THE PROPAGATION OF VIRTUE AND PREVENTION OF VICE LAW

Islamic Emirate of Afghanistan
Ministry of Justice
Official Gazette

Afghanistan Analysts Network

Unofficial AAN translation complete with footnotes

February 2025

The Islamic Emirate of Afghanistan
Ministry of Justice

The Official Gazette
THE PROPAGATION OF VIRTUE AND PREVENTION OF VICE LAW

The Decree of His Excellency
Amir al-Mu'minin
May Allah Almighty Protect Him

Date of publication: 25 Muharram 1446 Hijra Lunar
10 Asad 1403 Hijra Solar
[corresponds to 31 July 2024]
Serial Number: 1452

The following legal documents are published in this issue:

1. The Propagation of Virtue and Prevention of Vice Law.
2. The order of the Amir al-Mu'minin, may Allah preserve him, regarding the offering of the prayer.

Copyright: Ministry of Justice
Production Manager: Mawlawi Muhammad Afzal (Ahmad)
0773262028
Deputy: Mawlawi Abdulhaq (Sediqqi)
0767680461
Manager: Muhammad Jan Rassouli
0747627930
Website: www.moj.gov.af

Price of this issue (based on contract): 50 Afs
Print run: 6,000 copies
Number of pages, including cover: 114
Printing House: Baheer
Address: Ministry of Justice, Department of Publications and Public Information, District 6, west of Darul Aman Palace

In the name of Allah, the Beneficent, the Merciful

Praise be to Allah, the Lord of the Worlds. Blessings and peace upon the foremost of the messengers, and on all his family and companions.

THE DECREE OF THE AMIR AL-MU'MININ, MAY ALLAH PRESERVE HIM, REGARDING THE IMPLEMENTATION OF THE PROPAGATION OF VIRTUE AND PREVENTION OF VICE LAW

Number: 1
Date: 3/1/1446 AH

Article 1

I hereby endorse the Propagation of Virtue and Prevention of Vice Law, composed of one preface, four sections and 35 articles.

Article 2

This law shall be enforced from the date the decree is signed and the text of the law shall be published in the Official Gazette.

Peace be upon you and the mercy of Allah and His blessings!

Amir al-Mu'minin [Commander of the Faithful] Sheikh al-Quran and Hadith Mawlawi Hibatullah Akhundzada

TABLE OF CONTENTS

The decree of the Amir al-Mu'minin, may Allah preserve him, regarding the implementation of the Propagation of Virtue and Prevention of Vice Law 3

Article 1 3
Article 2 3

Table of Contents 4

The Law on the Promotion of Virtue and Prevention of Vice 7

Preface 7

Basis
Article 1 7

Aims
Article 2 7

Terminology
Article 3 8

Area of enforcement
Article 4 11

Responsibility for implementation
Article 5 12

Establishment of virtue and prohibition of vice
Article 6 12

Limitation of responsibility for establishing virtue and extirpwating vice
Article 7 13

Abbreviation
Article 8 13

Chapter One
Rules for the enforcer, the enforcee and that which is being enforced. Conditions, manners and principles of enforcement. 14

Qualifications and attributes of a Muhtasib (enforcer)
Article 9 14

Conditions and principles relating to enforcement and the enforcer
Article 10 16

Conditions relating to the one upon whom enforcement is taking place
Article 11 19

Conditions relating to that which is being enforced
Article 12 20

Injunctions related to women covering themselves
Article 13 20

Laws for the covering of the male body
Article 14 23

Duties of the enforcer related to people covering themselves
Article 15 24

Chapter Two
Duties and responsibilities of enforcers 25

Duties and responsibilities of enforcers
Article 16 25

The enforcer's duties with regard to the press and news organisations
Article 17 25

The enforcer's duties relating to traders, artisans and farmers
Article 18 27

The enforcer's duties with regard to sightseeing and recreation spots
Article 19 34

The enforcer's duties with regard to passenger vehicles, lorries, motorcycles and other such vehicles
Article 20 36

The enforcer's duties with regard to public baths
Article 21 38

The enforcer's duties with regard to individual wrongful acts
Article 22 38

The enforcer's duties with regard to minorities living under an Islamic government, asylum-seekers, children and the mentally handicapped
Article 23 52

Chapter three
Punishments 54

Punishment administered by the enforcer
Article 24 54

Rights of a director and commander with regard to punishment
Article 25 55

Conditions under which a perpetrator is referred to the concerned court of law
Article 26 56

An enforcer's duties with regard to his prisoners
Article 27 56

Chapter Four
Miscellaneous injunctions 58

Ensuring good relations among the general public
Article 28 58

Monitoring and evaluation
Article 29 58

Reporting
Article 30 59

Training and education of enforcers and workers
Article 31 59
Seeking guidance
Article 32 60
Obtaining assistance
Article 33 60
Presenting methodology and procedure
Article 34 60
Implementation
Article 35 61

In the name of Allah, the Beneficent, the Merciful[1]
Praise be to Allah, the Lord of the Worlds. Blessings and peace upon the foremost of the messengers, and on all his family and companions.[2]

THE LAW ON THE PROMOTION OF VIRTUE AND PREVENTION OF VICE

PREFACE

Basis
Article 1

This law is based on decree number 9 issued by the esteemed Amir al-Mu'minin,[3] may Allah preserve him, on 28/3/1444AH, corresponding to 2/8/1402 in the Hijri solar calendar [25 August 2023].

Aims
Article 2

1. The aim of this law is to organise matters related to the promotion of virtue and prevention of vice,[4] and

---

[1] (In the name of Allah, the Beneficent, the Merciful) The book begins with mention of the name of Allah, then Allah is offered praise, in emulation of the Book that begins in this manner. This is also consistent with the words of the Prophet ﷺ, "Every good deed that does not begin with mention of Allah is doomed." Abdul Qadir ar-Rehawi transmitted this in his collection of 40 Hadiths. According to the version of Abu Dawud and an-Nasai, "Every good deed that does not begin with praise of Allah will be tainted," while another version of Bin Majah has it that every good deed, not beginning with praise of Allah, would be doomed. This has been transmitted by Abu Awanah and Bin Habban in their collection of authentic Hadiths (Al-Banayah in explanation of Al-Hedayah, volume 1, p105, published by Dar al-Kutub al-Ilmiya, Beirut.)

[2] See above.

[3] "Believers, obey Allah and obey the Messenger and those who have been entrusted with authority among you." (Surah An-Nisa, verse 4:59) Bin Abidin says that the command of the ruler should be implemented, in other words, it should be obeyed and one is not allowed to contradict it. … obedience of one's leader is obligatory, in all matters that are not sinful (*Radd al-Mukhtar* on Al-Durr al-Mukhtar, volume 8,132, Al-Rashidiya.)

[4] Undoubtedly, Umar (may Allah be pleased with him) organised all these matters in a manner that could not be bettered (*Al-Faruq*, Shibli Nomani, p254, Dar'al-Salam li'n-Nashri wa't-Tauzi.)

Umar (may Allah be pleased with him) laid down strong principles to ensure that actions remained in their authentic and true form (*Al-Faruq*, Shibli Nomani, p231, Dar'al-Salam li'n-Nashri wa't-Tauzi.)

In accordance with the commands given by Umar (may Allah be pleased with him) to those delegated with some task: everyone who was appointed to assist them would agree to a written code of conduct, laying out his powers and duties. This process would be witnessed by a host of the *Muhajirs* and the *Ansar*. (*Al-Faruq*, Shibli Nomani, p224,

2. To lay out the duties and capacities of those who are charged with enforcing this law.[5]

Terminology
Article 3

These are the meanings of certain terms referred to in the course of this legal document:

1. *Ihtisab* [enforcement]: Conducted by the enforcer to promote Islamic law – *sharia* – and all virtuous acts that are in accordance with Islamic law and to prevent any deviation from Islamic law.[6]
2. *Muhtasib* [enforcer]: The person who has been delegated by the Amir al-Mu'minin, or by a person authorised by the Commander of the Faithful, to carry out the task of enforcement.[7]
3. *Muhtasib fihi* [that which is being enforced]: Actions that are subject to an enforcer's enforcement.[8]

Dar'al-Salam li'n-Nashri wa't-Tauzi.) [Translator's note: Muhajirs refers to those who had emigrated from Mecca to Medina and Ansar to those who assisted them in Medina.]

[5] [Translator's note: All three clauses of the footnote above are repeated].

[6] Al-Hasba: It is to promote virtue, when one sees it being abandoned, and to prevent vice, when one sees it being committed, as Almighty Allah states, "Let there be a group among you who call others to good, and enjoin what is right, and forbid what is wrong." (Surah Al Imran, verse 3:104) (*Al-Ahkam al-Sultaniya*, by Al-Mawardi, p349, published by Dar al-Hadith, Cairo.)

Firstly, let's look at the real meaning of al-hasba – literally to take to account. It is to promote virtue, when one sees it being abandoned, and to prevent vice, when one sees it being committed. It is a religious duty, part of enjoining good, and forbidding wrongdoing, and it is incumbent on one who is in authority over Muslims; in other words, one who is competent to carry out this task. It becomes obligatory on that person, who employs assistants in order to carry out this task. The person who established this enforcement system through implementation of the duty or principle of enjoining good and forbidding evil, as stipulated in Islam and its law, was Umar bin al-Khattab, may Allah be pleased with him. He used to personally stand guard in the markets, in order to ensure that no cheating was going on. He used to patrol at nights, to check on the conditions of Muslims, to guard against any wrongdoing, to identify those who broke the law and to punish offenders. However, the nomenclature became established during the Abbasid Caliphate (*Al-Fiqh al-Islami wa adilatuhu*, volume 8, p2658, published by Dar al-Fikr, Damascus, Syria.)

[7] Al-Muhtasib: He is the one appointed by the head of state or the person acting on behalf of the head of state. His job is to keep informed of the conditions of the populace. He should be able to discern their circumstances and the solutions to their problems. From their transactions, he is able to gauge the conditions of the market, whether they are giving full measure or selling people short. He is able to take stock of what applies to their affairs. He is wise to the excuses made by miscreants. He is able to mete out suitable punishment to them – a punishment that is in proportion to their crimes. (*Al-Mausu'at al-Fiqhiya't al-Kuwaitiya*, of Kuwait, volume 17, p234.)

Al-Muhtasib is derived from al-ihtisab. Literally, it refers to one who is asking for a price. In Islamic terminology, it refers to one who promotes virtue, when he sees it being abandoned, and prevents vice, when he sees it being perpetrated.

It is incumbent on the enforcer to accomplish this task, since he has been appointed for this task by the government. As for others, their obligation to perform *amr bi'l-maruf wa'n-nahi an il-munkar* is discharged when someone is doing it, an action that is known as *fard-e kifaya* in Islam (*Al-Ahkam as-Sultaniya* of Al-Mawardi, p349, published by Dar'al-Hadith, Cairo.)

[8] The *muhtasib fihi* – the thing that is subject to enforcement. Enforcement is practised on every good deed, when it becomes apparent that it is being neglected; and on every wrongdoing, once it becomes apparent that it is being practised. The word *khair* – good – has been used in the Quran to give the sense of both: "Let there be amongst you a group who call others to good, and enjoin what is right and forbid what is wrong," "good" being every good deed

4. *Ma'ruf* [virtue]: Every word or deed that is approved of by Islamic law.[9]
5. *Amr bi'l-ma'ruf* [promotion of virtue]: To require obedience to the Messenger of Allah ﷺ, along with action in accordance with Islamic law.[10]
6. *Munkar* [vice]: Every word and deed that is disapproved of by Islamic law.[11]

---

that one instinctively inclines towards (*Al-Mausu'at al-Fiqhiya't al-Kuwaitiya*, volume 17, p245, published by Maktaba Rashidiya, Quetta.)

[9] Because *maruf* – good, virtuous actions – are what Allah has commanded. (*Al-Ahkam al-Quran*, by Al-Jassas al-Hanafi, volume 2, p322, published by Dar Ihya at-Turath al-Arabi, Beirut.)

According to *An-Nahaya*, al-maruf is a word for every act that is well-known as being enjoined by Allah, aimed at becoming close to Him, and being kind towards people. It encompasses everything that Islamic law requires. (*Mirqat al-Mafatih Sharh al-Mishkat al-Masabih*, volume 8, p3208, published by Dar al-Fikr, Beirut, Lebanon.)

"Let there be a group among you who call others to good, and enjoin what is right," in other words, to what is favoured by both sharia and human intellect; "and forbid what is wrong," in other words, what is disapproved of by sharia and human intellect, or one can say that al-maruf is what is in accordance with Quran and Sunna – the practice of the Prophet ﷺ – while al-munkar is the opposite; or al-maruf are virtuous actions, and al-munkar sinful actions. (*Tafsir Nasafi, Madarik al-Tanzil wa Haqaiq at-Tawil*, volume 1, p280, published by Dar al-Kalam al-Tayyib, Beirut.)

And al-maruf is what the human intellect and sharia recognise the goodness of, while al-munkar is the opposite of that, in other words what the human intellect and sharia recognise the evil of. (*Tafsir al-Khazin*, volume 1, p399, published by Dar al-Fikr, Beirut.)

In another definition, al-maruf is everything enjoined by sharia, and accepted by a sound mind, and commonly acceptable. (*Al-Fiqh al-Islami wa adilatuhu*, volume 8, p2625, published by Dar al-Fikr, Damascus, Syria.)

Literally, al-maruf is what the human intellect accepts and what sharia has enjoined – what appeals to the conscience. (*Encyclopaedia of Jurisprudence*, volume 39, p123.)

"Word or deed": There are various explanations of this, some of which our school of thought upholds. As you will come to realise, these are the best explanations, first of which is what most narrators and writers, that faith comprises both word and deed. Word, that is the two testimonies – that there is only one God and Muhammad ﷺ is his Messenger – and actions in accordance with Islam.

[10] According to jurists, amr bi'l-maruf is to enjoin obedience to Muhammad ﷺ and the religion that he brought from Allah. The original meaning of al-maruf is that which is reputable, appropriate, giving rise to no opprobrium in those of faith; that in which there is no disrepute. (*Encyclopaedia of Jurisprudence*, volume 6, p247.)

Amr bi'l maruf is to enjoin every word and deed that is appropriate, in accordance with the injunctions of Islam. (*Az-Zuhayli's Islamic Jurisprudence and its Proofs*, volume 8, p6369, published by Dar al-Fikr, Damascus, Syria.)

[11] In Islamic terminology, al-munkar is every word and deed in which the pleasure of Allah is not concomitant. (*Encyclopaedia of Jurisprudence*, Kuwait, volume 6, p247.)

It is that from which human nature instinctively recoils and which Islamic law has prohibited. It is a tendency that one would hate to see on the rise, something that one would not wish to see manifest itself in any gathering, in accordance with a saying of the Messenger of Allah ﷺ, what crops up in one's mind, but one would hate anyone else to find out about." (*Encyclopaedia of Jurisprudence*, Kuwait, volume 17, p251.)

"Let there be a group among you who call others to good, and enjoin what is right," in other words, to what is favoured by both sharia and human intellect; "and forbid what is wrong," in other words, what is disapproved of by sharia and human intellect, or one can say that al-maruf is what is in accordance with Quran and Sunna – the practice of the Prophet ﷺ – while al-munkar is the opposite; or al-maruf are virtuous actions, and al-munkar sinful actions. (*Tafsir Nasafi, Madarik al-Tanzil wa Haqaiq at-Tawil*, volume 1, p280, published by Dar al-Kalam al-Tayyib, Beirut.)

And al-maruf is what the human intellect and sharia recognise the goodness of, while al-munkar is the opposite of that, in other words what the human intellect and sharia recognise the evil of. (*Tafsir al-Khazin*, volume 1, p399, published by Dar al-Fikr, Beirut.)

Some, however, classify al-munkar as everything that sharia has prohibited. (*Encyclopaedia of Jurisprudence*, Kuwait, volume 17, p251.)

7. *Nahi an il-munkar* [prevention of vice]: To prevent any such word or deed that does not accord with Islamic law.[12]
8. *Muhtasib alaihi* [the one upon whom enforcement is being conducted]: The person from whom an enforcer requires virtuous conduct and avoidance of that which sharia disapproves.[13]
9. *Ta'zir* [punishment]: Action taken that is in accordance with Islamic law, and this particular law, by the enforcer when some manifest act that contradicts sharia takes place.[14]
10. *Sharia hijab*: Clothes which cover a woman's whole body from everyone [ie men] who is not her mahram [everyone who is not her close male relative] so long as those clothes are not thin, short or tight.[15]

---

[12] *Nahi an il-munkar* is to demand desistance from any deed not pleasing to Allah. It is to encourage abandonment of any action which it is appropriate to abandon, or to alter anything that requires abandonment, in accordance with what Islam has prescribed. (*Islamic Jurisprudence and its Proofs*, Imam Zuhayli, volume 8, P6369, published by Dar al-Fikr, Damascus, Syria.)

[13] *Al-Muhtasib alaihi* – the one on whom enforcement is exercised – is the one who is being addressed with enjoining of right, forbidding of wrongdoing. (*Encyclopaedia of Jurisprudence*, Kuwait, volume 17, p241, published by Maktaba Rashidiya, Quetta.)

[14] *Taziir* – translated here as punishment – is the reprimand for such a sin which does not carry any *hadd* – prescribed punishment – or any *kafara* – atonement – whether that sin involves infringement of some right of Allah, or a human right. With respect to the exact punishment, it can be said to be some chastisement, though not a prescribed punishment; an admonishment, without its exact measure being identified. (*Encyclopaedia of Jurisprudence*, volume 25, p296.)

From an Islamic perspective, this punishment can be said to be an admonishment that does not reach the level of a prescribed punishment, like the admonishment of someone who swears, without swearing an oath. (*Al-Muajam al-Wasit*, volume 2, p598.) So *tazir* – punishment – is literally an admonishment – tadib. (*Al-Dar al-Mukhtar wa Hashiyatu bin Abidin Radd al-Muhtar*, volume 4, pp40-59, published by Dar al-Fikr, Beirut.)

This is contrary to a punishment which is imposed on someone who swears a false oath, or something similar. This punishment is incumbent when the aggrieved party lodges a complaint to the concerned official. He is then able to punish the person for a false oath or make a settlement between the two parties. (*Al-Durr al-Mukhtar wa Hashiyatu Bin Abidin Radd al-Muhtar*, volume 4, p65, published by Dar al-Fikr, Beirut.)

So what is clear here is that the action of the concerned official, in this case – whether to punish the culprit or settle the matter between two parties – is on account of some expediency of which he is aware. It is not as if he is establishing some precedent in this case, should he not punish the person who has sworn a false oath. (*Al-Bahr al-Raiq Sharhu Kanz al-Daqaiq wa Manhat al-Khaliq wa Takmilat al-Turi*, volume 5, p11, published by Dar al-Kitab'al-Islami.)

"This punishment is incumbent when the aggrieved party lodges a complaint to the concerned official. He is then able to punish the person for a false oath, or make a settlement between the two parties." So, in the case of some wrongdoing – *al-munkar* – the punishment is obligatory, since it is part of the process of eliminating wrongdoing. The lawmaker – in this case the Messenger of Allah ﷺ – prescribed admonishment in every such case when he said, "If any of you sees anything that is objectionable, he should change it with his hand, but if he cannot, he should do it with his tongue." The same is not the case with prescribed punishments, which have to be administered by a ruler; nor with the punishment that is inflicted for swearing a false oath. That lies within the power of the concerned official, who can decide whether to punish the culprit, or make a settlement between the two parties. (*Al-Durr al-Mukhtar wa Hashiyatu Bin Abidin Radd al-Muhtar*, volume 4, p65, published by Dar al-Fikr, Beirut.)

[15] *Al-Hijab* literally means covering. The word is used to convey the covering of women. There is another term in this connection, *Al-Niqab*. The distinction between hijab and niqab is that niqab refers to a woman's covering of her face, while hijab is the covering by a woman of her whole body, except from her close relatives, known as *al-maharam*. (*Encyclopaedia of Jurisprudence*, volume 41, p133.)

Bin Abbas says, Allah commanded believing women, when they came out from their houses for some need, to cover their faces from above their heads with shawls, and just to show one eye. Muhammad bin Sirin says that he asked

Area of enforcement
Article 4

This law will be implemented in all departments, in public places and for everyone who lives in the country of Afghanistan.[16]

Ubaydah al-Salmani about the saying of Almighty Allah, "that they should draw over themselves some of their outer garments" (33:59.) He demonstrated what this meant by covering his face and his head, showing his left eye. (*Abridged Tafsir Bin Kathir*, volume 2, p114, published by Dar al-Quran al-Karim, Beirut.)

According to Aisha, "The Messenger of Allah used to offer the morning prayer. Some women of the believers used to join him, wrapped in their cloaks. Then they would return to their houses, without him having recognised a single one of them." (*Sahih al-Bukhari*, Hadith number 372)

According to Umm Salma, when the verse was revealed, "that they should draw over themselves some of their outer garments," the women of the Ansar came out, and on their heads cloaks as black as crows. Abu Bakr says that this verse proves that young women should cover themselves from strangers. This concealment manifests itself when they go out. It is to prevent any doubtful quarters from harbouring desire in their regard. (*Ahkam'al-Quran, Jassas*, volume 3, p486, from the Chapter on Covering of Women.)

Sharia does not countenance any garment which reveals any part of the awrat – the parts of the body which are supposed to be concealed – of either a man or a woman, no matter how beautiful that garment is. The same is the case with very thin clothes, that stick to the flesh, which conjure up an image in the eyes of the onlooker of a part of the body that is supposed to be concealed. Such a garment is considered the same as a garment which actually reveals that part of the body: it is not allowed. (*Fath al-Mulhim*, volume 4, p88.)

If a garment is sticking to the body, or is very thin, then looking at it is like looking at that actual part of the body, and looking at a part of someone's body that should be concealed is now allowed, without some valid excuse. (*Ahkam al-Quran of Mufti Muhammad Shafi*, may Allah have mercy on him, volume 6, p370.)

Things have really reached a calamitous state in our part of the world, with women wearing tight, thin clothing. Such clothing should not even be worn in the presence of close relatives, except for a woman's husband, so how can it be acceptable in public. People seem to be unaware of this. (*Ahkam al-Quran of Mufti Muhammad Shafi*, may Allah have mercy on him, volume 3, p370.)

If a woman's clothes are so thin that they reveal what is under them, or if they are thick, but they stick to her body in such a manner that body parts become visible, then one should avert one's gaze, since in reality that clothed woman is similar to a naked one and the Messenger of Allah ﷺ said, "Allah has cursed the naked, clothed ones." It is related on the authority of Aisha – may Allah be pleased with her – that her sister Asma came to see her. She was wearing some thin, Syrian clothing. Such clothing is popular these days. The Messenger of Allah ﷺ commented that this was the very type of clothing that was disapproved of in Surah al-Nur. After she left, Aisha said that she had told Asma what the Messenger of Allah ﷺ had said. "Aisha," the Messenger of Allah said, "after a woman's periods have started, the only parts of her body that should be visible are her face and her hands." (*Badai as-Sanai fi Tartib al-Sharai*, volume 5, p123, published by Dar al-Kitab al-Ilmiya.)

[16] Equality before the law is one of the most important principles of justice. In the eyes of the law, there is no disparity between one person and another. A king and a beggar, the noble and the lowly, are all the same. (*Al-Faruq*, Shibli Nomani, p257, Dar al-Salam li'l-Nashri wa'l-Tauzi.)

So the first principle of the penal code of any country is that the law should extend to every person living in the realm, regardless of their gender or attributes. The foundation of this principle is the right of leadership of the government over the land, sea and air of its territory. This consists of all parts of the geographical territory of a country that consist of dry land, while the sea attached to this land constitute its territorial waters. (*Al-Fiqh al-Islami wa adilatuhu*, volume 8, p5973, published by Dar al-Fikr, Damascus, Syria)

Islamic jurists are united that Islamic sharia should be implemented in Dar al-Islam – the place where a majority of Muslims are residing – for both Muslims and others. This principle is prevalent in legislation that is drawn up, for instance in Arab countries, though exceptions are made under certain circumstances. Our jurists are at odds over the extent of implementation of sharia on those who have sought asylum in one's country. Such a person is known as *al-mustaman*, plural *al-mustaminin*. They consist of those who enter our lands and live in peace for a limited amount of time, such as those who come with an entry visa, or those who work in their country's accredited embassies and consulates, outside their own country. (*Al-Fiqh al-Islami wa adilatuhu*, volume 8, p5973, published by Dar al-Fikr, Damascus, Syria.)

Responsibility for implementation
Article 5

The Ministry of Promotion of Virtue, Prohibition of Vice and Hearing of Complaints is responsible for implementing the orders contained in this law.[17]

Establishment of virtue and prohibition of vice
Article 6

1. The Ministry of Promotion of Virtue, Prohibition of Vice and Hearing of Complaints is responsible for extorting people to virtue and prohibiting vice, in accordance with Islamic law and Hanafi jurisprudence.[18]
2. The Ministry of Promotion of Virtue, Prohibition of Vice and Hearing of Complaints is responsible for promoting peace and brotherhood among the population and to deter them from ethnic, linguistic and regional prejudice.[19]

Equality in the eyes of the law: Justice in its most inclusive sense encompasses this now popular principle. This is because justice requires consistency in its application, as far as decisions, rights and ownership are concerned. Abu Bakr, may Allah be pleased with him, alluded to this when he said, "The weak amongst you are strong in my sight: I will be sure to secure their rights. The strong amongst you are weak in my sight: God willing, I will make sure that they do not seize anyone else's rights." And, in a famous letter, written by Umar to Abu Musa al-Ashari, he mentioned, "Be the most noble, in people's midst, in your countenance, your justice and your bearing, in such a way that no noble person can have any expectation that you will exercise favouritism, nor any lowly one any fear that you will not be just."

Furthermore, the Messenger of Allah ﷺ condemned attempts to discriminate between people, in judicial matters and any matter related to the law. "Those who preceded you perished," he said, "by letting off those who stole, just because they were of noble birth, and punishing those who stole, but happened to be of lowly birth. By the One in whose hand the soul of Muhammad rests, if Fatima the daughter of Muhammad were to steal, her hand would be severed." (*Al-Fiqh al-Islami wa adilatuhu*, volume 8, p6208, published by Dar al-Fikr, Damascus, Syria.)

[17] Details of the duties of functionaries can be found in the instructions of Umar, may Allah be pleased with him: everyone who was appointed to some official position would be given written instruction. This would accompany his appointment and would lay out his powers and his duties. This instruction would be attested by a substantial number of those who emigrated from Mecca – the muhajirun – and those who assisted them in Medina – the ansar. (*Al-Faruq*, Shibli Nomani, p224, Dar al-Salam li'l-Nashri wa'l-Tauzi.)

[18] "Those who, when We establish them in the land, ensure proper offering of prayer and pay the zakat and enjoin good and forbid evil. The final outcome of all affairs rests with Allah." (Surah al-Hajj, verse 41)

Enforcement is to enjoin good, when it is evidently being abandoned, and to prohibit evil, when it is evidently being perpetrated, as Almighty Allah has said, "Let there be a group among you who call others to good, and enjoin what is right, and forbid what is wrong: those who do this shall be successful." (Surah Al Imran, verse 104)

This act is to be expected of every Muslim, but there are nine differences between one who does it of his own accord and one who is charged with enforcement. One of these differences is that the enforcer is duty bound to enact it, because he is charged to do so by the government, whereas others are released of their responsibility, so long as someone is doing it. Another difference is that it is a duty of the enforcer, which he is not allowed to shirk, whereas in the case of someone who is doing it of his own accord, it constitutes a voluntary action, which if he wishes, he can leave to someone else. (*Al-Ahkam al-Sultaniyah* written by al-Mawardi, p284, published by Dar al-Kutub al-Ilmiyah, Beirut, Lebanon.)

[19] "Surely, all believers are brothers, so make peace between your brothers, and fear Allah, so that mercy may be shown to you." (Surah Al-Hujurat, verse 10)

"Mankind! We have created you from a male and a female, and made you into peoples and tribes, so that you might come to know each other. The noblest of you in Allah's sight is the one who fears Allah most. Allah is All-Knowing, All-Aware." (Surah Al-Hujurat, verse 13)

Limitation of responsibility for establishing virtue and extirpating vice
Article 7

Everyone is able to stand up for virtue and against wrongdoing, but the responsibility for doing so has been limited to enforcers.[20]

Abbreviation
Article 8

The Ministry of Promotion of Virtue, Prohibition of Vice and Hearing of Complaints will, hereafter, be referred to as the Ministry in this legal document.[21]

Abu Huraira reported that the Messenger of Allah ﷺ said, "Do not be envious of each other, do not quarrel, do not be hateful towards one another, do not turn your backs on one another, and do not seek to outbid each other, but be slaves of Allah, brothers amongst yourselves. A Muslim should be the brother of another Muslim, not oppressing him, not humiliating him and not ridiculing him. Piety is here," he said, pointing towards his chest three times. "A Muslim considers it wrong that he should humiliate his Muslim brother. Similarly, every Muslim's blood, property and honour is sacred, as far as another Muslim is concerned." (Transmitted by Muslim in Hadith number 6706, Tirmidhi in Hadith number 1927 and Ahmad bin Hanbal in Hadith number 7713.)

Article 57 of the Code of Judicial Rulings states that authority over the populace is dependent on expediency. This is due to the fact that the leader of the Muslims has a general overview over the population in general in their day-to-day affairs, on account of the power that has been given to the sovereign from on high, for the protection of the blood of His servants, the upholding of their honour and keeping safe their properties. (*Sharh al-Mujallah Salim Baz*, volume 1, p43.)

The connection of a head of state with his subjects is like the connection of a trusty servant with his master. It is for him to ensure people's well-being, he should create a climate of peace and security, protecting people's honour and property. He should not exercise force or oppression. (*Islamic Jurisprudence and its Proofs*, volume 8, p6313, published by Dar al-Fikr, Damascus, Syria.)

Hold fast to the rope of Allah, in other words to the religion of Islam … all of you … Abu Hurairah related that the Messenger of Allah ﷺ said, "Allah is pleased for you on three accounts and is displeased for you on three accounts. What pleases him is that you should worship Him and should not associate any partners with Him, that all of you should hold fast to the rope of Allah and that you should be well-meaning towards those whom Allah has put in charge of your affairs; what displeases Him is a lot of discussion, asking a lot of questions and waste." Muslim transmitted it. … Be careful of breaking into cliques; stick to the community and the population in general. Ahmad transmitted it in explanation of the words "do not become disunited," quoted in Tafsir Mazhari, volume 2, p106.)

[20] "And let there be amongst you a people who call to good and encourage what is right and prohibit what is wrong. They are the successful ones." (Surah Al Imran, verse 104)

Abu Said says, "It has been decided what this is about, for I heard the Messenger of Allah ﷺ say, 'Whoever amongst you sees some wrongdoing, he should change it with his hand, but if he is not able to do so, then with his tongue, and if he is not able to do so, then in his heart, and that is the weakest type of faith.'" (*Sahih Muslim*, Hadith number 49, volume 1, p69, published by Dar Ihya al-Turath al-Arabi, Beirut.)

Seeing that the duty of enforcement is an Islamic duty, and it is a duty of the imam – the head of state – so one can deduce the fact that he has to delegate the task to others. Others are charged with this task, on behalf of the head of state. Its methodology is dependent on the power and will of those enforcing it, the reach of the sovereign and whether he has people who will assist him in this task. However, enforcement is the duty of the head of state. He does not relinquish this duty under any conditions. (*Encyclopaedia of Jurisprudence*, Kuwait, volume 17, p240.)

Article 57 of the Code of Judicial Rulings states that authority over the populace is dependent on expediency. This is due to the fact that the leader of the Muslims has a general overview over the population in general in their day-to-day affairs, on account of the power that has been given to the sovereign from on high, for the protection of the blood of His servants, the upholding of their honour and keeping safe their properties. (*Sharh al-Mujallah Salim Baz*, volume 1, p43.)

[21] The terminology, in this case, is the agreement of a group of people on a certain term. Every branch of knowledge has its own terminology. (*Maajam al-Wasit*)

CHAPTER ONE

RULES FOR THE ENFORCER, THE ENFORCEE AND THAT WHICH IS BEING ENFORCED. CONDITIONS, MANNERS AND PRINCIPLES OF ENFORCEMENT.

Qualifications and attributes of a Muhtasib (enforcer)
Article 9

A person is fit to be appointed as an enforcer if he fulfils the following conditions:[22]

1. Islam.[23]
2. Is bound by Islamic tenets (has reached puberty and is of sound mind).[24]
3. Has knowledge of the Islamic injunctions which he is promoting, along with the things which he is prohibiting.[25]

Article 57 of the Code of Judicial Rulings states that authority over the populace is dependent on expediency. This is due to the fact that the leader of the Muslims has a general overview over the population in general.

Article 45 states that an appointment in accordance with convention – *urf* – is like an appointment according to the scripture. (*Code of Judicial Rulings* (p21) published by Nor Muhammad, Karkhana Tajarat-e Kutub, Aram Bagh, Karachi.

[22] Conditions of the enforcer: Jurists have given the following conditions for someone who can perform this task. (*Encyclopaedia of Jurisprudence*, Kuwait, volume 17, p234.)

23 Firstly, Islam: Enforcement can only be valid if it is conducted by a Muslim, due the element of authority that is inherent in this act, and the status that comes with implementation of the law. A non-believer does not have the right to wield authority over Muslims, because of the saying of the Almighty, "Never will Allah give those who deny the truth a way to harm the believers." (Surah an-Nisa, verse 141) In this case, prohibition is in support of religion, so one who denies the very religion cannot be fit to perform this task. (*Encyclopaedia of Jurisprudence*, Kuwait, volume 17, p235.)

[24] The second condition: Being bound by Islamic tenets, through having reached puberty, and being of sound mind. Being bound by Islamic tenets entails being responsible enough to perform such tasks, having the ability to put in the effort and to understand what is required of one. One who is bound by Islamic tenets must have the capacity to perform the tasks involved, in the required manner. This requires intelligence which is the basis of understanding. Allah has made it a basis of our religion, and our worldly affairs, so one only becomes responsible to carry out Islamic tasks, when one's intelligence reaches its mature form.

Such responsibility for enforcement becoming compulsory and one being entrusted with this duty. As for promotion and prohibition, a child is not even duty-bound to carry out these injunctions. Just because it is possible for him to do so does not mean that he is fully intelligent. So when he comes to know the ways of coming close to Allah, along with the paths of wrongdoing, and how one can change, then if he is offered such a task, he is fit for it. (*Encyclopaedia of Jurisprudence*, Kuwait, volume 17, p235.)

[25] Third condition: Knowledge. There are two types of knowledge that an enforcer is bound to have. The first type of knowledge is knowledge of sharia injunctions. He has to know what he is promoting, and what he is prohibiting. Someone who is ignorant of the instructions of sharia may think well of something that is frowned on by sharia. On

4. Has a good idea of the benefits of removing vice and asserting virtue, when to be engaged in the prohibition of one, and promotion of the other.[26]
5. A sense of justice.[27]
6. Has the capacity to promote and prohibit.[28]

A person is able to work as an enforcer if he fulfils the following conditions:

1. Is himself a manifestation of virtue and avoids all forms of iniquity and vice.[29]

---

the other hand, he may perpetrate an action that he should be wary of, due to his lack of familiarity with the harm of that act. (*Encyclopaedia of Jurisprudence*, volume 17, p235.)

"He who sees," in other words knows, "amongst you some wrong deed," in other words, amongst others besides oneself from among the believers. Here the companions are being addressed directly. Indirectly, others are also being addressed. The 'who' – من – here is selective. This means that the task of amr bi'l-maruf wa nahi an il-munkar is obligatory on the community: if some are conducting this obligation, then that exonerates others in the community. And there is an allusion here to the fact that only one who is aware of the degrees of righteousness, and the distinction between various forms of wrongdoing, is fit to conduct this work; one who is able to distinguish between that on which there is agreement, with respect to righteousness and wrongdoing, and that on which there is not general agreement. (*Mirqat al-Mafatih Sharh Mishkat al-Masabih*, volume 8, p3208, published by Dar al-Fikr, Beirut, Lebanon.)

[26] The second type of knowledge: that he should know how to alter one with the other, in such a manner that he is sure, or practically sure, that his denial of some wrongdoing will lead to its elimination, and that his promotion of righteous act will be effective and have the desired result. (*Encyclopaedia of Jurisprudence*, volume 17, p236.)

"He who sees," in other words knows, "amongst you some wrong deed," in other words, amongst others besides oneself from among the believers. Here the companions are being addressed directly. Indirectly, others are also being addressed. The "who" – من – here is selective. This means that the task of amr bi'l-ma'ruf war is obligatory on the community: if some are conducting this obligation, then that exonerates others in the community. And there is an allusion here to the fact that only one who is aware of the degrees of righteousness, and also of the distinction between various forms of wrongdoing, is fit to conduct this work; one who is able to distinguish between that on which there is agreement, with respect to righteousness and wrongdoing, and that on which there is not general agreement. (*Mirqat al-Mafatih Sharh Mishkat al-Masabih*, volume 8, p3208, published by Dar al-Fikr, Beirut, Lebanon.)

[27] Not all jurists have stipulated the necessity of a sense of justice in the enforcer, so long as he is acting under supervision and is not himself the one who is wielding authority. So this condition applies to the one who is wielding authority, except in the case of necessity, when the sense of justice of the enforcer comes into play. (*Encyclopaedia of Jurisprudence*, Kuwait, volume 17, p237.)

[28] Fifth condition: power; the capacity to promote righteousness and prohibit wrongdoing. Bin al-Arabi (not to be confused with the more famous Bin al-Arabi, a philosopher and mystic also hailing from Muslim Spain, this Bin al-Arabi is a 12th century jurist of the Maliki school of thought, who became a student of Imam al-Ghazali in Baghdad) says that this refers to the person of the enforcer: does he have the power to carry out the task at hand? For example, he may be required to force the person to refrain from some wrongdoing. There may be a risk of him being attacked, or even killed in the process of putting an end to the wrongdoing. In this case, if he holds out hope of ending the wrongdoing, then in the opinion of most scholars, he is allowed to continue, despite the risks. If there is no hope of such an outcome, then what is the point? Bin al-Arabi goes on to say that if he is sincere in his intention, then he may carry on with his task, no matter what the consequences may be, but in the opinion of Bin al-Arabi it is more important to save a human life, than it is to preserve the right of God Almighty, in this case by righting the wrongdoing (*Encyclopaedia of Jurisprudence*, Kuwait, volume 17, p239.)

[29] This refers to the manners that should be adopted when promoting right and prohibiting wrong. The person performing this task should be a model of virtue, in word and in deed. He should be an epitome of good character. The enforcer should hold himself to high standards. In this way, his actions will be emulated by others and his words will be listened to. (*Encyclopaedia of Jurisprudence*, Kuwait, volume 17, p244.)

It is necessary that an arbiter of enforcement should be a free person – not a slave – endowed with a sense of justice, one whose religious opinions are well formed, with a sense of clarity and zeal in his beliefs. He should have knowledge of blatant wrongdoing. Such characteristics add to his aura and help him to suppress wrongdoing. They enable him to enforce his will and ensure that he is listened to. There remains no possibility of him being argued with, regarding what he is promoting and prohibiting. What is important to him is to achieve the very aim of his

2. Is sincere, not ostentatious, nor seeking any worldly reward or respect of men.[30]
3. Is kind.[31]
4. Practices forbearance and patience.[32]

Conditions and principles relating to enforcement and the enforcer Article 10

Conditions and principles relating to enforcement and the enforcer are as follows:

1. Respect for everyone's person and human dignity, ensuring good treatment for everyone when promoting virtue or prohibiting vice.[33]

---

existence, that is to uphold the sacredness of Islamic law, the spreading of virtue, respect of good character and common decency. (*Al-Fiqh al-Islami wa adilatuhu*, volume 8, p6263, published by Dar al-Fikr, Damascus, Syria.)

[30] To be sincere means to do things for the sake of Allah's good pleasure alone (*Safwat al-Tafasir*, volume 1, p87, published by Dar al-Sabuni li l-Tabaati wa al-Nashri wa al-Tauzi, Cairo.)

Two things are integral to being sincere: firstly, that one's intention should be Allah's good pleasure; and that one's action should be in accordance with sharia, whether it be a word or a deed. It should be a good word and a righteous action. (*Al-Fiqh al-Islami wa Adilatuhu*, volume 8, p6261, published by Dar al-Fikr, Damascus, Syria.)

Bin Abd al-Salam says that sincerity is for someone who is bound by Allah's commandments to undertake an act of devotion solely for the sake of Almighty Allah, not seeking any renown or honour among men. He does not do it to gain any religious benefit, nor to avert any worldly harm. Sincere action has its degrees. One is to do something out of fear of Allah's punishment; another is to do it in order to magnify the glory of God, in awe of His Majesty, in obedience to Him and in response to His commandments. In this case, one does not have any personal agenda – none whatsoever. One is just worshipping one's Lord as if one were to behold Him. And when one beholds Him, all creation vanishes into nothing; all worldly purposes are severed, as if they never existed. (*Encyclopaedia of Jurisprudence*, volume 42, p89.)

[31] Kindness is an essential attribute for an enforcer, in all his affairs. The Prophet ﷺ said as much in a Hadith related by Abd bin Hamid and Dhiya from Anas: "When kindness is attached to any deed, it beautifies that deed; and any action that is deprived of kindness, is impaired as a result." (*Al-Fiqh al-Islami wa adilatuhu*, volume 8, p6263, published by Dar al-Fikr, Damascus, Syria.)

[32] Similarly, it is essential that he should have a forbearing nature, and be patient in the face of adversity, for if this is not the case, then he is likely to do more harm than good. Like the sage, Luqman, after whom a surah of the Quran is named, said to his son, "enjoin good, and forbid evil, and endure patiently whatever may befall you. Surely, this is something that requires firm resolve." (Surah Luqman, verse 31:17) Along with his command and prohibition, an enforcer should be well-wishing towards others. This will enable him to achieve his objective of achieving what is desirable and eliminating that which is reprehensible, for the only way people can endure bitterness is when it is mixed with some kind of sweetness. (*Al-Fiqh al-Islami wa adilatuhu*, volume 8, p6263, published by Dar al-Fikr, Damascus, Syria.)

[33] In all his actions, an enforcer should be kind. The Prophet ﷺ said as much in a Hadith related by Abd bin Hamid and Dhiya from Anas: "When kindness is attached to any deed, it beautifies that deed; and any action that is deprived of kindness, is impaired as a result." Similarly, it is essential that he should have a forbearing nature, and be patient in the face of adversity, for if this is not the case, then he is likely to do more harm than good. Like the sage Luqman, after whom a surah of the Quran is named, said to his son, "enjoin good, and forbid evil, and endure patiently whatever may befall you. Surely, this is something that requires firm resolve" (Surah Luqman, verse 31:17) Along with his command and prohibition, an enforcer should be well-wishing towards others. This will enable him to achieve his objective of achieving what is desirable and eliminating that which is reprehensible, for the only way people can endure bitterness is when it is mixed with some kind of sweetness. (*Al-Fiqh al-Islami wa adilatuhu*, volume 8, p6263, published by Dar al-Fikr, Damascus, Syria.)

Promotion of virtue requires five things: firstly, knowledge, since an ignorant person does not know how to enjoin what is right; secondly, that the only intention in promoting virtue is to gain the good pleasure of Almighty Allah, and to ensure the pre-eminence of the exalted Word of God; thirdly, the enforcer should be compassionate towards the person who is the target of his command, his commands should be issued in a mellow and kind manner; fourthly, that the enforcer should be patient, and show forbearance; fifthly, that he should himself be acting in accordance

2. Prohibition of any wrong behaviour they see with their eyes.[34]
3. Prohibition of any wrong behaviour they hear with their ears.[35]
4. When promoting virtue or prohibiting vice, not prying into people's private sins; avoiding entering their homes, except in cases when it is allowed, according to Islamic law.[36]
5. Prohibition of any wrong behaviour that is testified to by two persons whose testimony is acceptable.[37]

---

with the exhortations that he is issuing to others. He should be careful not to come under the category of those referred to in this verse of the Quran, "Believers! Why do you say one thing and do another?" (Surah Al-Saff, verse 61:2)

[34] Abu Said says that it has been decided what this matter consists of, "I heard the Messenger of Allah ﷺ say, 'If any of you sees something objectionable he should change it with his hand, but if he cannot he should do it with his tongue, and if he cannot he should do it in his heart, that being the weakest form of faith.'" (*Sahih Muslim*, Hadith number 49, volume 1, p69, published by Dar Ahya al-Turath al-Arabi, Beirut.)

Enforcement is practised in the case of every good deed, when its abandonment becomes evident; and in the case of every wrongful deed, when its practice becomes evident. (*Encyclopaedia of Jurisprudence*, volume 17, p245.)

[35] Abu Said says that it has been decided what this matter consists of, "I heard the Messenger of Allah ﷺ say, 'If any of you sees something objectionable he should change it with his hand, but if he cannot he should do it with his tongue, and if he cannot he should do it in his heart, that being the weakest form of faith.'" (*Sahih Muslim*, Hadith number 49, volume 1, p69, published by Dar Ahya al-Turath al-Arabi, Beirut.)

Enforcement is practised in the case of every good deed, when its abandonment becomes evident; and in the case of every wrongful deed, when its practice becomes evident. (*Encyclopaedia of Jurisprudence*, volume 17, p245.)

[36] Basically, this means that eavesdropping is not allowed. The Messenger of Allah ﷺ prohibited it when he said, "Whoever listens in on a conversation of people when they do not wish him to do so, forcing them to go elsewhere, will have molten lead poured into his ears on the Day of Resurrection," and when he said, "Be careful not to come to bad assumptions, for assumptions are the greatest falsehood. Do not probe and do not spy on each other. People's personal secrets are sacred for them. One is not allowed to bring them into the open, unless it is for some valid reason, sanctioned by Islamic law." (*Encyclopaedia of Jurisprudence*, volume 3, p280.)

Al-Mawardi says that it is not for an enforcer to look into some possible wrong action that has not manifested itself. If there are evident signs that certain people are trying to keep their actions secret from the Emirate, then this can take two forms: one of these is in case it involves a violation of sanctity which will take place, unless action is taken. For example, in case someone of whose truthfulness one is certain, reports that two people are alone together and one of them is intent on murdering the other, or a man is alone with a woman and is intent on fornicating with her. In such a case one is allowed to take steps to look into and uncover such a deed. Otherwise, one will miss out on something that cannot be made up for later. In such an instance, even some lay person who is not an enforcer, should he learn of such an instance, would be entitled to take steps to uncover such a deed, and reprehend it. The second instance is of some deed that is not of such urgency. In that case one would not be allowed to look into the matter and uncover the deed that is being perpetrated. For example, if one were to hear sounds of reprehensible entertainment from a house, then that should be denounced from outside the house because the reprehensible act is apparent and he does not have to reveal what is hidden. (*Encyclopaedia of Jurisprudence*, Kuwait, volume 17, p256, published by Maktaba al-Rashidiya.)

It has been mentioned in *Al-Karahiyah al-Bazaziyah an il-Waqiyat al-Hasamiyah* that the person concerned should offer an apology for the apparent immorality in his home. If he stops, then well and good, otherwise the imam will imprison him, administer corporal punishment to him, or remove him from his home, whatever appears to be a suitable punishment. (*Al-Dar al-Mukhtar wa Hashiyatu bin Abidin*, Radd al-Mukhtar, volume 4, p65, published by Dar al-Fikr, Beirut.)

[37] Yes, if two just men gave information, without information having been sought, that someone was drinking alcohol in his house or that there was alcohol in his house that he had prepared for drinking, then the enforcer may enter his house and he is not required to ask permission, and his right to enter would be violated in order to prevent the evil, such as breaking his head by beating him to prevent it, no matter how much he needed it. And if two just men or one just man, and in general everyone whose narration is accepted but not his testimony, inform him, then there is a question and possibility regarding the permissibility of attacking his house based on their statement, and

6. Prohibition of wrong behaviour in such a manner that it does not lead to another wrongful act of similar or greater seriousness.[38]
7. In establishing virtuous behaviour and eliminating iniquity, adhering to justice and not being discriminatory in any way.[39]
8. When promoting virtue or prohibiting vice, dealing with more important matters before attending to other less important matters.[40]
9. Explaining the harm in his actions to a perpetrator of vice.[41]

---

it is better to refrain because he has the right that his house not be trespassed without his permission, and the right of a Muslim cannot be forfeited from what is proven against him except with two witnesses, so this is the first thing to be considered a rebuttal. It has been said that the inscription on the ring of Luqman, "The veil when you saw it," was better than revealing what you suspected. (*Ihya ulum ad-din*, by Imam Ghazali, volume 2, p329.)

[38] Enjoining what is right should not entail the loss of something more beneficial or the occurrence of something more reprehensible. And forbidding evil should not entail the occurrence of something more reprehensible or the loss of something more beneficial. (*Al-Hasbah fi l-Islami lil-Maraghi*, p12.)

Secondly if the denunciation of an evil leads to a greater evil, such as forbidding the drinking of alcohol, and the prohibition of that leads to him killing a person, then this is forbidden in this particular case. Enforcement is itself considered reprehensible if it leads to falling into reprehensible sin. (*Encyclopaedia of Jurisprudence*, volume 17, p230.)

[39] "And when you judge between people, to judge with fairness. They are very excellent, the instructions that Allah gives you. Allah hears and sees all things." (Surah Al-Nisa, verse 4:57)

Jabir bin Abdullah, may Allah be pleased with him, reported this saying of the Holy Prophet, "People! An Arab has no superiority over an Ajami [Translator's note: non-Arab]. (Bayhiqi, Hadith number 5137, *Jawahir al-Fiqh*, volume 4, p326.)

Equality in the eyes of the law means that all are equal as far as all major matter pertaining to justice are concerned. All should be equal in the hall of justice, the king and the beggar, the rich and the poor, the noble and the lowly. (*Al-Faruq*, by Shibli Nomani, p257.)

[40] One should deal with matters in their order of importance. One may act according to what is allowed, when it is difficult to adopt the most excellent course of action (*Faidh al-Bari Sharh al-Bukhari*, volume 4, p320, published by Maktaba Mishkat al-Islamiya.)

Abdullah bin Abbas, may Allah be pleased with both of them, reported Allah's Messenger as saying, when he sent Muadh, Allah be pleased with him, to Yemen, "You will come to folk who are people of a book, so invite them to testify that there is no God but Allah, and that Muhammad is the Messenger of Allah. If they obey that, tell them Allah has made obligatory for them five times of prayer every twenty-four hours. If they obey that, tell them Allah has made obligatory for them sadaqa – charity – to be taken from their rich and handed over to their poor. If they obey that, avoid taking the best parts of their property; and regard the claim of him who is wronged, for there is no veil between it and Allah." (Bukhari, Hadith number 1395; Muslim, 130, Tirmidhi, 625; Bin Majah, 1783, *Mishkat al-Masabih*, translated by Dr James Robson, Book of Zakat, Chapter 1, p371, published by Sheikh Muhammad Ashraf, Lahore.)

So when good things and bad are inherent, then if one can attain the good and prevent the bad, then one should do that, in accordance with the commandment of Almighty Allah, "Fear Allah, as much as you are able." (Surah Al-Taghabun, verse 64:16) If it is impossible to prevent it, the harm must be prevented, even if the benefit is lost, for Allah has said, "They ask you about wine and gambling. Say, 'In both, there is much sin, and some benefit for men. But the sin of both outweighs the benefit.'" (Surah Al-Baqarah, verse 2:219) And if some action is totally bad, then if the harm can be prevented, that should be done. If one is unable to eliminate all the harmful effects of some action, then one should eliminate the most harmful effect, then the next most, the most loathsome aspect, then the next most. If all the effects are equally harmful, then one should wait, and weigh things up, for there is a difference between all things being equal, and there being a distinction. (*Encyclopaedia of Jurisprudence*, volume 17, p231, published by Maktaba al-Rashidiya, Kuwait.)

[41] Definition of a wrongful action: when one comes across a wrongful action, and the person concerned does not realise that it is wrong, then the best way to eliminate that wrongful action is to point out to the person concerned that this action is wrong. This definition should be done in a gentle manner, without any violence. (*Al-Amr bil-Maruf wa al-Nahi an al-Munkar fi Dhau al-Kitab wa al-Sunna* – Enjoining Right and Prohibiting Wrong in Light of the Book and the Sunna.

10. Exhorting and admonishing in a gentle manner.[42]
11. Only using force when there is no fear of any untoward incident taking place as a result.[43]

Conditions relating to the enforcee
Article 11

1) Conditions relating to the enforcee are as follows:
   1. To be engaged in some wrongdoing, from which one is, from an Islamic point of view, obliged to refrain.[44]
   2. To be avoiding some good deed, which one is Islamically obliged to carry out.[45]

2) The enforcer is obliged to promote virtue and prohibit wrongdoing when the conditions mentioned are present, in the case of the enforcee.[46]

[Translator's note: This compact, comprehensive and to-the-point book – 59 pages in all – was written by one Hamud bin Ahmad al-Raheyli, and published by the Ministry of Auqaf, Saudi Arabia, see here.]

[42] Because in the definition, attributing it to ignorance in itself is harmful, but it is still necessary to prevent evil, so the definition must be extremely gentle so that there is no unjustified harm inflicted, because harming a Muslim is forbidden. (*Al-Amr bil-Maruf wa al-Nahi an al-Munkar fi Dhau al-Kitab wa al-Sunna* – Enjoining Right and Prohibiting Wrong in Light of the Book and the Sunna, p115.)

The third degree of amr bi'l-ma'ruf is to prohibit wrongdoing with admonition, good advice, reminding a person of the power of Allah, his attributes and the days when He will come into His own. All this is done in a gentle and compassionate manner, without any violence or anger. (*Al-Amr bil-Maruf wa al-Nahi an al-Munkar fi Dhau al-Kitab wa al-Sunna* – Enjoining Right and Prohibiting Wrong in Light of the Book and the Sunna, p115.)

[43] So that enjoining right should not lead to the forfeiture of something that is even more important, or even bring about a wrongdoing on top of it; and so that forbidding wrongdoing should not bring about an even worse wrongdoing, or the forfeiture of a rightful action that is even more desirable. (*Al-Hasbatu fil-Islam lil-Maraghi*, p12.)

Secondly if the denunciation of an evil leads to a greater evil, such as forbidding the drinking of alcohol, and the prohibition of that leads to him killing a person, then this is forbidden in this particular case. Enforcement is itself considered reprehensible if it leads to falling into reprehensible sin. (*Encyclopaedia of Jurisprudence*, volume 17, p230.)

[44] The condition is that he should be engaged in some wrongdoing, the elimination of which is obligatory. (*Encyclopaedia of Jurisprudence*, volume 17, p291, published by Maktaba Rashidiya, Quetta.)

Another condition is that in its attributes, the forbidden act becomes reprehensible in his case (*Encyclopaedia of Jurisprudence*, volume 6, p250.)

[45] Or abandoning some good deed for a necessary interest. (*Encyclopaedia of Jurisprudence*, volume 17, p261.)

[46] Enforcement is to encourage good, when its abandonment is apparent, and to prohibit wrongdoing, when it evidently being committed, because Almighty Allah has said, "Let there be a group amongst you who call others to good, and enjoin what is right, and forbid what is wrong." (Surah Al Imran, verse 3:104)

This action can be performed by any Muslim, though there is a difference between an enforcer – a government functionary – and a vigilante – someone who does it voluntarily. This distinction manifests itself in nine ways: one is that amr bi'l-ma'ruf is stipulated for the enforcer, since he has been ordered to do it by the government. As for others, they can be exonerated of responsibility to perform amr bi'l-ma'ruf, through others doing it. Secondly, for the enforcer to perform these duties is his responsibility, from which he is not allowed to waver, unlike one who acts voluntarily and is not dependant on any government exemption to be distracted from this work. (*Al-Mawardi*, published by Dar al-Hadith, Cairo, p349.)

Conditions relating to that which is being enforced
Article 12

Conditions relating to that which is being enforced are as follows:

1. The word or action that is subject to enforcement, or that which leads up to it, is present.[47]
2. Without having to conduct any investigation, the matter to be enforced should manifest itself in such a manner that the enforcer can either see it or hear it, or credible information about it reaches him in a manner consistent with this law.
3. The wrongdoing should be evident without it having to be ascertained through investigation.[48]

Injunctions related to women covering themselves
Article 13

1. A woman is required to cover her entire body.[49]
2. A woman should cover her face in order to prevent some *fitna* – temptation – taking place.[50]

---

[47] One condition is that whatever is being enforced, or the actions that lead up to it, should exist, at the present time. If the action has expired, then all one can do is exhortation. For the action to be apparent, the enforcer has to see it or hear it or be told about it from a trusted source, and all this should be without any prying. Furthermore, another condition is that it should not be a matter in which there is valid controversy in matters of *ijtihad*.

[Translator's note: *ijtihad* are matters in which different jurists have done their best to reach the correct decision, in accordance with Quran and Hadith, yet have come to different conclusions.] So in matters that come within the ambit of ijtihad, there is no wrongdoing. (*Fatawa al-Shabakah al-Islamiya*, volume 3, p4023.)

Another condition is that the wrongdoing should be currently present, and the perpetrator should be persisting in doing it. (*Encyclopaedia of Jurisprudence*, volume 17, p252.)

[48] The third condition is that the wrongdoing should be clear to the enforcer, without any investigation. (*Encyclopaedia of Jurisprudence*, volume 17, p255.)

[49] It is in Al-Muntaqa that a young woman is forbidden from revealing her face, lest it lead to temptation. In our age, this prohibition in obligatory – *wajib* – indeed, it is mandatory – *fardh* – due to the predominance of corruption. According to Aisha, may Allah be pleased with her, the whole body of a free woman is to be concealed except for one of her eyes. That is enough for the fulfilment of needs. (*Majma al-Anhar fi sharh Multaqa al-Abhar*, volume 1, p81, chapter on the conditions of prayer, published by Dar Ihya Turath al-Arabi.)

(One is not allowed to look at a woman's face) Permission to look at a woman's face is dependent on there being a lack of desire. Otherwise, it is forbidden. That was in previous times. In our times, one is not allowed to look at the face of a young woman. That is what Qaharistani and others have said. (*Al-Dar al-Mukhtar*, volume 9, p532, published by Maktaba al-Rashidiya.)

As far as looking at parts of the body that are supposed to be concealed is concerned, outside of prayer, her whole body, as far as men who are not close relatives is concerned [should be concealed]. (*Al-Fiqh al-Islami wa adilatuhu*, volume 1, p750, published by Dar al-Fikr, Damascus, Syria.)

The school of thought that has the stamp of approval of modern-day scholars is that the presence of women in a gathering is also frowned on, even if it is a gathering in which admonition and exhortation is taking place. This prohibition is absolute, even if the woman concerned is aged. This is because of the corruption of our age and the manifestation of promiscuity. (*Islamic Jurisprudence and its Proofs*, volume 2, p1172.)

[50] (As far as what is said that in our day and age, it is not allowed in the case of young women) This is not because it is a part of the body that should be concealed, but due to fear of *fitna* – temptation. (*Al-Dar al-Mukhtar wa Hashiyah bin Abidin*, namely *Radd al-Mukhtar*, volume 6, p370, published by Dar al-Fikr, Beirut.)

3. Women's voices (in a song, a hymn, or a recital out loud in a gathering) are also something that should be concealed.[51]
4. A woman's clothes should not be thin, short or tight.[52]
5. It is the responsibility of women to hide their body and their face from men who are not their *mahram* – close relatives.[53]

(One is not allowed to look at a woman's face) Permission to look at a woman's face is dependent on there being a lack of desire. Otherwise, it is forbidden. That was in previous times. In our times, one is not allowed to look at the face of a young woman. That is what Qaharistani and others have said. (*Al-Dar al-Mukhtar*, volume 9, p532, published by Maktaba al-Rashidiya.)

[51] They should not raise their voices when reciting or glorifying Allah. This is because the basic state of women is one of concealment and they are not required to reveal themselves with such raising of their voices, since the Holy Prophet said, "Clapping is for women." (*Encyclopaedia of Jurisprudence*, volume 12, p79.)

[Translator's note: The meaning of this phrase, "Clapping is for women – al-tasfiqu lin-nisa," may not be clear to readers, without giving some background to this Hadith. The Holy Prophet had gone to make peace among the tribe of one of his close companions. As a result, he was late for prayer and Abu Bakr was leading the people in prayer. The Messenger of Allah came during the prayer, and the people clapped to alert Abu Bakr of the Prophet's arrival. Though the Prophet motioned for him to remain in his place, Abu Bakr insisted on relinquishing his imam spot to the Prophet. So the Prophet led the people in prayer, then he said: "Clapping is for women," after the prayer. Actually, the full Hadith is, "Glorification is for men, clapping is for women," meaning that if something happens during the prayer – an accident or something of that sort – and men wish to inform the imam, then they should say: "Praise be to Allah – *Subhan'Allah*." Women, for their part, should clap, it not being considered appropriate for women who are taking part in the prayer to exclaim, "*Subhan'Allah*" in a loud voice – clapping being more suitable in their case.]

We have seen in the conditions of prayer that the voice of a woman is something that should be concealed. We discussed this matter there, so you may refer to that. (*Al-Dar al-Mukhtar*, volume 6, p369.)

[52] Sharia does not approve of clothes that reveal any part of those areas of either a man's or woman's body that should be concealed, however beautiful those clothes are. The same applies to very thin or tight clothes that give an impression to onlookers of a part of the body that should be concealed. Such clothes are the same as clothes which actually reveal that part of the body and are not permissible. (*Fath al-Mulhim*, volume 4, p88.)

And her clothing, if it is clasping to her body or thin, then looking beyond it is like looking at her body, and looking at the private parts is not permissible except in cases of necessity. This is what Bazaziya says, commenting on Hamish al-Hindiya (*Ahkam al-Quran of Mufti Muhammad Shafi*, volume 6, p370.)

In my opinion, this wearing of tight and thin clothes has become a widespread disease in our country. The wearing of such clothes is not even allowed in front of close relatives, except for a woman's husband, so how could it be permissible in front of other unrelated people? Nevertheless, people are unaware of this point. (*Ahkam al-Quran* of Mufti Muhammad Shafi, volume 3, p383.)

If her garment is thin and shows what is underneath it and is transparent, or if it is thick but sticks to her body so that her body is visible to a man, then it is not permissible for him to look at her, because if her body is visible, then she is truly bearing a naked image, and the Prophet, may God bless him and grant him peace, said, "Allah has cursed those who dress but are naked." It was narrated on the authority of our noble Aisha that she said, "I entered upon my sister, Asma, and she was wearing thin Syrian clothes, the like of which have now been worn out among you. The Messenger of God, may God bless him and grant him peace, said, 'These are the clothes that have been referred to in Surat An-Nur.' (24:31) He ordered them to be taken off, and I said: O Messenger of Allah, my sister visited me, and I asked her what happened. He said: 'Aisha, when a woman menstruates, it is not appropriate for anyone to si anything except her face and hands.'" (*Badaiu al-Sanai fi Tartib al-Sharai*, volume 5, p123, published by Dar al-Kutub al-Alamiya.)

[53] "Tell believing men to lower their gaze and remain chaste. That is purer for them. Allah is aware of what they do." (Al-Nur, 24:30.)"Say to believing women that they should lower their gaze and remain chaste and not reveal their adornments – save what is normally apparent thereof …" (Surah Al-Nur, verse 24:31)

6. It is obligatory for Muslim and righteous women to cover themselves in front of non-believing or loose women, so that no decadence may ensue.[54]
7. It is forbidden for unrelated men to look at a woman's body or face. Likewise, women are not allowed to look at strange men.[55]
8. If an adult woman leaves home because of some urgent need, she is duty-bound to hide her voice, face and body.[56]

---

[54] It is in *Siraj* [Translator's note: This appears to be a reference to the book of Hanafi jurisprudence, *Kitab al-Faraidh al-Sirajiya*.] and in the rules of enforcement that it is not permissible for a Muslim woman to reveal herself in the presence of a Jewish or Christian woman, or an idolatress, unless they are her slaves. Also, it is not suitable for a woman of loose morals to see the intimate parts of a pious woman, since that woman may talk about her to other men. She should not let down her shawl or her veil. (*Al-Dar al-Mukhtar wa Hashiyatu bin Abidin* which goes by the name *Radd al-Mukhtar*, volume 6, p371, published by Dar al-Fikr, Beirut.)

[55] "Tell believing men to lower their gaze and remain chaste. That is purer for them. Allah is aware of what they do." (Al-Nur, 24:30.)"Say to believing women that they should lower their gaze and remain chaste and not reveal their adornments – save what is normally apparent thereof …" (Surah Al-Nur, verse 24:31)

According to their most reliable opinions, Hanafis, as well as Malikis, Shafiis and Hanabalites, consider the gaze of a woman in the direction of any part of the body of an unrelated man, is prohibited, when she means to gain enjoyment thereby, or if she is sure or thinks that there is some lust involved, or even if she is has some suspicion that this may be the case. For the possibility of some lust occurring, and it not occurring, are one and the same thing, since to look lustfully at someone who is not one's spouse or one's slave is a form of adultery, and not allowed as far as all jurists are concerned. (*Encyclopaedia of Jurisprudence*, volume 40, p355.)

So on the basis of the most reliable verdict regarding a man looking at a woman, the same applies to a woman looking at a man, in other words prohibition applies in both cases. However, Jalal al-Balqini has pointed out that not a single companion of the Prophet has given this opinion. So certain authorities are agreed that a woman is allowed to look at the face and hands of a man, when there is no danger of any temptation occurring. Those who subscribe to this opinion cite the verse, "Say to believing women that they should lower their gaze," so women have been commanded to lower their gaze, just as men have been commanded to do so. They also cite the saying of Umm Salma, may Allah be pleased with her, that she was with the Messenger of Allah ﷺ, and Maymuna, when Bin Umm Maktum entered. The Messenger of Allah ﷺ asked them both to cover themselves. "But isn't he blind?" they said. "He cannot see us, nor can he recognise us." "Are you blind?" the Messenger of Allah ﷺ said. "Are you not able to see him?" So if women were allowed to look at men, then why would the Messenger of Allah have commanded them to cover themselves in the presence of Bin Umm Maktum, may Allah be pleased with him, and why would he have disapproved of them looking at him? (*Encyclopaedia of Jurisprudence*, volume 40, p357.)

And it is forbidden for an adult male to look at the private parts of a free, adult, unrelated woman, as well as her face and hands, when there is fear of temptation, and also when there is security from temptation, according to the correct opinion.

It is permissible to look at the face of a woman wanderer, so long as she is not a young woman, since there is no escape from doing so. (*Muahib al-Jalil li sharh mukhtasir al-Khalil*, volume 2, p181, Book of Prayer, Section on Covering Oneself during Prayer, published by Dar al-Alim al-Kitab.)

[56] According to Ibn Abbas, Allah has commanded believing women, when they leave their homes due to some need, to cover their faces with their outer garments from above their heads, and just to show one eye. Muhammad bin Sirin says that he asked Ubaydah al-Salmani about the verse "they should draw over themselves some of their outer garments." (Surah Al-Ahzab, verse 33:59) He covered his face and head, revealing his left eye. (*Mukhtasar Tafsir bin Kathir*, volume 2, p114, published by Dar al-Quran al-Karim, Beirut, Lebanon.)

[Translator's note: A couple of things to note here: this segment of *Mukhtasar Tafsir bin Kathir* is to be found on p114 of volume 3, not volume 2. Also, I have given the number of the verse, under which this explanation is given. This will enable readers to see the context in which these verses were revealed – enabling believing women to be identified as believing women, while affording them both anonymity and protection from blame. This context is reinforced by the next Hadith quoted, from Aisha. It is also noteworthy that leaving one eye visible is not part of the verse of the Quran, but part of the explanation of Abdullah bin Abbas.]

Laws for the covering of the male body
Article 14

1. The part of a man's body that should be covered is from his waist down to his knees. Knees are also required to be covered.[57]
2. Men are required to adhere to the order contained in the first clause of this article, along with other injunctions related to segregation.

Aisha said that the Messenger of Allah ﷺ would pray the morning prayer. With him there would be a number of believing women, wrapped in their cloaks. "They would then return to their homes, without anyone having recognised them." (*Sahih al-Bukhari*, Hadith number 372)

Umm Salma said that when this verse was revealed "they should draw over themselves some of their outer garments," women of the Ansar would wear black robes over their heads, when they ventured out of their houses. Abu Bakr said that this verse shows that a young woman is required to cover her face from unrelated men. This show of modesty and chastity when going out, would prevent the suspicious from coveting them. (*Ahkam al-Quran lil Jassas*, volume 3, p484, chapter on covering of women, published by Dar al-Kutub al-Ilmiya, Beirut, Lebanon.)

Abu Huraira reported this saying of the Prophet ﷺ, "A woman who believes in Allah and in the Last Day should not travel one day and a night without having a close relative with her." (*Al-Sahih al-Muslim*, Hadith number 1339)

A similar Hadith, also reported by Abu Huraira, and transmitted by both Imams Bukhari and Muslim has this wording, "A woman should not travel one day and a night without having a male close relative with her." (*Mishkat al-Masabih*, p221.)

Al-Ayni says that a woman is allowed to venture out, in order to pursue her needs and her legitimate pursuits, provided that she is of good appearance, coarse in dress, has no bad breath, has covered her limbs, is not wearing adornments, and does not raise her voice. (*Umdah al-Qari*, volume 19, p125, *Encyclopaedia of Jurisprudence*, volume 19, p109.)

With reference to a journey, it is three days and nights, and she is permitted to go out to a place if the journey is less than that for a need without a chaperone. It was narrated on the authority of Abu Hanifa and Abu Yusuf that it is disliked for her to go out alone for a day's journey. This is the opinion that should be upheld, owing to the decadence of the age and it is reinforced by the Hadith which is in the two authentic collections, "A woman should not travel one day and a night without having a male close relative with her." In Muslim's version, it is a night's journey, and in another version, it is a day's journey. (*Al-Dar al-Mukhtar wa Hashiyatu bin Abidin* – Radd al-Mukhtar – volume 2, p465, published by Dar al-Fikr, Beirut.)

[Translators note: There follows a repetition of Al-Ayni's quote above, which the translator does not deem necessary to repeat.]

[57] Abu Kathir relates on the authority of Muhammad bin Jahsh that he and the Prophet ﷺ passed by Muamar and his knees were showing and the Prophet ﷺ said, "Cover your knees, Muamar, for knees are a part of the body that should be covered." (*Masnad Imam Ahmad bin Hanbal*, Hadith number 22548)

(And the parts of a man's body that should be concealed are below the navel, down to the knees) Due to his saying, peace and blessings upon him, that the parts of a man's body that should be concealed are below the navel, down to the knees, and according to one version, below the navel, down past the knees, which shows that the navel itself is not a part of the body that should be concealed, contrary to what Imam Shafi, may Allah be merciful to him, contends and the assertion that the knees should be concealed also runs contrary to his position. So we Hanafis take the word "to" – الی – to mean "along with" – مع – while at the same time acting in accordance with the word "down to" – حتی – while at the same time acting in accordance with his saying ﷺ, "the knee should be covered." (*Al-Enayah sharh al-Hedaya*, volume 1, p257, published by Dar al-Fikr.)

The part of a man's body that should be covered are between the navel and the knees and the knees should also be covered. (*Tuhfah al-Muluk fi fiqh madhhab al-Imam Abi Hanifah al-Noman*, volume 1, p62, Maktaba Dar al-Bashair al-Islamiya.)

3. While pursuing pastimes and exercise, men are obliged to wear clothes that conceal the required parts of the body. Their clothes should not be very tight, nor should certain parts of the body be apparent.[58]

Duties of the enforcer related to people covering themselves
Article 15

Enforcers are obliged to promote virtue and prevent vice with regard to both men and women, in accordance with the orders contained in this law.[59]

[58] Abu Kathir relates on the authority of Jahsh that he and the Prophet ﷺ passed by Muamar and his knees were showing and the Prophet ﷺ said, "Cover your knees, Muamar, for knees are a part of the body that should be covered." (*Masnad Imam Ahmad bin Hanbal*, Hadith number 22548)

And the parts of a man's body that should be concealed are below the navel, down to the knees) which shows that the navel itself is not a part of the body that should be concealed, contrary to what Imam Shafi, may Allah be merciful to him, contends and the assertion that the knees should be concealed also runs contrary to his position. So we Hanafis take the word "to" – الی – to mean "along with" – مع – while at the same time acting in accordance with the word "down to" – حتی – while at the same time acting in accordance with his saying ﷺ, "the knee should be covered." (*Al-Enayah sharh al-Hedaya*, volume 1, p257, published by Dar al-Fikr.)

The part of a man's body that should be covered are between the navel and the knees and the knees should also be covered. (*Tuhfah al-Muluk fi fiqh madhhab al-Imam Abi Hanifah al-Noman*, volume 1, p62, Maktaba Dar al-Bashair al-Islamiya.)

[59] Enforcers are obliged to eliminate wrongdoing, so they have to enforce with regard to any act of sin and take punitive action that they consider suitable. (*Encyclopaedia of Jurisprudence*, volume 17, p266.)

CHAPTER TWO
DUTIES AND RESPONSIBILITIES OF ENFORCERS

Actions that are required of the enforcer with regard to the veneration of Islamic holy places, the prophets on whom be blessings and peace, the gracious companions, may Allah be pleased with them, and pious predecessors, may Allah have mercy on them.

Article 16

1. An enforcer is duty-bound, in accordance with Islamic law, to ensure that Emirate functionaries and the general population accord due veneration to Islamic holy places, the prophets on whom be blessings and peace, the gracious companions, may Allah be pleased with them, and pious predecessors, may Allah have mercy on them.[60]
2. An enforcer is duty-bound to punish any person who contravenes the order contained in clause number one, in accordance with the orders contained in this law.[61]

The enforcer's duties with regard to the press and news organisations

Article 17

An enforcer is duty-bound to ensure that those working for the press and news organisations observe the following virtuous rules when publishing reports:

1. To publish reports that do not contradict Islamic law and religion.[62]

---

[60] "Thus it is. He who honours the hallmarks of Allah shows the piety of his heart." (Surah Al-Hajj, verse 22:32)

Included in this is preserving religion on its established principles, which the predecessors have united upon, so if an innovator comes up with something new, or a doubter deviates therefrom, he should present convincing arguments to him, and show him what is right, making him accept what is required of him in terms of rights and limits, so that the religion is protected from error and the nation is prevented from wavering. (*Al-Ahkam al-Sultaniyah*, volume 1, p40, published by Dar al-Hadith, Cairo.)

[61] And every person who perpetrates some evil or harms a Muslim unjustly, by word or deed, is to be punished. (*Radd al-Mukhtar*, volume 4, p66, published by Dar al-Fikr, Beirut.)

[62] Aisha reported Allah's Messenger as saying, "If anyone introduces into this affair of ours anything which does not belong to it, it is rejected." (Sahih al-Bukhari, Hadith number 2697)

He also said, "I exhort you to fear Allah and to listen and obey, even if the one being obeyed is an Ethiopian slave. Those who live after me will see a lot of differences, so you will have my Sunna, and the Sunna of my rightly guided successors, so hold onto that and stick to it doggedly, but be careful of novelties, for every novelty is an innovation and every innovation is in error." (It was transmitted by Abu Daud in Hadith number 4609.)

[Translator's note: There then follows a repetition of the Hadith related by Aisha, already mentioned above.]

2. To publish reports that do not deride or humiliate Muslims.[63]
3. To publish reports that do not contain pictures of any animate object.[64]

The Hadith has also been transmitted by Abu Daud, along with the explanation that anyone who introduces something into the religion of Allah, that is not part of religion, is guilty of the kind of innovation that the Messenger of Allah ﷺ warned against.

He ﷺ has explained in this Hadith that any innovation introduced by an innovator is to be rejected. It is wrong to take up any such practice, for that would be to act on falsehood and on the basis of an innovation that has no place in religion. This Hadith is one of the most succinct sayings uttered by the Holy Prophet. So if anyone introduces an innovation into religion, that innovation is to be rejected. One should only act on what has been spelled out in the Quran and Sunna. (*Sharh Sunan Abu Daud*, volume 515, p8.)

Thirdly, whatever I give you of obedience, do it. And whatever I forbid you from doing, avoid it. Bin Jarih has said that. Fourthly, all His commands and prohibitions are considered to be general in their application because He only commands what is good and only prohibits what is corrupt. (*Tafsir al-Mawardi Al-Nukut wa al-Ayun*, volume 5, p504, published by Dar al-Kutub al-Ilmiya, Beirut, Lebanon.)

The truth is all the imams who are followed in matters of religion are following true guidance, so it is obligatory for the masses to follow whichever of their schools of thought happens to be foremost in any particular country – that which has a majority of Islamic scholars as its adherents. (*Ila al-Sunan*, volume 20, p290.)

[Translator's note: As the Hadith quoted at the beginning of this footnote makes clear, innovations are into "this affair of ours," in other words in matters of religion, so how such innovations apply to matters related to the press is not exactly clear. In fact, how any of this long footnote applies to the press and news organisations is far from clear. This is one of the things I will go into further, all being well, in the appraisal of this law that I hope to follow this translation.]

[63] Abu Hurayra related that the Messenger of Allah said, "Do not be envious one of another, do not quarrel with each other, do not be hateful towards one another, do not turn your backs on one another, and do not seek to outbid each other, but be servants of Allah, brothers to one another. A Muslim should be brother to another Muslim, not oppressing him, not humiliating him and not looking down on him. Piety is here," he said, and he pointed towards his chest three times. "Does a man think it is evil to despise his Muslim brother? The blood, property and honour of a Muslim are sacred for another Muslim." (Muslim transmitted it in Hadith number 6706, so did Tirmidhi in Hadith number 1927 and Ahmad in Hadith number 7713.)

[64] Our companions and others besides them have maintained that a picture of an animal is strongly prohibited. In fact, it is a major sin, whether it is made for something that is used or for something else, it is forbidden in all cases because it is an imitation of Allah's creation, whether it is in a garment, a rug, a dinar, a dirham, a coin, a vessel, or a wall. As for that in which there is no picture of an animal, such as a tree or the like thereof, it is not forbidden, whether the picture concerned has a shadow, or does not have any shadow and to this effect a group of scholars are agreed, including Imam Malik, Sufyan Thauri and Abu Hanifa, along with others. (*Umda al-Qari sharh Sahih al-Bukhari*, volume 22, p70, published by Dar Ihya Turath al-Arabi, Beirut.)

Our companions and others besides them have maintained that a picture of an animal is strongly prohibited. In fact, it is a major sin, since severe retribution has been held out for such pictures in Hadith, no matter whether it has been made by something he has crafted or otherwise, his crafting of such an image is forbidden under all circumstances since it is an imitation of Allah's creation. It makes no difference if it is in a garment, a rug, a dinar, a dirham, a coin, a vessel, or a wall, or anything else for that matter. As for a picture of the form of a tree, or the setting off of a caravan and suchlike – so long as it does not include a picture of an animal – then it is not forbidden. However, does such a picture preclude the entry of angels into a house that contains such pictures? There is room for discussion here, which we will soon mention, God willing. It does not make any difference if the picture concerned has a shadow or does not have a shadow. This is a summary of our school of thought in this matter. It has been agreed by a consensus of scholars, among the Companions, and the generation that followed the Companions, and those who followed them. It is the school of thought of Sufyan Thauri, Malik, Abu Hanifa and others. Certain scholars amongst our predecessors have said that the only picture that is not allowed is one that has a shadow. This is not correct, since no one doubts that the picture contained in a veil, regarding which the Prophet ﷺ expressed displeasure, was indeed reprehensible, even though that picture did not have any shadow. The same is the case with other categorical Hadiths regarding pictures. Zahri has also acted on the generality of the Hadith concerned and said that the prohibition of pictures applies generally, and applies also to the use of the vessel – and also entry into a house – in which there is a picture, no matter whether it is a label on a piece of clothing, or anything else besides a label, or a rug that has been made by professional craftsmen, or otherwise. This is especially the case with the

The enforcer's duties relating to traders, artisans and farmers
Article 18

An enforcer is duty-bound to ensure that traders, artisans and farmers, when conducting their affairs and carrying out their functions, observe the following rules:[65]

1. At the set times, to offer prayers in congregation in the mosque. [66]

Hadith of Al-Namraqah mentioned by Muslim. This school of thought is the strong one. Some others have said that it is allowed if it is a label on a garment, no matter whether the garment is worn or not, or if a picture is hung on the wall or not, but if it has a shadow, then it is reprehensible, as it is if it has been depicted on walls or the like thereof. They cite some Hadiths that have cropped up in chapters on this subject, which make an exception for labels on clothes. This is the school of thought of Qasim bin Muhammad. However, everyone is agreed that if the picture concerned casts a shadow, then it is not allowed. One should alter such a picture. Qadhi has made an exception for girls' games, since the girls who play such games are little, so the exemption is in those games. However, Malik has discouraged the purchase of such games for his daughters, while some have contended that the allowance of such games, made specially for girls, has been superseded by the Hadiths concerned. Allah knows best. (*Minhaj al-Sharh al-Nawawi li Sahih al-Muslim*, volume 7, p205, published by Dar al-Ihya al-Turath al-Arabi, Beirut.)

[65] "Those who, if We establish them in the land, say their prayers regularly and pay the zakat and enjoin good and prohibit evil. The final outcome of all affairs rests with Allah." (Surah Al-Hajj, verse 22:41)

"Let there be a group among you who call others to good, and enjoin what is right, and forbid what is wrong: those who do this shall be successful." (Surah Al Imran, verse 3:104)

[66] "Be ever mindful of your prayers, especially the middle prayer, and stand before Allah in submissive devotion." (Surah Al-Baqarah, verse 2:238)

"Recite what has been revealed to you of the Book and pray regularly. Surely prayer restrains one from indecency and wrongdoing; and the remembrance of Allah is greater. Allah has knowledge of all your actions." (Surah Al-Ankabut, verse 29:45)

"Believers have an obligation to say their prayers at the appointed times." (Surah Al-Nisa, verse 4:103)

Abu Amr al-Shaybani reports that Abdullah bin Masood says that he asked the Messenger of Allah what action was best. "Prayer at the appointed time," he said. (Bukhari transmitted it in Hadith number 2782 and Ahmad bin Hanbal in Hadith number 4243.)

Abu Darda says that he heard the Messenger of Allah ﷺ say, "If any three people assemble in any township or desert dwelling and they do not pray in congregation, then Satin will waylay them, so make sure to pray in congregation, for prayer in congregation extirpates even the most distant sin. (Nasai transmitted it in Hadith number 847.)

Abu Zarin reported that Bin Umm Maktoum asked the Prophet ﷺ, "You know, my eyesight is impaired, my house is in a remote place, I have difficulty to find my way, so can I have permission to pray in my home?" "Can you hear the call to prayer?" the Prophet ﷺ said. "Bin Umm Maktoum said that he could." "Then I cannot see any way to exonerate you," said the Prophet. (Abu Daud transmitted it in Hadith number 552.)

Abu Huraira reported that the Prophet said, "One's prayer in congregation is twenty-five times better than one's prayer in one's house or in the bazaar. So when a person does the ablution in a good manner and comes to the mosque, not having any other intention than to take part in the prayer, then every step that he takes will raise his status and result in the removal of some misdeed from his slate. When he enters the mosque, he remains in a state of prayer, so long as he remains in the mosque, and the angels will invoke blessings on him, so long as he remains in the same gathering in which he offered the prayers. "Allah, forgive him. Allah, have mercy on him," they will say, so long as he has not said anything else. (Bukhari transmitted it in Hadith number 477, in the chapter on the congregation and the imam.)

It is mentioned in al-Ghaya that the consensus of our religious scholars is that prayer in congregation is obligatory. It is only called Sunna, due to its obligatory nature being established in the Sunna of the Holy Prophet. According to al-Badai, prayer in congregation is obligatory for free, adult men of sound mind, who are able to take part in the congregation without any difficulty. (*Fath al-Qadir*, volume 1, p345, Chapter on the leadership of prayer, published by Dar al-Fikr.)

As for its status, it has been mentioned as being a strong Sunna, with a strength that makes it comparative to being obligatory. Indeed, the most preferential opinion is that it is obligatory. That is what has been mentioned in al-Badai as the general opinion of our eminent scholars, which does not differ in reality from the opinion of those

2. Pay the *zakat* [tax on capital wealth], *ushr* [tax on harvest] and fulfil other financial obligations to those who are deserving at the appropriate time.[67]

---

who consider it to be a strong Sunna. It is just a difference in terminology, for a strong Sunna – *al-Sunna al-muakkada* – amounts to the same thing as *wajib* – obligatory, especially when it is referring to one of the hallmarks of Islam. The proof of this is to be found in several Hadiths, which mentioned that a strong Sunna of this nature should not be abandoned. Some degree of blame would be concomitant with its abandonment. Here, as stated in Al-Mujtaba, it appears that obligation is intended by virtue of emphasis, based on the evidence from the reports that came with severe threats of abandoning the congregation. It was stated in Al-Muhit that no one is permitted to abandon it without an excuse, and even if the people of Egypt abandoned it, they would be ordered to pray in congregation. If they fell into line, well and good, otherwise it would be lawful to put them to the sword. And it is in Al-Qaniya and other places that it is obligatory to punish those who abandon the congregation without an excuse, and neighbours who remain silent are also sinful. (*Al-Bahr al-Raiq sharh Kanz al-Daqaiq*, volume 1, p365, published by Dar al-Kitab al-Islami.)

The congregation is a strong Sunna, in accordance with his saying, peace and blessings be upon him, "The congregation is a Sunna, counted amongst the sunnas of guidance, regarding which there is no controversy, except on the part of a hypocrite." (*Al-Enayah sharh al-Hedayah*, volume 1, p345, published by Dar al-Fikr.)

The congregation is a Sunna which one is not allowed to remain distant from, except with a valid excuse. (*Al-Muhit al-Burhani*, volume 2, p136, in the section on encouragement to join in the congregation, published by Dar Ihya al-Turath al-Arabi.)

Can't you see that Al-Karkhi called it a Sunna? Then he explained it as something that is obligatory and said, "The congregation is a Sunna, no one is allowed to remove themselves from it, unless they have a valid excuse. "It is an explanation that indicates the obligatory nature of the congregation, according to the general opinion. (*Badai al-Sanai fi Tartib al-Sharai*, volume 1, p155, published by Dar al-Kitab al-Ilmiyah.)

The congregation is a strong Sunna, close to being obligatory, even if the people of Egypt abandoned the congregation, arms would be taken up against them, and if one person were to remove himself from the congregation, then he would be beaten and imprisoned. No one is allowed to miss the congregation, unless they have a valid excuse, such as rainfall, mud, extreme cold and pitch darkness. (*Majma al-Anhar fi sharh Multaqa al-Abhar*, volume 1, p161, published by Dar al-Ilmiyah, Beirut, Lebanon.)

[67] "And establish prayer and pay the poor due, and bow down with those who bow down." (Surah Al-Baqarah, verse 2:43)

"Those who, if We establish them in the land, say their prayers regularly and pay the poor due and enjoin good and forbid evil. The final outcome of all affairs rests with Allah." (Surah Al-Hajj, verse 22:41)

"Believers, give charitably from the good things which you have earned and what We produce for you from the earth." (Surah Al-Baqarah, verse 2:267)

"Eat their fruits when they bear fruit and give away what is due of them on the day of their harvest." (Al-Anam, 6:141.)

Abdullah bin Abbas, may Allah be pleased with both of them, says that when the Prophet sent Muadh, may Allah be pleased with him, to Yemen, he told him, "Call people to testify that there is no one worthy of being worshipped except for Allah, and that I am the Messenger of Allah. If they agree to that, then inform them that Allah has prescribed five prayers, in the course of every day and night. If they agree to that, then inform them that Allah has prescribed for them to give charity in their wealth, it should be taken from the wealthy and given to the poor." (Bukhari transmitted it in Hadith number 1395, Muslim in Hadith number 130, Tirmidhi in Hadith number 625 and Bin Majah in Hadith number 1783.)

It is said, "Payment of the poor due is obligatory on a free person." In other words, it is mandatory according to the Book, for Allah has said, "Pay the poor due," and the well-known Sunna, in which the Prophet explained that Islam has been built on five things, one of which is zakat – payment of the poor due – as well as consensus of the community of Muslims, for no one has gone against it from the time of the Messenger of Allah until our day. (*Al-Enayah, sharh al-Hedayah*, volume 2, p154, published by Dar al-Fikr.)

Zakat is obligatory on a free, adult Muslim of sound mind, when he is in complete possession of the minimum required amount and a whole year has passed on him being in possession of that amount. (*Fiqh Hanafi*, p110, *Kitab al-Zakat wa al-Labab fi sharh al-Kitab*, p 68, published by Dar al-Kitab al-Arab.)

3. To conduct their affairs in accordance with the Hanafi school of law.[68]
4. To avoid usury,[69] hoarding,[70] hiding defects in some items, cheating,[71] selling people short in weight or measure,[72] forcing people to buy something,[73]

---

[68] The truth is that all the Imams who are followed in matters of religion are on a straight path of guidance, so the masses should follow whichever school of thought is current in any community, on which a majority of Islamic scholars are agreed. (*Iila al-Sunan*, volume 20, p290.)

[69] "Those who take usury shall rise up before Allah like men whom Allah has demented by his touch, for they say, 'Buying and selling is like usury.' But Allah has made trade lawful, and usury unlawful. Therefore, he who desists because of the admonition that has come to him from his Lord may retrain what he has received in the past, and His judgement will be with Allah. Those who revert to it shall be inmates of the Fire; they shall abide therein forever." (Surah Al-Baqarah, verse 2:275)

"Believers, do not devour usury multiplied many times over. Fear Allah, so that you may prosper." (Surah Al Imran, verse 3:130)

Usury – giving interest based loans – is forbidden on the basis of the Book and the Sunna. As for the Book, Allah has said explicitly "Usury is forbidden," while in Sunna the Messenger of Allah ﷺ said, "To devour one dirham worth of usury is worse than 33 acts of adultery, so Hell is the best place for a person whose flesh has grown from forbidden things." Bin Masood said, "The one who devours usury, the one who gives it, the one who writes the contract and the one who witnesses it, are all cursed by the tongue of Muhammad until the Day of Resurrection." That is what has been written in Al-Nehaya. [Translator's note: This presumably refers to the on Islamic history by the Sunni Muslim scholar Ibn Kathir, Al-Bidaya wa al-Nehaya.] (*Al-Jawahir al-Nirah*, volume 1, p212, published by Al-Matbaa al-Khayria.)

The original basis of the prohibition of usury is the saying of the Almighty, "Allah has made trade lawful, and usury unlawful" (Al-Baqarah, 2:275) and the saying, "Do not devour usury" (Surah Al-Imran, verse 130) (*Al-Ikhtiyar li Talil al-Mukhtar*, volume 2, p31, published by Dar al-Kitab al-Ilmiiyah, Beirut, Lebanon.)

The testimony of someone who is well known for taking usury, and persists in doing so, is not to be accepted. This is because it is a major sin to take usury, in accordance with clear directives in the Scripture. Furthermore, these clear directives are accompanied warnings of Hellfire for anyone who contradicts them. For instance, the saying of Almighty Allah, "Believers, do not devour usury multiplied many times over" goes onto to say, "Fear the Fire, that has been prepared for those who disbelieve." (Surah Al Imran, verse 2:130-131) And he ﷺ also said, "Allah has cursed the one who takes usury, and the one who gives it," and one who commits a grave sin, forfeits being an arbiter of justice. (*Al-Muhit al-Burhani*, volume 8, p313, published by Dar al-Kitab al-Ilmiyah, Beirut, Lebanon.)

[70] In Islamic law, Hanafis have identified hoarding as the purchase of some commodity and keeping it until there is a shortage. (*Encyclopaedia of Jurisprudence*, volume 2, p90.)

Hoarding is considered reprehensible in items that are used by human beings and cattle, in a city where hoarding is to the detriment of its inhabitants. The same applies to receiving hoarded goods, but if it is not harmful, then there is no harm in it. As far as Islamic law is concerned, the hoarding and the storage of commodities until such time as there is a shortage, amounts to forty days, on the basis of a saying – peace and blessings be upon him, "those who hoard, to the detriment of the Muslims, for forty days, will expose themselves to leprosy and bankruptcy from Allah." And according to one tradition, "He has exonerated himself from Allah, and Allah from him." This means, as has been explained in Al-Kafaya, He has disgraced him, and for him to be disgraced means that the support of Allah at the time of his need has been withdrawn. And in yet another tradition, "The curse of Allah, the angels and all mankind will be upon him, and Allah does not accept any ransom or compensation from him," ransom or compensation being a reference to voluntary or obligatory charity, as indicated in al-Kafi's Sharnablaliya and other places. Some have said that keeping something for one month amounts to hoarding, while some have given a longer period than that. This estimation is for punishment in this world, as an act of buying and selling, not an indication of the weight of the sin, which occurs due to the act of hoarding. And if you say that the period and its variation depend on the period of his waiting, for either the hoarder's profit to materialise or for a famine to take place – God forbid – then one can read more about this in Al-Muntaqa. Abu Hanifa and his student Muhammad have restricted hoarding to human sustenance, and that is the verdict that has received the approval of scholars, according to al-Kafi. (*Radd al-Mukhtar ala al-Dar al-Mukhtar*, volume 6, p398, published by Dar al-Fikr li al-Tabaati wa al-Nashr, Beirut, from its Chapter on Trade.)

(And hoarding is reprehensible in human commodities) like wheat and the like thereof (and cattle) like barley and straw (in a city where it is to the disadvantage of its inhabitants), this being because it is connected to the rights of

the general population. This is implicit in the saying that it is harmful to the population because, if the city is very large and no harm is done to the general population, then the person concerned is not hoarding, since it is a matter of him keeping something that belongs to him and no harm is done to anyone else. (*Majma al-Anhar fi Sharh al-Multaqa al-Abhar*, volume 2, p548, published by Dar Ihya al-Turath al-Arabi.)

Hoarding is reprehensible. It amounts to the purchase of some food commodity in one city, then to prevent it from being sold in such a manner that it is harmful to the population. That is what has been written in al-Hawi. And if the purchase is conducted in a city, then the commodity is stored in such a way that does not disadvantage the general population in any way, then there is no harm in that. That is what has been written in al-Tatarkhaniyah, mentioning some commodity that existed in a place near a city, from where he carried the food commodity to the city, where he stored it. That worked to the disadvantage of the inhabitants of the city, so it was reprehensible, according to the verdict of Muhammad, may Allah have mercy on him. It also constitutes one of two verdicts attributed to Imam Abu Yusuf, may Allah have mercy on him. Indeed, it is the preferred verdict, according to al-Ghiyathiya and that is also what is in al-Jawahir al-Akhlati. (*Al-Fatawa al-Hindiya*, volume 3, p213, chapter on hoarding, published by Dar al-Fikr.)

[Translator's note: Imams Muhammad and Abu Yusuf were both leading students of Imam Abu Hanifah. Imam Abu Yusuf was Chief Justice during the reign of Harun al-Rashid in Baghdad, considered by many to be the height of Islamic power. Both Muhammad and Abu Yusuf are quoted extensively in books of Hanafi jurisprudence. The opinions of these three imams of the Hanafi school of thought do sometimes vary, on certain questions of jurisprudence, as in this particular instance, as detailed below.]

The definition of hoarding is keeping some food commodity in order to inflate its price. The noun deriving from the act of hoarding is *al-hakarah*.

Firstly, there is the decision adhered to by Abu Hanifah, Muhammad, the Shafiis and the Hanbalis, that there can only be hoarding of food items. The second opinion is that hoarding can apply to anything that humans have need of and stand to be harmed by its hoarding. That can be food, clothing, or any other item. That is the opinion of the Malikis and also Abu Yusuf from among the Hanafis.

There is a third opinion, namely that hoarding only applies to food items or clothing. That is the opinion of Muhammad bin al-Hasan (*Encyclopaedia of Jurisprudence*, volume 2, p92.)

The enforcer will prohibit the hoarding of anything of which human being stand in need. Muslim has transmitted a tradition on the authority of Muamar bin Abdullah al-Adwi, to this effect, "Only a wrongdoer hoards," a hoarder being someone who intentionally buys some food item of which human beings stand in need. He then keeps it from people, intending to inflate its price, in the process doing wrong to humans in general.

That is why a person in authority should prevent hoarders from selling items at the going rate, at a time when people are in need of that item. (*Islamic Jurisprudence and its Proofs*, volume 8, p382, published by Dar al-Fikr, Damascus.)

[71] It is related on the authority of Abu Hurayrah that the Messenger of Allah ﷺ passed by a man who was selling some food. He asked the person for how much he was selling it. The vendor told him, upon which the Messenger was inspired by Allah to put his hand into the item. He found it to be wet, in order to increase its weight. "One who cheats is not one of us," the Messenger of Allah ﷺ said. (Abu Daud, Hadith number 3454)

It is related that the Prophet said, "Whoever cheats is not one of us." If this cheating involves fraud against the customer, which he conceals from the person concerned, then it constitutes the worst type of cheating as far as its prohibition is concerned, and the most grievous sin. It should be discouraged most vehemently and the punishment administered for it should be most severe. If it is not being concealed from the customer, then it does not constitute such a grievous sin, nor is its discouragement such an urgent matter. In that case, one would wait for the transaction to take place. If the buyer purchases it, in order to sell it to someone else, then action will be taken for cheating against the vendor, and upon the purchaser for compounding the cheating, since he is intending to sell it to someone else without informing them. However, if he purchases it in order to use it, then no blame accrues to the purchaser; only the vendor is blameworthy. This is the decision with regard to sinful fraud. Furthermore, it is forbidden to slaughter livestock or dig their udders [Translator's note: the meaning of this is unclear] when selling them, since this is forbidden and constitutes a type of fraud. (*Al-Ahkam al-Sultaniyah li al-Mawardi*, volume 2, p11.)

By way of definition, cheating is when a vendor hides some defect in the item being sold from the customer, in such a way that if the customer were to become aware of the defect, he would not buy the item at the same price. (*Encyclopaedia of Jurisprudence*, volume 7, p317.)

(Chapter on Identification of a Defect.) (It has been elaborated on in Fath al-Qadir.) According to al-Ramali, many scholars have elaborated on this. For example, some Shafii scholars were asked about this, Bin Hajr al-Haytami, to be precise – as mentioned by al-Ramali. In his Fatwa, Bin Hajr cited the case of a man who kneads bread for sale

and sells it to people while having the itchy black spots of a leper. Is it allowed for him to prepare bread, while being tainted with the attributes mentioned? Commenting on this, al-Ramali says that it would not be acceptable for someone to make dough and sell it under these conditions, unless he were to explain the true situation. This is because, were he to know the true situation, customers would be unlikely to purchase bread from that person. Whenever this is the case, then hiding the true situation would be considered a type of cheating, which is forbidden, on the basis of his saying ﷺ, "Whoever cheats someone from my community, is not one of us." (*Al-Bahr al-Raiq sharh Kanz al-Daqaiq wa Manhat al-Khaliq wa Takammal al-Turi*, volume 6, p38, published by Dar al-Kitab al-Islami.)

NB: It is forbidden to hide any defect in a product. It is in al-Bazaziya and in other collections of juristic decision, that whenever any defective product is sold, then one is duty-bound to explain the defect. Some of our leading scholars say that a person who does not explain the defect of a product has sinned and his testimony becomes unacceptable, while al-Sadr says that such a product should not be bought. (*Al-Bahr al-Raiq sharh Kanz al-Daqaiq wa Manhat al-Khaliq wa Takammal al-Turi*, volume 6, p38, published by Dar al-Kitab al-Islami.)

[72] "Woe to those who give short measure, who demand of others full measure for themselves, but when they give by measurement or weight to others, they give them less." (Surah Al-Mutaffifin, verse 83:1-3)

"To the people of Midian, We sent their brother Shuayb. He said, 'My people, worship Allah. You have no deity other than Him. Do not give short measure and short weight. I see you are prospering, but I fear for you the punishment of a fateful Day.'" (Sura Hud, verse 11:84)

The Arabic word *al-tatfif* literally means to sell people short in measure and weights. Almighty Allah has said, "Woe to those who do al-tatfif," so al-tatfif is the reduction which someone makes in the measurement and weights. Jurists have not deviated from the literal meaning of the word, in their own usage. (*Encyclopaedia of Jurisprudence*, volume 12, p144.)

What is to be emphasised as far as the enforcer is concerned is that he should stop people from giving short measure and selling people short in measurements, weights and in the nets that fishermen cast to catch fish. It is right that he should warn tradesmen who deal in these measures and explain to them the punishment of Allah that will ensue from contravening this order. He should prohibit them from selling people short and giving short measure, he will be reprimanded for that and the matter will be made public, so that others should be deterred from such action. (*Encyclopaedia of Jurisprudence*, volume 12, p145.)

[73] Said bin al-Musayb said that he heard Abu Hurayrah, may Allah be please with him, say, "A person should not buy something in opposition to his brother and do not argue about prices and a townsman must not sell the good a man from the desert." (Bukhari transmitted it in Hadith number 2160.)

Al-Najash – something close to auctioning – is also considered reprehensible. It is to offer a high price for something, without intending to buy it, or to praise something excessively, in order to increase its demand. (*Al-Dar al-Mukhtar*, volume 5, p101, published by Dar al-Fikr lil-Tabaati wa al-Nashr, Beirut.)

In Islamic law, al-najash is to raise the price of a product without intending to buy it so that someone else would have to meet that price. It is called thus because the aim of the auctioneer is to increase the demand for the commodity. It is in al-Nahayah, that this practice consists of praising a product in order to increase its value and demand, in the process pushing up its price, while at the same time not wishing to buy it, but to force someone else to meet that price. It happens in matters of marriage also. The difference between al-najash and al-musawamah is that a person conducting al-najash has no intention of buying the product, while the bidder conducting al-musawamah fully intends to buy it. (*Encyclopaedia of Jurisprudence*, volume 37, p159.)

[74] Bin Musayb reports that Abu Hurayrah, may Allah be pleased with him, related that he had heard the Messenger of Allah ﷺ say, "An oath aimed at selling a product eliminates its blessing." (Bukhari transmitted it in Hadith number 2087.)

According to Abdullah bin Abi Aufa, may Allah be pleased with him, a man displayed a product in the market. He swore an oath that the product had all sorts of qualities that in fact it did not have. He wanted to trick some Muslim to buy it. On the basis of this incident, the verse, "Those who take a paltry price, in exchange for the covenant of Allah," was revealed. (Bukhari transmitted it in Hadith number 2088.)

The words that occur in one tradition are, "Beware of swearing oaths in the course of your transactions, for the product will be sold, then its worth will fade." Here, there is prohibition of swearing a number of oaths in the course of a transaction. It is reprehensible to swear an oath, without there being a dire need. Here, the promotion of the product is attached to the oath, and the buyer may be deceived by the oath. (*Sharh al-Nawawi ala Sahih al-Muslim*, volume 11, p44, published by Dar al-Ihya al-Turath al-Arabi, Beirut.)

injustice, swearing oaths[74] and committing other un-Islamic actions in their dealings.[75]

5. To abstain from selling or buying anything that is prohibited or unlawful in Islamic law, like wine, meat that is not allowed, blood, weapons, military ammunition and equipment, along with pictures of animate objects.[76]
6. To avoid the use of pictures of any animate object when advertising some product.[77]

---

[75] What is to be emphasised as far as the enforcer is concerned is that he should stop people from giving short measure and selling people short in measurements, weights and in the nets that fishermen caste to catch fish. It is right that he should warn tradesmen who deal in these measures and explain to them the punishment of Allah that will ensue from contravening this order. He should prohibit them from selling people short, and giving short measure, he will be reprimanded for that and the matter will be made public, so that others should be deterred from such action. (*Encyclopaedia of Jurisprudence*, volume 12, p145.)

An enforcer is duty bound to eradicate wrongful actions. He should practice enforcement on anyone who perpetrates some sinful action and should punish him for it in a manner that appears appropriate. (*Encyclopaedia of Jurisprudence*, volume 17, p266.)

[Translator's note: The first paragraph of this footnote – already mentioned in footnote 72 – is repeated here in the original text.]

[76] Rather, he seeks it. [Translator's note: In other words, he seeks one of the items which should not be sought or bought.] What is apparent from what is coming in the Chapter on Business Transactions that are forbidden is that it is not lawful to benefit from these items in any way. This only applies to impure fat, what is written in Sahih al-Bukhari seconding this, namely that "Jabir heard the Messenger of Allah ﷺ say on the Day of Victory, when he was in Mecca, 'Allah has prohibited the sale of wine, and dead animals, and swine and idols.' He was asked, 'Messenger of Allah, what about the fat of dead animals? Ships are coated with it, hides are greased with it, and people use it for lighting.' But the Prophet demurred, 'No,' he insisted, 'it is prohibited.'" (*Al-Dar al-Mukhtar wa Hashiyatu Bin Abidin*, Radd al-Muhtar, volume 1, p231, published by Dar al-Fikr, Beirut.)

He says, "it is reprehensible to sell weapons to people of sedition, and to their soldiers, since it amounts to assistance in the path of sin. (*Al-Hedayah fi Sharh al-Bedayah al-Mubtadi*, 2/576, Al-Maktaba al-Haqqaniya.)

[77] Our companions, as well as some others have said that a depiction of an animal is strictly forbidden. It does not matter if it has been fashioned as part of one's profession or not, it is forbidden under any circumstances, since it mimics the creation of Allah. It makes no difference if it is in a garment, a rug, a dinar, a dirham, a tiny coin, a vessel, or fashioned with a thread. If there is no depiction of an animal, but a depiction of a tree or something like that, then it is not forbidden. Similarly, it makes no difference if it the depiction shows something that casts a shadow, or does not cast a shadow. A whole section of scholars, like Malik, al-Thawri and Abu Hanifah are agreed on this point. (*Umdah al-Qari sharh Sahih al-Bukhari*, volume 22, p70, published by Dar Ihya al-Turath al-Arabi, Beirut.)

Our companions and some other scholars have held that the depiction of the appearance of an animal is strictly forbidden and that it constitutes a grave sin, since dire warnings have been issued for the making of such a depiction in Hadith, it making no difference if it is fashioned as part of a person's livelihood or not: it is forbidden under all conditions, due to the imitation of God's creation that is inherent in the making of such an image. It also makes no difference if it in a garment, a rug, a dinar, a dirham, a tiny coin, a vessel, or fashioned with a thread. However, if there is a depiction of a tree, but a depiction of a tree or something like that, then it is not forbidden. As for drawing pictures of trees, camel saddles, and other things that do not contain an image of an animal, it is not forbidden. Such is the injunction regarding an actual picture. As for taking a picture of an animal, if it is hung on a wall, worn as a garment, a turban, or something similar that is not subject to wear and tear, then it is forbidden. However, if it is part of a rug to be trampled on, a pillow, a cushion, and the like – something that is used – then it is not forbidden. However, does it preclude the entrance of the angels of mercy into that house? There are points to be considered here, that we will mention in due course, God willing. There is no difference in all of this between something that has a shadow, and something that does not have a shadow. This is a summary of our school of thought on this matter. Most scholars from among the Companions, those who followed the Companions, and those who followed them, are in agreement on this. This is the school of thought of Thawri, and Malik, and Abu Hanifah and others besides them. Some past scholars have contended that the images that are prohibited are those which cast a shadow, and

7. To avoid selling or making use of any part of the human body, such as kidneys, livers, eyes and human hair.[78]

---

there is no harm in images that do not have any shadow. This school of thought is wrong, the reason being that no one can be in any doubt that the curtain the image on a curtain, which the Holy Prophet disapproved of, was reprehensible. But that image did not have any shadow. This is along with all the other Hadiths that are categorical on this matter. Al-Zahri says – acting on the evident meaning of the Hadiths – that the prohibition of pictures is general, and likewise the use of items that have a picture on them, and entry into a house in which there is a picture, no matter if it is an emblem on some piece of clothing, or not such an emblem, whether it is on a wall, a garment, or a rug, whether it is worn or not, notwithstanding the Hadith of al-Numruqah, mentioned by Muslim.

[Translator's note: It is a Hadith related by Aisha, who said that she "bought a cushion (*al-numruqah*) on which were pictures. When Allah's Messenger saw it he stopped at the door and did not enter. Seeing the signs of disapproval in his face, she said, 'Messenger of Allah, I repent towards Allah and His Messenger. What have I done wrong?' He asked, 'What is the meaning of this cushion?' and when she replied that she had bought it for him to sit and recline on he said, 'The people who make these pictures will be punished on the Day of Resurrection and be told to bring to life what they have created,' adding, 'The angels do not enter a house which contains a picture.'" Transmitted by Muslim, from the translation of *Mishkat al-Masabih* by Dr James Robson, pp940-941.)

Indeed, this is the strong school of thought. However, some others are of the opinion that it is permissible to have an emblem on a garment, whether it is worn or not, and whether it is hung on a wall or not. Those scholars consider any image that casts a shadow, or one that is depicted on walls and the like, to be reprehensible, whether it is an emblem or not. They cite as proof what is mentioned in some Hadith, in the chapter on pictures, in which exception is made for that which is an emblem in clothes. This is the school of thought of al-Qasim bin Muhammad. However, everyone is agreed that an image of something that casts a shadow is prohibited, and that it is obligatory to do away with such an image. Qadhi makes an exception for a game for little girls, and gives permission for this.

[Translator's note: Which Qadhi is being referred to does not appear to be clear.]

However, Malik disapproves of a man purchasing such a game for his daughter, while some scholars have said that the approval of this girls' game has been annulled by other Hadith. Allah knows best. (*Al-Minhaj sharh al-Nawawi li Sahih Muslim*, volume 7, p205, published by Dar ihya al-Turath al-Arabi, Beirut.)

[78] Jurists are united on the impermissibility of benefiting from human hair, either for trade or for usage. This is because of the honourable status of humankind, according to the words of the Almighty, "We have honoured the children of Adam," so no parts of the human body should be dishonoured or trivialised. (*Encyclopaedia of Jurisprudence*, volume 26, p102.)

As for the statement, "human hair, and making use of it," in other words, one is not allowed to sell it or make use of it, since humankind is honourable and not a thing to be trivialised, so it is not permissible to dishonour or trivialise any part of the human body. And the Holy Prophet said, "The curse of Allah is upon one who extends hair and who has it extended." (*Al-Bahr al-Raiq sharh Kanz al-Daqaiq*, volume 6, p88, published by Dar al-Kitab al-Islami.)

(As the sale of a child who has not reached the age of discernment, or a mentally ill person, is also considered invalid), indeed, anything related to the human body, even excrement (and human excrement does not decompose into the earth) because, if it did, it would be permissible to throw it into the sea, just mixing it with earth, as it is with dung and droppings. (And human hair) due to the honourable status of humankind, even if it is an infidel (*Al-Dar al-Mukhtar*, volume 5, p85, published by Dar al-Fikr, Beirut.)

The meaning of the fact that humankind is considered honourable, even if it is an infidel, as mentioned by the author when he says, "Humankind is honourable as far as Islamic law is concerned, even if it is an infidel, so the very intention of making a contract against him, demeaning him, and grouping him together with other inanimate objects amounts to humiliation as far as the human body is concerned," in other words, it is not permissible and the wrongfulness of such acts has been made clear in *Fath al-Qadir* (*Al-Dar al-Mukhtar*, volume 19, p238, published by Dar al-Fikr, Beirut.)

It is not permissible to benefit from the use of human parts, some say this is because of impurity, while some say this is because of the honourable nature of the human body and the latter is the right opinion, as has been made clear in Jawahir al-Ikhlati (*Al-Fatawa al-Hindiyah*, volume 5, p354, published by Dar al-Fikr.)

The enforcer's duties with regard to sightseeing and recreation spots Article 19

An enforcer is duty-bound to ensure that staff responsible for sightseeing and recreation spots observe the following rules:[79]

1. To construct a mosque for offering prayers in congregation.[80]
2. To ensure that staff and tourists observe congregational prayer.[81]

---

[79] "Those who, if we establish them in the land, say their prayers regularly and pay zakat and enjoin good and forbid evil. The final outcome of all affairs rests with Allah." (Surah Al-Hajj, verse 22:41)

"Let there be a group among you who call others to good, and enjoin what is right, and forbid what is wrong." (Surah Al Imran, verse 3:104)

[80] "Only he should tend Allah's houses of worship who believes in Allah and the Last Day, and is constant in prayer, and spends in charity, and stands in awe of none but Allah; such people may hope to be among the rightly guided." (Surah Al-Tauba, verse 9:18)

It was at the time when people were speaking up, at the time when he rebuilt the mosque of the Messenger of Alla ﷺ, that Uthman bin Affan said, "You have said your bit, for my part I heard the Prophet ﷺ say, 'If anyone builds a mosque for Allah,' – and it was Bakir who remembers his words – 'Allah will build for him the like thereof in Paradise.'" (Bukhari transmitted it in Hadith number 122 and Muslim in Hadith number 1217.)

It is related that the Prophet ﷺ said, "Whoever builds a mosque for Allah – small or large – Allah will build him a house in Paradise." We heard this from Qutaybah, who heard it from Nuh bin Qays, who heard it from Abdul Rahman, the master of Qays, who heard it from Ziyad al-Numayri, who heard it from Anas who heard it from the Prophet ﷺ. (Tirmidhi transmitted it in Hadith number 320.)

The building of mosques is obligatory in cities, towns, settlements, and similar dwellings, according to need. This is one of the obligations that is discharged when someone does it, and a mosque is Allah's most favourite place in the whole land, mosques being houses where Allah's Unity is proclaimed, and He is worshipped. (*Encyclopaedia of Jurisprudence*, volume 37, p195.)

The construction of mosques is ordered in the Holy Book and the Sunna of the Holy Prophet. It is an obligation that if some among the Muslim community discharge, then others are also relieved of the responsibility. However, if everyone abandons this responsibility, then the sin accrues to everyone.

[Translator's note: This fits into the second type of mandatory action. The first is *fard ayn* – something that is incumbent on every Muslim. The second is *fard kafaya*, such as building mosques, an obligation that if some among the Muslim community discharge, then others are also relieved of the responsibility.]

Almighty Allah states, "Only he should tend Allah's houses of worship who believes in Allah and the Last Day." Bin Kathir writes in his commentary on this verse, "The construction is only suitable for those who have acquired excellence in the field of learning and pious deeds." What exactly does the construction of mosques consist of? It consists of their construction, beautifying them with a floor, giving them good lighting and perpetual worship and imparting of learning therein, along with their protection from things they were not constructed for, such as worldly talk. There is a Hadith Qudsi – a Hadith in which words are attributed to Almighty Allah, "Mosques are my houses on earth. Those who build these mosques are my visitors. So successful is one who purifies himself in his own house, then visits me in mine. It is only right that the one who is visited should be gracious to the visitor." (*Encyclopaedia of Jurisprudence*, volume 30, p299.)

Mosques belong to the Muslim public and each and every Muslim is bound to look after his own interests, one of which is the construction and tending of mosques. Almighty Allah says, "Only he should tend Allah's houses of worship who believes in Allah and the Last Day." (*Badai al-Sanai fi Tartib al-Sharai*, volume 7, p279, published by Dar al-Kutub al-Ilmiya.)

[81] "Be ever mindful of prayers, especially the middle prayer; and stand up before Allah in submissive devotion." (Surah Al-Baqarah, 2:238.)

"Recite what has been revealed to you of the Book and pray regularly. Surely prayer restrains one from indecency and evil and remembrance of Allah is greater. Allah has knowledge of all your actions." (Surah Al-Ankabut, verse 29:45)

"Believers are under the obligation to say their prayers at the appointed hours." (Surah Al-Nisa, verse 4:103)

Bin Masud said, "I asked the Messenger of Allah ﷺ which action is dearest to Allah and he replied, 'Prayer at its proper time.'" (Bukhari transmitted it in Hadith number 2782, Ahmad bin Hanbal in Hadith number 4243, *Mishkat al-Masabih*, translated by Dr James Robson, pp114-115.)

Abu Darda reported Allah's Messenger ﷺ as saying, "If there are three men in a village or in the desert among whom prayer is not arranged, the devil has got the mastery over them. So observe prayer in company, for the wolf eats only the straggling animal." (Nasai transmitted it in Hadith number 847; *Mishkat al-Masabih*, translated by Dr James Robson, p219.)

Abdallah bin Umm Maktum said, "Messenger of Allah ﷺ, there are many venomous creatures and wild beasts in Medina, and I am blind, so are you able to grant me any licence?" He asked whether he could hear the call to prayer and when he replied that he could, he said, "Then you must come," and he gave him no indulgence. (Abu Dawud transmitted it in Hadith number 552; *Mishkat al-Masabih*, translated by Dr James Robson, p221.)

Abu Hurayrah reported the Prophet as saying, "The congregational prayer is twenty-five times more excellent than a person's prayer in his home, or his prayer in the market. So when one of you performs ablution in the best way, then makes his way to the mosque, not having any other intention but to pray, then for every step he takes, Allah will raise his status and will forgive him one of his sins, until he enters the mosque. Then, when he enters the mosque, he remains in a state of prayer, as long as the prayer holds him back. And the angels invoke blessings upon him, as long as he remains in the sitting in which he prayed. 'Allah, forgive him. Allah have mercy on him,' so long as he has not entered into any other conversation." (Bukhari transmitted it in the Chapter on the Congregation and the Leadership of Prayer, Hadith number 477.)

It is in *al-Ghayah* that most of our scholars have said that the congregation is obligatory. The same is in *al-Mufid*. It is called Sunna because it is in the Sunna that its obligatory status has been determined. It is in *al-Badai* that the congregational prayer is obligatory for adults who are of a sound mind, free men who are able to perform the congregation without any difficulty. (*Fath al-Qadir*, volume 2, p169 in the Chapter on Leadership of Prayer.)

As for its category, that which has been mentioned, that the congregation is a strong Sunna – known as Sunna muakkadah or a Sunna that has been emphasised – that means that it is such a strong Sunna that it resembles an obligatory act.

[Translator's note: For clarification, it is worthwhile noting that four categories of virtuous actions have been identified by jurists: fard – mandatory – like the five times prayer a day; wajib – obligatory; Sunna, of which there are two categories, Sunna muakkadah and Sunna ghair muakkadah. Sunna muakkadah is like wajib in its requirement to be performed, while Sunna ghair muakkadah is more like the fourth category, nafl or voluntary action.]

Most adherents to our school of thought consider the congregation to be an obligatory action, as explained in al-Badai, on the authority of the senior scholars of our school of thought. As for those who call it Sunna muakkadah, there is no difference between that and an obligatory action, it is only a different manner of speaking, since a strong Sunna is the same as an obligation, especially when it is a matter that pertains to a hallmark of Islam. The proof of this is in the Sunna, that one should be consistent in doing it, without abandoning it, while in many s Hadith there is denouncement those who abandon it without an excuse. And it is in *al-Mujtaba* that they certainly intended it to be obligatory, and they used as evidence of this the reports, mentioning a dire outcome for those who abandon the congregation. It is in *al-Muhit* that no licence was given to anyone to abandon the congregation, with an excuse. Even in the instance of the people of Egypt, it was mentioned that if they abandon the congregation, then they would be commanded to resume congregational prayer. If they were to do so, well and good, otherwise it would be permissible to take up arms against them. It is in *al-Qaniyah* and other sources that punishment should be administered to those who abandon congregational prayers without a valid excuse. Also, a neighbour incurs sin by keeping silent. (*Al-Bahr al-Raiq sharh Kanz al-Daqaiq*, volume 3, p380.)

The congregation is a strong Sunna, by virtue of his ﷺ saying, "The congregation is a Sunna, one of the sunnas of right guidance. Only a hypocrite will take issue with this." (*Al-Inayah sharh al-Hedayah*, volume 2, p58.)

[Translator's note: A longer tradition to this effect is in *Sahih Muslim* and is also included in *Mishkat al-Masabih*, but is transmitted as a statement of Abdallah bin Masud and not attributed to the Holy Prophet ﷺ, as it is here: "I have seen a time when no one stayed away from prayer except a hypocrite. … Allah's Messenger taught us the paths of right guidance, among which is prayer in the mosque in which the *adhan* is called. … If you were to pray in your houses as this man who stays away prays in his house, you would abandon the practice of your Prophet, and if you were to abandon the practice of your Prophet you would go astray." *Mishkat al-Masabih*, Chapter on the Congregation and its Excellence, translated by Dr James Robson, volume 1, p220.]

The enforcer's duties with regard to passenger vehicles, lorries, motorcycles and other such vehicles
Article 20

An enforcer is duty-bound to ensure that staff and drivers of commercial vehicles observe the following rules:[82]

1. Not to play music.[83]
2. Not to use or smuggle intoxicating substances.[84]
3. Not to transport any woman who is not covered.[85]

The congregation is a Sunna. No one is allowed to stay away from it, except with a valid excuse. (Al-Muhit al-Burhani, volume 2, p136, section on Encouragement to Pray in Congregation, published by Dar Ihya al-Turath al-Arabi.)

Haven't you seen how al-Karkhi called it Sunna, but that explained it as obligatory – wajib? "The congregation is a Sunna, no one is allowed to stay away from it, except with a valid excuse." This is an explanation that fits an obligatory deed, according to the general opinion. (*Badai al-Sanai fi Tartib al-Sharai*, volume 1, p155, published by Dar al-Kutub al-Ilmiyah.)

The congregation is a strong Sunna, in other words it is close to being obligatory, so much so that if the inhabitants of Egypt were to abandon it, the sword would be taken up against them. When one person stays away from the congregation, he is liable to take a beating or be imprisoned. No one is allowed to stay away from the congregation, except with a valid excuse, for example rain, mud, extreme cold, or extreme darkness. (*Majma al-Anhar fi sharh Multaq al-Abhar*, volume 1, p161, published by Dar al-Kutub al-Ilmiyah, Lebanon.)

[82] "Those who, if We establish them in the land, say their prayers regularly and pay zakat and enjoin good and forbid evil. The final outcome of all affairs rests with Allah." (Surah Al-Hajj, verse 22:41)

"Let there be a group among you who call others to good, and enjoin what is right, and forbid what is wrong." (Surah Al Imran, verse 3:104)

An enforcer is duty bound to eliminate wrongdoing. He should practice enforcement upon anyone who perpetrates any kind of sin and take whatever action against that person that he considers appropriate. (*Encyclopaedia of Jurisprudence*, volume 17, p266.)

[83] Bin Masud, may Allah be pleased with him, says that the sounds of merrymaking and song makes hypocrisy grow in the heart, just like water makes plants grow. It is in Bazaziyah that listening to the sounds of entertainment, such as blowing the flute and the like thereof, is forbidden. This is because of a saying attributed to him – peace and blessings be upon him, "Listening to sounds of entertainment is sinful, to sit in such a place is wrongful, while to enjoy it is an act of disbelief – *kufr*," using the word *kufr* in its literal sense of being ungrateful for a blessing, since it involves the diversion of the limbs to something other than what Allah created. So it is absolutely essential that one should avoid it and not listen to it, due to the fact that the Holy Prophet "used to put his fingers in his ears, whenever he heard it."

As for the attribution of this tradition to Bin Masud, it has been transmitted in the books of Hadith, attributed to the Prophet, with the following wording: "Sing-song creates hypocrisy in the heart." This was mentioned in Ghayah al-Bayan and it is said that if one breaks into melody in order to benefit from the rhyme systems and become eloquent in speech, then there is nothing wrong with that. Also, there is nothing wrong with singing to oneself in order to relieve depression. That is what al-Surkhsi has said, but Sheikh al-Islam has said that all this is reprehensible in the opinion of our respected scholars, citing the verse of the Quran referring to "those who spend their time in idle diversions" (Surah Luqman, verse 31:6), it having been clarified in tafsir that by idle diversions is meant song, as written in al-Dar al-Mukhtar and the explanatory notes of Bin al-Abidin (volume 6, p348, published by Dar al-Fikr, Beirut.)

[Translator's note: It does not appear clear who is being referred to here]

[84] The apparent meaning of this statement is that politics is the act of a ruler for some benefit he deems expedient, even if there is no specific proof to back up a certain action. (*Al-Bahr al-Raiq sharh Kanz al-Daqaiq wa Manhah al-Khaliq wa Takmilah al-Turi*, volume 5, p11, published by Dar al-Kitab al-Islami.)

[85] "Tell believing men to lower their gaze and remain chaste. That is purer for them. Allah is aware of what they do." (Surah Al-Nur, verse 24:30)

"Say to believing women that they should lower their gaze and remain chaste and not reveal their adornments – save what is normally apparent thereof …" (Surah Al-Nur, verse 24:31)

4. Not to allow women to sit or mingle with an unrelated man.[86]
5. Not to transport any woman who is not in the company of an adult male who is a close relative and of sound mind.[87]
6. That transport companies make a schedule that ensures that drivers and passengers are praying at the proper time.[88]

Bin Abbas says that Allah has commanded the believing women to cover their faces from above their heads with their cloaks, when they go outside for some need, just revealing one eye. Muhammad bin Sirin says that he asked Ubaydah al-Salmani about the saying of the Almighty, "cover themselves with their cloaks …" and he covered his face and his head, showing his left eye. (*Mukhtasar Tafsir Bin Kathir*, volume 3, p114, published by Dar al-Quran Karim, Beirut.)

According to Aisha, the Messenger of Allah used to offer the morning prayer. The believing women used to be present with him, wrapped in their cloaks. Then they would return to their homes, without anyone recognising them. (*Sahih al-Bukhari*, Hadith number 372)

Umm Salma says that when the verse was revealed that believing women should cover themselves with their cloaks, the women of the Ansar came out, and on their heads cloaks as black as crows. Abu Bakr says that this verse proves that young women should cover themselves from strangers. This concealment manifests itself when they go out. It is to prevent any doubtful quarters from harbouring desire in their regard. (*Ahkam'al-Quran*, Jassas, volume 3, p486, from the Chapter on Covering of Women.)

"The entire body of a free woman is to be covered, except for her face and the palms of her hands," owing to his saying ﷺ, "The whole body of a free woman is to be covered – *aurah* – except for her face and the palms of her hands."

[Translators note: It would have been good to give the source of this Hadith, for some authorities have made clear that "they do not know of any Hadith to this effect." Indeed, the language of the saying quoted is more juristic, than the type of language one would expect in a Hadith. This is not to negate the thrust of what is being said.]

The palm of the hand extends from the wrist to the fingers. The palms are specified because the outer parts of the hands are to be concealed, the palms being the inner parts of the hands, not the outer. It is in al-Bahr that neither the outer parts of the hands, nor the inner, are to be concealed. It is in al-Muntaqa that a young lady is not allowed to show her face since it will lead to temptation. And in our day and age, this prohibition is obligatory, indeed it is mandatory, due to the prevalence of promiscuity. It is related from Aisha may Allah be pleased with her that the whole body of a free woman is to be concealed except for one of her eyes, which is enough to meet requirements. (*Majma al-Anhar fi sharh Multaqa al-Abhar*, volume 1, p122, Chapter on Conditions of Prayer, published by Dar al-Kutub al-Ilmiya.)

[86] It is related from Hamza, the son of Abu Asyad al-Ansari, that he heard the Messenger of Allah ﷺ say – addressing the women – outside the mosque, when he saw men mixing with women in the road. The Messenger of Allah ﷺ said to the women, "It is not for you to occupy the path: you should follow the edges of the path." The narrator of the Hadith says that after this, women used to stick to the wall, so much so that their clothes would be attached to the wall. (Abu Dawud transmitted it in Hadith number 5272.)

He says, seeing that there tend to be crowds in his court, it behoves a Qadi to keep women within limits, and men also within limits. There are obvious dangers in women mixing with men in crowded spaces. (*Al-Mabsut li al-Surkhsi*, volume 12, p80.)

[87] It is related by Abu Hurayrah from the Prophet that he said, "It is not permissible for a woman who believes in Allah and in the Last Day that she should travel the distance of one day's travel, except with a close relative." (Muslim transmitted it.)

Regarding what he says about a journey, it consists of the distance of three days and nights, so it is permissible for her to go out without a close male relative for a lesser distance for some need. It is related from Abu Hanifah and Abu Yusuf that it is reprehensible for a woman to go out for the distance of one day's travel. It is appropriate for the juristic verdict – the fatwa – to be in favour of this decision, owing to the temptations prevalent in this day and age. This is backed up by the Hadith carried by both most authentic collections, "It is not permissible for a woman who believes in Allah and in the Last Day that she should travel the distance of one day's travel, except with a close relative in attendance upon her." The wording of Muslim has it that "the distance of one night" was mentioned, while in one version "one day" was mentioned. (*Al-Dar al-Mukhtar wa Hashiyah bin Abidin Radd al-Muhtar*, volume 2, p464.)

[88] Nafi, who was a freed slave of Abdallah bin Umar, said that Umar wrote to his delegated officials, "The most important matter in my sight is prayer. Whoever looks after their prayer, and is a custodian of their prayer, has looked after his religion. Whoever lets his prayer go astray will be even more careless with regard to other parts of his faith."

The enforcer's duties with regard to public baths
Article 21

An enforcer is duty-bound to ensure that people using public baths and swimmers cover the required parts of the body.[89]

The enforcer's duties with regard to individual wrongful acts
Article 22

An enforcer is duty-bound to prevent the following individual, wrongful acts:[90]

Then he wrote, "The early afternoon prayer commences when one's shadow is one yard long and lasts until is equal to the shadow of one of you (p7.)The late afternoon prayer arrives when the sun is still high in the sky, shining and in a pure state, allowing a rider time to travel two or three furlongs before it sets. The evening prayer is after the sun sets, and the night prayer is after the glow disappears until one third of the night has passed. But whoever sleeps, his eye will not sleep," saying it three times. The morning prayer is to be offered while the stars are still clearly intertwined." Imam Malik, may Allah have mercy on him, transmitted it in the Muatta.

One who abandons prayer is not to be killed unless he refuses, but one who denies prayer is a disbeliever, in accordance with conclusive proofs that leave no doubt. So the person who denies prayer is an apostate. As for one who abandons prayer because of laziness, he is a sinner. He may be imprisoned until such time as he resumes prayer. Some say that he may be beaten until blood issues from him, as an exaggerated punishment. If a child is ten years old and he does not pray, he can be chastised, on the basis of his saying ﷺ, "Command your children to observe prayer when they are seven years old and beat them for not observing it when they are ten years old." (Abu Dawud transmitted it, and Baghawi transmitted it thus from him in *Sharh-e Sunna*, translated by Dr James Robson in *Mishkat al-Masabih*, Book of Prayer, volume 1, p115.) (*Majma al-Anhar fi sharh Multaqa al-Abhar*, volume 1, p218, published by Dar al-Kutub al-Ilmiya.)

[89] Said bin Jabir says that it is prohibited to enter public baths without a garment, on the basis of a Hadith of Jabir bin Abdallah, that the Prophet ﷺ said, "Whoever believes in Allah and the Last Day should not enter a public bath without a garment on, and the wife of whomsoever believes in Allah and the Last Day should not enter into a public bath," and it has also been related that two angels will curse anyone who enters a public bath, while not wearing any garment. (*Encyclopaedia of Jurisprudence*, volume 18, p156, published by Maktaba Rashidiya, Quetta.)

[90] "Those who, if We establish them in the land, say their prayers regularly and pay zakat and enjoin good and forbid evil. The final outcome of all affairs rests with Allah." (Surah Al-Hajj, verse 22:41)

"Let there be a group among you who call others to good, and enjoin what is right, and forbid what is wrong." (Surah Al Imran, verse 3:104)

Abu Said says, "It has been decided what this is about, for I heard the Messenger of Allah ﷺ say, 'Whoever amongst you sees some wrongdoing, he should change it with his hand, but if he is not able to do so, then with his tongue, and if he is not able to do so, then in his heart, and that is the weakest type of faith.'" (*Sahih Muslim*, Hadith number 49, volume 1, p69, published by Dar Ihya al-Turath al-Arabi, Beirut.)

The one who upon whom enforcement is being implemented is required to practice virtue and avoid vice. (*Encyclopaedia of Jurisprudence*, volume 17, p261, published by Maktaba Rashidiya, Quetta and *Kanz al-Akbar fi al-Amr bi al-Maruf wa al-Nahi an al-Munkar*, volume 1, p57.)

1. Adultery, whether forced or consensual, whether hidden or in public.[91] Similarly, temporary marriage is also not allowed.[92]

[91] "Do not go near adultery, for it is an indecent thing and an evil course." (Surah Al-Isra, verse 17:32)

"Flog the adulteress and the adulterer, each one of them, with a hundred lashes. Let no pity for them cause you to disobey Allah, if you truly believe in Allah and the Last Day; and let their punishment be witnessed by a number of believers." (Surah Al-Nur, verse 24:2)

Zar says that Ubayy bin Kaab said that he used to recite Surah al-Ahzab Surat Al-Ahzab. I mentioned that it was 73 verses. He said that was not the case. "I have seen it," he said, "and it resembled Surah al-Baqarah in its length." According to Ubayy bin Kaab's reported statement, one of the "verses" that they recited therein was a "verse" prescribing stoning for a married man and married woman who commit adultery.

Abu Hurayrah says that the Messenger of Allah said, "At the time when he commits adultery, an adulterer does not remain a believer." (Transmitted by Bukhari in Hadith number 2475, Muslim in Hadith number 100, Abu Dawud in Hadith number 4689, Nasai in Hadith number 7129, Tirmidhi in Hadith number 2834 and Bin Majah in Hadith number 3936.)

Salim bin Amir says that Abu Umama told him that a young man came to the Messenger of Allah ﷺ and said: "Messenger of Allah, allow me to commit adultery." People shouted to him, "Stop!" The Messenger of Allah ﷺ said, "Let him come closer." He came closer, until he sat right in front of the Messenger of Allah ﷺ, who said to him, "Would you like it for your mother?" "No," he said. "Other people also would not like it in the case of their mothers," the Prophet said. "And would you like it for your daughter?" "No," he said. "Other people also would not like it in the case of their daughters," the Prophet replied. "And would you like it for your sister?" "No," he said. "Other people also would not like it in the case of their sisters," the Prophet said. "And would you like it for your paternal aunt?" "No," he said. "Other people also would not like it in the case of their paternal aunts," the Prophet replied. "And would you like it for your maternal aunt?" "No," he said. "Other people also would not like it in the case of their maternal aunts," the Prophet said. Then the Messenger of Allah ﷺ placed his hand on his chest and said, "Allah! Remove his sin, and purify his heart, and preserve his chastity." (*Al-Maajam al-Kabir li al-Tabrani*, volume 8, p183, published by Maktaba Bin Taymiyyah, Cairo.)

It is transmitted in both the most authentic collections of Hadith, and in other collections from Bin Masood, that the blood of one who testifies that there is none worthy of being worshipped save Allah, and that I am the Messenger of Allah, except in three cases, "A life for a life, a married person who commits adultery, and one who abandons his religion and separates himself from the community." (*Roh al-Maani*, volume 8, p67, published by Dar al-Kutub al-Ilmiyah, Beirut.)

It is evident from reports in Hadith that the consequences of adultery are atrocious, foremost among them being that it leads one to the Fire and dire punishment. Furthermore, it bequeaths poverty, loss of beauty, shortening of lifespan and it leads to similar behaviour from those who are born of an adulterous relationship. And when this was mentioned to one of the kings, he wanted to try it out on his daughter, and she was extremely beautiful. So he put her up with a woman and ordered her not to prevent anyone who wanted to approach her in any way he wanted. One such man ordered her to uncover her face, so she paraded her in the markets, and she did not pass anyone but that he lowered his head out of shyness and embarrassment. A man grabbed her and kissed her, then left her. So she brought her to the king and told him the story. He prostrated himself in gratitude and said, "Praise be to God Almighty. I have never in my life done anything but kiss her, and I have told her about it. We ask Allah – may He be glorified – to protect us and our progeny from anything that might be insinuated against us, both evident and hidden, by the sacred soul of the Holy Prophet ﷺ."

It has been added in Fath al-Qadir that adultery is prohibited in all religions, and amongst all communities. (*Al-Bahr al-Raiq sharh Kanz al-Daqaiq*, volume 4, p5, published by Maktaba Dar al-Maarifa, Beirut.) (*Hashiyah Radd al-Mukhtar ala al-Dar al-Mukhtar*, volume 4, p6, Injunctions related to Adultery, published by Dar al-Fikr li al-Tabaati wa al-Nashr, Beirut.)

Adultery is forbidden in every religion. (*Al-Enayah sharh al-Hedayah*, volume 3, p386, published by Dar al-Fikr.)

Because adultery is forbidden in every religion. (*Al-Badai al-Sanai fi Tartib al-Sharai*, volume 7, p38, published by Dar al-Kutub al-Ilmiyah.)

[92] Bin Ayyinah told us that he heard Al-Zahri say that Hasan bin Muhammad bin Ali and his brother Abdallah told him that Ali, may Allah be pleased with him, told Bin Abbas that the Prophet ﷺ forbade temporary marriage and the meat of domestic donkeys during the time of the Khaybar campaign. (Bukhari transmitted it in Hadith number 5115, Ahmad bin Hanbal in Hadith number 592 and Tirmidhi in Hadith number 1121.)

2. Fornication.[93]
3. Lesbianism.[94]

Ali says that the Prophet ﷺ forbade temporary marriage on the day of Khaybar, and also the meat of domestic donkeys. (Muslim transmitted it in Hadith number 2511.)

He says – may Allah be merciful with him – "and temporary marriage is annulled," temporary marriage being that one should say, I am temporarily marrying you, for this amount of time, and for this amount of money. (*Tabyin al-Haqaiq sharh Kanz al-Daqaiq wa Hashiyatu al-Shibli*, volume 2, p115, published by Al-Matbaah al-Kubra al-Amiriyah, Bolaq, Cairo.)

Remember that we have the Book, the Sunna, consensus and reason. As for the Book, the Almighty has decreed, "Those who remain chaste, except with their wives or those whom their right hands possess," so the Almighty has forbidden intercourse except in two circumstances. As for "temporary marriage," it is neither a marriage, nor is it a relationship of bondage, so all that is left is prohibition. (*Badai al-Sanai fi Tarteeb al-Sharai*, volume 2, pp272-3.)

The proof that temporary marriage is not a real marriage – *nikah* – is that it is dissolved without any divorce or separation. Neither does it put enact any process of inheritance between the two partners. So one can deduce that it is not a marriage, nor is the female partner a wife to the person involved, and Almighty Allah has decreed, at the end of the verse already quoted, "but those who seek to go beyond that limit are transgressors" (70:31.) Those who seek any other arrangement are labelled transgressors. This shows that intercourse is forbidden except in those two circumstances. As for the saying of the Almighty, "Do not force your slave maids into prostitution" (24:33), this includes the hiring of female slaves, which Almighty Allah has forbidden. Indeed, it has been called prostitution, which is itself a proof of prohibition. (*Badai al-Sanai fi Tarteeb al-Sharai*, volume 2, p272, published by Dar al-Kutub al-Ilmiyah.)

As for his saying "temporary marriage – *mutaah* – stands annulled," the circumstances of such an arrangement are that one says to a lady, "take this amount, I will do mutaah – literally benefit from you – for a certain number of days,'' or he says: "allow me to benefit from yourself." Such an arrangement is void – it stands annulled by virtue of the unanimous agreement of – Sunni – scholars. (*Al-Jauhar al-Nirah*, volume 2, p18, published by al-Matbaah al-Khayriah.)

And with regard to his saying, "both marriage of mutaah – benefit – and temporary marriages are void,"," the difference between them being – according to al-Nahayah and al-Miraj – that in the case of temporary marriage, the word marriage – nikah – is mentioned, or it is called wedlock for a certain period, whereas with mutaah, the wording is "I benefit from you" or "I seek to benefit." In al-Inayah, another distinction is also mentioned, namely that temporary marriage is solemnised in the presence of witnesses, and a specific length of the arrangement is mentioned, contrary to mutaah, in which it is mentioned that the benefiting from the woman concerned is mentioned, but not the time span. The matter has been looked into in Fath al-Qadeer, showing that the meaning of mutaah is to impose a bondage on the woman in which there is no intention to achieve the aims of marriage – namely having and bringing up children. Rather, either the arrangement terminates at the end of its specified time frame, or there is no specified time frame, so the arrangement remains in place so long as the couple remain together, until such time as he leaves her. This applies to both mutaah and temporary marriage, so both are different types of mutaah, even if the arrangement is entered into with mention of wedlock and with the presence of witnesses. It has been mentioned in Hedayah that the Companions were unanimous on the prohibition of such an arrangement. (*Al-Bahr al-Raiq sharh Kanz al-Daqaiq*, volume 8, p74, published by Dar al-Maarifah, Beirut.)

[93] Abu Hurayrah relates that the Messenger of Allah ﷺ said, "The eyes commit adultery, so does the tongue, so do the hands, and the feet, and this is confirmed by the outlets or not." (Bin Habban transmitted it in Hadith number 4419 and Bayhiqi also in his Adaab, Hadith number 597.)

[94] Waila bin al-Asfa related that the Messenger of Allah ﷺ said, "Lesbianism of women amongst themselves is a type of adultery." (It is transmitted in the Masnad of Abu Yaala, Hadith number 7291.)

Al-Suhaq and al-Musahiqah are terms which refer to the perpetration of acts between one woman and another, similar to those performed with them by men. (*Encyclopaedia of Jurisprudence*, volume 24, p251.)

The three hundred and sixty-second major sin is lesbianism of women, which is that women should perform acts with other women, similar to those that men perform with them. This is what some have mentioned, citing as proof his saying ﷺ, "Al-Sahaq is the adultery of women amongst themselves," and his saying, "there are three persons from whom Allah does not accept the testimony that there is no God but Allah, the male rider and the male mount, the female rider and the female mount and an oppressive leader." (*Al-Zawajir an Iqtiraf al-Kabair*, volume 2, p235, published by Dar al-Fikr.)

4. Anal sex,[95] even if it is with one's own wife.[96]

It was related that Sulaiman – Solomon – on whom be peace – said to Iblis – Lucifer, "what action is most dear to you, and most hateful in the sight of Allah?" He said, "If it was not for your status in the presence of Allah, I would not have told you. I do not know of anything that I love more – and Allah hates more – than a man enjoying a man, and a woman enjoying a woman." According to Thaalabi, the first person who taught lesbianism to women was a daughter of Iblis called al-Dalhan. She saw a man enjoying a man, then she presented herself to women in the form of a woman and she lured them towards some of them riding on others, by showing them how this could be done. (*Sharh Sahih al-Bukhari li Shams al-Din al-Safeeri*, volume 34, p26.)

[95] "How can you commit an abomination such as no one in the world has ever done before you?" (Surah Al-Araf, verse 7:80)

Abu Hurayrah related that the Messenger of Allah ﷺ said, "One who approaches his wife in her rear is cursed." (*Al-Sunan al-Kubra li al-Nasai*, Hadith number 8966; *Ahmad bin Hanbal fi Masnadihi*, Hadith number 10209; *Mirqat al-Mafatih*, Hadith number 3193; *Book of Marriage*, Chapter on Sexual Intercourse, published by Maktaba al-Hanafiyah.)

Bin Abbas related that the Messenger of Allah ﷺ said, "Allah will not look at a man who comes to a man or a woman in her rear." (Tirmidhi transmitted it in Hadith number 1198, Bin Habban in Hadith number 4418, *Mirqat al-Mafatih* in Hadith number 3195, volume 6, p321; *Maktaba Hanafiyah and in the Sunan al-Saghir of Bayhiqi*, Hadith number 1920, volume 3, p54, published by Dar al-Nashr, Jamiya al-Darsat al-Islamiya, Karachi, Pakistan.)

Khuzaymah bin Thabit relates that the Messenger of Allah said, "Allah is not ashamed of the truth: do not come unto women in their rear." (Bin Majah transmitted it in Hadith number 1924; *Mirqat al-Mafatih* in Hadith number 3192, volume 6, p321; *Book of Marriage*, Chapter on Sexual Intercourse, Maktaba al-Hanafiyah.)

He has clarified that the prohibition of sodomy is more severe than that of adultery, since sodomy is abhorrent, rationally, physically and from a point of view of Islamic law. (*Roh al-Maani*, volume 4, p411, published by Dar al-Kutub al-Ilmiyah, Beirut.)

The verses condemning sodomy and showing its abhorrence are quite clear. There is unanimity on the fact that it is a grievous sin – even more grievous than adultery. It is written in Sharh al-Mashariq li l-Akmal that it is prohibited due to rational, legal and natural reasons. According to Imam Abu Hanifah, may Allah be pleased with him, the lack of any prescribed punishment for sodomy is not because it is a light matter: it is because there is no proof of any prescribed punishment being applied. Some scholars have written that the lack of any prescribed punishment for sodomy is actually a sign of its grievous nature, since a prescribed punishment serves to wipe out a sin. However, there is some disagreement regarding its permissibility in Paradise. In Fath al-Qadir, it is written that if its prohibition is rational, along with being based on what people have heard in the Scriptures, then it could never take place in Paradise, but if it is just based on what people have heard in the Scriptures, then it would be acceptable there. However, the true opinion is that it could never take place there, since Allah has reviled it and found it abhorrent and He has even pronounced, "You commit an indecency that no one before you has ever perpetrated." (Surah Al-Ankabut, verse 29:28) In Surah al-Anbiya, Allah has even called it an abomination – "they used to perpetrate abominations" (Surah Al-Anbiya, verse 21:74) Paradise will be pure from such filth. (*Roh al-Maani*, volume 10, p361, published by Dar al-Kutub al-Ilmiyah, Beirut.)

I say – and it will be mentioned in the Book of Compulsion – that sodomy can never become lawful. Its prohibition is based on reason, so it could never take place in Paradise, according to the right opinion. (*Radd al-Mukhtar ala l-Dar al-Mukhtar*, volume 1, p297, published by Dar al-Fikr li l-Tabaati wa l-Nashr, Beirut.)

All jurists are unanimous that sodomy is forbidden in the most strict sense of the term. It is a grievous sin. Mawardi says that it is the most extreme of all indecent acts, and the most stern in its prohibition. (*Encyclopaedia of Jurisprudence*, volume 44, p23.)

It is written in Sharh al-Mashariq li l-Akmal that it is prohibited due to rational, legal and natural reasons. According to Imam Abu Hanifah, may Allah be pleased with him, the lack of any prescribed punishment for sodomy is not because it is a light matter: it is because there is no proof of any prescribed punishment being applied. Some scholars have written that the lack of any prescribed punishment for sodomy is actually a sign of its grievous nature, since a prescribed punishment serves to wipe out a sin. However, there is some disagreement regarding its permissibility in Paradise. In Fath al-Qadir, it is written that if its prohibition is rational, along with being based on what people have heard in the Scriptures, then it could never take place in Paradise, but if it is just based on what people have heard in the Scriptures, then it would be acceptable there. However, the true opinion is that it could never take place there, since Allah has reviled it and found it abhorrent and He has even pronounced, "You commit an indecency that no one before you has ever perpetrated." (Surah Al-Ankabut, verse 29:28) In Surah al-Anbiya,

5. Paedophilia.[97]
6. Gambling (egg-fighting, *mardaki*, *beday*, playing with walnuts and other such games).[98]

Allah has even called it an abomination – "they used to perpetrate abominations" (Surah Al-Anbiya, verse 21:74) Paradise will be pure from such filth. (*Al-Bahr al-Raiq sharh Kanz al-Daqaiq*, volume 5, p18, published by Dar al-Maarifah, Beirut.)

[Translator's note: The repetition is not mine: it is repetition in the footnote of the law, presumably because the very same thing has been repeated in a different source.]

As for his saying, "whoever comes to a woman,"," that is an unrelated woman, "in a reprehensible place," in other words her rear, "or acts in the manner of the people of Sodom," then there is no prescribed punishment for him according to Abu Hanifah, however he should be punished, in other words he should be imprisoned until he dies, or repents. And if he is a habitual sodomite, then the imam may decide to put him to death, whether he is married or not, out of political expediency. However, this punishment is not a hard and fast punishment in his case. They have also said that sodomy is like adultery. This narrative is convincing, since sodomy is not exactly adultery, however it is like adultery. So if he is not married, then he will be flogged, and if married, then stoned to death. (*Fath al-Qadir*, volume 5, p262, published by Dar al-Fikr.)

[Translator's note: Here, "they" is in the dual tense, it not being clear who the other person – one is clearly Imam Abu Hanifah – being referred to here. One may safely say it is probably one of his leading students, Imam Abu Yusuf or Imam Muhammad.]

It is in Al-Durur that he may be burnt at the stake, or placed under a wall which is toppled on top of him, or he should be thrown from a high place, followed by stones being thrown upon him, but the most acceptable punishment is flogging. In Fath al-Qadir, it is written that he should be punished by imprisonment until death overtakes him, or he repents. However, if he is habitual, then the imam may decide to put him to death, out of political expediency. (*Al-Dar al-Mukhtar*, p27, published by Dar al-Fikr, Beirut.)

[96] "How can you commit an abomination such as no one in the world has ever done before you?" (Surah Al-Araf, verse 7:80)

Abu Hurayrah related that the Messenger of Allah ﷺ said, "One who approaches his wife in her rear is cursed." (*Al-Sunan al-Kubra li al-Nasai*, Hadith number 8966; *Ahmad bin Hanbal fi Masnadihi*, Hadith number 10209; *Mirqat al-Mafatih*, Hadith number 3193; *Book of Marriage*, Chapter on Sexual Intercourse, published by Maktaba al-Hanafiyah.)

As for his saying, "or he comes in the rear," this includes the rear of his own wife. (*Durur al-Hukkam sharh Ghurur al-Ahkam*, volume 5, p308.)

The jurists speak with one voice when it comes to sexual intercourse with a dead body, no matter if the dead person was a person's spouse when alive, or unrelated. Bin Hajar al-Haytami has counted this as a grievous sin, and an act of gross indecency. (*Encyclopaedia of Jurisprudence*, volume 44, p31, published by Maktaba al-Rashidiya.)

[97] With regard to his saying, "among those who play with children" in India, it was narrated on the authority of Abu al-Hasan that if an old man wrestled with young men in gatherings, his testimony would not be accepted. (*Radd al-Mukhtar ala al-Dar al-Mukhtar*, volume 7, p161, published by Dar al-Fikr li l-Tabaati wa al-Nashr, Beirut.)

[98] [Translator's note: Mardaki is a game played in southern provinces of Afghanistan. Stones are used and bets are usually placed. The same game is played in eastern provinces with walnuts. Beday is a game played in Kandahar, Helmand, Zabul and Loya Paktia. It is played with the bones of sheep and goats.]

"Believers, intoxicants and gambling and occult dedication of stones and divining arrows are abominations devised by Satan. Avoid them so that you may prosper." (Surah Al-Maida, verse 5:90)

And in this sacred verse, Allah has forbidden His believing servants from indulging in wine and gambling or *qimar* and Bin Abu Hatim related from his father, who related from Abas bin Marhum, who related from Hatim, and then from Jaafar bin Muhammad, who related from his father and then from Ali, may Allah be pleased with him, that he said that chess was also like gambling and Bin Abu Hatim related that Muhammad bin Ismail al-Ahmami related from Waki and then from Sufyan that Laith and Ata and Mujahid and Taus said that everything that is included in *qimar* amounts to gambling, even children playing with walnuts, and the same thing is related from Rashid bin Saad and Hamza bin Habib, who both said that this includes the games that children play with their heels, and

7. The creation of a platform or circumstances conducive to adultery, fornication, lesbianism, anal sex, paedophilia or gambling.[99]

walnuts, and eggs. (*Umdah al-Qari sharh Sahih al-Bukhari*, volume 18, p208, published by Dar Ihya al-Turath al-Arabi, Beirut.)

As for his mention "from one direction" or from three, it is for one of the two to say to his companion, if you beat me I will give you this amount, whereas if I beat you, I will give you a certain amount, or a prince might say to knights or archers: whoever of you beats the other will receive this amount, and the one who is beaten has no say in the matter, save remorse. And as for his saying "from both sides," it is that one should say that if your horse wins, then I will owe you so much, whereas if my horse wins, then you will be the one owing me; or similarly if he mentions your camel or arrow, the same would apply, as mentioned in Tatarkhaniyah. As for his saying, "since it becomes *qimar*, or gambling," because the word *qimar* comes from *al-Qamr* – moon – which is subject to increase and decrease. Qimar – gambling – is called thus since one of those gambling is either forfeiting some of his wealth to the other or appropriating the other's wealth. This is prohibited in the Scriptures. This is not the case if it is stipulated from one side because increase and decrease are not possible in both the parties, but in one of them increase is possible, and in the other only decrease, so it is not gambling because it is a reciprocal action from him, as Zaylai has pointed out. (*Al-Dar al-Mukhtar wa Hashiyatu Bin Abidin*, volume 6, p402, published by Maktaba Rashidiya.)

So if a stipulation – *shart* – comes from one side, for instance that one should say to the other that if you beat me, I will give you this much, but if I beat you, then I will not take anything from you, or a condition in it is to make a third party the first to compete, such as if a third party says to the two competitors, "Which of you will come first?" Then this is permissible because it is a form of encouragement to something – a horse – that is a tool of war and jihad, keeping in mind his saying: "Believers are bound by their conditions." In analogy, it is not permissible to make money dependent on risk, and according to the three imams, it would not be permissible to take such an initiative.

However, if a condition is stipulated from both sides, for instance if one says if your horse wins, I will give you this amount and if my horse wins, then you will have to give me a certain amount, then it is not permissible, since this becomes gambling, and gambling is prohibited. Unless there is a suitable horse between them, that is, apart from their two horses, with the assumption that it will outpace them. If it outpaces them, he will take the prize from them, and if it is outpaced, he will not give them anything, or vice versa. That is, the condition is that if one of them outpaces his horse, he will not take anything from them, as is written in al-Tas'hil [Translator's note: Tas'hil means making things easy. This must be a reference to a book of jurisprudence, but I am not aware of such a book.] And between them, whichever of them takes the stipulated money first from the other, because the one who makes the arrangement permissible is not gambling, so it is permissible. And if the horse that makes the arrangement permissible is not like them, it is not permissible because there is no benefit in introducing it between them, so the arrangement does not cease to be gambling. (*Majma al-Anhar fi Sharh Multaqa al-Abhar*, volume 2, p550, published by Dar Ihya al-Turath al-Arabi.)

Jurists are unanimous on the prohibition of playing qimar – gambling. (*Encyclopaedia of Jurisprudence*, volume 39, p407, published by Maktaba Rashidiya.)

The gambler is earning tainted money; it amounts to unlawful earnings, like fraud and gambling. What is required in the case of evil gain is to discharge its liability and return it to its owners, if they are known, and otherwise to the poor. (*Encyclopaedia of Jurisprudence*, volume 24, p407, published by Maktaba Rashidiya.)

[99] "Those who desire that indecencies should spread among the believers, will have a painful chastisement in this world and the Hereafter. Allah knows, and you do not know." (Surah Al-Nur, verse 24:19)

As for his saying, "a synonym of a man whose wife is unfaithful," Zaylai says that it refers to a man who sees his wife or some close female relative of his with some other man, and he leaves them alone, and some say that it refers to a man who causes two people to come together – not in a good sense – and some say that it refers to a man who sends his wife with a servant of his who has reached adulthood or with a farmer to the farm, or one who allows them to have sexual intercourse with her in his absence. (*Radd al-Mukhtar ala al-Dar al-Mukhtar*, volume 3, p202, published by Maktaba al-Rashidiya.)

The writer has mentioned with regard to the word *al-dayuth* and *al-Qurtaban*, that the former refers to a man who has no honour, with regard to who has intimate relations with his wife, whereas the latter is a more general term, for a man who is lacking in a sense of honour. That is what al-Laith and al-Azhari has said. These are contemporary terms. I have never heard Bedouins using these terms, in fact, they have never even heard of them, and from this word comes a derogatory word, that people use as a term of abuse.

8. Making dogs, cocks, quails, pheasants or any other animals or birds fight with each other.[100]
8. Wrongful use of tape recorders or radio; making pictures or videos of any animate object on computers or mobile phones, or any other such device.[101]
10. The sound of a woman's voice or any music emanating from any gathering or from the home.[102]
11. The use, buying and selling, storing or smuggling of any narcotics or liquor.[103]

[Translator's note: Interesting, the word dayuth – dayus in Pashto and Farsi – has been adopted as a term of abuse in Afghanistan, with much the same meaning as it has in Arabic.]

The commentator has mentioned that *qurtaban* is one who sees a man with his wife, or with his close female relative, and leaves them alone, and it is also said that the word is used to refer who causes brings a man and a woman together, in an impropriate manner, in other words a pimp, while some say that it refers to a man who sends his wife with a servant of his who has reached adulthood or with a farmer to the farm, or one who allows them to have sexual intercourse with her in his absence. (*Al-Bahr al-Raiq sharh Kanz al-Daqaiq*, volume 5, p48, published by Dar al-Maarifa, Beirut.)

[100] Bin Abbas reports that the Messenger of Allah forbade making animals fight against each other (*Sunan Abu Dawud*). There is no difference of opinion among the jurists that it is prohibited to make animals fight with one another, by inciting and provoking them against each other, the reason being that all too often it leads to injuries on the part of the animals – sometimes even to their death, for no valid, lawful reason (*Encyclopaedia of Jurisprudence*.)

[101] Our companions and others have said that depiction of the form of an animal is strictly forbidden. In fact, it is a major sin, whether it is made for something that is used or for something else, it is forbidden in all cases because it is an imitation of Allah's creation, whether it is in a garment, a rug, a dinar, a dirham, a coin, a vessel, or a wall. As for that in which there is no picture of an animal, such as a tree or the like thereof, it is not forbidden, whether the picture concerned has a shadow, or does not have any shadow and to this effect a group of scholars are agreed, including Imam Malik, Sufyan Thauri and Abu Hanifa, along with others. (*Umda al-Qari sharh Sahih al-Bukhari*, volume 22, p70, published by Dar Ihya Turath al-Arabi, Beirut.)

[Translator's note: Footnote number 77 is then repeated here. Readers may wish to refer to that footnote, should they wish to be reminded of it.]

[102] "Those who desire that indecencies should spread among the believers, will have a painful chastisement in this world and the Hereafter. Allah knows, and you do not know." (Surah Al-Nur, verse 24:19)

We have already dealt in the conditions that are stipulated for prayer, with the point that the voice of a woman is something that should be concealed, according to the most preferred opinion, so it may be referred to there.

[Translator's note: The remainder of the footnote is a repetition of footnote number 83.]

[103] "Believers, intoxicants and gambling and occult dedication of stones and divining arrows are abominations devised by Satan. Avoid them, so that you may prosper." (Surah Al-Nur, verse 5:90)

Abu Hurayrah reported that the Messenger of Allah forbade the use of hollow stumps, vessels smeared with pitch, pumpkins and green jars as containers and he said, "Every intoxicant is unlawful." (Sunan Bin Majah, Hadith number 3401, though the exact Hadith is not in *Mishkat al-Masabih*, the translation of terms is taken from Dr James Robson's translation of a similar Hadith in his translation of Mishkat, volume 2, p908.)

(Article 34): If it is forbidden to do something, then it is also forbidden to provide the means for someone else to do it.

(Article 35): If it is forbidden to do something, then it is also forbidden to seek to do it. (*Mujallah al-Ahkam al-Adaliyah*, published by Noor Mohammad, Karkhana Tijarat-e Kutub, Aram Bagh, Karachi.)

Ibn Abbas said, "Wine is prohibited in itself, whether it is a lot or a little, along with intoxication from any drink." (*Al-Sunan al-Kubra of Bayhiqi*, volume 10, p361, published by Dar al-Kutub al-Ilmiyah, Beirut.)

And amongst those who clarified the prohibition of hashish, cannabis and opium was Hadadi in *al-Jauhirati fi Akhir al-Ashribah*. (*Al-Bahr al-Raiq sharh Kanz al-Daqaiq*, volume 3, p432, published by Dar al-Kutub al-Ilmiyah, Beirut.)

In Islamic jurisprudence, there are numerous varieties of intoxicants. People have become very creative in consuming them with different names, some of them resorting to taking substances that achieve the intended goal of clouding the mind. They all share one thing in common: they are all prohibited substances due to the inevitable harm that they cause.

12. Revealing of parts of the body that are required to be concealed.[104]
13. Women not covering themselves properly.[105]

Some of the most famous types of inebriants are hashish, opium, cocaine, morphine, bhang (a poisonous plant used in medicine for anaesthesia), nutmeg (the fruit of a tree), *al-bursh* (a compound of opium and bhang) and qat (a plant, a few leaves of which are stimulating and energizing, while many are a narcotic and fixative, causing laziness and lethargy, and disrupting work), or any other substance that is taken by injection, placebo, smoking, or otherwise. They all cause a clouding of the mental faculties, are detrimental to health, and lead to moral degradation. Sharia considers all narcotics to be unlawful, except when used to address some medical need. (*Al-Fiqh al-Islami*, volume 7, p5512, published by Dar al-Fikr, Damascus.)

[104] "Oh Children of Adam! We have sent down to you clothes to cover your nakedness, and to be pleasing to the eye; but the raiment of righteousness is the best. That is one of the signs of Allah, so that people may take heed." (Surah Al-Aaraf, verse7:26)

Abu Kathir reported from Muhammad bin Jahsh, that he said that he was with the Prophet ﷺ when he passed by Muammar Ali, whose thighs were showing at the time. "Cover your thighs," the Prophet told Muammar, "for the thighs are a part of the body that should be concealed." (*Masnad Ahmad bin Hanbal*, Hadith number 22548)

"He avoided looking at her face." The permissibility of looking is dependent on a lack of lust, otherwise it is not allowed, but that was then. In our day and age, it is forbidden to look at a young woman. So say Qaharstani and others. (*Al-Dar al-Mukhtar*, volume 9, p532.)

One should realise that covering those parts of the body that are required to be concealed is obligatory, in public, except in certain places. All jurists are unanimous on this. As for when a person is in private, there is some disagreement among the jurists, but the correct opinion is that it is obligatory there also, except when one has a valid reason for exposing oneself. That is what has been written in Sharh al-Muniya. (*Al-Bahr al-Raiq sharh Kanz al-Daqaiq*, volume 1, p468.)

Fourthly, as for concealment of the parts of the body that are supposed to be concealed, they should be concealed everywhere, even in private. This is the correct opinion, except for some valid reason. (Radd al-Muhtar ala al-Dar al-Mukhtar, volume 1, p404.)

It's in Al-Muntaqa that a young woman is forbidden from revealing her face, lest it lead to temptation. In our age, this prohibition in obligatory – *wajib*--indeed, it is mandatory – *fardh* – due to the predominance of corruption. According to Aisha, may Allah be pleased with her, the whole body of a free woman is to be concealed except for one of her eyes. That is enough, for the fulfilment of needs. (*Majma al-Anhar fi sharh Multaqa al-Abhar*, volume 1, p220, chapter on the conditions of prayer.) Almighty Allah has favoured His servants by giving them clothing and things to keep them warm. By clothing is meant covering those parts of the body which are to be concealed, in other words the private parts. Ibn Aslam said, "By the clothing of piety is meant one who fears Allah and hides those parts of his body which are to be concealed." (*Mukhtasar Tafsir Ibn Kathir*, volume 2, p12.)

[105] "Tell believing men to lower their gaze and remain chaste. That is purer for them. Allah is aware of what they do." (Surah Al-Nur, verse 24:30) "Say to believing women that they should lower their gaze and remain chaste and not reveal their adornments – save what is normally apparent thereof …" (Surah Al-Nur, verse 24:31)

Ibn Abbas says, Allah commanded believing women, when they came out from their houses for some need, to cover their faces from above their heads with shawls, and just to show one eye. Muhammad bin Sirin says that he asked Ubaydah al-Salmani about the saying of Almighty Allah, "that they should draw over themselves some of their outer garments" (33:59.) He demonstrated what this meant by covering his face and his head, showing his left eye. (*Abridged Tafsir Bin Kathir*, volume 3, p114, published by Dar al-Quran al-Karim, Beirut.)

According to Aisha, "The Messenger of Allah used to offer the morning prayer. Some women of the believers used to join him, wrapped in their cloaks. Then they would return to their houses, without him having recognised a single one of them." (Sahih al-Bukhari, Hadith number 372)

According to Umm Salma, when the verse was revealed, "that they should draw over themselves some of their outer garments," the women of the Ansar came out, and on their heads cloaks as black as crows. Abu Bakr says that this verse proves that young women should cover themselves from strangers. This concealment manifests itself when they go out. It is to prevent any doubtful quarters from harbouring desire in their regard. (*Ahkam'al-Quran, Jassas*, volume 3, p486, from the Chapter on Covering of Women.)

"He avoided looking at her face." The permissibility of looking is dependent on a lack of lust, otherwise it is not allowed, but that was then. In our day and age, it is forbidden to look at a young woman. So say Qaharstani and others. (*Al-Dar al-Mukhtar*, volume 9, p532.)

14. Not praying or delaying one's prayers.[106]

As for not looking at a young woman, in our day and age, it is not due to the aurah factor – parts of her body that should be concealed. It is due to the *fitna* factor – fear of temptation. (*Al-Dar al-Mukhtar*, volume 9, p532.)

I consider the most correct opinion to be that of the Hanbalis, that the whole body of a free, adult woman is *aura* – it should be concealed – under an all-inclusive burqa, including her nails and her hair, though not including her face. With regard to her being visible, the face and hands are to be concealed outside prayer, like the rest of her body. (*Maraat al-Mafatih sharh Mishkat al-Masabih*, volume 2, p479.)

It's in Al-Muntaqa that a young woman is forbidden from revealing her face, lest it lead to temptation. In our age, this prohibition in obligatory – *wajib* –indeed, it is mandatory – *fard* – due to the predominance of corruption. According to Aisha, may Allah be pleased with her, the whole body of a free woman is to be concealed except for one of her eyes. That is enough, for the fulfilment of needs. (*Majma al-Anhar fi sharh Multaqa al-Abhar*, volume 1, p81, chapter on the conditions of prayer, published by Dar Ihya Turath al-Arabi)

[106] According to our use of the term, not praying amounts to habitual abandonment of prayer. (*Hashiyatu Radd'al-Mukhtar ala al-Dar al-Mukhtar*, volume 3, p830, published by Dar al-Fikr li l-Tabaati wa al-Nashr, Beirut.)

As for delaying prayer, it means performing some obligatory act after the stipulated time has expired. (*Al-Fiqh al-Islami wa Adillatuhu*, volume 1, p53)

With regard to one who is habitual in his abandonment of prayer:

1. If he denies the mandatory nature of prayer, then he is a disbeliever and an apostate. In case of persistence, he is to be put to death.
2. If he has abandoned prayer out of negligence, then he is a wrongdoer – a *fasiq*. He is to be imprisoned and things are to be made difficult for him, until such time as he resumes offering prayer. Some say that he should be beaten, until blood flows from him. According to other schools of thought [other than the Hanafi school], he too is to be put to death.
3. As for someone who does not offer a prayer at the appointed time, he has incurred sin. (*Fiqh al-Ibadaat ala Madhhab al-Hanafi*, volume 1, p71.)

"One who abandons prayer is not to be killed unless he refuses," but one who denies prayer is a disbeliever, in accordance with conclusive proofs that leave no doubt. So the person who denies prayer is an apostate. As for one who abandons prayer because of laziness, he is a sinner. He may be imprisoned until such time as he resumes prayer. Some say that he may be beaten until blood issues from him, as an exaggerated punishment. If a child is ten years old and does not pray, he can be chastised, on the basis of his saying ﷺ, "Command your children to observe prayer when they are seven years old, and beat them for not observing it when they are ten years old." (Abu Dawud transmitted it, and Baghawi transmitted it thus from him in *Sharh-e Sunna*, translated by Dr James Robson in *Mishkat al-Masabih*, Book of Prayer, volume 1, p115.) (*Majma al-Anhar fi sharh Multaqa al-Abhar*, volume 1, p146, published by Dar al-Kutub al-Ilmiya.)

The Hanafis say that the one who misses prayer out of laziness is a sinner who is to be imprisoned and beaten – according to the school of thought he is to be beaten severely until blood issues from him – until such time as he repents or dies in prison. (*Al-Fiqh al-Islami wa Adillatuhu*, volume 1, p578.)

The third opinion is that the one who abandons prayer out of laziness should be detained and not put to death. Rather, he should be beaten in his detention until he prays. This is what is related from Zahri, Abu Hanifah and Muzni from amongst the companions of Shafii. They cite the Hadith, "One is not allowed to take the blood of a Muslim, except for any one of three reasons: a life for a life, a married woman who commits adultery and an apostate from religion who tears himself away from the community." As for someone who does not pray out of laziness, he is none of these three things, so it is not allowed to kill him. Rather, he should be imprisoned, so that he should desist from forsaking prayer until such time as he resumes praying. (*Encyclopaedia of Jurisprudence*, volume 16, p302.)

Hanafis have divided injunctions that require people to perform certain actions into seven categories, the first of which is:

Making something obligatory: it refers to something that the originator of sharia requires, on the basis of absolute, conclusive proof, for example prayer, zakat, jihad. Such actions are obligatory to be done. If one denies them, one becomes a disbeliever. If one does not do them, one is a wrongdoer – a *fasiq*, literally one who has broken his covenant with Allah. (*Al-Wajiz fi Usul al-Fiqh al-Islami*, volume 1, p300, published by Dar al-Khair li l-Tabaati wa l-Nashr wa l-Tauzi, Damascus.)

15. Omitting mandatory and obligatory prayers.[107]
16. Not praying in congregation.[108]
17. Neglecting obligatory fasts.[109]
18. Shaving one's beard or reducing it to less than the width of a fist.[110]

---

[107] Abu Hurayrah said that a man entered the mosque when the Messenger of Allah was sitting in it and prayed. He then came and said, "Peace be upon you," and Allah's Messenger replied, "And upon you be peace. Go back and pray, for you have not prayed." He returned and prayed, then came and said, "Peace be upon you," to which he replied, "And upon you be peace. Go back and pray, for you have not prayed." On the third or fourth occasion he said, "Teach me, Messenger of Allah," so he said: "When you get up to pray, perform the ablution perfectly, then face the qibla and say, 'God is most great.' Then recite a convenient portion of the Quran; then bow and remain quietly in that attitude; then raise yourself and stand erect; then prostrate yourself and remain quietly in that attitude; then raise yourself and sit quietly; then prostrate yourself and remain quietly in that attitude; then raise yourself and sit quietly." A version has, "Then raise yourself and stand erect; then do that throughout all your prayer." (Bukhari and Muslim transmitted it.)

[Translator's note: In the original document of the IEA, the same Hadith has been related, as transmitted by Ibn Majah, volume 1, p336. I have taken the version transmitted by Bukhari and Muslim, as translated by Dr James Robson at the head of the chapter on the Nature of Prayer, volume 1, p159, Bukhari and Muslim being the most authentic collections of Hadith. It is strange to carry a Hadith quoting Ibn Majah, when the same Hadith also appears in Bukhari and Muslim.]

One who forsakes prayer without any valid excuse is a wrongdoer – fasiq. (*Al-Wajiz fi Usul al-Fiqh al-Islami*, volume 1, p300, published by Dar al-Khair li l-Tabaati wa l-Nashr wa l-Tauzi, Damascus.)

The wisdom behind it is that one deserves punishment for abandoning prayer and also for not declaring one who denies prayer to be an unbeliever, while one will be rewarded for doing offering prayer. (*Radd al-Mukhtar ala l-Dar al-Mukhtar*, volume 1, P456, published by Dar al-Fikr, Beirut.)

[108] Abu Hurayrah reported Allah's Messenger as saying, "By Him in whose hand my soul is, I have thought about giving orders for fuel and having it gathered, then giving orders for prayer and having an adhan called for it, then ordering a man to lead the people, then going off to some people (who are not present at the prayer, as it says in a version) and burning down their houses over them. By Him in whose hand my soul is, if one of them knew he would find a fat meaty bone or two fine sheep's hooves, he would attend the evening prayer (Bukhari transmitted it in Hadith number 244, *Mishkat al-Masabih*, translated by Dr James Robson, volume 1, p217.)

As for his saying, he will be rebuked, it means he will be blamed, not punished, that is the interpretation that is in Al-Bahr wa n-Nahr. However, it is in Al-Talwih that the abandonment of a strong Sunna is close to being haram – prohibited – and one who does that endangers being denied prophetic intercession, in the light of his saying ﷺ, "Whoever abandons my Sunna will not my intercession." And it is in Al-Tahrir that one who abandons the Sunna will be subject to transgression and blame, meaning one who abandons the Sunna repeatedly, without any valid excuse. (*Radd al-Mukhtar ala Al-Dar al-Mukhtar*, volume 1, p104, published by Dar al-Fikr, Beirut.)

[109] Believers, fasting has been prescribed for you, just as it was prescribed for those before you, so that you may guard yourselves against evil." (Surah Al-Baqarah, verse 2:183)

"Whoever is present in that month, let him fast." (Surah Al-Baqarah, verse 2:185)

Ibn Umar reported Allah's Messenger as saying, "Islam is based on five things: the testimony that there is no god but Allah and that Muhammad is His servant and messenger, the observance of the prayer, the payment of zakat, the Pilgrimage, and the fast during Ramadan." (Bukhari and Muslim transmitted, *Mishkat al-Masabih*, translated by Dr James Robson, volume 1, p6.)

An enforcer is duty bound to eradicate wrongdoing. It is for him to take to account anyone who is perpetrating some sinful action, and to punish him for it in whatever manner he deems suitable. (*Encyclopaedia of Jurisprudence*, volume 17, p266.)

[110] And grow the beard naturally and do not shave it or trim it to less than the length that is proved in the Sunna, in other words the width of one fist. (*Nisab al-Ihtisab*, volume 1, p122.)

On the matter of the beard, this is in agreement with what was mentioned in Al-Fath [The reference is to Fath al-Qadir] and what is in the two sahihs – the authentic collections of Hadith of Bukhari and Muslim – on the authority of Ibn Umar, from him ﷺ, "Cut the moustache and leave the beard." (*Mishkat al-Masabih*, , English version translated by Dr James Robson, volume 2, p929), since it is established from Ibn Umar, who related this Hadith, that

19. Styling one's hair in an un-Islamic manner.[111]

he used to trim what was in excess of the width of one fist. Since this is not taken to indicate any abrogation, as is the basis of our position regarding his action, contrary to what was narrated – to "leave the beard" – even though it was narrated from someone other than the narrator, and from the Prophet ﷺ that leaving the beard means leaving it from having most or all of it shaved, as the Magians did when they shaved their beards. This is reinforced by what is Muslim on the authority of Abu Hurayrah, from him ﷺ, "Trim the moustache, allow the beard to grow and act contrary to the Magians" – a sentence that can be taken as an explanation. As for trimming it more than that, as some Westerners and effeminate men do, no one has permitted this. (*Radd al-Mukhtar ala al-Dar al-Mukhtar*, volume 2, p418.)

[Translator's note: For the first and to the best of my knowledge the only time, the following sentence is written in Pashto, not Arabic as is the case with the rest of the footnotes.]

With regard to the shaping of very long locks of hair, [be guided by] the guidance of the leadership of the Islamic Emirate. (Number 48, volume 4.)

"It," referring to the length of the beard that is approved according to the practice of the Prophet ﷺ, is a fistful, or *qubdah*, as is written in Nehayah, and what is more than that should be trimmed, as is related from the Messenger of Allah ﷺ that he used to trim his beard, lengthwise and breadthwise, as transmitted by Abu Musa, that is Imam Tirmidhi, in his collection. He has related this from the Hadith of Abdallah bin Amr bin al-Aas. (*Fath al-Qadir*, volume 2, p347, published by Dar al-Fikr.)

With regard to his saying, "the length sanctioned in Sunna is one fist," it means that a man should grab his beard in his fist, and what is extra should be trimmed. That is what Muhammad mentioned in his Kitab al-Athar an il-Imam, and that is what we act upon (*Al-Dar al-Mukhtar*, volume 6, p407, published by Dar al-Fikr li l-Tabaati wa al-Nashr.) It has been elucidated in Nehayah that one is obliged to trim that which is in excess of one fist. The implication is that there is sin in not doing this, not that the obligation to do so is based on proof. As for trimming it more than that, as some Westerners and effeminate men do, no one has permitted this. As for shaving the entire beard, it is the practice of the Jews of India and the Magians of Asia. (*Hashiyatu ala Maraqii l-Falah sharh Nur al-Aydah*, volume 1, p449, published by Al-Matbaah al-Kubra al-Amiriyati in Bolaq, Egypt.)

Muhammad ibn al-Hasan writes in his Kitab al-Athar, that we were informed by Abu Hanifah, on the authority of Ibn al-Haytham, from Ibn Umar may Allah be pleased with both of them, that Ibn Umar used to grab his beard in his fist and trim that which was below his fist. It has been transmitted by Abu Dawud and Nasai in the Book of Fasting, on the authority of Ali ibn al-Hasan ibn al-Shafiq, from Hasan bin Waqid, from Marwan bin Salim al-Maqna, that he saw Ibn Umar catch hold of his beard in his fist, and trim that which was in excess of his hand. The full Hadith is as follows: "When the Prophet ﷺ used to break his fast, he would say, "The thirst has departed, the sweat has dried and the reward has materialised, by the will of Almighty Allah," and Bukhari mentioned as a comment the Ibn Umar, when he performed the great or the minor pilgrimage, used to grab his beard in his fist, and he used to trim what was in excess of his fist, and it has also been related from Abu Hurayrah, may Allah be pleased with him, on the authority of Bin Abu Shaybah, that Abu Usama told them, on the authority of Shuaba from Amr bin Ayub, from the son of Jarir, from Abu Zaraah, that he said, "Abu Hurayrah used to hold his beard in his fist and trim what was in excess of his fist." (*Fath al-Qadir*, volume 2, p347, published by Dar al-Fikr.)

[111] Ahmad bin Hanbal told us that Abdal Razzaq told him, that Ayub had told him, from Nafi, from Bin Umar that the Prophet ﷺ saw a lad who had shaved some of his head and left some other parts. He forbade him from doing this and said, "Shave all of it or leave all of it." (*Sunan Abu Dawud*, Hadith number 4195, published by al-Maktaba al-Asriya, Sayda, Beirut.)

As for shaving, it means shaving all one's head, if one wishes it to be clean, or letting it grow, then oiling it, combing it and parting it, on the basis of what is in Abu Dawud and Nasai from Bin Imran that the Messenger of Allah saw a lad who had shaved some of his head and left some other parts, upon which he said, "Shave all of it or leave all of it." It is in al-Gharaib that it is considered commendable to shave one's head every Friday and it is related in *Sharh al-Neqayah* from the Imam that he did not like to shave his scalp except when in the barber's shop. (*Hashiyatu ala Maraqii l-Falah sharh Nur al-Aydah*, volume 1, p341, published by Al-Matbaah al-Kubra al-Amiriyati in Bolaq, Egypt.)

[Translator's note: *Sharh al-Neqayah* is a book written by the 15th century Egyptian Shafii scholar Imam Jalaluddin Suyuti, famous for being one of the two Jalaluddins who wrote the famous commentary of the Quran, *Tafsir al-Jalalayn*, the only Quran commentary that is part of the curriculum in South Asian madrasas. One may safely presume that the `'Imam" mentioned here is Suyuti himself.]

Bin Abidin says that *qaza* is that one should shave some of one's head and leave three fingers' length of it completely. Nawawi says that qaza refers to any type of shaving of part of the head, whereas some people say that

20. Befriending non-Muslims and assisting them;[112] imitating them in one's appearance or character.[113]
21. Observing Nawruz, Shab-e Yalda [festival marking the winter solstice], fireworks night and other festivals which are common among Muslims, but have no Islamic foundation.[114]

---

it is the shaving of some parts of the head, according to certain injunctions that one is following. All jurists are agreed that qaza is a reprehensible practice because the Prophet ﷺ forbade qaza and said, "Shave it all or let it all grow." (*Encyclopaedia of Jurisprudence*, volume 33, p165, published by Maktaba Rashidiya.)

Tahawi mentioned that shaving the head is Sunna – a practice ratified by the Prophet ﷺ. This opinion is attributed to the three Imams. It is in Zakhirah that there is nothing wrong with shaving just the middle of one's head and letting one's hair grow without making it curly, but making it curly is reprehensible, since this makes it resemble some disbelievers and Magians in our lands who let their hair grow without making it curly. However, in fact they do not shave the middle of the head, but rather cut the forelock, according to Tatarkhaniyah. And as is written in Gharaib, it is reprehensible to shave part of the head and let a part which is the equivalent of the area covered by three fingers grow. And it is also in Gharaib that some of the predecessors used to leave their sideburns, which are the ends of the moustache. (*Radd al-Mukhtar ala al-Dar al-Mukhtar*, volume 6, paged 407, published by Dar al-Fikr, Beirut.)

Qaza, which is the shaving of the head, while leaving to grow an area of the scalp equivalent to the width of three fingers, is a reprehensible practice, as written in Gharaib, and it is also reprehensible to shave the head, except in the barber's shop (*hijamah*, which also means cupping.) (*Al-Fatawa al-Hindiya*, volume 22, p44, Al-Fiqh al-Islami was Adillatuhu, volume 1, p409, published by Dar al-Fikr, Damascus.)

[112] "Believers, do not take the Jews and the Christians as friends. They are friends of one another. Whoever of you takes them as a friend shall become one of them. Allah does not guide the wrongdoers." (Surah Al-Maidah, verse 5:51) Almighty Allah forbade his believing servants from friendship with Jews and Christians, then enemies of Islam and those who have deserved the curse of Allah (Surah Al-Munafiqun, verse 63:4)

[Translator's note: in the Quran, the phrase *qatalahum Allah* [may Allah destroy them] is applied to the hypocrites.] Some of them are friends of others, Allah informs us and goes onto lay out the consequences of such friendship. (*Mukhtasar Tafsir Ibn Kathir*, volume 1, p526, published by Dar al-Quran al-Karim, Beirut.]

"And do not incline towards those who do wrong, lest the Fire touch you. For then you would have none to protect you from Allah, and you will not be helped." (Surah Hud, verse 11:113) And do not incline towards those who do wrong means not leaning towards in even the slightest manner. Leaning towards them can be explained as the heart leaning towards them with love. It can be explained in any even wider manner, like the term wrongdoers is explained as one in whom is found any type of *zulm* – wrongdoing – and the same applies here in the way one addresses wrongdoers, so the prohibition includes flattering them and refraining from modifying their behaviour while being able to do so, idealising them, and glorifying their remembrance, even sitting with them without a legitimate reason. (*Roh al-Maani*, volume 6, p347, published by Dar al-Kutub al-Ilmiyah, Beirut.)

[113] "Believers, do not be like those who are bent on denying the truth and who say of their brothers, when they travel about the land or go forth to war, 'Had they but remained with us, they would not have died, or been slain' – for Allah will cause such thoughts to become a source of bitter regret in their hearts, since it is Allah who gives life and causes death. And Allah sees all that you do." (Surah Al Imran, verse 3:156) The Almighty has forbidden the believers from being like the disbelievers in their wrong beliefs. (*Mukhtasar Ibn Kathir*, volume 1, p330.)

[Translator's note: In particular, the verse is warning believers against the vain belief, that does not take into account the will of Allah, that if I had done this or that, then I would have avoided misfortune or death.]

Ibn Umar reported Allah's Messenger as saying, "He who copies any people is one of them." (Ahmad and Abu Dawud transmitted it, from *Mishkat al-Masabih*, translated by Dr James Robson, volume 2, p917.)

[114] "Believers, do not be like those who are bent on denying the truth and who say of their brothers, when they travel about the land or go forth to war, 'Had they but remained with us, they would not have died, or been slain' – for Allah will cause such thoughts to become a source of bitter regret in their hearts, since it is Allah who gives life and causes death. And Allah sees all that you do." (Surah Al Imran, verse 3:156) The Almighty has forbidden the believers from being like the disbelievers in their wrong beliefs.

[Translator's note: The verse is warning believers against the vain belief, that does not take into account the will of Allah, that if I had done this or that, then I would have avoided misfortune or death. It is unusual for it to be applied to observance of non-Islamic festivals, regarding which a number of Hadiths could have been cited, for example a

22. Wearing and popularising crucifixes, neckties and other such un-Islamic symbols.[115]

Hadith reported by Anas, that when the Prophet came to Medina, the people had two days on which they engaged in games. Having asked what their significance was and being told that they had engaged in games on them in the pre-Islamic period, he said, "Allah has substituted for them something better than them, the day of sacrifice and the day of breaking the fast." Abu Dawud transmitted it, from *Mishkat al-Masabih*, translated by Dr James Robson, volume 1, p301]. (*Mukhtasar Ibn Kathir*, volume 1, p330.)

Ibn Umar reported Allah's Messenger as saying, "He who copies any people is one of them." (Ahmad and Abu Dawud transmitted it, from *Mishkat al-Masabih*, translated by Dr James Robson, volume 2, p917.)

Asbagh says that Abdallah bin Masud may Allah be pleased with him was invited to a wedding feast. When he came, he heard the sound of merry making, he did not enter. He was asked what the matter was. He said that he heard the Messenger of Allah ﷺ, "Whoever emulates the behaviour of a certain people, belongs to them, and whoever is pleased with the actions of a people is a partner with those who perform those actions." (*Encyclopaedia of Jurisprudence*, volume 38, p178.)

And he [it is not clear who this refers to] refused to go out for the Nowruz of the Magians and to join in their activities on that day, and to buy things on that day that he had not bought previously, in celebration of Nowruz, and he was not in favour of joining in eating and drinking, and giving food and drink on that day to polytheists, even an egg, as a celebration of that day. (*Majma al-Anhar*, volume 1, p698, published by Dar Ihya al-Turath al-Arabi.)

And there is a tradition from Thauri, from either Auf or Abu Walid, from Abdallah bin Umar, who said, "Whoever builds their home in the land of the Persians and observes their Nowruz and their festivals and imitates them until they die, then he is like them and will be raised amongst them on the Day of Resurrection." I would add that as you witness in the land of India, the spheres of the Muslims and the people of polytheism are not mixed in the ancient country, but are rather distinct and different, so the people of polytheism are not able to display their hallmarks, except in their own sphere, and their own localities. They are not able to do so in the sphere of the Muslims. So whoever among the Muslims builds their home in a locality of the idolators, for instance so that he can imitate them in their festivals, and distances himself from Muslim localities, then his case is the same as that mentioned by Abdallah bin Umar. The obvious meaning of this is that involvement in these acts renders a person a disbeliever, or at least a perpetrator of grievous sins which necessitate punishment of Hell-fire. If the first is the case, then the meaning is obvious from the wording, in which case involvement in certain of these activities would amount to a sin. (*Iila al-Sunan*, 11/5496-7.)

In this regard, I would say that the crucifix is also included in this category, even if it is not in itself an image of an animate object, but because of its imitation of the Christians, imitation of whom is reprehensible and frowned upon, even if it is not intended, as has already been discussed. (*Radd al-Mukhtar ala al-Dar al-Mukhtar*, volume 5, p531, published by Maktaba Rashidiya.)

One is not allowed to imitate non-believers in observance of their festivals. This is clear from the Hadith, that if one imitates a certain people, then one belongs to them. The meaning of this is that Muslims should be averse from having anything in common with traits that are particular to non-believers. (*Encyclopaedia of Jurisprudence*, volume 12, p8, Maktaba Rashidiya.)

[115] Aisha told that the Prophet never left anything in his house containing figures of a cross without destroying it. Bukhari transmitted it, Hadith number 5496, *Mishkat al-Masabih* , translated by Dr James Robson, volume 2, p940.)

It was reported by Amr bin Shuayb, from his father and his grandfather, that the Messenger of Allah said, "One who resembles others besides us does not belong to us. Do not imitate the Jews and the Christians, the greeting of Jews being to make a sign with the fingers, while the greeting of Christians is to make a sign with the palm." (Tirmidhi transmitted it in Hadith number 2911.)

A Muslim is not allowed to manufacture a crucifix, or to order anyone else to manufacture one. The intended meaning is to make what symbolises a cross. Nor should one buy a crucifix, whether it is attached or installed, or not attached or installed. Nor is it permissible for anyone to display such symbols on the thoroughfare of Muslims, their public or private buildings. Nor is one allowed to wear it on one's clothes, because of what is related from Adi bin Hatim [a Christian who accepted Islam in the time of the Prophet ﷺ] who came to the Prophet ﷺ, wearing a golden crucifix on his neck. He said, "Adi, get rid of this idol," and it is related on the authority of Amama, may Allah be pleased with him, that the Messenger of Allah said, "Verily, Allah has sent me as a mercy for mankind, and He has commanded me to destroy flutes, musical instruments, idols, crosses and any matter associated with the time of ignorance. It is reprehensible to wear a cross on one's clothing or any similar place, such as on a skullcap, on a

23. Implementing and popularising particular practices which are disapproved of and considered innovations [that which is newly introduced, is without precedent and contravenes the Quran or the tradition of the Prophet] in trusted books of Hanafi jurisprudence.[116]
24. Disobeying one's parents.[117]

---

dirham or dinar coin, or on a signet-ring. Bin Hamdan says that this may indicate prohibition, and that is the evident meaning of what Salih related from Imam Ahmad, ratified by the author of al-Insaf. The proof of this is the Hadith of Aisha, may Allah be pleased with her, to the effect that the Prophet used to cut images of the cross from clothes, and in a tradition of Ahmad, related on the authority of the mother of Abdar Rahman bin Udhaynah, who said that they were walking with Aisha when she saw a woman wearing a cloak, on which there was a crucifix. The mother of the faithful said to her, "Get rid of it, get rid of it, for the Messenger of Allah would reprimand anyone he saw wearing an item of clothing on which there was such a thing." (*Encyclopaedia of Jurisprudence*, volume 12, p88.)

It is reprehensible that there should be a crucifix in front of someone engaged in prayer, since this amounts to a resemblance with the Christians in their worship and imitating them in what is reprehensible is to be avoided, even if it is unintentional. (*Encyclopaedia of Jurisprudence*, volume 12, p88.)

There is general agreement that whoever breaks a crucifix belonging to some Muslim [the sentence could also mean on behalf of some Muslim – the conjunction leaving the possibility of both meanings, but 'belonging to' seems more logical – is not liable for any damages, even if that person belongs to those living under the protection of Muslims. And if a person uncovers the presence of some cross, then it is obligatory that it should be removed, and again no damages are incurred. (*Encyclopaedia of Jurisprudence*, volume 12, p89.)

I would say that it would appear that the cross is included in these injunctions, even if it is not a statue of a living being, but because it is an imitation of the Christians, and it is reprehensible to imitate them in imitate them in any of their malpractices, even if it is unintentional, as we already discussed. (*Radd al-Mukhtar ala al-Dar al-Mukhtar*, volume 1, p479.)

It is forbidden to copy the actions of those who perpetrate innovations, in fact it is obligatory to do the opposite of them. What I would say on this is that dislike of imitating the people of innovation – like dislike of imitation of Christians – is also established by us, not absolutely, but rather in what is reprehensible and also in imitating them for the sake of imitation, as we already discussed with regard to those matters which render prayer invalid. (*Radd al-Mukhtar ala al-Dar al-Mukhtar*, volume 5, p531.)

One is not allowed to copy non-believers in their festivals, due to what has cropped up in Hadith regarding resembling a nation, and in the process becoming one of them. The aim of this is to put Muslims off emulating non-believers in everything that is specific to their lack of belief. (Encyclopaedia of Jurisprudence, volume 12, p8.)

It is forbidden for a Muslim to tie his belt around his waist in the manner adopted by people who live in a Muslim land, under the protection of Muslims, since this involves resemblance of them, and the Holy Prophet said that whoever resembles a nation, belongs to them. There is unanimity on this. (*Encyclopaedia of Jurisprudence*, volume 24, p52.)

[116] Aisha reported Allah's Messenger ﷺ as saying, "If anyone introduces into this affair of ours anything which does not belong to it, it is rejected." (Bukhari transmitted it in Hadith number 2697, *Mishkat al-Masabih* , translated by Dr James Robson, volume 1, p39.)

The truth of the matter is that all the imams who are followed in matters of religion are rightly guided, so the masses are duty bound to follow whichever of their schools of thought is popular in any particular city, and upon which a majority of religious scholars are agreed. (*Iila al-Sunan*, volume 20, p290.)

Innovation is to introduce some matter which did not exist in the time of the Messenger of Allah ﷺ. One can say that there are two types of innovation: if it is something that can considered desirable in Islamic law, then it is a good innovation, but if it is something that is considered undesirable in Islamic law, then it is a bad innovation. (*Umda al-Qari sharh Sahih al-Bukhari*, volume 11, p126, published by Dar Ihya al-Turath al-Arabi, Beirut.)

[117] "Worship none but Allah and be good to your parents." (Al-Baqarah, 2:83.)

"Your Lord has commanded that you worship none but Him and show kindness to your parents. If either or both of them attain old age with you, say no word of contempt to them and do not rebuke them, but always speak gently to them and treat them with humility and tenderness and say, 'Lord, be merciful to them both, as they raise me up when I was little.'" (Surah Al-Isra, verse 17:23-24)

25. Not respecting the rights of others.[118]
26. Dealing harshly with orphans and those who have been wronged.[119]

The enforcer's duties with regard to minorities living under an Islamic government, asylum-seekers, children and the mentally handicapped

Article 23

1. An enforcer is duty-bound to prevent minorities living under an Islamic government and asylum-seekers from open perpetration of wrongful acts.[120]

Anas, may Allah be pleased with him, said that the Prophet ﷺ was asked about the major sins. He said, "Associating partners with Allah, disobeying parents, killing a person, and giving false testimony." (Bukhari transmitted it in Hadith number 2653.)

[118] "Those who affront believing men and believing women without their having deserved it shall bear the weight of slander and flagrant sin." (Surah Al-Ahzab, verse 33:58)

Abu Hurayrah reported Allah's Messenger as saying, "Do not be envious of one another, do not quarrel with one another, do not turn on one another, do not conduct transactions in opposition to one another, and be servants of Allah, brothers. A Muslim is a Muslim's brother; he does not wrong, desert or despise him. Piety is found here (pointing three times to his breast). Despising his brother Muslim is enough evil for any man to do. Every Muslim's blood, property and honour are sacred to a Muslim." (Muslim transmitted it in Hadith number 6706, *Mishkat al-Masabih*, translated by Dr James Robson, volume 2, p1032-33.)

Abu Burdah reported, from Abu Musa who said that he asked the Messenger of Allah whose Islam was best. "From whomsoever's tongue and hand a Muslim is safe," he replied. (Bukhari transmitted it.)

Ubadah bin Samit said that the Messenger of Allah ﷺ decreed that there should be no harm, and no harm should be inflicted."

Abu Hurayrah said, "Every Muslim's blood, property and honour are sacred to a Muslim." (*Sunan Ibn Majah*)

[119] "Those who consume the property of orphans unjustly are actually swallowing fire into their own bellies; soon they will burn in the blazing Flame." (Surah Al-Nisa, verse 4:10)

Anas, may Allah be pleased with him, said that the Prophet ﷺ said, "Help your brother, whether he is the oppressor or the oppressed." One man said, "Oh Messenger of Allah, we will help him if he is oppressed. But what about when he is the oppressor? How can we help him then?" The Prophet said, "You will stop him, in other words prevent him from oppression. That is how you can help him." (Bukhari transmitted it in Hadith number 6952 and Tirmidhi in Hadith number 2255.)

Ibn Umar reported the Prophet ﷺ as saying, "Oppression – *zulm* – will produce excessive darkness – *zulumat* – on the day of resurrection." (Bukhari transmitted it in Hadith number 2447, Muslim in Hadith number 6742 and Tirmidhi in Hadith number 2030, *Mishkat al-Masabih*, translated by Dr James Robson, volume 2, p1062.)

Abu Hurayrah, may Allah be pleased with him, reported that the Prophet ﷺ said, "The best home amongst the Muslims in one in which there is an orphan who is treated well; and the worst house amongst the Muslims is one in which there is an orphan who is badly treated." (Ibn Majah, Hadith number 2653.)

Abu Hurayrah reported that the Prophet ﷺ said, "Avoid the seven deadly sins." People said, "Messenger of Allah, what are they?" He listed them and one of the sins he mentioned was consuming an orphan's property. (Bukhari transmitted it in Hadith number 2766.)

[120] Islamic jurists are unanimous on the obligation to enforce Islamic law – on Muslims and others alike – in an Islamic country. (*Al-Fiqh al-Islami wa Adillatuhu*, volume 8, p5973.)

To summarise, an asylum seeker in our country, before he qualifies to be considered as a *dhammi*, one living under the protection of a Muslim government, falls under the category of dhammi, except in on respect: in the case of his death equal retaliation does not become incumbent, whereas it does in the case of a dhammi. Nor are normal punishments imposed on him, unless it is a case of someone's right being usurped, also, his liability for agricultural tax. We mentioned before this chapter that he has already committed himself to submit to all matters which Muslims are liable for. (*Radd al-Mukhtar ala al-Dar al-Mukhtar*, volume 3, p273.)

2. If a child or a mentally handicapped person commits a wrongful act, then the enforcer is duty-bound to put an end to that wrongful act.[121]

[121] Wrongdoing – *munkar* – amounts to every sinful action, prohibited by Islamic law, whether it is perpetrated by one who is responsible for their actions or not. So if someone sees a child or a mentally deranged person drinking wine, for instance, he should stop that person from doing so and dispose of the wine. Similarly, if a mentally deranged person is observed committing adultery with a woman similarly mentally deranged, or approaching an animal, one should prevent them from this action. (*Al-Fiqh al-Islami wa Adillatuhu*, volume 8, p473.)

[Translator's note: The very same point is then repeated, referencing the *Encyclopaedia of Jurisprudence*.]

CHAPTER THREE
PUNISHMENTS

Punishment administered by the enforcer
Article 24

1. A person who commits a wrongful act, in plain sight, is liable for punishment from the enforcer who, once he sets sight on both the sin and the perpetrator, should deal with it in the following manner:[122]
    1. Exhortation.[123]
    2. Reminding the person concerned of the displeasure of Allah that will ensue from such an act.[124]
    3. Threatening and punishing using strong words.[125]
    4. To punish the perpetrator with a fine.[126]
    5. To detain the perpetrator in a public prison from one to 24 hours.

---

[122] Bin Abidin says that the punishment will vary, according to the person involved. There is no point in deciding on some punishment, when one is able to achieve the intended goal without any punishment being administered. (*Encyclopaedia of Jurisprudence*, volume 2, p262.)

The enforcer has the right to punish for wrongdoings, but he should not exceed the limits. (*Encyclopaedia of Jurisprudence*, volume 17, p234.)

[123] Levels of accountability: some scholars mentioned levels of alteration of wrongdoing that can be summarised as follows:

The first type: Admonition and reminding, and this is in the case of someone who knows that he will remove the corruption that occurred because it was done out of arrogance and ignorance, as happens to someone who is ignorant of the subtleties of corruption in sales and the forms of usury that the enforcer knows are hidden from someone. Similarly, a person can easily be waylaid from properly observing the pillars of prayer and the conditions of worship, and the matter can be dealt with by compassionate and gentle nudging in the right direction. (*Al-Fiqh al-Islami wa Adillatuhu*, volume 17, p265)

[124] The stages of accountability: some scholars mentioned the levels of change, which can be summarized as follows: the second type: admonition and making a person aware of Allah and this is for a person who knows that he has perpetrated some wrongdoing and he is also aware of the kinds of sins that are evident for a Muslim who is accountable for his actions, so the enforcer will remind him through admonition, and invoking the power of Allah. (*Al-Fiqh al-Islami wa Adillatuhu*, volume 17, p265.)

[125] The stages of accountability: some scholars mentioned the levels of change, which can be summarized as follows: the third type: rebuke, reprimand and harsh words and verbal telling-off and severity in challenging and denial. This will be resorted to with someone who does not benefit from good advice. Nor does gentle admonition benefit him. Indeed, he shows signs of persisting with his wrongdoing and ridiculing exhortation. This will be done in a way that is not considered obscene or extravagant in speech, and free of lies; and whoever attributes to someone who advises him something that is not limited to what is necessary, so that the result is not insistence and arrogance. (*Al-Fiqh al-Islami*, volume 17, p265.)

[126] Indeed, the lawmaker determined to burn the houses of those who stayed away from the congregational prayers. This is the basis for people having to pay a fine, when behaviour of that kind is perceived.

6. To detain the perpetrator in a public prison for one to three days.
7. Any punishment that an enforcer considers appropriate, and which is not the exclusive prerogative of a court of law.[127]
8. The enforcer is duty-bound, in the course of promoting virtue and prohibiting vice, to observe the various stages of punishment outlined in clause one of this article.

Rights of a director and commander with regard to punishment
Article 25

1. The directors of Promotion of Virtue and Prohibition of Vice on a provincial and city level have the right to deliver punishments as laid out in a) to g) of article 24, upon witnessing any such wrongful act.[128]

And it is related from Umar that he burned the house of a gambler and it is said of Imam Safar that he ordered the destruction of the house of a wrongdoer – a *fasiq*. This is what has been written in Khulasa. (*Al-Fatawa al-Hindiyah*, volume 5, p353.)

For example, Umar spilled the milk that had been adulterated with water and a group of jurists have ratified this action, an example of this being the destruction of counterfeit goods in industries, such as sub-standard, bad quality clothing. (*Encyclopaedia of Jurisprudence*, volume 17, p266.)

The punishment can be beating, imprisonment, destruction of the offending item, or it can be execution or just prohibition. (*Encyclopaedia of Jurisprudence*, volume 17, p255-6.)

[127] From Fudail bin Ayad, "for the love of Allah," "and a prisoner." According to Hassan, the Messenger of Allah ﷺ used to bring a prisoner and give him to some Muslim. The prisoner would stay with him for two or three days and he would give him precedence over himself. (*Tafsir Zamahshari, Al-Kashaf an Haqaiq Ghawamid al-Tanzil*, volume 4, p668, published by Dar al-Kitab al-Arabi, Beirut.)

The sixth type: issuing a summons and referring the matter to the ruler and the leadership, because of his general consideration and his ability to impose his will, so long there is a necessity to abandon the support for the culprit due to a fear that he will miss out on altering his behaviour. This danger means that the enforcer must immediately do what is necessary. Jurists are of the opinion that the enforcer should do whatever is necessary to enforce reform of the population, and rebuke of those who are perpetrating evil. This involves in particular punishment in the case of every sin, for which there is no prescribed punishment or any penalty, and which is not the sole prerogative of the qadi [judge]. This punishment may be beating, it may be imprisonment, it may be destruction, it may be execution and it may be just prohibition. (*Encyclopaedia of Jurisprudence*, volume 17, p255-56.)

[128] These discretionary punishments are determined by the authority according to the circumstances of the crime and the criminal. They are applied against Muslims and those non-Muslims who live under a Muslim government, under a covenant. The penalties are severe or lenient, according to the nature of the crime and the circumstances of the criminal. (*Encyclopaedia of Jurisprudence*, volume 7, p137.)

Some of our sheikhs have ranked the punishments according to the ranks of people. They said that the punishments are of four ranks: the punishment of the nobles, who are the chieftains and commanders; the punishment of the most noble of the nobles, who are the Alawites and jurists; the punishment of the middle classes, who are the common people; and the punishment of the base, who are the lowly.

The punishment of the most noble of the nobles is by personal notification. This would be for the qadi to send a trustworthy person to him, and say to him, "I have heard that you have committed such and such a crime." The punishment of the nobles is by notification and summoning to the court of the qadi and bringing his attention to the matter. The punishment of the middle classes would be through notification, summoning and imprisonment, while the punishment of base and lowly classes would consist of notification, summoning, beating and imprisonment. This is because the aim of punishment is reprimand, and the circumstances of people are in accordance with these categories, in their susceptibility to reprimand. (*Al-Badai wa al-Sanai fi Tartib al-Sharai*, volume 7, p64, published by Dar al-Kutub al-Ilmiyah.)

2. The commanders of Promotion of Virtue and Prohibition of Vice on a district and department level have the right to deliver punishments as laid out in a) to g) of article 24, in consultation with the director, upon witnessing any such wrongful act.[129]
3. In case the perpetrator, following implementation of clauses 1 and 2 of this article, does not mend his ways, then his case will be referred to a court of law.[130]

Conditions under which a perpetrator is referred to the concerned court of law
Article 26

In the following circumstances, the enforcer will refer the perpetrator to the concerned court of law:

1. In case someone, without any valid excuse, repeatedly omits saying his daily obligatory and mandatory prayers.[131]
2. In case someone, without any reasonable excuse, repeatedly omits joining in congregational prayers.
3. In case any community collectively omits saying the call to prayer or offering congregational prayers.
4. In case someone, without any valid excuse, does not fast during the holy month of fasting.
5. In case children are repeatedly disobedient to their parents.
6. In case anyone mistreats an orphan or misuses their property.
7. In case a person does not perform all the virtuous acts that are required of him or does not avoid all the iniquitous acts from which he should refrain.

An enforcer's duties with regard to his prisoners
Article 27

1. An enforcer is duty-bound to release any prisoner he has in his custody, immediately, once the prisoner's term has come to an end.[132]

[Translator's note: the same ranks of people, with the same punishments are repeated, giving Fath al-Qadir as the reference.]

[129] These discretionary punishments are determined by the authority according to the circumstances of the crime and the criminal. They are applied against Muslims and those non-Muslims who live under a Muslim government, under a covenant. The penalties are severe or lenient, according to the nature of the crime and the circumstances of the criminal. (*Encyclopaedia of Jurisprudence*, volume 7, p137.)

[130] These discretionary punishments are determined by the authority according to the circumstances of the crime and the criminal. They are applied against Muslims and those non-Muslims who live under a Muslim government, under a covenant. The penalties are severe or lenient, according to the nature of the crime and the circumstances of the criminal. (*Encyclopaedia of Jurisprudence*, volume 7, p137.)

[131] Enforcement in Islamic law is general, and takes in every act that is prescribed by Islamic law, which is done for the sake of Almighty Allah, numerous though these are, like adhan – the main call to prayer – then the second call to prayer immediately preceding the prayer itself and bearing witness. (*Nisab al-Ihtisab*, p83-84.)

[132] Article 58 of the Journal of Judicial Rulings says that governance of the populace is subject to their interest, seeing that the leader of the Muslims is a general supervisor over all the affairs in the public domain. This is because the

2. An enforcer is duty-bound to ensure and recommend that prisoners are able to offer their daily prayers, that their daily needs are met and that necessary facilities are provided to them.[133]

sultan – the king or leader of the Muslims – has been given authority by Almighty Allah, for the purpose of protecting the blood of his servants, preserving their honour and their property. (*Sharh al-Mujallah Saleem Baz*, p42, published by Maktaba Farooqia.)

"The order of the sultan is to be implemented," in other words, it is to be obeyed and not contradicted. (*Radd al-Mukhtar*, volume 4, p382.)

[133] The Almighty has decreed, "They give food, despite their love for it, to the poor, and orphans, and captives." (Al-Insan, 76:8.) As for the poor, and orphans, we have looked at its explanation, and what this entails. With regard to prisoners, Said bin Jubair, Hasan and Duhak have said that this refers to prisoners who pray towards the qiblah – *ahl-e qiblah*, in other words Muslims. Ibn Abbas says that the prisoners on that day were also idolators and he testifies that, on the day of Badr, the Messenger of Allah ﷺ commanded that prisoners be treated well. Indeed, they would be given precedence over themselves at meals, as pointed out by Said bin Jubair, Ata, Hasan, and Qatada (*Tafsir Ibn Kathir*, volume 8, p288)

With regard to a prisoner, the Messenger of Allah ﷺ would bring a prisoner and pass him over to some Muslims, saying, "Look after him, he will remain with you for two or three days." He would be given precedence over that person's self. Most scholars say that it is permissible to do good to infidels in the land of Islam, but no duties are imposed on them. Qatadah says that the ones who were prisoners in those times were infidels, but one's Muslim brother would be even more worthy of being well fed. Saad bin Jubair and Ata say that the reference is to a prisoner who faces the qiblah in his prayer. Abu Said al-Khudri says that the prisoner being referred to is a slave and a captive prisoner, while the Messenger of Allah ﷺ called him a person who was in debt. (*Tafsir al-Zamakhshari*, also known as *Al-Kashaf an Haqaiq Ghawamid al-Tanzil*, volume 4, p668, published by Dar al-Kitab al-Arabi, Beirut.)

As for the saying of the Almighty, "They give food, despite their love for it, to the poor, and orphans, and captives," Qatadah says that the Almighty has order the good treatment of prisoners, and the prisoners being referred to at that time were idolators, but one's Muslim brother would be even more worthy of being well treated. (*Al-Jami li Ahkham al-Quran*, also known as *Tafsir al-Qurtabi*, volume 190, p126, published by Dar al-Kutub al-Misriyah, Cairo.)

Abu Yusuf has mentioned that the condition of detainees should be followed up and looked into without fatigue or negligence, and justice should be followed with them. They should not be assaulted. Jurists are of the opinion that the first initiative a Qadi should take, when he takes up his position, is to inspect prisons and enquire into the condition of prisoners. Some consider this to be obligatory. Since imprisonment is a punishment, it takes precedence over all other priorities. (*Encyclopaedia of Jurisprudence*, volume 16, p330.)

Abdallah bin Umar reported Allah's Messenger as saying, "Each of you is a shepherd and each of you is responsible for his flock. The imam who is over the people is a shepherd and is responsible for his flock; a man is a shepherd in charge of the inhabitants of his household and he is responsible for his flock; a woman is a shepherdess in charge of her husband's house and children and she is responsible for them; and a man's slave is a slave in charge of his master's property and he is responsible for it. So each of you is a shepherd and each of you is responsible for his flock. (*Umda al-Qari Sharh Sahih al-Bukhari*, volume 13, p113, *Mishkat al-Masabih*, translated by Dr James Robson, volume 1, p784.)

CHAPTER FOUR
MISCELLANEOUS INJUNCTIONS

Ensuring good relations among the general public
Article 28

In order to achieve the following objectives, the Ministry is duty-bound to consult with religious scholars, with teachers in madrasas, schools and higher learning institutes and with pious and eminent individuals:[134]

1. In working to promote virtue and eliminate vice.
2. In preventing the enemies of Islam from popularising iniquitous behaviour.

Monitoring and evaluation
Article 29

The Ministry is duty-bound to monitor the work of those delegated with the task of promotion of virtue, eliminating of vice and hearing of complaints.[135]

---

[134] In connection with the qualities of the Prophet ﷺ, jurists have mentioned that one of the qualities that was obligatory in his case was consultation, with his household and with his companions, with regard to the matter in hand. This was because of the saying of the Almighty, "Take counsel with them in the conduct of your affairs." (Surah Al Imran, verse 3:159) The reason for consultation being particularly important in the case of the Prophet ﷺ, when it is also obligatory for every other person in authority, is to show that consultation is even necessary in the case of the Prophet ﷺ, despite his unrivalled knowledge and understanding. [Translator's note: So it follows that it is even more important in the case of others in authority.]

The underlying wisdom of the Prophet's consultation with his household and his companions is that this will be followed by rulers after him. It was not that the Prophet ﷺ should gain knowledge or wisdom from them, for he did not stand in need of their consultation, due to him being the recipient of revelation. However, his taking counsel from them did serve to bolster their morale, lift their spirit, and make them even more devout in their faith. Abu Hurayrah, may Allah be pleased with him, said that he never saw anyone more keen to take counsel from his companions that the Messenger of Allah ﷺ. (*Encyclopaedia of Jurisprudence*, volume 26, p280.)

"And take counsel from them in the conduct of your affairs; then, when you have decided on a course of action, place your trust in Allah: for Allah loves those who place their trust in Him." (Surah Al Imran, verse 3:159)

The reason for this is that when counsel is taken, all different opinions come together. Clearly, when opinions are gathered in one place, the truth is likely to emerge. That is why they say, "Consultation is the expansion of the mind." So, when consultation takes place, and minds meet on a certain matter, then a decision is taken accordingly, since in that case there is a consensus on the matter; and consensus is itself a basis of proof. In the case of a difference of opinion between all those consulted, then the decision maker will look at all the opinions and decide on the one that is the right one, in his opinion. It is related from Ibn Masud and Abu Musa al-Ashari, may Allah be pleased with them, that they used to write to Umar, seeking his counsel. Umar, for his part, used to write to Ibn Masud, seeking his counsel; and Ibn Samaah used to write to Muhammad, may Allah have mercy on him. (*Al-Muhit al-Burhani*, volume 8, p12, published by Dar al-Kutub al-Ilmiyah, Beirut, Lebanon.)

[135] Supervision is here in the meaning of strict control. Establishment of this type of supervision is necessary for the good order that is one of the aims of Islamic law. This will become clearer in the subsequent text. (*Encyclopaedia of Jurisprudence*, volume 5, p6.)

Reporting
Article 30

1. Those who work in the Ministry are duty-bound to report to the Ministry on how they have discharged their duties and performed their functions.[136]
2. The Ministry is duty-bound to submit reports to the office of the esteemed Commander of the Faithful, may Allah preserve him.[137]

Training and education of enforcers and workers
Article 31

The Ministry is duty-bound, keeping in mind circumstances, to hold seminars aimed at educating and training for its enforcers and workers, to ensure that they are acquainted with the orders contained this law, as well as with other legal documents and with the effective principles and methods of the promotion of virtue and prohibition of vice, along with the hearing of complaints.[138]

The author of Sharh al-Mujallah writes that this is because the leader of the Muslims is a general supervisor over all subjects in public affairs since the Sultan has been given power from Allah for the purpose of protecting the blood of his servants, the preservation of their honour and their property. (*Sharh Mujallah al-Ahkam li Saleem Rustam Baz*, volume 1, p43.)

[136] The head of government should keep abreast, on a daily basis, of what is going on in his kingdom. He should be aware of what is happening in his kingdom, regarding peaceful activities and the reverse. (*Hujjah Allah al-Balighah*, volume 1, p95, published by Dar al-Jil, Beirut.)

One can see that many administrative matters were first set in place by Umar, may Allah be pleased with him, in his era. After that, the Hanafis made them into a school of thought and dealt with them in the way that Islamic law deals with them. (*Faid al-Bari Sharh al-Bukhari al-Kashmiri*, volume 3, p44, published by Maktaba Mishkat al-Islamiya.)

Umar, may Allah be pleased with him, used to expend a lot of effort on keeping abreast of all developments in the provinces. Nothing would remain hidden from him. Similarly, he had appointed emissaries and correspondents in all government departments. They kept a record of all news and developments, which would be passed onto Umar, including even minor incidents that took place in the provinces. (*Al-Faruq*, p367.)

Abu Yusuf says [presumably counselling one of the Abbasid Caliphs under whom he worked], "I consider it appropriate for you to send some people of impeccable integrity and character, people in whose faith and honesty you have utmost trust, to look into what is going on behind the scenes, and the trends of behaviour in the provinces. (*Al-Kharaj li Abi Yusuf*, p124, published by Maktaba al-Azhariya li l-Turath.)

There was for this purpose another body, in addition to the ruling council. This body was responsible for administrative matters, and matters connected to day-to-day life. This body used to sit in the Prophet's Mosque. It would be composed entirely of Companions who had emigrated from Mecca. In this gathering, Umar would present the daily report that would have reached the capital from distant provincial centres. (*Al-Faruq*, p214.)

So that he could personally remain abreast of the Muslims' politics, seek what was in their best interests, so that he could monitor affairs of state, and remain informed regarding how rulers were discharging their duties. (*Encyclopaedia of Jurisprudence*, volume 25, p305.)

[Translator's note: The paragraph above, beginning "Umar may Allah be pleased with him …" is repeated.]

Mawardi has listed ten things that are important for a ruler, with regard to public affairs, the ninth of which is seeking trustworthy people and following honest people in the tasks he delegates to them and the money he entrusts to them, to ensure that that tasks are in strong hands and funds with trustworthy people. (*Al-Ahkam al-Sultaniya*, p40, published by Dar al-Hadith, Cairo.)

[137] See the previous footnote.

[138] Whoever is involved in any activity should become familiar with the necessary knowledge and injunctions regarding that activity, so that he may avoid wrongful actions, while engaging in that activity. (*Radd al-Mukhtar*, volume 1, p42.)

Seeking guidance
Article 32

In case an enforcer should come across a situation, concerning which he has not been made aware, either in this law or in other related legal documents, then he is duty-bound to inform the director about the situation, so that a higher authority could seek guidance and direction from the esteemed Amir al-Mu'minin, may Allah preserve him.[139]

Obtaining assistance
Article 33

Through its provincial functionaries, the Ministry is duty-bound to share its method of conducting the promotion of virtue, prevention of vice and hearing of complaints with other provincial government functionaries, so that their assistance may be available.[140]

Presenting methodology and procedure
Article 34

In order to implement the orders of this law in the best possible manner, the Ministry should compile its methodology and procedure and present it for approval in the presence of the esteemed Amir al-Mu'minin, may Allah preserve him.[141]

So the enforcer should have knowledge of what he is promoting, and what he is prohibiting people from doing. (*Encyclopaedia of Jurisprudence*, volume 17, p244.)

There are two types of knowledge that an enforcer should have:

Firstly: he should be acquainted with injunctions of Islamic law, so that he can have knowledge of what he is promoting, and what he is prohibiting. The second type of knowledge is that he should know the nature of alteration, in the sense that he should know, or have a good idea that his prohibition of some wrongdoing will eliminate that wrongdoing, and that his promotion of virtue will have the desired effect. (*Encyclopaedia of Jurisprudence*, volume 17, p236.)

[139] Ali said, "I asked the Messenger of Allah, that we have been confronted with a matter, regarding which there is no command or prohibition, so what would you suggest? He said, 'Consult in this matter with jurists and true servants of God and do not enter into this matter with a personal opinion.'" Tabrani transmitted it is his Ausat, with sources that are strong, and considered authentic. (*Majmaa al-Zawahid and Manbaa al-Fawaid*, Hadith number 834, published by Maktaba al-Qudsi, Cairo.)

[140] "Help one another in goodness and in piety. Do not help one another in sin and transgression." (Surah Al-Maida, verse 5:2)

Helping one another, strengthening ties amongst men and attracting their love. Devotion with various types of goodness promotes co-operation among men. That is why Allah has encouraged this by saying, "Help one another in goodness and piety." (*Encyclopaedia of Jurisprudence*, volume 12, p151.)

Umar, may Allah be pleased with him, said to the companions, "When you do not help me, then who is going to do so?" Upon which Abu Hurayrah said, "We will do so." (*Al-Faruq*, p223.)

[141] The leader has a right to frame injunctions that have been extrapolated from Islamic law:

The principle of the rule of sharia does not mean that the leader, and those who are below him in power and authority, do not have the right to introduce necessary rules and injunctions, without which the state cannot function. That is because the pronouncements of sharia are limited and finite. So the leader and those in power have to present all of this in the form of injunctions that they consider necessary. (*Encyclopaedia of Jurisprudence*, volume 25, p301.)

Implementation
Article 35

This law will be implemented[142] from the day of its publication. It should be published in the official circular.[143] Other laws, which have not been approved or published by the esteemed Amir al-Mu'minin, may Allah preserve him, or those which differ from this law, are hereby annulled.[144]

---

[142] In the same manner, if they are ordered to do something and they do not know whether it will benefit them or not, then they must obey, because the obligation of obedience is established by a definitive text and the opinions that they have about whether what they are ordered to do is beneficial or not is not amounts to opposition to the definitive text. (*Sharh al-Sair al-Kabir*, volume 1, p165, published by Al-Shirkah al-Sharqiyah li l-Iilanat.)

He said in Miraj that obedience to the leader in what is not sinful is obligatory (*Radd al-Mukhtar ala al-Dar al-Mukhtar*, volume 172, published by Dar al-Fikr li l-Tabaati wa al-Nashr, Beirut.)

The meaning of obedience to the leader being obligatory is that "the command of the sultan is to be implemented," in other words, it is to be followed; it is not permissible to oppose it. (*Hashiyatu Ibn Abidin*, al-Fikr, volume 5, p422, published by Dar al-Fikr li l-Tabaati wa al-Nashr.)

All the imams [of the four schools of thought] are agreed that obedience to the complete leader is obligatory in everything that he commands, so long as he has not commanded any sin to be committed, and that the orders of the leader, his deputy and those in whom he invests power should be implemented. (*Al-Fiqh ala Madhahab al-Arbaa*, Book of Prescribed Punishments, volume 4, p1364, published by Maktaba al-Haqqaniyah Mahallah Jangi.)

This being the case, it is obligatory to implement the laws and impositions that a ruler issues. (*Islamic Jurisprudence and its Proofs*, volume 8, p312)

[143] As for advertising in circulars, there were no newspapers in the era of the jurists as there are in our time, so there is no discussion in the books of jurisprudence regarding advertising by this means. However, to do so in our time is acceptable, but, since not everyone reads these newspapers, nor are they even able to read them, and because newspapers are not found in every locality, so announcements should also be made in places where people gather, as jurists have made clear. (*Durar al-Ahkam sharh Mujalla al-Ahkam*, volume 2, p249, published by Dar al-Jil.)

[144] In that whoever is presented with the law, takes an order from it to follow it, in that he writes his order to follow it. (Taqrirat al-Rafii, an appendix to Radd al-Mukhtar ala al-Dar al-Mukhtar of Ibn Abidin, volume 16, p508, Maktaba al-Tariq.)

He said in Miraj that obedience to the leader in what is not sinful is obligatory (Radd al-Mukhtar ala al-Dar al-Mukhtar, volume 172, published by Dar al-Fikr li l-Tabaati wa al-Nashr, Beirut.)

Does prohibition remain after the death of the sultan? Indeed, does prohibition remain after the death of the sultan, when he has prohibited in such a way that there is no need for a new prohibition. The best verdicts that have been given say that there should be a new prohibition and that prohibitions do not outlast the deceased monarch. This is because, in case two people differ over whether something is prohibited or not, then a decision on the matter has to be made by a judge, so long as the prohibition is not proven by the one against whom the ruling is issued. If he has spoken at length about that and seems satisfied with it, then one should refer to that. As for what al-Hamawi also mentioned, that he knew from the custom of the Ottoman kings, may Allah support them, that if a sultan assumed power, a law that was passed before him would be presented to him and he would order that it should be followed, it is not useful here because its meaning is that he should adhere to the law of his predecessors by ordering what they ordered, and prohibiting what they prohibited. However, it does not follow from this that if the new sultan appoints a judge and does not forbid him from hearing a certain case, then the judge stands forbidden simply because of that. Rather, it follows from this that if he appoints him, he explicitly forbids him from acting in accordance with the law that he has committed himself to, whereas in fact, when he appoints him now, he orders him in his proclamation to rule according to the most correct statements of his school of thought, as was the custom of those before him. In any case, a complete treatise on this has been written in our book Tanqih al-Hamidiyah, so you may refer to that, and we have also dealt with this issue in detail in our book Tanbih al-Walati wa l-Hukkam (Radd al-Mukhtar ala al-Dar al-Mukhtar, volume 5, p420.)

They have also explained that if something is allowed [mubah, which means it is allowed, although no particular virtue is attached to doing it, nor opprobrium attached to not doing it] then it becomes prohibited due to the prohibition of the leader, since Allah has prescribed obedience to the leader by saying, "Obey Allah, and obey the

Translated for AAN by John Butt
Edited by Kate Clark and Roxanna Shapour
Design and layout by Žolt Kovač

Messenger and those who are in authority over you." For example, maybe a leader prohibits the consumption of some item, on the basis of what has become evident to him, then people are duty-bound not to consume that item. However, this prohibition will only last for the duration of the reign of that monarch. It will not outlive him. An example of this is the prohibition of tobacco, which some monarch prohibited, may Allah preserve them. (Faid al-Bari ala Sahih al-Bukhari, volume 2, p408, published by Dar al-Kutub al-Ilmiyah, Beirut.)