
General principles of the system of government in Islam

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Abstract:

Islamic law is a comprehensive system of governance that includes legislation, enforcement, and adjudication, and is based on reason, social values, and societal interests. Its adaptability stems from its rational foundation and civilizational goals, making it suitable for application in both Muslim and non-Muslim societies, including non-Muslims and foreigners residing within Islamic lands.

The legal provisions of Islamic law are closely linked to religious belief, emphasizing divine authority and accountability in the afterlife. This intertwining of legal and moral obligations reinforces its moral dimension. Justice Austin's analytical doctrine is consistent with this perspective, suggesting that laws are authoritative commands that require compliance and rational analysis to adapt to societal changes.

Islamic governance is based on flexible core principles—consultation, justice, equality, and obedience to leadership—allowing for diverse applications across different eras and contexts. The Qur'an does not specify governmental structures or electoral methods but emphasizes core values that are adaptable to societal development.

Islamic law places the public interest first, prohibits corruption, and allows rulers to seize private property for the public good when needed. It also allows the imposition of taxes to meet the needs of society, and links its provisions to the interests of the people, whether immediate or future.

Keywords: General Principles, the System of Government, Islamic Law

Introduction:

Islamic law is a comprehensive system of government in terms of legislation, implementation and judiciary. It is supported by sound logic, has its foundations of social values and has its goals from the interests of society that it aims to achieve. Therefore, it has a civilized character and has its suitability for application derived from its logical support, social values and civilized goals, independent of its authentic religious character. From this perspective, it was conceivable that Islamic law would be applied as a

system of government in a non-Islamic society, or in an Islamic society on non-Muslims among its individuals and on foreigners who are present on its land. The practical legal rulings were mentioned in close connection with religious belief and accompanied by the reminder that they are from God and must be acted upon, otherwise the punishment will be severe in the afterlife.

Hence, the jurist Austin called for his analytical doctrine, which states that laws are orders issued by the supreme authority and to which the people are subject. Thus, it is necessary for the man of

law to analyze them because the legal rule is an open framework to receive all new developments in life and to several possibilities due to its rational nature, while the issues required to be resolved in the end are of a special nature.

The system of government in Islam is based on general basic principles whose generality and flexibility allow for application in different forms and methods, leaving the details and particles to develop and be distinguished by the changing circumstances of the nation in each era, in a way that achieves the good of the Islamic society. The most important of these principles are (consultation, justice, equality, obedience to the guardian). Note that the Holy Quran did not address the nature of government, nor the methods of electing the guardian (head of state), nor the conditions that must be met by the president, nor the method of electing the people of consultation (people of contract and solution), nor anything that changes with the change of life, especially with regard to the constitutional system and the relationship between the ruler and the ruled and the rights and duties between the shepherd and the subjects. However, it ordered the availability of main foundations, such as consultation, justice, equality, and obedience to the guardian. These general foundations came in Islamic legislation to make things easier for people and organize their life affairs. To this end, it forbade corruption in all its forms and shapes, and presented the public interest over the private interest as a method in the policy of governance and the administration of the state, and permitted the guardian to remove Private property is for the public benefit, and it also permits the imposition of taxes whenever the Islamic nation needs this measure. Islamic legislation has made its provisions linked to the interests of the people, whether they exist or not.

First: The importance of research:

In order to emphasize the application of the general principles of Islamic law, and to achieve justice, because one of the most prominent and important duties of the state is to provide justice and to strive to support and assist it, and to bring the state system to good governance, and laws and

regulations are not legislated in isolation from God's law. Since the dawn of history, tyrants among people have been accustomed to the idea of going against the will of truth and goodness.

Second: Research methodology:

The nature of research into historical and legal topics and rulings in general has forced us to rely on the analytical approach, which is based on describing the texts as they are, without addition or subtraction, and then analyzing them on logical foundations to deduce the general principles upon which the rulings are based in the general policy of the Islamic state.

Third: Research structure:

To cover the basic ideas of the research topic and highlight its general framework, then address the study according to a research plan consisting of an introduction, two chapters, a conclusion containing the most important results and recommendations, and a list of research sources.

The first topic:

Shura and justice:

Shura and justice are among the lofty principles of good governance, upon which the system of government in Islam is based. Accordingly, we will divide this topic into two sections. We will devote the first section to explaining the principle of Shura, and we will devote the second section to explaining the principle of justice.

The first requirement:

The principle of Shura:

The principle of Shura is one of the most important constitutional principles on which the system of government in Islam is based. It is a principle that is consistent with the nature of the Arabs and their simple way of life and their acceptance of a great Sharia. The Holy Qur'an referred to the authority of Shura in its address to the Noble Prophet Muhammad (PBUH) by saying (And consult them in the matter¹⁾ Then he made it the basis for the ruling by saying: (And their

(1)Al Imran, verse 159

command(Consultation among them)⁽¹⁾Their word "command" refers to the public good and that they cooperate as one hand to work for it.⁽²⁾It was mentioned in Nahjul Balagha on the authority of Imam Ali (peace be upon him): "Consultation is the essence of guidance, and he who is satisfied with his opinion has taken a risk."

Based on the principle of Shura, Islam created the Islamic Caliphate system as a guarantee of good governance following the death of the Noble Messenger, so that the Caliph would preserve the religion, call for it, fight for its sake, and implement its rulings.⁽³⁾So that justice may prevail in the Islamic state, far from injustice, tyranny and monopoly of rule. The principle of Shura was established so that the ruler would not monopolize opinion and act independently in the affairs of the state, as we see today in the dictatorial regimes that have dragged the country and its people into ruin and destruction. Shura prevents tyranny and respects freedom of opinion and other opinions in order to achieve the public good.⁽⁴⁾Whereas working on the principle of Shura in making every decision related to the supreme interests of the nation, this is what the aforementioned Qur'anic verses indicate.⁽⁵⁾In order to implement a sound system of government based on the principles of the tolerant Islamic Sharia, the first duty of the Imam (the ruler) is to work according to the principle of Shura, while the duty of the nation is to obey the Imam. He interprets obedience in a new way on the basis of,

It is the commitment of each person to contribute to the life of the community and to cooperate.⁽⁶⁾In order to achieve the public good and ensure the selection of a trustworthy ruler for the interests of

the nation, the noble Messenger Muhammad (PBUH) established a general principle, which is the principle of consultation, which the Rightly-Guided Caliphs, the Companions, and the Followers followed after him until this day. It is a rational and humane principle that seeks to reach through it the sound opinion and correct ruling that is in accordance with the law of God Almighty.⁽⁷⁾The ruler cannot do without consultation as a lofty principle in Islamic law. It has been said that God Almighty ordered His Prophet to do so in order to reconcile the hearts of his companions, so that those who came after him would follow his example, and to extract from them their opinion on matters for which no revelation was sent down.⁽⁸⁾With the aim of reaching a ruling inspired by the spirit of the Sharia in light of the evidence of public interests and approval as a principle of the principles of the tolerant Islamic Sharia, and consultation is the principle of religion and the Sunnah of God in the worlds, and it is a right upon all creation from the noble Messenger Muhammad (PBUH) to the lowest creation after him in their degrees, and it is a meeting.

On a matter, everyone indicates his opinion, taken from the indication⁽⁹⁾It was mentioned that Imam Ali (PBUH) consulted the people and they advised him to stay in Kufa for most of that time.⁽¹⁰⁾Shura in this sense is a survey of the opinion of the nation or its representative in public matters related to it. In this context, in general, it is a collective intellectual effort that aims to adopt a common position regarding a political, social, economic, or other issue that has not been

(1)Shura, verse 38

(2)Muhammad Jawad Mughniyah, The Revealing Interpretation, 4th ed., Dar Al-Anwar, Printing, Publishing and Distribution, Beirut, Lebanon, p. 6\529

(3)Al-Tarmanini, Abdul Salam, History of Systems and Laws, 1st ed., 1975, Kuwait University, p. 478.

(4)Laila, Muhammad Kamil, Political Systems, 1st ed., 1962, Cairo edition, p. 221.

(5)Al-Zalmi, Mustafa Ibrahim, Principles of Jurisprudence in its New Fabric, p. 28.

(6)Ibn Taymiyyah, The Legal Policy for Reforming the Subjects, 3rd ed., 1955, Cairo, p. 157

(7)Ibn Hazm, Abu Muhammad bin Ahmad bin Saad, Summary of the Heroes of Analogy, Opinion and Approval, edited by Saad Al-Afghani, 1st ed., 1960, Damascus University Press, p. 11.

(8)Ibn Taymiyyah, previous source, p. 158

(9)Ibn Al-Azraq, Abu Abdullah, died in 896 AH, Bada'i' Al-Silk Silk fi Tabai' Al-Malik, edited by Ali Sami Al-Nashar, 1st edition, 1977, Ministry of Information Publications, Baghdad, p. 1\302

(10)Al-Daynuri, Ibn Qutaybah, Abu Muhammad Abdullah bin Muslim, died 276 AH, Imamate and Politics, edited by Taha Muhammad Al-Zayni, no date, Dar Al-Kutub Press, p. 1\85

addressed explicitly or implicitly in the Holy Qur'an and the Noble Prophetic Sunnah.

The second requirement:

Principle of justice:

Enjoining justice is one of the duties of Islam. God Almighty said: "Indeed, Allah commands justice and doing good."¹⁾ As God Almighty said in His Holy Book: (Indeed, Allah commands you to render trusts to whom they are due, and when you judge between people to judge with justice.)⁽²⁾ The justice.)⁽²⁾ The two verses included fulfilling the trust and justice in judgment. It is not necessary for the trust to be a physical object, such as money or a book. It could be a secret, advice, or action. It also included the necessity of justice in judgment between people, because whoever does not treat people fairly from himself has no right to appoint himself as a judge between them.⁽³⁾ Justice among people in the Islamic society was the state with all its affairs and concerns. When justice became widespread, everything after that became easy, and the noble saying (the structure is on the one who claims and the oath is on the one who denies) was the first pillar of the logic of the rulings issued by the judge to achieve justice, equality and fairness among the subjects in the Islamic society.⁽⁴⁾ Thus, justice can be defined as a feeling latent in the soul, revealed by the sound mind and inspired by the enlightened conscience.

It aims to give everyone his due.⁽⁵⁾ The idea of justice emerged to govern relations between members of society, achieve equality between them, eliminate fraud, deception and fraud, and compensate individuals for the harm they suffer as a result of the actions of others.⁽⁶⁾ If the Romans were inspired by the principles of justice from the spirit of Greek philosophy, and the English said

that they stem from the conscience of the king, then the mind in Islam is what derives these principles from the wisdom of legislation and its spirit, and according to the requirements of the laws of the development of life in all its aspects, then the principles of justice in Islamic law are not a theory independent of this law, but rather they are derived from its rulings and inspired by the concepts of justice in it. This is because Muslim jurists do not deny the development of life in all its forms, especially in the political aspect and what is related to the system of government and its general foundations and principles, including:

Justice, and the necessity of adapting the rulings to this development in the various aspects of life, so they approved amending the rulings by expanding their scope and specializing them or by adding new principles to them. This method was called (opinion), which is the interest sought from the legislation of the ruling, justified by bringing benefit to man and repelling harm from him. All of God's rulings that were revealed to the messengers and prophets all came for the benefit of man and his happiness, so they are justified by worldly and otherworldly interests or both.⁽⁷⁾ Justice in this sense is nothing more than the formal principle of equality, and justice cannot even be considered a principle of equality without this characteristic being present. Justice does not mean treating every individual in the same way without regard to individual differences, because this may lead to the same penalty being imposed on every person who committed a murder, without regard to factors such as mental disability or the young age of the accused.⁽⁸⁾ These differences must be taken into consideration in order to achieve the desired principle of justice required by Sharia and law to create a state of reassurance and societal stability.

Justice in Islam has gone far beyond what is known in any other divine or positive law, due to its importance in the life of society. We find the

(1) Surah An-Nahl, verse 90

(2) Surah An-Nisa, verse 58

(3) Muhammad Jawad Mughniyah, previous source, p. 354

(4) Al-Anbari, Abdul Razzaq Ali, The Judicial System in Baghdad in the Abbasid Era, p. 23

(5) Sufi Abu Talib, Principles of the History of Law, 1st ed., 1963, Cairo, p. 322.

(6) Ali Muhammad Jaafar, History of Laws and Stages of Islamic Legislation, 1st ed. 1986, Al-Mu'assasa Al-Jami'a for Studies, Publishing and Distribution, p. 135.

(7) Hashem Al-Hafez, Adam Wahib Al-Nadawi, History of Law, 1st ed., Al-Atik Publisher, Cairo, Legal Library Distribution, Baghdad, p. 79

(8) Dennis Lloyd, The Idea of Law, p. 112

Holy Qur'an urging justice even against one's own self and even with enemies.⁽¹⁾ God Almighty said: (O you who believe! Believers, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves.⁽²⁾ It means that religion rules over us, our children and our fathers, and that if personal interest clashes with those we have to give priority to religion, even if that leads to the loss of life and wealth, just as the Master of Martyrs, Imam Hussein (peace be upon him), did. If one of the people compares this Quranic truth with our behavior, he will conclude that we give priority to our interests and the interests of our relatives over religion. This is our reality, or the reality of most of us, or the reality of many of us.⁽³⁾ God commands us in this noble verse to be just, even if that justice is against ourselves, our parents, or our relatives, and we are harmed by that. God Almighty says:

(noThe hatred of a people prevents you from being just. Be just; that is nearer to righteousness.⁽⁴⁾ The people referred to in the verse are the enemies of goodness and justice who resist every attempt to liberate humanity from the shackles of weakness and backwardness. God Almighty has commanded us to continue to establish justice and work for the sake of life. This is the justice that God has commanded us to do.⁽⁵⁾ Because the universe is based on justice and fairness, justice is a supreme value and a great principle in governance and state administration, as it is one of the principles on which the Islamic system of government is based. This is what the Book of God and the Sunnah of His Noble Prophet have confirmed, and this is what the Noble Qur'anic verses have indicated, which urge the adoption of justice, not as a mere virtue, but as part of the law and religion. Where there is justice, there is the true Islamic law. In confirmation of this meaning, the Noble Prophet says, "The most beloved of people to God on the Day of

Resurrection and the closest to Him in assembly will be a just leader, and the most hated of people to God and the most severely punished will be an unjust leader." This is what the Islamic state was built upon in caring for people by achieving justice and avoiding injustice and oppression.⁽⁶⁾

There is a point that must be clear in the context of the search for the principle of justice in governance, which is that justice, whatever its meaning, is itself a moral value, that is, it is one of the goals that man seeks to achieve in order to achieve a happy life. And because the moral goals of man are described as "good," the idea of justice remains one of the good things that human ethics seeks to achieve for the human race.⁽⁷⁾ Applying justice in society and ruling on disputes between people requires the establishment of an integrated judicial system entrusted with this task, because any system of rights requires the existence of mechanisms for redress. For this reason, Islam created a judicial system equipped with all the reasons for justice, out of its concern for the well-being of society and the security and happiness of man in a society in which justice prevails and rights are guaranteed.⁽⁸⁾ One of the most important objectives of Islamic legislation is to achieve justice among people and their equality in submission to its rulings. There is no difference between rich and poor, nor between ruler and ruled, nor between great and small. The Holy Quranic verses and the honorable prophetic hadiths have confirmed this.

For this reason, justice has come as a basis for rulings in the field of judiciary, settling disputes, appointing to positions, imposing taxes, collecting money and spending it on various aspects of public benefit, and other matters that achieve justice and equality among people.⁽⁹⁾ Even absolute absolute *ijtihad* is based on the idea of justice that the mind derives from the principles of Islamic

(1) Abbas Al-Aboudi, History of Law, p. 209

(2) Surat An-Nisa, verse 135

(3) Muhammad Jawad Mughniyah, previous source, p. 458

(4) Surah Al-Ma'idah, verse 8

(5) Muhammad Jawad Mughniyah, previous source, pp. 3-26

(6) Ibn Qayyim al-Jawziyya, The Wisdom Methods, p. 14, Fouad al-Attar, Political Systems and Constitutional Law, p. 122

(7) Dennis Lloyd, op. cit., p. 110

(8) Mustafa Al-Shakaa, Landmarks of Islamic Civilization, p. 71

(9) Ali Muhammad Jaafar, previous source, p. 159

law and its spirit to achieve the public interest, whether in the social or political aspect, and in managing government and achieving social justice. Ijtihad by opinion to arrive at just rulings is acceptable in one way or another to all Islamic sects, in order to achieve the public interest.⁽¹⁾

The second topic:

Equality and obedience to the ruler:

Equality and obedience to the ruler are among the lofty principles of the system of government in Islamic law, due to their tangible impact on the stability of society and ensuring that rights are provided to all citizens. In order to cover these two principles, we will divide this topic into two sections. In the first section, we will discuss the principle of equality, and in the second section, we will discuss the principle of obedience to the ruler.

The first requirement:

principle of equality:

Although the principle of equality is a form of justice and a cause and result of it, this principle was new to the Arabs. Indeed, it conflicted with the tribal feeling that was prevalent among them in the pre-Islamic era, when the Arabs used to boast about their titles and lineages, as tribal affiliation and pre-Islamic fanaticism made them deviate from the principle of equality among members of society.⁽²⁾ The true Islamic religion has established the principle of equality among people and the basis

This is because since all people are created for God alone and are charged with worshipping none but God, they are considered equal before their Creator. Therefore, the ruler must deal with the subjects in light of this great Islamic principle and not deviate from it for any reason.⁽³⁾ The principle of equality is one of the principles brought by the true Islamic religion based on what is mentioned in the Holy Quran. (O mankind, indeed We have created you from male and female and made you

peoples and tribes that you may know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you.)⁽⁴⁾ This humanitarian principle brought by Islam destroys every system based on class or any other basis. Thus, Islam has made people absolutely equal. It includes equality before the law, equality before the judiciary, and equality in rights and duties. It also addresses equality before God, as there is no difference between one person and another except through good deeds.⁽⁵⁾ And also what was reported from the Noble Prophet (PBUH): (O people, your Lord is one. And your father is one. You are all from Adam, and Adam was from dust. The most honorable of you in the sight of God is the most righteous of you. And an Arab has no superiority over a non-Arab, nor does a non-Arab have any superiority over an Arab, except by piety.)⁽⁶⁾

This principle is also embodied in the saying of the Noble Messenger (PBUH): "Those who came before you were destroyed because if a noble person among them stole, they would leave him alone, and if a weak person among them stole, they would carry out the prescribed punishment on him. By the One in Whose Hand is Muhammad's soul, if Fatima, the daughter of Muhammad, had stolen, I would have cut off her hand." This confirms that there is no privilege in Islam for one sect or family over another, as there is no privilege except in piety, knowledge, and righteous deeds. It is clear from the above that Islam establishes absolute equality in its various forms in rights and duties.⁽⁷⁾

The Noble Messenger applied the principle of equality among people in his judgment and declared that he applied it to himself. Applying the principle of equality to all people, including the Imam (the ruler) and, a fortiori, non-Muslims who reside in the territory of the Islamic state, gives this principle generality and absoluteness,

(4) Surat Al-Hujurat, verse 13

(5) Fouad Al-Attar, previous source, p. 142

(6) Al-Bayhaqi, The Branches of Faith, Hadith No. 5137

(7) Sulaiman Al-Tamawi, The Three Authorities, p. 390
Farouk Al-Samarra'i, Human Rights in the Holy Quran, 1st ed., 2002, Center for Arab Unity Studies, Beirut, p. 82

(1) Hashem Al-Hafez, and Adam Wahib Al-Nadawi, previous source, p. 80

(2) Muhammad Kamil Laila, previous source, p. 221

(3) Fouad Al-Attar, previous source, p. 123

which makes its application easy. Although the tolerant Islamic Sharia has established the principle of almost absolute equality among all people, people are equal like the teeth of a comb, and no Arab is better than a non-Arab except in piety, Islamic Sharia

You cannot ignore the existence of differences between people due to differences in their religious beliefs, which results in differences in the degree of their belonging to the Islamic state, and this difference is important in determining the extent of their submission to Islamic legislation.⁽¹⁾We can explore these principles and see them clearly in every part of Islamic law and its private and public protections. Equality before the law is the basic rule of the system of government in the true Islamic law. This is what we notice in the letter of Caliph Omar bin Al-Khattab to Abu Musa Al-Ash'ari (Be fair to people between your face, your justice and your council so that the noble does not covet your injustice and the weak does not despair of your justice). In this religion, man realizes the meanings of God and the smallness of human beings.⁽²⁾In order for everyone to be subject to the rules of Islamic law, the majority of jurists believe that the ruling Imam has no greatness and no immunity from the application of Islamic law to him, and the implementation of all punishments, whether as a hadd, qisas, blood money, or ta'zir. Their basis for this is the principle of equality among people in submitting to the rules of Islamic law and the law.

What I have decided regarding criminalization and punishment is a principle based on the texts we have presented that are definitive in terms of proof and meaning regarding criminalization and punishment.⁽³⁾Rights, duties and obligations must be distributed on the scale of equality and justice, so that no one takes a right greater than his obligation at the expense of others, and no one is

charged with an obligation without his consent. The Holy Qur'an has indicated in many verses that the origin of man is that he is made of one metal, so it is not permissible to forge by dealing with some of them on the basis that they are made of gold and with others on the basis that they are made of copper.⁽⁴⁾Public facilities have become of of great importance in the lives of individuals, especially after the development of the state's function from a guardian state to an intervening state whose goal is to achieve the welfare of the people. This requires the state to implement the principle of equality among all those dealing with these public facilities. The aspect of equality, especially before the judiciary, is one of the important aspects of the right to equality, and it means that persons with similar legal positions are subject to it.

For one set of rules and procedures before the judiciary and all public state facilities.⁽⁵⁾The idea of linking justice with equality of treatment owes its existence to the link between justice and legal principles. The law is supposed to be applied equally in all cases that require it and to all persons it deals with without fear or favoritism, and without differentiation between rich and poor, or strong and weak. The law is applied to everyone without exception or discrimination. In this way, it is an embodiment of the principle of justice among the subjects.⁽⁶⁾And that everyone should be subject to one court, as it is not permissible for the courts to differ according to the social status of the litigants, and it is not right for some sects to enjoy judicial privileges, such as establishing their own courts, as was the case in France before the French Revolution of 1789 AD, when there were excellent courts, especially for the nobles. Here, it must be noted that the concept of equality before the judiciary, with the existence of different courts according to the different types of disputes,

(1)Mahmoud Naguib Hosni, Islamic Criminal Jurisprudence, 1st ed., 2007, Dar Al Nahda Al Arabiya, Cairo, p. 191.

(2)Sir Thomas Arnold, The Heritage of Islam, translated by Girgis Fathallah, 1st ed., 2002, Aras Printing and Publishing House, p. 108.

(3)Mahmoud Naguib Hosni, previous source, p. 209

(4)Al-Zalmi, previous source, p. 28

(5)Ahmed Fathy Sorour, Constitutional Legitimacy and Human Rights, p. 318

(6)Dennis Lloyd, op. cit., p. 112

Or the difference in the nature of crimes, and the variety of punishment imposed by the judge according to the circumstances of the cases presented to him, even if the crime is the same.⁽¹⁾In recent years, the issue of non-discrimination has been the issue that has raised the greatest difficulties and controversy. The basic idea here is that differences in gender, religion and race cannot be considered a valid principle for discrimination between one citizen and another in terms of rights and obligations. This principle has been rejected by some modern countries, such as former Nazi Germany and the current government of South Africa, which considered racial discrimination based on race and religion to be part of the creed and applied it severely under an unparalleled repressive legal system. The greatest example of this is the recent decisions of the US Supreme Court, which confirmed that discrimination between whites and blacks in American educational institutions is unconstitutional.⁽²⁾The constitutions of modern Islamic countries have been keen to keep pace with the principles of Islamic law and have emphasized the establishment of the principle of equality among people.

Before the law, for example, Article (14) of the current Iraqi Constitution states: (Iraqis are equal before the law without discrimination on the basis of gender, race, nationality, origin, color, religion, sect, belief, opinion, or economic or social status).⁽³⁾The principle of equality in Islamic law is not affected by some of the differences that it has established between groups of people, which are necessitated by aspects of difference and imposed by natural or social considerations that require establishing these differences, such as the difference between men and women, or between children and adults, or between free and slaves. These differences confirm the existence of the principle of equality as a general rule.⁽⁴⁾Continue in Islamic legislation to build rulings on it and achieve sound Islamic governance.

(1) Muhammad Kamil Laila, previous source, p. 893

(2) Dennis Lloyd, op. cit., p. 133

(3) Iraqi Constitution of 2005 Article (14)

(4) Mahmoud Naguib Hosni, previous source, p. 203

The second requirement:

The principle of obedience to the guardian:

The obligation to obey the ruler in matters that do not involve disobedience to God, because he represents the public order, and failure to adhere to the obligation of obedience is a failure to the public order.⁽⁵⁾God Almighty said:(O you who have believed, obey Allah and obey the Messenger and those in authority among you.)⁽⁶⁾There has been much talk and discussion about what is meant by those in authority, and what qualities are considered in them, as the pretending rulers have clung to them to make it obligatory to obey them or remain silent about them, at least. Also, a group of jurists have used them as evidence that the sources and principles of Sharia are limited to four: the Book of Allah, as Allah the Most High says, "Obey Allah"; the Sunnah of the Prophet, as Allah the Most High says, "Obey the Messenger"; the consensus, as Allah the Most High says, "And those in authority among you"; and analogy, as Allah the Most High says, "If you dispute about something, refer it to Allah and the Messenger," as they claimed that the meaning is to compare what is not explicitly stated to its counterpart, which is explicitly stated in the Book and the Sunnah. There is no dispute that the Book and the Sunnah are the two basic principles of legislation.⁽⁷⁾

The preachers of the sultans repeat this verse (And obey Allah and His Messenger and those in authority among you), and by doing so they order people to obey the ruler no matter how unjust he is. The Quran orders obedience to three: Allah, His Messenger, and those in authority. As for the preachers, they forget to obey Allah and the Messenger and focus most of their attention on obeying the guardian of authority, that is, obeying the sultan. Obedience to Allah and His Messenger is naturally more important than obedience to those in authority. If the two acts of obedience

(5) Al-Zalmi, previous source, p. 28

(6) Surah An-Nisa, verse 59

(7) Muhammad Jawad Mughniyah, previous source, p. 2\358

contradict each other, the first command is more worthy of being followed than the second. It was stated in the noble hadith (There is no obedience to a creature in disobedience to the Creator). Islam is distinguished, among all religions, by imposing on its followers the duty of enjoining what is right and forbidding what is wrong. This Islamic duty is a strange duty that calls for contemplation, as it imposes on people to confront the oppressor with objection and criticism and to say to him to his face (You are an oppressor). Whoever studies the psychology of oppressors will find: They do not tolerate such harsh confrontation, and often order the killing of those who criticize or object to them.⁽¹⁾ Ibn Khaldun also used the expression political laws in the role of the guardian's legislation and its necessity for the continuity of societies.

And the stability of its population says in that: (The requirement of kingship is to prevail and subjugate and to compel people to obey us in order to avoid chaos, so it is necessary to return in that to the laws, an imposed policy that everyone accepts and submits to its rulings. If the state is devoid of such a policy, its affairs will not be stable.)⁽²⁾ And the images of the subjects who violate their sanctity or disobey them do not sin against the social system but also commit a religious sin, and the reasons that led to setting a limit on the actions of people and their activity to achieve their happiness are what dictated that a ruler should rule over them, take charge of them and compel them to obey him when necessary. For this reason, God Almighty completed the construction of the law with the ruler (the Imam or Caliph) and imposed his obedience on the nation. God alone is the one who gives the kingdom to whomever He wills, because without the will of God man cannot control the destinies of his brothers. The existence of the deterrent and the necessity of submission to it are two religious duties and two inevitable necessities for the continuity of Islamic society and a conclusion

(1) Ali Al-Wardi, *Preachers of Sultans*, 2nd ed., 2013, Dijlah and Euphrates Publishing House and Library - Beirut - Lebanon, p. 105

(2) Ali Muhammad Jaafar, previous source, p. 243

from dissolution and disintegration as is necessary in any society. If there is no authority

Strong and solid, there will be nothing but chaos and barbarism, unleashing its instincts without control or deterrent.⁽³⁾ In this sense, the (prince) is the pillar of the state, so appointing the president is a religious duty for every Muslim who possesses the prescribed qualities. The system of government in the Islamic society cannot be achieved unless the reins of government are handed over to one person and no more, as evidenced by the Almighty's saying (If there were in them two men) (If there were any gods but Allah, they would have been ruined.)⁽⁴⁾

The universe moves in a precise balanced way in all its fields and phenomena, the fixed and the moving. It is evidence of the one, wise, all-powerful force that creates things with calculation and moves them with a system in a wise administration that includes the entire universe. It is evidence of the oneness of God Almighty.⁽⁵⁾ There is no doubt that this one president must possess the moral and physical qualities necessary and appropriate to occupy his position and give it its due, and these qualities can be summarized as follows:

- 1- Freedom: That is, the Imam cannot be a slave.
- 2- Manliness: The Imam cannot be a woman, as evidenced by the noble hadith: "A people whose nation is their women will not succeed."
- 3- Competence: I mean that the imam must be sane and an adult.
- 4- Physical health: I mean that it should be free from any defects that might hinder its ability to perform its duties properly.
- 5- Familiarity with divine law: Although the extent of this knowledge is disputed.

(3) Sir Thomas Arnold, op. cit., p. 111.

(4) Surat Al-Anbiya, verse 22

(5) Muhammad Hussein Fadlallah, *A Brief Interpretation Inspired by the Qur'an*, A Brief Introduction by Muhammad Khalil Taraq, 1st ed., 2021, Dar Al-Qamati, for Printing, Beirut - Lebanon, p. 323

- 6- To be characterized by good management, and to be just, brave and wise, to protect what has been entrusted to him in times of war and peace.
- 7- That his life be pure and clean, in accordance with the provisions of divine law and Islamic morals.
- 8- He must be of noble lineage and honorable lineage. In view of these essential matters, it becomes clear that the selection of the head of the Islamic community cannot be left to circumstances and chance.

Or acts of violence and tyranny and its acts derive their strength and legality from the principle that the prince must keep in mind the interest of the group. For this purpose (the princes' command is over the people), the leader and the people, the imam and the group, and these two simple terms carry the entire Islamic political system and explain the meaning of the state.⁽¹⁾In its ancient and modern concept, based on justice, equality, and obedience to the ruler in accordance with the principles of Islamic law.

Conclusion:

One of the most important results reached by the research is that applying the principles of Islamic law in governance creates a state of political, economic and social stability due to the spirit of justice, equality and fairness among the subjects, and because the principles of Islamic law have an open framework to receive all new developments in life and address all possibilities due to their rational and practical nature that is suitable for all times and places, and they are general principles that can be traced back to all the details and particulars of the eternal texts, with regard to the subject of (consultation, justice, equality, and obedience to the guardian) and especially with regard to the constitutional system and the relationship between the ruler and the ruled and the rights and duties between the shepherd and the subjects with the aim of organizing the affairs of Islamic society to facilitate people as an approach in the policy of governance and state

administration, and applying the principles of Islamic law related to the system of government referred to above highlights the most important duties of the state in managing public facilities, and achieving good governance away from oppression and exploitation of power, as tyrannical rulers have been accustomed since the dawn of history to the idea of going against the will of truth and others, and monopolizing governance is far from the objectives of Sharia.

Recommendations:

- 1- Calling for the constitutions of Islamic countries to include the principles of good governance (consultation, justice, equality, obedience to the ruler) far from injustice, oppression and greed.
- 2- Calling for inspiration from Islamic constitutional thought and applying it in the Islamic political system, away from the deviation of power
- 3- Inspired by Islamic judicial thought and deriving judicial rulings, especially in cases of public interests
- 4- Searching for the legislator's intent with a vision far from the rigidity of the text and dealing with the text in light of the facts of reality
- 5- Putting the interests of the people in mind, and establishing mechanisms for choosing the ruler away from the system of inheritance from father to son, and searching for the most suitable and knowledgeable,

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