Article

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The Opinion of the Imam (Khaleefah) Resolves the Disagreement (Khilaaf)

The Qaidah (Principle) **"رأي الإمام يرفع الخلاف"** "The opinion of the Imam resolves the disagreement," is one of the Shariah Principles related to the rulings of governance. However, in order to project Islam as merely a clerical, individualistic religion, it has been deliberately left out of the cultural and educational curricula of Muslims, after the destruction of Khilafah.

Similarly, many other Shariah principles and rulings (ahkaam) were left out, such as those related to the ruling system and economic system, as well as other principles like, للإمام وحده حق تبني الأحكام "The Imam (Khalifah) alone has the right to adopt Shariah rulings" and فله أن يتبنى من الأحكام بقدر ما يستجد من الحوادث "he adopts ahkam as much as new incidents arise," and أمر الإمام نافذ ظاهراً وباطنا "The order of the Imam is binding explicitly and implicitly."

The importance of these principles and their great impact upon the lives of Muslims can only be realized, by reflecting upon the nature of Ahkaam Shariah and also by reflecting upon the political concept of Islam that govern the collective life.

Upon referring the political concept in Islam, we find that politics is taking care of the affairs of the people, with the Ahkaam Shariah implemented, by a state as an executive entity. The Ummah exercises politics by monitoring and accounting, being the origin of authority. The Ummah is the legally responsible (mukallaf) to implement Shariah in origin, whilst the Imam is delegated by the Ummah within that responsibility.

Allah (swt) says, ﴿إِنَّ اللَّهَ يَأْمُرُكُمْ أَن تُؤَدُّواْ الأَمَانَاتِ إِلَى أَهْلِهَا وَإِذَا حَكَمْتُم بَيْنَ النَّاسِ أَن تَحْكُمُواْ بِالْعَدْلِ إِنَّ اللَّهَ نِعِمَّا يَعِظُكُم بِهِ إِنَّ اللَّهَ كَانَ سَمِيعًا بَصِيرًا﴾ **"Indeed, Allah commands you to render trusts to whom they are due and when you judge between people to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing."** [TMQ Surah an-Nisa'a 4:58]. Allah (swt) said, ﴿وَمَن لَّمْ يَحْكُم بِمَا أَنْزَلَ اللَّهُ فَأُوْلَـئِكَ هُمُ الْكَافِرُونَ﴾ **"And whoever does not judge by what Allah has revealed – then it is those who are the disbelievers."** [TMQ Surah al-Maaida 5:44].

Imamah is defined as, حمل الكافة على مقتضى النظر الشرعي "Holding everyone to the requirement of the Shariah considerations." "Holding everyone to" means making them abide by the ahkam of Shariah, through making ahkam as binding laws that regulate the relationships of the society, domestically and externally. Accordingly, leaving political Islam is a compromise of most of the ahkam of Shariah, including decisive ahkam.

Upon referring to the Ahkam of Shariah, we find them of two categories:

First: Decisive ahkam derived from the evidence that is decisive both in terms of narration (qata'ee thubooth) and meaning (kata'ee dalalaah). There is no disagreement (khilaafah) in these ahkam amongst the Fuqaha.

Second: Indecisive ahkam, which are subject to Ijthihad. Disagreements occur in these ahkam, both in the past and present, which will not cease. It is impossible to unify Muslims upon a single opinion from the aspect of Ijthihad and thought, due to several reasons. Islamic madhabs (schools of thought) will remain and they will multiply.

The state is an executive entity that is obliged to take care of the affairs of people through the Shariah rulings. It is thus mandatory for the state to adopt Shariah rulings, which it enacts in the form of constitution and canons. The Shariah rulings define the structure of the state and the role of each institution therein. They also clarify the rights and obligations of the people, in order to determine their relationships and to resolve their disputes. The state will not be formed simultaneously upon the four schools of thoughts, Shafi, Hanafi, Hanbali and Maliki, otherwise there will be chaos, conflict and fragmentation of the Ummah, as its cohesion dissipates.

Thus, Khilafah as a ruling system gives the right of adopting the akham to the Khaleefah. It is the only way to unify the Ummah, gathering the Muslims together and guarding their Deen from the absurdity of those who bring ruin. Thus, the Khilafah is the general leadership of all the Muslims, from the East to the West. Allah (swt) says, ﴿إِنَّ هَذِهِ أُمَّتُكُمْ أُمَّةً وَاحِدَةً وَأَنَا رَبُّكُمْ فَاعْبُدُونِ﴾ **"Indeed this, your Ummah, is one Ummah, and I am your Lord, so worship Me."** [TMQ Surah al-Anbiyya 21:92]. The Messenger of Allah (saw) said, **«إِذَا بُويِعَ لِخَلِيفَتَيْنِ فَاقْتُلوا الآخِرَ منهُما»** **"If the pledge**

of allegiance is given to two Khaleefahs, then kill the latter of them." [Muslim]. It is the only way to ensure the unification of the Ummah and the greatness of the Khilafah.

When a dispute occurs between people, the law must intervene in order to resolve the dispute and end the conflict, so that people will not resort to the ijtihad of their own fuqaha. For instance, there is a dispute between a man and his wife. The wife goes to a Hanbali faqeeh, who judges the occurrence of divorce and her non-return to her husband. The husband goes to a Shafi faqeeh who judges the return of his wife to him. There is no way to resolve the dispute except by the adoption of the Khaleefah. Thus the order of the Imam resolves the disagreement. This applies to all the relationships between the Muslims, domestically and their external relations with other nations.

In the *Introduction to the Constitution* published by Hizb ut Tahrir it is stated, وأما القاعدة الرابعة وهي للخليفة وحده حق تبني الأحكام فقد ثبتت بإجماع الصحابة، على أن للخليفة وحده حق تبني الأحكام، ومن هذا الإجماع أخذت القواعد الشرعية المشهورة. (أمر الإمام يرفع الخلاف)، (أمر الإمام نافذ)، (للسلطان أن يحدث من الأقضية بقدر ما يحدث من مشكلات "With respect to the fourth principle, which is that للخليفة وحده حق تبني الأحكام "it is for the Khaleefah alone to adopt the laws" it has been established by the Ijma' of the Companions (ra) that the Khaleefah alone has the right to adopt the laws, and from this Ijma' are derived the famous Shari'ah principles, أمر الإمام يرفع الخلاف "The order of the Imam resolves the difference," أمر الإمام نافذ "The order of the Imam is executed" and للسلطان أن يحدث من الأقضية بقدر ما يحدث من مشكلات "The ruler can issue as many judgments as there are problems that appear."" In Article 36, it is stated, "The evidence for paragraph "a" is the Ijma' of the Companions, since the law (Qanun) is a term of convention which means, "The command which is issued by the authority in order to govern the people according to it" and it is also known as "the collection of rules which the authority imposes upon people to adhere to in their relations"." In other words, if the authority commands specific rulings, these ruling are laws which the people are bound by, whilst if the authority did not order them, then they are not considered laws and the people are not bound by them. The Muslims act according to the rulings of the Shari'ah, therefore, they act according to the orders and prohibitions of Allah (swt) and not the orders and prohibitions of the authority. So, they act according to the rulings of the Shari'ah and not the orders of the authority… However, Shari'ah rulings were differed over by the Companions (ra), so some of them understood something from the Shari'ah texts, whereas others understood something different from them. Each of them (ra) proceeded according to what they had understood, as their understanding would be the ruling of Allah (swt) for them. However, there are Shari'ah rules that the Muslims would all have to proceed, collectively, according to one opinion in order to facilitate the management of the affairs of the Ummah, as opposed to each one following their own Ijtihad. This actually happened. Abu Bakr as-Siddiq (ra) thought that the wealth should be distributed amongst all the Muslims equally, since it was their right collectively. As for Umar al-Farooq (ra), he thought that it was not correct to give the one who had previously fought against the Messenger of Allah (saw) the same as the ones who had always fought alongside him, or to give the poor the same as the rich. However, Abu Bakr (ra) was the Khalifah and so ordered the implementation of his opinion, in other words, the adoption of the equal distribution of the wealth. The Muslims followed his opinion and the judges and governors acted accordingly. Umar (ra) submitted to the opinion of Abu Bakr (ra) and he acted according to it and implemented it. However, when Umar (ra) then became the Khalifah, he adopted an opinion which contradicted the opinion of Abu Bakr (ra). In other words, he ordered his opinion which was to distribute the wealth according to preference rather than equally. Therefore, he distributed the wealth according to those who embraced Islam earlier and according to need. The Muslims followed his opinion and the judges and governors acted accordingly. So, there was an Ijma' of the Companions (ra) that the Imam could adopt specific rulings and order their enactment. It was upon the Muslims to obey that even if it went against their own Ijtihad. They had to leave acting according to their own opinions and Ijtihad. These adopted rulings are the laws. Consequently, the passing of laws is for the Khalifah alone and no one else possesses that right at all."

Many jurists of the four madhabs and other Muslim Ulema and leaders have agreed in more than one place in their books, particularly in the chapters regarding judiciary, that the judgment of the ruler resolves the dispute. In fact, books of jurisprudence from amongst the well-known references hardly leave this matter without mention. Thus, we can ascertain that the acknowledgement of this principle is amongst the things that have been agreed upon by the

Ulema, in word and deed, even though their positions differed sometimes, when implementing certain issues.

Those fuqaha assert the distinction between the issues of worship and the issues of transactions. Some of them did not assert that. Nevertheless, they unanimously agreed that the nature of these issues must not be amongst the issues of ijtihad, on which each one's difference is justified.

Most of their citations for this Qaidah are in the issues of disputes brought to the judiciary, such as issues related to marriage, breastfeeding, divorce and polygamy and other personal situations. They are also within the transaction issues varying from sale, endowment, company structuring and hiring. Sometimes they are within the issues related to worship such as prayer timings, the beginning of the month of Ramadan and matters in Hajj. The elaboration to this is as follows:

Firstly: Hanafi Jurisprudence:

The Hanafi scholars mention this principle in their sayings about the issues related to Yameeni Talaq (Oath of divorce) and ujrat almisl (wage compensation), that if a ruler judges upon these two, his judgment will resolve the dispute. Ibn Aabideen says, وَلَيْسَ لَهُ أَنْ يَدُلَّهُ عَلَى مَا يَهْدِمُ مَذْهَبَهُ، وَلَيْسَ الْمُرَادُ أَنَّهُ لَا يُفْتِيهِ بِفَسْخِ الْيَمِينِ إذَا فَعَلَ صَاحِبُ الْحَادِثَةِ شَيْئًا مِنْ ذَلِكَ، لِمَا عَلِمْت مِنْ أَنَّ الْجَاهِلَ يَلْزَمُهُ اتِّبَاعُ رَأْيِ الْقَاضِي وَالْمُفْتِي. عَلَى أَنَّ قَضَاءَ الْقَاضِي فِي مَحَلِّ الِاجْتِهَادِ يَرْفَعُ الْخِلَافَ"What is meant is that he (the ruler) does not give fatwa to nullify the yameeni (Talaq), if a person involved in the incident did something of that, as you know that ignorant person is obliged to follow the opinion of judge and Mufti, with consideration that judgment given by the judge in the place of ijtihad resolves the dispute" [1]

In the Fatwa of Ibn Najim, it is stated, وَلَا يَمْنَعُ قَبُولَهَا: أَيْ الزِّيَادَةِ حُكْمُ الْحَنْبَلِيِّ بِالصِّحَّةِ؛ لِأَنَّهُ غَيْرُ صَحِيحٍ، قَالَ فِي الْحَامِدِيَّةِ وَفِيهِ نَظَرٌ؛ لِأَنَّ حُكْمَ الْحَاكِمِ يَرْفَعُ الْخِلَافَ "its acceptance is not prevented, i.e. the more validity of Hanbali judgment is not correct. He (Ibn Najim) says in Hameediya: this needs to be reviewed, because judgment of the ruler resolves the disagreement."" [2]

Az-Zaylai says, فَحَاصِلُهُ أَنَّ الَّذِي قَضَى بِهِ الْأَوَّلُ لَا يَخْلُو مِنْ أَرْبَعَةِ أَوْجُهٍ: إمَّا أَنْ يَكُونَ مُوَافِقًا لِلدَّلِيلِ الشَّرْعِيِّ كَالْكِتَابِ وَالسُّنَّةِ وَالْإِجْمَاعِ ، فَلَا كَلَامَ فِيهِ ، وَإِمَّا أَنْ يَكُونَ مُخْتَلَفًا فِيهِ اخْتِلَافًا يَسْتَنِدُ كُلُّ وَاحِدٍ إلَى دَلِيلٍ شَرْعِيٍّ فَكَذَلِكَ حُكْمُهُ لَا يَتَعَرَّضُ لَهُ بِنَقْضٍ بَعْدَ مَا حَكَمَ بِهِ حَاكِمٌ مِمَّنْ أَصْحَابِ الشَّافِعِيِّ رَحِمَهُ اللَّهُ الْيَمِينَ بِالطَّلَاقِ الْمُضَافِ فَأَبْطَلَ الْيَمِينَ نَفَذَ ، وَلَا يَقَعُ الطَّلَاقُ بِتَزَوُّجِهَا بَعْدَهُ "In summary, what is judged at first is not devoid of four things: Firstly, the judgement agrees with the Shariah evidence such as the Quran, Sunnah and Ijma. There is no argument in this regard. Secondly, the judgement has differences within which everyone relies on the Shariah evidence (of their own). As such its judgement is not subjected to reversal, after it has been judged by the ruler. For instance, if the issue of Yameeni Talaq (oath of divorce) is taken to the ruler, by the people who follow Shafi (rh) and the ruler enacts to revoke the oath, then divorce does not occur by marrying her after that." [3]

The three following is taken from these sayings of Hanafi Ulema: First: They acknowledge the principle that judgment of the ruler resolves the dispute. Second: They differ between the issues that are agreed upon and the issues that have disagreement. This applies to the issues that are subjected to ijtihad. Third: This relates to the issues that have valid basis before the judiciary.

All these are indicated by Ibn Abideen by saying: قَضَاءَ الْقَاضِي فِي مَحَلِّ الِاجْتِهَادِ يَرْفَعُ الْخِلَافَ "judgment of the judge in the area of ijtihad resolves the disagreement." [4]

Second: Maliki Jurisprudence:

Likewise, the Maliki 'Ulema mention in their sayings about the issue of establishing the prohibition of breastfeeding the adult and the annulment of this ruling by the judgment of the ruler. They also mention the issue of marital intercourse, with a woman who has been absolutely separated by divorce, in that they mention the judgement of the ruler for that. So how is the matter resolved?

It is stated in Sharh Kabir, وَلَيْسَ لَهُ بَعْدَ فَسْخِ النِّكَاحِ الْأَوَّلِ أَنْ يَرْفَعَ الْأَمْرَ لِمَنْ يَرَى أَنَّ رَضَاعَ الْكَبِيرِ لَا يُحَرِّمُ فَيَحْكُمَ بِصِحَّتِهِ؛ لِأَنَّ حُكْمَ الْحَاكِمِ يَرْفَعُ الْخِلَافَ كَمَا مَرَّ "After the annulment of the first marriage, he must not then raise the matter with one who sees that breastfeeding an adult is not haram, so that he judges that the marriage is valid. This is because the judgment of the ruler resolves the disagreement as stated before." [5]

Imam Desooqi says, إذَا حَكَمَ الشَّافِعِيُّ بِحِلِّ مَبْتُوتَةِ مَالِكِيٍّ بِوَطْءِ صَغِيرٍ فَإِنَّ هَذَا الْحُكْمَ رَافِعٌ لِلْخِلَافِ - فَلَيْسَ لِلْقَاضِي الْمَالِكِيِّ نَقْضُهُ وَالْحُكْمُ بِعَدَمِ الْحِلِّ - وَمُحِلٌّ لِلْحَرَامِ عَلَى مَذْهَبِ الزَّوْجِ "If a Shafi 'aalim judges the permissibility of an absolutely divorced Maliki woman to have marital intercourse with the breast fed, this judgment resolves the disagreement. It is not allowed for the Maliki judge to repeal it and judge it as impermissible, the pretext for prohibition being upon the madhab of the husband."

Some of them quote, whilst others disagree, that this principle is specific to the subject of transactions (Muamalaat) and the subject of Ibadah (worship) is not included within it.

It is mentioned in Sharh Mukhthasir Khaleel authored by Al-Kharashi that, فَحَاصِلُهُ أَنَّ حُكْمَ الْحَاكِمِ يَرْفَعُ الْخِلَافَ وَلَوْ كَانَ الْحُكْمُ بِطَرِيقِ اللُّزُومِ لِحُكْمٍ آخَرَ تَبَعًا، وَالْحَاصِلُ أَنَّ حُكْمَ الْحَاكِمِ لَا يُدْخِلُ الْعِبَادَاتِ إلَّا تَبَعًا وَحَقَّقَهُ الْقَرَافِيُّ وَخَالَفَهُ تِلْمِيذُهُ ابْنُ رَاشِدٍ فَجَوَّزَ دُخُولَهُ فِيهَا " In summary, the judgment of the ruler resolves the disagreement, even if the judgment is by the way of necessity for another ruling, in accordance. In conclusion, the judgment of the ruler does not interfere with the worship, except regarding the accordance. Al-Qarafi approved of this, whilst his student Ibn Raashid disagreed with him, as he allowed the rulers' intervention in Ibaadah."

The above mentioned Al-Qarafi stated that the judgment of the ruler resolves the disagreement, whether the judgment of the ruler is by conformity or by implication or by commitment. [6]

Also they mentioned terms and conditions for that; It has come in Sharh Sagheer ma'a Haashiya Sawi, (وَرَفْعُ) حُكْمُ الْعَدْلِ الْعَالِمِ (الْخِلَافَ) الْوَاقِعَ بَيْنَ الْعُلَمَاءِ. وَكَذَا غَيْرُ الْعَدْلِ الْعَالِمِ إنْ حَكَمَ صَوَابًا - كَمَا يُعْلَمُ مِمَّا تَقَدَّمَ - فَإِنَّهُ يَرْفَعُ الْخِلَافَ وَلَا يُنْقَضُ، وَكَذَا الْمُحَكَّمُ. وَالْمُرَادُ: أَنَّهُ يَرْتَفِعُ الْخِلَافُ فِي خُصُوصِ مَا حَكَمَ بِهِ أَخْذًا مِنْ قَوْلِهِ الْآتِي وَلَا يَتَعَدَّى لِمُمَاثِلٍ "The judgment of the just one of 'Ilm resolves the disagreement that occurs between the 'Ulema. The same applies to the unjust one of 'Ilm if he judges correctly, as it is known from the precedence. This will resolve the disagreement and it will not be revoked. The same applies to the ruler. The intention is to resolve the difference regarding what he judged. It is taken from the saying, "Do not transgress upon what has been agreed upon."" [7]

It also says, وَتَقَدَّمَ أَنَّ الْعَدْلَ الْعَالِمَ لَا تُتَعَقَّبُ أَحْكَامُهُ لَكِنْ إنْ ظَهَرَ مِنْهَا شَيْءٌ مِمَّا تَقَدَّمَ نُقِضَ. وَأَمَّا الْجَائِرُ وَالْجَاهِلُ فَتُتَعَقَّبُ أَحْكَامُهُمَا وَيُنْقَضُ مِنْهَا مَا لَيْسَ بِصَوَابٍ وَيَمْضِ مَا كَانَ صَوَابًا. وَالصَّوَابُ: مَا وَافَقَ قَوْلًا مَشْهُورًا أَوْ مُرَجَّحًا وَلَوْ كَانَ الْأَرْجَحُ خِلَافَهُ. (وَ) إذَا نُقِضَ (بَيَّنَ) النَّاقِضُ (السَّبَبَ) الَّذِي نَقَضَ الْحُكْمَ مِنْ أَجْلِهِ، لِئَلَّا يُنْسَبَ النَّاقِضُ لِلْجَوْرِ وَالْهَوَى بِنَقْضِهِ الْأَحْكَامَ الَّتِي حَكَمَ بِهَا الْقُضَاةُ. "It is precedent that judgments of the just of 'Ilm will not be reviewed. However, if any of the aforementioned things appears in it, then they will be revoked. As for unjust and ignorant persons, their judgments will be reviewed and what is wrong amongst them will be revoked, whilst what is correct will be deemed effective. The correct stance is to agree with a well-known or outweighed opinion, even if the most outweighed opinion disagrees with it, when the one who revokes explains the reason for the invalidity, lest the one who revokes indulges in oppression and whims, for his revoking of the judgments issued by the ruler."

He then clarifies that the judgment of the ruler does not depend on his saying alone, "I have judged," saying, "Instead, all that indicates mandatory abidance in his statement, are judgments. These include the statements of the ruler, 'I have transferred the ownership of these goods to Zaid' or 'you have owned it because of its plaintiffs' and so on. These are all judgments, as well as, 'I have nullified this contract of marriage or sale' or 'I have invalidated it' or 'I have revoked it', or 'I have decreed it' or other words, that indicate his denial or approval after the occurrence of what is obliged, in the matter of judgment in terms of presenting the claim or testimony or establishing one's evidence, excuse and acclamation. This is the meaning of the saying: There must be a valid claim to be presented for a judgment, whose validity is due to its nature of being accepted and listened to, entailing its requirements such as testimony or evidence for renouncement and others. Matters that are considered as judgments, even if he did not say 'I have judged' are also statements such as: 'Take him and Kill him', 'Give him the punishment of Hadd' or 'Give him the punishment of Ta'zeer'. Matters that are not considered as judgments, even if the matter is resolved by him are like, the Marriage of a woman by herself without a guardian and the trade during the time of Jumma Adhan. However, if the ruler merely says, 'I do not permit it', it is not considered as judgment and it does not resolve the disagreement. This is because it is from the subject of fatwa, as opined by Ibn Shash. Other than these are judgments, with what he views from his madhab.

Similar to this is the saying, "I give a Fatwa" for a judgment he was asked about like, in the manner of, 'Is this permissible?' or 'is it correct or not?' So the ruler responded by saying 'it is valid' or 'it is not valid', his Fatwa will not be considered as a binding judgment that resolves the

dispute. This is because giving Fatwa is providing the information about the judgment and not for the sake of abidance by it. It is true, however, that the saying of the ruler, 'I do not permit it,' even after presenting the claim, is a judgment that resolves the disagreement. If it is merely giving information, when he is asked about a woman who got married without a guardian, and he responded by saying, 'I do not permit it', then it is a fatwa and not a binding judgement. The statement of al-Karshi indicates that. Ibn Arafa says, مقتضى جعله فتوى أن لمن ولي بعده أن ينقضه "the requirement for making it a fatwa is that the one who assumes the authority after him can revoke it." (End Quote) [8]

From the statements of the Maliki scholars, we can take the following matters: First: They regard that principle the same as Hanafi 'Ulema do. Second: They differ over the domain of its implementation, whether it includes the subjects of worship, or is it limited and specific to the subjects of transactions alone. Third: They distinguish between the subject of giving fatwa and the subject of issuing a judgment. Fourth: the judgment includes the saying, action and acknowledgement of the ruler. Fifth: They consider the valid judgment to be issued by the just person alone, and not the unjust person. The judgments of the latter will be reviewed for its revocation, if it opposes the truth, whilst he will be sinful for the judgment made on the specific issue. Sixth: The connection of what they mentioned of implementation in the context of judiciary, as it is clarified by their statements, لَا بُدَّ لِلْحُكْمِ مِنْ تَقَدُّمِ دَعْوَى صَحِيحَةٍ، وَصِحَّتُهَا لِكَوْنِهَا تُقْبَلُ وَتُسْمَعُ وَيَتَرَتَّبُ عَلَيْهَا مُقْتَضَاهَا مِنْ إقْرَارٍ أَوْ بَيِّنَةِ عُدُولٍ " There must be a valid claim to be presented for a judgment, whose validity is due to its nature of being accepted and listened to, entailing its requirements such as confession or testimony of the just."

Third: Shafi Jurisprudence:

Similarly, Shafi fuqaha mentions in their sayings about the affirmation of the beginning of Ramadan by the ruler and his ruling for that. They also mention about the bringing forward or delaying the timing of the Jummah prayer and his judgment upon the validity of marriage, along with the wrongdoing (fisq) of a guardian or witnesses.

It is said in Tuhfathul Muhtaj, مُرَادَهُ حُكْمٌ بِقَرِينَةِ اسْتِشْهَادِهِ بِكَلَامِ الْمَجْمُوعِ؛ لِأَنَّ الثُّبُوتَ لَيْسَ بِحُكْمٍ وَالْحُكْمُ هُوَ الَّذِي يَرْفَعُ الْخِلَافَ لَكِنْ يَتَرَدَّدُ النَّظَرُ هَلْ يَكْفِي قَوْلُهُ حَكَمْت بِأَنَّ أَوَّلَ رَمَضَانَ يَوْمُ كَذَا وَإِنْ لَمْ يَكُنْ حُكْمًا حَقِيقِيًّا كَمَا تَقَدَّمَ فِي كَلَامِ الشَّارِحِ أَوْ لَا بُدَّ مِنْ حُكْمٍ حَقِيقِيٍّ كَأَنْ تَرَتَّبَ عَلَيْهِ حَقُّ آدَمِيٍّ مَحَلُّ تَأَمُّلٍ ثُمَّ مَحَلُّ مَا ذُكِرَ حَيْثُ صَدَرَ الْحُكْمُ مِنْ مُتَأَهِّلٍ أَوْ غَيْرِ مُتَأَهِّلٍ نَصَبَهُ الْإِمَامُ عَالِمًا بِحَالِهِ "His indication is the judgment by the indication of seeking its witness from the statements of the group. This is because affirming evidence is not the judgment. The judgment is what resolves the dispute. However, the view is uncertain as to whether it is enough for the ruler to say: 'I have judged that the first day of Ramdhan is so and so.' This is as to whether it certainly is, or is not, an actual judgment, as mentioned in the saying of the commentator. This is such as when the human right is ordered in the place of judgement, wherein the place where the judgement is issued is mentioned, whilst the judgment is issued from a qualified or unqualified person, whom the Imam appoints as an 'Aalim in this case." [9]

It is also said in Tuhfathul Muhtaj, وَقَوْلُهُمْ حُكْمُ الْحَاكِمِ يَرْفَعُ الْخِلَافَ مَعْنَاهُ أَنَّهُ يَمْنَعُ النَّقْضَ بِشَرْطِهِ اصْطِلَاحًا لَا غَيْرُ وَإِلَّا فَلِشَافِعِيٍّ وَقَفَ عَلَى نَفْسِهِ بَيْعُ الْوَقْفِ، وَإِنْ حَكَمَ بِهِ حَنَفِيٌّ "Regarding their saying about the judgement of the ruler resolves the disagreement, its meaning is that the judgement prevents its revoking, by its conventional condition and nothing else. Otherwise those who follow Shafi madhab would adhere to their opinion on selling the Waqf, even if it is judged by the Hanafi school of thought." [10]

It is also said in Tuhfathul Muhtaj, (وَلِصِحَّتِهَا مَعَ شَرْطٍ) أَيْ شُرُوطٍ (غَيْرِهَا) مِنْ الْخَمْسِ (شُرُوطٍ) خَمْسَةٌ (أَحَدُهَا وَقْتُ الظُّهْرِ) (قَوْلُهُ: وَلَوْ أَمَرَ الْإِمَامُ بِالْمُبَادَرَةِ إلَخْ) كَانَ الْمُرَادُ بِالْمُبَادَرَةِ فِعْلُهَا قَبْلَ الزَّوَالِ وَبِعَدَمِهَا تَأْخِيرُهَا إلَى وَقْتِ الْعَصْرِ كَمَا قَالَ بِكُلٍّ مِنْهُمَا بَعْضُ الْأَئِمَّةِ وَلَا بُعْدَ فِيهِ، وَإِنْ لَمْ يُقَلِّدْ الْمُصَلِّي الْقَائِلَ بِذَلِكَ لِمَا سَيَأْتِي أَنَّ حُكْمَ الْحَاكِمِ يَرْفَعُ الْخِلَافَ ظَاهِرًا وَبَاطِنًا... وَلَا بُعْدَ فِيهِ إلَخْ فِيهِ وَقْفَةٌ ظَاهِرَةٌ فَإِنَّهُمْ صَرَّحُوا بِأَنَّهُ لَا يَجُوزُ لِلْإِمَامِ أَنْ يَدْعُوَ النَّاسَ إلَى مَذْهَبِهِ وَأَنْ يَتَعَرَّضَ بِأَوْقَاتِ صَلَوَاتِ النَّاسِ وَبِأَنَّهُ إنَّمَا يَجِبُ امْتِثَالُ أَمْرِ الْإِمَامِ بَاطِنًا إذَا أَمَرَ بِهَا أَوْ عَدَمِهَا فَالْقِيَاسُ وُجُوبُ امْتِثَالِهِ "Its (Jumma Prayer for travel) validity is conditional, meaning with conditions. 'Other conditions' means the other five conditions, as said "'One of the conditions is the time of Dhuhr prayer". As for "If an Imam ordered to take initiative…." what is intended by this is the initiative taken by the Imam before noon, and the not delaying until the time of Asr prayer, as said by some of the 'Ulema about both initiatives and nothing more. If one who leads the prayer does not follow this saying, then the judgment of the ruler resolves the disagreement, explicitly and implicitly… And his saying: "as said by some of the scholars about both initiatives" and nothing more. This statement has apparent prohibition, as they clearly stated that it is not permissible for an Imam to call people into his Madhab and to oppose the prayer timings of the

people. They also clearly stated that it is obligatory to comply with the command of Imam implicitly, if he orders it or not, because the analogy is the obligation to comply with him." [11]

It says in Scholium (Hashiya) of Jumal وَأَمَّا الْقَاضِي فَيَجِبُ عَلَيْهِ أَنْ يُفَرِّقَ بَيْنَهُمَا إذَا عَلِمَ بِذَلِكَ، وَالْأَصْلُ فِي الْعُقُودِ الصِّحَّةُ، فَلَا يَجُوزُ الِاعْتِرَاضُ فِي نِكَاحٍ وَلَا غَيْرِهِ عَلَى مَنْ اسْتَنَدَ فِي فِعْلِهِ إلَى عَقْدٍ مَا لَمْ يَثْبُتْ فَسَادُهُ بِطَرِيقِهِ وَهَذَا كُلُّهُ حَيْثُ لَمْ يَحْكُمْ حَاكِمٌ بِصِحَّةِ النِّكَاحِ الْأَوَّلِ مِمَّنْ يَرَى صِحَّتَهُ مَعَ فِسْقِ الْوَلِيِّ وَالشُّهُودِ، أَمَّا إذَا حَكَمَ بِهِ حَاكِمٌ فَلَا يَجُوزُ لَهُ الْعَمَلُ بِخِلَافِهِ لَا ظَاهِرًا وَلَا بَاطِنًا لِمَا هُوَ مُقَرَّرٌ أَنَّ حُكْمَ الْحَاكِمِ يَرْفَعُ الْخِلَافَ، وَلَا فَرْقَ فِيمَا ذُكِرَ بَيْنَ أَنْ يَسْبِقَ مِنْ الزَّوْجِ تَقْلِيدٌ لِغَيْرِ إمَامِنَا الشَّافِعِيِّ مِمَّنْ يَرَى صِحَّةَ النِّكَاحِ مَعَ فِسْقِ الشَّاهِدِ وَالْوَلِيِّ أَمْ لَا "As for the Judge, it is obligatory upon him to differentiate between both. The contracts in origin are valid and it is not permissible to oppose the one whose action depends on the contract, unless his contract is proven to be fasid (corrupted) in its formation, in the case of marriage or others. All these are applicable, even if the ruler did not judge the validity of the first marriage of the one who views his marriage as valid, despite the wrongdoing (Fisq) of the guardian or witnesses. If a ruler judges that, it is not permissible for him to act opposite to the judgment, either explicitly or implicitly, as it has been decreed that the judgment of the ruler resolves the disagreement. There is no distinction in what was mentioned between the husbands who follow the Ulema other than our Shafi scholars, who view the validity of marriage, despite the wrongdoing (Fisq) of the witness or guardian and between others." [12]

It says in Scholium (Hashiya) of Bajeerami, وَصَرَّحَ الْأَصْحَابُ بِأَنَّ حُكْمَ الْحَاكِمِ فِي الْمَسَائِلِ الْخِلَافِيَّةِ يَرْفَعُ الْخِلَافَ وَيَصِيرُ الْأَمْرُ مُتَّفَقًا عَلَيْهِ. وَقَوْلُهُ: " بِأَنْ حَكَمَ الْحَاكِمِ " لَوْ حَاكِمَ ضَرُورَةٍ، وَمَحَلُّ ذَلِكَ كُلِّهِ حَيْثُ صَدَرَ حُكْمٌ صَحِيحٌ مَبْنِيٌّ عَلَى دَعْوَى وَجَوَابٍ "The Companions (ra) clearly stated that the judgment of the ruler in the issues of disagreements, resolves the disagreement. The matter becomes agreed upon. And his (Imam Al-Khateeb) saying: "the judgment of the ruler" i.e. if it is necessary for the ruler, all of this is because he issues correct judgment, based on the claim and response" [13]

The following matter can be taken from the statements of the Shafi scholars: First: They acknowledge the principle. Second: They clarify the meaning of this principle and the result of its implementation, which is the resolution of the dispute. The matter becomes agreed upon. And that it is not permissible to act opposite to the issued judgment, either explicitly or implicitly. They also clarify that: it is prohibited to revoke the judgment of the judge by its condition. [14] Third: The implementation of the principle is particular to the disagreement in judicial issues. This is their statement: "all of this is because he issues correct judgment based on the claim and response." And they say: "Otherwise those who follow Shafi madhab would stand on themselves for selling the Waqf, even if it is judged by the Hanafi school of thought." Fourth: They differ in the description of the judgement passed, whether it is enough for him to say: 'I have judged that the first day of Ramadhan is so and so,' if it is not a real judgment. Or there must be real judgment as a result of human right." Fifth: they regard passing judgment to be from the people of qualifications, as they say: where the judgment is issued from a qualified or unqualified person, whom Imam appoints as an 'Aalim in this case. Sixth: Inclusiveness of this principle within the subjects of worship, just like the subjects of contracts, personal situations and transactions. Seventh: They clearly stated that it is not permissible for the Imam to call the people upon his Madhab.

Fourth: Hanbali Jurisprudence:

Similarly, Hanbali Scholars mention in their statements about the issues of marriage without guardian, alimony, intercession, and some of the issues of neighborliness.

Mur'yi bin Yusuf says, وحكم الحاكم يرفع الخلاف؛ لكن لا يزيل الشيء عن صفته باطنًا، فمتى حكم له ببينةِ زورٍ بزوجيةِ امرأةٍ ووَطِئَ مع العلم؛ فكالزنا، وإن باع حنبلي متروك التسمية فحكم بصحته شافعي نفذ. ومن قلد في صحة نكاح صح، ولم يفارق بتغير اجتهاده كالحاكم بذلك "And the judgment of the ruler resolves the disagreement. However, it does not remove the thing from its intrinsic description, so when it is judged by false evidence of the marriage of a woman and the sexual intercourse with knowledge such as zina, and if the Hanbali did not contract the named and the Shafi judged its validity, then it will be executed. Whoever follows the validity of a valid marriage, and does not differ by changing his opinion, is like the ruler in that." [16]

Al-Rahibani says in Muthalib, (وَعَقْدِ نِكَاحٍ بِلَا وَلِيٍّ) حَيْثُ رَآهُ وَفَسْخِ لَعْنَةٍ وَعَيْبٍ؛ فَهُوَ حُكْمٌ يَرْفَعُ الْخِلَافَ إنْ كَانَ. قَالَ فِي " الْمُغْنِي " وَغَيْرِهِ فِي بَيْعِ مَا فُتِحَ عَنْوَةً: إنْ بَاعَهُ الْإِمَامُ لِمَصْلَحَةٍ رَآهَا صَحَّ؛ لِأَنَّ فِعْلَ الْإِمَامِ كَحُكْمِ الْحَاكِمِ، وَفِيهِ أَيْضًا لَا شُفْعَةَ فِيهَا إلَّا أَنْ يَحْكُمَ بِبَيْعِهِ حَاكِمٌ أَوْ يَفْعَلُهُ الْإِمَامُ أَوْ نَائِبُهُ، وَفِيهِ أَيْضًا أَنَّ مَا فَعَلَهُ الْأَئِمَّةُ لَيْسَ لِأَحَدٍ نَقْضُهُ "'The marriage contract without guardian' which he opined as nullified, blameworthy and deplored. It is the judgment that resolves the disagreement if there is any. He (Ibn Qudama) in 'Mughni' and others say about selling the goods that were opened forcefully (through fighting): if the Imam sells it for the

benefits he sees, then it is valid. This is because the action of the Imam is like the judgment of the ruler, also it does not have intercession, except what is judged by the ruler or what is done by the Imam or his delegate. Also there is no one to revoke what is done by rulers." [17]

It is also said, (فَإِطْلَاقُهُ) أَيْ الْمَحْبُوسِ أَوْ إذْنُهُ أَيْ: الْقَاضِي (وَلَوْ فِي قَضَاءِ دَيْنٍ وَفِي نَفَقَةٍ لِيَرْجِعَ) قَاضِي الدَّيْنِ وَالْمُنْفِقُ حُكْمٌ ، (وَقُرْعَتُهُ) فِي أَيْ مَوْضِعٍ شُرِعَتْ فِيهِ (حُكِمَ بِرَفْعِ الْخِلَافِ إنْ كَانَ) فِي الْمَسْأَلَةِ خِلَافٌ لِصُدُورِهِ عَنْ رَأْيِهِ وَاجْتِهَادِهِ كَمَا لَوْ صَرَّحَ بِالْحُكْمِ "'its release' i.e. of the sequestered property or his permit i.e. of the judge. 'Even if it is the matter of paying off the debt or alimony, he must fulfill' i.e. the one who pays off the debt and who gives alimony. 'his liability' in any matter that is legislate, 'judgment is the one that resolves the dispute' i.e. if there is any dispute, the judge would issue judgment according to his view and ijtihad, just as he stated the judgment." (18)

Mansour Al-Bahouti says: "'إذْنُهُ أَيْ: الْقَاضِي (وَلَوْ فِي قَضَاءِ دَيْنٍ وَفِي نَفَقَةٍ لِيَرْجِعَ) قَاضِي الدَّيْنِ وَالْمُنْفِقُ حُكْمٌ his permission' i.e. the judge's permission. 'even if it is for paying off the debt" and in 'alimony, he must fulfill' i.e. paying the debt and giving the alimony is a judgment." (19)

Al-Bahouti continues about neighborliness, (وَ) إذْنُهُ فِي (وَضْعِ مِيزَابٍ وَ) وَضْعِ (بِنَاءٍ) مِنْ جَنَاحٍ وَسَابَاطٍ بِدَرْبٍ نَافِذٍ بِلَا ضَرَرٍ حُكْمٌ، فَيُمْنَعُ الضَّمَانُ ; لِأَنَّهُ كَإِذْنِ الْجَمِيعِ، (وَ) إذْنُهُ (فِي غَيْرِهِ) كَوَضْعِ خَشَبٍ عَلَى جِدَارِ جَارٍ بِشَرْطِهِ حُكْمٌ، (وَأَمْرُهُ) أَيْ الْقَاضِي (بِإِرَاقَةِ نَبِيذٍ) حُكْمٌ ذَكَرَهُ فِي الْأَحْكَامِ السُّلْطَانِيَّةِ فِي الْمُحْتَسِبِ، (وَقُرْعَتُهُ) أَيْ الْقَاضِي (حُكْمٌ يَرْفَعُ الْخِلَافَ إنْ كَانَ) ثَمَّ خِلَافٌ، وَذَكَرَ الشَّيْخُ تَقِيُّ الدِّينِ أَنَّهُ لَوْ أَذِنَ أَوْ حَكَمَ لِأَحَدٍ بِاسْتِحْقَاقِ عَقْدٍ أَوْ فَسْخٍ فَعَقَدَ أَوْ فَسَخَ لَمْ يَحْتَجْ بَعْدَ ذَلِكَ إلَى حُكْمِهِ بِصِحَّتِهِ بِلَا نِزَاعٍ "The judge's permission within "siting a drain" and siting a "building" means with the compartmentalizing and arcaded passaging, implemented without causing any harm, is a judgment. The warrant is denied, this is because it like the permission for all and his permission for others, such as placing the wood on the wall of the neighbor, is a judgment by condition. 'His command' means the judge's command. 'Wasting of the fermented' is a judgment mentioned in Ahkam Sultaniyya for the Muhtasib. 'His liability' i.e. of the judge. "The judgment resolves the disagreement if any.' Sheikh Taqiuddin mentions that if the judge permits or judges a person for the entitlement of a contract or its annulment, then it is contracted or annulled. After that, there is no need for his judgement for its validity, without dispute.'" (19)

He also states, (وَكَذَا نَوْعٌ مِنْ فِعْلِهِ) أَيْ الْحَاكِمِ (كَتَزْوِيجِهِ يَتِيمَةً) بِالْوِلَايَةِ الْعَامَّةِ (وَشِرَاءِ عَيْنٍ غَائِبَةٍ) مَوْصُوفَةٍ بِمَا يَكْفِي فِي سَلَمٍ لِقَضَاءِ دَيْنِ غَائِبٍ وَمُمْتَنِعٍ "'The same applies to the type of his action' i.e. the ruler. 'Such as marrying him as an orphan' i.e. with general guardianship. 'And the purchase of the absent' described as sufficient in submitting to pay the debt to an absent and abstained. (19)

The following matters can be discerned from the statements of the Hanbali 'Ulema: First: They acknowledge the principle that the judgment of the ruler resolves the disagreement if it exists, and that the principle applies to the issues of ijtihad. Second: Any judgment does not remove its intrinsic description, meaning that the judgment does not change the halal into haram of the real matter and vice versa. Third: The action of the imam (ruler) is like the judgment of the ruler. And no one can revoke what is done by the rulers (20). Fourth: Delegates of the Imam act in the place of Imam.

It is clear from what has been presented above that the saying "The judgment of the ruler resolves the disagreement" is an agreed-upon principle amongst the Sharia Fuqaha of the four schools of thought and those who follow them. It is also clear that it is specific to the subject of ijtihad.

O Muslims! Your affairs will be unified, your state of affairs will be consolidated, the oppressed of you will be supported, your Deen and worship will be protected, your sanctities will be honored, the disputes amongst you will be resolved only by your Khilafah and your Imam. The Messenger of Allah (saw) said, **«وَإِنَّمَا الْإِمَامُ جُنَّةٌ يُقَاتَلُ مِنْ وَرَائِهِ وَيُتَّقَى بِهِ»** "**Only the Imam is a shield, behind whom you fight and you protect yourself with."** (Bukhari). Thus, the just Imam is the one who straightens all those who incline to wrong, reforms all the corrupters, pursues those who are unjust and supports all those who are oppressed.

So be strong in your resolve to establish the Islamic state, the Second Khilafah Rashidah upon the Method of Prophethood that will protect your Deen, your blood, your honor, uniting your lands, reviving your glory and honor. So for the good actions let those who work, work.

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References

1) Dur Mukhtar Wa Hashiya Ibn Abideen (Radd Muhtar) (3/347)

2) Ibid (6/27)

3) Tabyeen Al-Haqa'iq Sharh Kanz ad-daqa'q wa hashiyath Shulabi (4/189)

4) Radd Muhtar ala Dur Mukhtar (3/347)

5) Sharh Kabeer li Sheik Duraidir wa Hashiya Desuqi (4/158)

6) Sharh Mukhtasir Khaleel lil Khurashi (2/75)

7) Hashiya Sawi Ala SHarh Shagheer- bi Lughathi Salek li Aqrabil Masalik (4/221)

8) Ibid (4/227)

9) Tuhfathul Muhtaj fi Sharh al Minhaj wa Hawashi as Shurwani wal Ibadi (3/383)

10) Ibid (7/239)

11) Ibid (2/419)

12) Hashiyathul Jumal ala Sharh Manhaj (4/142)

13) Hashiyathul Bajeerami alal khatheeb

14) Warning: It came in the jurisprudence of the four schools of thought (1/501): "Is the judgment of the ruler required for fasting? The judgment to affirm the crescent moon and the obligation to fast according to it is not required for the people, but if he judges the affirmation of the crescent based on any way in his madhab, then fasting must be imposed on all Muslims, even if it contradicts the madhab of some of them; Because the judgment of the ruler removes the dispute, and this is agreed upon, except according to the Shafi'is."

15) This is restricted amongst the scholars with the approval of the right to judge and thus the dispute rises as the judgment is issued by an unqualified person appointed by the imam.

16) Daleel Talib li Daleel Mutalib p 348

17) Mutalib Uli Nuha fi Sharh Ghayathil Munthaha (6/486)

18) Ibid

19) Sharh Mutaha Irada Daqaiq uli Nuha li Sharh Muntaha (3/503)

20) This is also stipulated by the Hanafi jurists. Ibn Abideen says in Hashiya. His saying (The act of the judge is a judgement) this applies to the likes in terms of branch and exception. It is mentioned in Bahrul Muhit, the first book of judiciary: the action of a judge is of two types". And see: the appointee of the ruler in relation to the hesitation of the two conflicting parties about the Ahkam (1/37).

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