



**A Political Study of Al-Mawardi with Special Reference to the  
Concept of Legitimacy**

by

**Mohammad Yaqub Khan**

**Arabic & Middle Eastern Studies  
University of Leeds**



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The candidate confirms that the work submitted is his own and that the appropriate  
credit has been given where reference has been made to the work of others

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## Abstract

The establishment of a legitimate government was a primary concern of the medieval jurists. Consequently they were obliged to deal with the issue of authority and make it a regular part of their juristic formulation. It was, however, al-Māwardī who dealt with this issue more systematically and made it a subject of thorough investigation. In this study we will examine his political ideas with reference to the concept of legitimacy not only in his contemporary context, but also with regard to the governments of past Islamic history. The study will also examine various responsibilities of the ruler as well as his concept of political change in a broad context.

The material has been divided into six chapters and a conclusion. The first chapter deals with the meanings of the Caliphate in a broader context, its significance and place in Islamic religious scheme, and various issues related to authority and government as al-Māwardī dealt with them in the light of the Qur'ān, the *Sunna* and the *Rāshidūn* period.

The second and the third chapters deal with legitimate accession to authority and various responsibilities of the ruler in order of priority and importance. Stress has been laid on the ruler's acknowledgement of the same order in their execution.

The fourth chapter deals with the exercise of authority in a legitimate manner. It examines why al-Māwardī recognized the *'Abbāsids* as legitimate rulers despite criticizing them for their departure from the standard practices of the *Rāshidūn* period.

In chapter five the attention is focussed on the legitimacy of the weak *'Abbāsīd* Caliph, the status of the Amīr and the rebel provincial dynast and the relations of the latter two with the Caliph. The *Sunnites* and the *Shī'ites* of this period had different approaches towards the issue of authority. It will be examined how they still managed to arrive at a concordat at an official level which lasted for more than a century.

In the sixth chapter, al-Māwardī's concept of political change has been examined in a broader context.

In the conclusion various research findings are brought together in consequence of studying al-Māwardī's political concepts in relation to the concept of legitimacy.

### Transliteration Note

*I have used the following Transliteration Through out my Thesis*

'	ء	l	ل
b	ب	m	م
t	ت	n	ن
th	ث	h	ه , ة
j	ج	w	و
ḥ	ح	y	ي
kh	خ		
d	د		

#### Vowels

		short vowels	long vowels
dh	ذ		
r	ر	□ a	اَ اِ اِي ā
z	ز	□ u	و ū
s	س	□ i	ي ī
sh	ش		
ṣ	ص	Diphthongs	Doubled
ḍ	ض	وْ aw	وَّ uww
ṭ	ط	يْ ay	يَّ iyy
ẓ	ظ		

' (ayn)

gh

f

q

k

ع

غ

ف

ق

ك

**Note: 1)** In Proper names definite articles always appear with

small 'a' whether it is in beginning or in middle of sentence.

**2)** 'Wal' is usually written as wa with the *al* connected with

the next word. For example, *wal Kitāb* is being written as *wa*

*al-Kitāb*.

## List of Abbreviations

1. A.D.: After Death.
2. A.H.:After Hijra.
3. A.S :Ahkām al-Sultāniyya.
4. A‘lām: A‘lām al-Nubuwwa
5. Adab : Adab al-Dunyā wa al-Dīn
6. al- Bidāya : al-Bidāya wa al-Nihāya
7. al-Kāmil: al-Kāmil fi al-Tārikh.
8. al-Muntazam: al-Muntazam fi Tārikh al-Mulūk wa al-Umam.
9. b. :bin
- 10.Ed. : edited
- 11.Edn. : edition
- 12.Encyclopaedia : Encyclopaedia of Islam
- 13.Ihyā’ ‘Ulūm: Ihyā’ ‘Ulūm al-Dīn.
- 14.Ltd : Limited
- 15.Naṣīhat : Nasīhat al-Mulūk
- 16.P.B.U.H. : Peace be Upon Him
- 17.Seerat : Seerat al-Nabī
- 18.Tafhīm : Tafhīm al-Qur’ān
- 19.Tafsīr : al-Nukat wa al-‘Uyūn
- 20.Tārikh: Tārikh al-Rusul wa al-Mulūk.
- 21.Tashīl : Tashīl al-Nazar wa Ta‘jil al-Zafar.
22. Trans : Translation

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## Introduction

The life of the famous *Shafi'ī* jurist, Abū al-Ḥasan 'Alī al-Māwardī, has been surveyed in many other books. I do not propose to duplicate here what other scholars have done but it is worth drawing brief attention to the main events in al-Māwardī's life. Born in 367/974, at Baṣra, he gained his early education in *Ḥadīth* and the *fiqh* under famous jurists of Baṣra and later on at Baghdād under the famous *Shafi'ī* jurist Abū Ḥāmid Isfrā'īnī (d.406/1015).<sup>1</sup> He began his professional career as a judge and served in this capacity in various towns. In 429/1037 A.H., in recognition of his judicial competence and erudite scholarship, he was raised to the post of '*Aqḍa al-Quḍā'*' which he continued to hold till his death in 450/1058.

His success in various diplomatic missions showed his ability to deal with contemporary issues in an astute manner. In the year 422/1030, the Caliph Qā'im bi Amr Allah, on his accession to the throne, sent him to Abū Kālījār (d.440/1048) and he was successful in securing the oath of allegiance to the Caliph as well as persuading him to be content with the title of *Mālik al-Dawla* instead of the title *Sulṭān al-Mu'azzam Mālik al-Umam*.<sup>2</sup> Similarly, in 428/1036, on Caliph's instructions, he was able to bring about reconciliation between the prince Jalāl al-Dawla and his nephew Abū Kālījār.<sup>3</sup> The Caliph, Qā'im bi Amr Allah sent him as an emissary in 433/1041, and again in 435/1043 to the Seljūq prince, Tughril Beg, who gave him a warm welcome,<sup>4</sup> acknowledged supremacy of the Caliph, and promised to treat the subjects in a kind manner. In 434/1042, he managed to convince Prince Jalāl al-Dawla not to unjustly

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<sup>1</sup> Ṣalah al-Dīn Basyūnī, *al-Fikr al-Siyāsī 'Ind al-Māwardī*, PP.11-12

<sup>2</sup> Ibn al-Jawzī, *al-Muntaẓam*, vol:15, PP.225-226

<sup>3</sup> Ibn Athīr, *al-Kāmil Fi Tārīkh*, vol:9, P.455

<sup>4</sup> Ibn al-Jawzī, *al-Muntaẓam*, vol:15, P.289

deprive the Caliph of his income from *Jawālī* (poll tax). Prince Jalāl al-Dawla agreed to restore it from next year.<sup>5</sup>

His active engagement in political affairs won him praise from the authorities and made him a popular figure of his age. But what made him a great figure after his death was his contribution as a jurist to which we shall now turn in our present study.

al-Māwardī occupies a prominent place among the medieval jurists due to his contribution in the field of Islamic politics. As a jurist, he dealt with the problems of authority at length both to clarify their standard solutions under favourable conditions and the minimum requirements in existing circumstances. Hence he did not merely propose an outline for an ideal Islamic state but was very much concerned with proposing solutions to contemporary issues of politics. Most of the jurists after him recognized the value of his work as fundamental in the field of Islamic politics. Even the great Ibn Khaldūn acknowledged the soundness of his opinions and recognized their validity in his own time.<sup>6</sup>

In dealing with contemporary issues of politics, al-Māwardī was guided by the Qur'ān, the *Sunna*, and the practices of the *Rāshidūn* period. He also critically examined past Islamic history during the *Umayyad* and the *'Abbāsīd* periods and benefited from the experiences of his predecessors. In the light of these sources, he proposed a flexible framework for the Caliphate, which along with incorporating a programme to be enforced under a strong Caliph offered good prospects for the continuation of the existing set up under a strong Amīr.

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<sup>5</sup> Ibn al-Jawzī, *al-Muntazam*, vol:15, PP.285-286

<sup>6</sup> Ibn Khaldūn, *Muqaddima*, vol:2, P.53

This study, therefore, instead of looking at al-Māwardī's theory of the Caliphate in a traditional way aims to identify both aspects: the study of the al-*Aḥkām* as a proposed framework for the restored Caliphate as well as a justification for the existing set up in which the Amīr could exercise his authority in a legitimate manner. In the context of the *Buwayhid* era, he found the problem of authority to be a complicated one. First of all, it was the Caliph whose legitimacy was challenged on the grounds that apart from being installed and deposed on the will of the *Buwayhids* he increasingly depended upon them for the exercise of his authority. Consequently some independent dynasts who had hitherto avoided adopting the title of the Caliph now had an excuse to claim the transference of the title to them. In his capacity of a classical *Sunnī* jurist, how and why did al-Māwardī still consider such a weak Caliph legitimate? An attempt has been made to study the Caliph's recognized role in religious and judicial matters as well as his supervisory role over the Amīr due to the existence of powerful dynasties. Moreover, in the light of al-Māwardī's formulation, it is examined that once the allegiance was rendered to the Caliph as a head of the community, the Caliphate could be a shared responsibility through delegation provided its responsibilities were shared jointly between the Caliph, the Amīr and the provincial dynast. The roles assigned both to the Amīr and the provincial dynast are examined to determine that although this formulation was meant to provide a framework for the restored Caliphate, it was also good for the *Buwayhids* who could continue to exercise authority on behalf of the Caliph in a legitimate manner. It is also examined how al-Māwardī dealt with an unprecedented situation and showed the possibility of co-existence of the *Shī'ite* and the *Sunnite* authorities on official level without violating the principles of religion.

al-Māwardī recognized the necessity and importance of legal means with regard to acquisition of authority, which he worked out in the light of various developments

during the *Rāshidūn* period. Yet he legitimized the ruler who established his authority in defiance of these principles. Similarly he acknowledged the consolidation of the rule within a single family and considered the less preferred (*Mafḍūl*) as a legitimate ruler even in the presence of a preferred (*afḍal*) candidate which seemed to be inconsistent with the spirit of *Rāshidūn* period. An attempt has been made to study how he justified both viewpoints by applying religious principles like the law of necessity, the recourse to expediency in changed circumstances, and the requirement of maintaining just the bare minimum. Moreover, on the issue of legitimate accession to authority his views have been critically analyzed and compared with the views of the *Ḥanbalī* and the *Ḥanafī* scholars. Similarities and differences point towards the different approaches regarding the problem of legitimate accession by different *Sunnī* schools of jurisprudence.

Similarly he legitimized the ‘*Abbāsīd* rulers who justified their rule on the basis of their relationship to the Holy Prophet (P.B.U.H). They laid down their principles in the manifesto called the ‘*Abbāsīd* Da‘wa which has been analyzed to determine whether there existed common grounds between their claims to authority and al-Māwardī’s account of Islamic politics.

al-Māwardī criticized the *Umayyad* and the ‘*Abbāsīd* rulers as worldly oriented and highlighted their shortcomings. Yet he considered their rule legitimate because they submitted to the practice of acquiring authority through legal means and carried out certain Islamic practices at public level. So the study highlights al-Māwardī’s requirements for the legitimacy of a ruler and how the ‘*Abbāsīds* fulfilled those requirements in broad essentials.

In the context of ten duties assigned to the ruler, al-Māwardī attached great importance to his religious responsibilities and put them above other responsibilities in

order of preference. al-Māwardī considered the ruler as the guardian of faith, the leader in the prayer, the one responsible for combating innovations, and the most important agent of enjoining virtue and preventing evil. He wrote separate chapters on the establishment of religious obligations and fully involved the ruler in their proper fulfillment. His viewpoint is therefore explained in the light of his interpretation of the verses of the Qur'ān and it is explained how the legitimacy of ruler's authority was primarily linked to the establishment of these obligations. It was in fact in recognition of retaining his religious status that the weak 'Abbāsīd Caliph of the *Buwayhid* age was considered legitimate. A considerable amount of space is therefore given to show the proper significance of religious responsibilities and the ruler's involvement in carrying them out.

In studying various responsibilities of the ruler, we see al-Māwardī's concern for the manner of carrying them out. The ruler was primarily considered as a religious leader, then a moral reformer, and finally an executor of law. Consequently we see throughout the text of al-Māwardī that the ruler was required to properly acknowledge these different roles and act accordingly towards apostates, rebels, criminals, and those evading religious responsibilities. Moreover, this study aims to highlight how al-Māwardī made the ruler responsible to deal with the different schools of jurisprudence. The rights and the duties of both the ruler and the different schools are carefully studied.

al-Māwardī considered the ruler as the most effective agent of change in society. Under the sinful (*fāsiq*) ruler, al-Māwardī made the subjects responsible for carrying out the same obligation to the extent of their ability. Consequently the subjects were required to deal with the evil of the unjust authorities under the same principle. Within this context it is possible to remove apparent contradictions in al-Māwardī's statements

in his different books and exegeses with regard to deposition of an unjust ruler<sup>7</sup> and to study his concept of political change properly in a broader context. If the means of deposition were lacking, al-Māwardī suggested various negative measures of resistance to the unjust rule along with positive duty of social reform through religious transformation of society.

From his detailed description of the prophetic method of establishing an Islamic order, we can appreciate that al-Māwardī linked the enforcement of Islamic injunctions to the collective ability of the believers. A careful study of this method would, therefore, enable us to determine the place of politics in religion and judge the relevance of the institution of the Caliphate within its proper context.

In this study, the term Caliphate is understood in its broader context and not confined to its political meanings alone. The study, therefore, seeks to identify in a unique manner the significance of the Caliphate both in political and non-political context. Moreover, the study brings into account the relevance of the institution of the Caliphate within its proper context. The various principles which al-Māwardī applied to the *Umayyad* and the *'Abbāsīd* governments, such as the lesser of two evils, the *Imāmate* of the less preferred (*Maḥḍūl*), the preference of tyranny over anarchy, necessity and benefits of political organization are studied in the light of *Ḥadīth* literature from his various books and the exegeses of the Qur'ān. In establishment of a legitimate government he made the precedents of the *Rāshidūn* Caliphs as an important source and drew various principles in the light of the developments during this period. We shall therefore begin our study with his fundamental concepts that he

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<sup>7</sup> It will be seen in the course of dealing with this problem that on the one hand Māwardī disqualifies the dissolute ruler and authorizes the people of power and influence to depose him. On the other hand, in the light of *Ḥadīth* literature, he quotes *Aḥādīth* which demands a complete submission to him even if he is bad and unjust.



worked out in the light of the Qur'ān, *Sunna*, and the period of the rightly guided (*Rāshidūn*) Caliphs.

## **Bibliographical Survey**

### **Primary Sources**

This research is based both on primary and the secondary sources. Among the primary sources al-Māwardī's own books constitute the bulk of the material. Attention is focussed both on the al-Ahkām and his other works. Since his political ideas were greatly influenced by his religious thought, the proper study is considered to naturally begin with his interpretations of the verses in the Exegeses of Qur'ān, the study of *Aḥādīth*, and the practices of the Prophet (P.B.U.H). His exegeses of the Qur'ān, hitherto ignored by the biographers of al-Māwardī, was found to be a useful source on many important topics like the limits of obedience and disobedience to a ruler, the concept of revolt against the unjust ruler, the limits of co-operation and non-co-operation under a dissolute and a non-Muslim ruler, and legitimacy of government service etc. In the light of his various interpretations in the exegeses, it was possible to analyze the 'Abbāsīd Da'wa and 'Abbāsīd claims to the Caliphate on the bases of their relationship to the Holy Prophet (P.B.U.H). His book Adab al-Dīn wa al-Dunyā was of considerable help in clarifying the role and the status of the 'ulamā' in politics, the necessity of political organization, the importance of religious obligations, and his concept of political change. Nasīhatul al-Muluk, and A'lām also contained a bulk of material from *Aḥādīth* literature which helped to clarify several topics like the place of politics in religion, the legitimacy of the less preferred (*Mafḍūl*) Imām, the preference of tyranny over anarchy, the various responsibilities of ruler, al-Māwardī's critical attitude towards the *Umayyads* and the 'Abbāsīds etc. Along with these primary sources, the Arabic sources from medieval writers related to the same subject were

consulted for a comparative study. Firstly, the exegeses of al-Ṭabarī, al-Qurṭubī, al-Zamakhsharī, and al-Mawdūdī are used for a comparative study to explore and understand the right meanings of the term Caliph in a broad perspective. The chronicles of Ibn Hishām, Ṭabarī, Khaṭīb Baghdādī, Ibn al-Athīr, Allama Syūṭī, and Ibn Kathīr, are frequently used and quoted in support or criticism of a viewpoint as well as for validating the authenticity of the various statements and events related to past history of the Muslims. Mawlāna Yūsuf's Ḥayāt al-Saḥāba was found to be of great help in giving useful details regarding the establishments of the early Caliphates. Abū Ya'la's work al-Aḥkām al-Sultāniyya was found to be useful for a comparative study on various important topics like legitimate accession to authority, the ruler's religious and administrative responsibilities and the limits of obedience and disobedience to the ruler. Imām al-Ash'arī's Maqālāt Islāmiyyīn was a useful source on the number of issues like legitimate accession to authority, the number of persons necessary for holding the Caliphate and viewpoints of different schools regarding the concept of political change. al-Fatāwa al-Hindiyya was found to be useful in providing details of the ruler's responsibilities for establishing prayer and giving *Zakāt*. Imām al-Ghazālī's book Iḥyā' 'ulūm al-Dīn was of great help for comparative study on the issues like enjoining good and preventing evil, the ruler's responsibility for carrying out this obligation, and the limits of performing obligations for the subjects and the '*ulamā'*'. Mawlana 'Umar's book Ma'rūf wa Munkar was another important source for comparative study with Māwardī's views on the subject of enjoining virtue and preventing evil. Abū Zahra's three volumes on the Imām al-Shāfi'ī, the Imām Mālik, and the Imām Aḥmad b. Ḥanbal supplied useful material for comparison regarding issues like the attitude of the Imāms towards the political authorities. Abū Ubayd's Kitāb al-Amwāl contained useful material on the ruler's responsibilities regarding

collecting and distributing *Zakāt*. Ibn Taymiyya's book *al-Siyāsa al-Shar'īyya* was of great help in providing details about the ruler's responsibilities. Juwaynī's work *al-Ghayāthī* was of great value in understanding the concept of revolt against authority as well as providing material with regard to the law of necessity in a collective context. As for other Arabic books related to our topic, we have mentioned them in the bibliography. Some important Urdu works related to our study were also consulted and are included in the bibliography.

As for the English sources, we shall briefly explain the significance of some important works and how they were found to be useful in relation to our study.

### **English Sources**

Gibb's *al-Māwardī's Theory of the Caliphate, (1937)* was considered as one of the most important sources on al-Māwardī. Refuting the charge of idealism against al-Māwardī, Gibb argues that the programme in al-Māwardī's book the *al-Aḥkām* was composed at the request of a higher authority in response to new developments and was meant to be an application of classical theory to contemporary circumstances. Gibb also acknowledged this programme to be an effort of a man who did not hesitate to express his judgements even against the will of the Caliph. Gibb's above suggestions were made to serve as the basis of our further study of al-Māwardī in the *al-Aḥkām* and his other works.

On the deposition of the dissolute ruler, Gibb rightly interprets al-Māwardī's intermediate stand between the subject's right of absolute revolt and his duty of complete submission. However, his final remarks about al-Māwardī's vague position on this issue stimulates us to a further inquiry to ascertain al-Māwardī's exact position

on this issue from various books including his interpretations of the verses of Qur'ān and the *Ḥadīth* literature.

On the Emirate by Seizure (*Imārat Istīlā*), Gibb acknowledged al-Māwardī's contribution but criticized him for his failure either to bring it in line with the *fiqh* principles or his exposition of the functions of the Caliphate. He argued that al-Māwardī proposed two sets of arrangements according to which the provincial governor was to be recognized legitimate even if he evaded the responsibility of enforcing the right order whereas in the case of the Amīr at Central Provinces no such concession was granted. These views are examined in the light of al-Māwardī's text to clarify whether al-Māwardī dealt with both situations according to different standards or did he adhere to the same principles in proposing arrangements for the Central Provinces and the outlying provinces. A detailed study is therefore carried out for arriving at the right conclusions.

Qamaruddīn Khan, in his book, al-Māwardī's Theory of the State (1958) dealt with various aspects of al-Māwardī's political theory. Like Gibb he judged the value of the al-Aḥkām as practical and, therefore, interpreted al-Māwardī's political concepts in the context of past and contemporary circumstances. The book provides some useful themes for further analyses.

Among his interpretations of al-Māwardī's political concepts few points are noteworthy for critical analyses. It seems doubtful that the *Buwayhids* had no legal bases for their authority because from the time of Mu'izz al-Dawla (the founder of *Buwayhid* dynasty) onward they gave allegiance to the Caliph who authorized them to carry out various responsibilities on his behalf. A detailed discussion was considered

necessary to clarify the matter in the light of the principle of delegation of power as stated by al-Māwardī.

Mr. Khan's statement seems to be exaggerated when he attributes to al-Māwardī as giving the subjects a right to rise in revolt against the Imām if he is guilty of wrong behaviour. Such method contradicted al-Māwardī's emphasis on obedience to the ruler even if he was sinful (*fāsiq*). Consequently it was considered necessary to fully clarify al-Māwardī's viewpoint on this subject in our present study.

E.I.J. Rosenthal's opinions in his book, 'Political Thought In Medieval Islam' (1958) are very instructive and provide us with the material for analyzing the relationship between the weak Caliph and the effective Amīr. He provides the basic theme for further analyses with regard to legitimacy of the weak Caliph.

His brief discussion on the significance of recognition of the Caliph by the provincial dynast highlights the religious necessity of the Caliphate and provides a theme for detailed treatment of the subject. Moreover, the work outlines al-Māwardī's various political concepts and provides groundwork for further research.

Hanna Makhail in his book, 'Politics and Revelation, 'Māwardī and After, (1995) analyses al-Māwardī's political concepts on the bases of all his extant works except his exegesis of the Qur'ān. The work is very useful because it deals with the political concepts of al-Māwardī' without ignoring their past and future context. But it is too short to do justice with some issues requiring a detailed treatment. For instance, the study of al-Māwardī's political concepts from his interpretations of the Qur'ān and the *Sunna*, the deposition of the Imām, and the functions and responsibilities of the Caliph, are not explained in a detailed manner.

His emphases on al-Māwardī's criticism of the early *fuqahā'* for neglecting the constitutional principles seems to be exaggerated because, despite his occasional

criticism, al-Māwardī constantly referred back to them on various issues throughout the text of al-Aḥkām. Moreover, at the outset of the al-Aḥkām, al-Māwardī clearly acknowledged their contributions and indicated his objectives to bring together the views of different *fuqahā* which were scattered and mixed with other *fiqh* rules.

Hanna challenged the soundness of Gibb's conclusions regarding the independent status of '*Ulamā*'. He pointed to their extremely limited role in politics and their dependence on the authorities in codification the *fiqh* principles. The historical evidences, however, seem to favour Gibb's conclusions rather those of Hanna. The arguments have been carefully documented from the original and secondary sources.

Kraemer, in his book 'Humanism in the Renaissance of Islam'(1986) provides useful analyses for assessing the position of the *Sunnites* and the *Shīites*, the position of various religious schools, and their relations with authorities. The study provides ample evidences for the right assessment of the Caliph's position of the *Buwayhid* age, reconciliation of the *Sunnites* and the *Shīites* of the age at official level, and the gradual shift of the Imāmī '*ulamā*' from orthodox beliefs towards reliance on theology (*Kalām*).

Moreover, he provides us good analyses for determining whether the Caliph and the *Buwayhids* could evolve a cordial relationship or did there always exist a continuous struggle for power between them.

A.J.Newman's thesis, 'The Development and Political Significance of the Rationalist (Usūlī) And Traditionist (Akhbārī) schools in Imāmī History From the Third/Ninth To The Tenth/Sixteenth Century A.D., (1986) is helpful in understanding the evolution of *Shīite* political thought from the age of Kulaynī to the age of al-Murtaḍā. It is instructive to note on the part of the Imāmī scholars the gradual shift from hostility to theology (*Kalām*) towards increasing reliance on it, the reconciliation

with *Sunni* authorities, the role of the '*ulamā*' in the absence of the twelfth *Imām*, and the formation of the *Shīite* thought under their influence. He makes careful analyses by referring to the text of the *Imāmī* authors from the age of Kulaynī to the age of al-Murtaḍā for showing an evolution in their thought on the fundamental issues like, the *Imāmate*'s necessity, occultation, infallibility etc.

Mafizullah Kabīr's research thesis The Buwayhid Dynasty of Baghdād(1962) is very instructive and highlights important religious, military, social, and political developments of this age, which assist us in analyzing the position of the Caliph, the Amīr, the provincial dynast, and the army. It highlights the mutual relations of the Caliph and the Amīr, the spheres of their influence, and various internal and external developments which led to the improved status of the Caliph. It gives a good account of the *Sunnite Shīite* relations both at the official and the private level.

Wilferd Madelung's article, 'Authority in Twelver *Shīism* in the Absence of the *Imām* (1982)' explains the character of the authority in the Twelver *Shīism* and the problems the *Shīites* faced in the absence of the twelfth *Imām* during the minor and the greater occultation. He also describes the status of *defacto* '*Abbāsīd* Caliph of the *Buwayhid* age, the difficulties which the *Shīites* encountered in reconciling with his authority, and the way the *Shīite* '*ulamā*' overcame this difficulty by their reliance on theology (*Kalām*).

Azīz Azmeh's book Muslim Kingship(1997) contains a useful chapter entitled 'Absolutism Sublime' on various issues related to authority in Medieval Islam. Apart from analyzing the nature of the different rulings on the same issue in the al-Aḥkām, he studies the relationship between the Caliph and the *Buwayhid* Amīr. By summing up the challenges posed to the weak '*Abbāsīd* Caliph from different parts of the Islamic world, he provides us with material to critically examine those claims and to

examine his legitimate status. Moreover, he examines the principle of delegation very carefully, which provides a useful material for analyzing the position of the Caliph and the Amīr and their mutual relations.

Jenina Safran in his article entitled; ‘ The Command of the Faithful In Andalus’(1999) assists us in understanding what gave rulers a legitimate status in medieval Muslim society. The article highlights how and by what means ‘Abd al-Raḥman 111 made claims to his legitimacy as a Caliph in the wake of the weak ‘*Abbāsīd* Caliphate. This study enables us to analyze that apart from completing the legal requirements at the installation what necessary functions a Caliph had to perform to justify his claim to the title. It also analyses a few more arguments by the *Umayyads* regarding their legitimacy and provides material for comparison and analyses regarding the legitimacy of the weak ‘*Abbāsīd* Caliph.

D.P.Little in his paper, ‘A New Look at al-*Abkām* al-Sultāniyya’(1974) provides a good survey of the opinions of the past writers about the al-*Abkām*. He ultimately verifies Gibb’s conclusions that the book was connected with contemporary circumstances but warns on the authority of various writers that it should not be treated as a reliable source for the ‘*Abbāsīd* institutions. This gives an incentive for investigating al-Māwardī’s accurate estimate of the ‘*Abbāsīds*, both his trust for and critical attitude towards their practices and his acknowledgement of them for conforming to his scheme in broad essentials.

The author highlights the substantial differences between the works of Abū-Ya‘lā and al-Māwardī which stimulates the researcher to a further inquiry into the differences between both writers. The differences are found on the issues like, accession to authority, the responsibilities of the ruler, and the right to rise in revolt against the authorities which are thoroughly discussed and analyzed.



However, the author's interpretation of al-Māwardī regarding the deposition of the *Imām* is questionable because al-Māwardī did not say that a dissolute *Imām* must be deposed. He just legitimized his deposition under favourable conditions but he neither made it incumbent upon subjects nor upon the people of power and influence.

Bernard Lewis in his paper, 'On the Quietist And Activist Traditions In Islamic Political Writing'(1986) provides good analyses for understanding the attitude of the '*ulamā*' towards the authorities, the reasons for their legitimisation and criticism of the rulers, their attitude towards the government and the government service. He also takes into account various developments in the course of Islamic history which shifted the attention of the '*ulamā*' from strict standards of legality to maintaining the bare minimum. He classified the jurists into the radicals and the quietists and explained their different approaches towards revolt against the authority in the light of their interpretations of the Qur'ān and the *Sunna*. His admission that the Quietists remained more predominant than the radicals enables us to interpret the traditional *Sunnī* theory in the context of the viewpoint of the '*ulamā*' belonging to that school. The researcher benefited from the useful analyses of this paper on several places in thesis.

## Chapter One

### The Meanings of the Caliphate: The Evidence of the Qur'ān, Sunna, and the *Rāshidūn* Period

To determine the exact nature of al-Māwardī's ideas on politics, we may begin to explore his views from the verses of the Qur'ān with political import. Since in explaining those verses in his exegeses, he also relies upon the *Ḥadīth* literature, the proper study of those *Aḥādīth* would also be necessary to derive the right conclusions.

#### A Study of the Word Caliph:

First of all, al-Māwardī explains the literal meanings of the word Caliph. It means, as he goes on to explain, the one who acts in place of another person.<sup>1</sup> When a person succeeds another person he is called Caliph. After this literal interpretation of the word, al-Māwardī further clarifies the scope of this term with reference to the descendants of Ādam on earth. In quoting three interpretations of the Caliphate of Ādam and his offspring, he sticks to the theme derived from its literal meaning in two of these interpretations. The third interpretation takes the word both in a religious and political sense.

According to the first interpretation, there were jinn on the earth who caused mischief and shed blood. Consequently they were destroyed and were succeeded by Ādam and his offspring.<sup>2</sup> According to the second interpretation, it was Allah's intention that a nation should succeed another nation from the offspring of Ādam who

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<sup>1</sup> al-Māwardī, *Tafsīr al-Māwardī: al-Nukat Wa al-'Uyūn*, vol. 1, 2-30.

<sup>2</sup> Ibid.

themselves should succeed Ādam in the establishment of truth.<sup>3</sup>

It is obvious from both interpretations that the word Caliph here refers to humanity as a whole. The first interpretation rather than focussing upon man as the first inheritor of the earth, attempts to prove that he was made to inherit the land in place of jinn. As the jinn spread corruption and killed one another they were destroyed and man succeeded them. This view does not seem to be inconsistent with the other verses of the Qur'ān since it is proved from the Qur'ān that the creation of the jinn was prior to the creation of man.<sup>4</sup> Satan (*Iblīs*) was also from the group of the jinn who did not tolerate the Caliphate of Ādam on the earth.<sup>5</sup> It is also proved by the act of his disobedience that before man the jinn were also given the freedom of choice, for without it, it would be impossible on their part to disobey the command of Allah. In other words, the jinn, in opposition to the Divine scheme, thought themselves more deserving of the Caliphate at the time of the creation of Ādam. Although there are no clear indications that man was created to succeed some other creation, the theme of the Qur'ānic verses does not contradict the concept of human succession to the Jinn. That is why the famous commentators of the Qur'ān considered it as one of the possible interpretations of this verse. al-Ṭabarī (d. 310/923) has quoted it in the following words: “ The first inhabitants on the earth were jinn. But they spread corruption, shed blood, and killed one another, so Allah replaced them with Ādam and his offspring.”<sup>6</sup> But there are no political meanings attached to this word which could be derived from these interpretations.

Through a second interpretation, however, al-Māwardī limits the Caliphate to those who are inheritors of the Caliphate of Ādam by virtue of their undertaking to establish the truth. al-Ṭabarī, however, applies the word to all the persons of a generation which

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<sup>3</sup> Ibid.

<sup>4</sup> al-Qur'ān, trans: Marmaduke Pickthall, 15:27.

<sup>5</sup> al-Qur'ān, 2:34.

succeeds the previous generation.

The third interpretation assigns to Ādam the status of Caliph because Allah wanted him in this capacity to establish His commandments among men.<sup>7</sup> In other words, Ādam was appointed to enforce the commandments of Allah in the capacity of a Caliph. The word can thus be applied to anybody who is able to enforce the commandments of Allah in this capacity. al-Ṭabarī quoted it as one of the possible interpretations of this verse. He says: “ Allah said to the angels: “ I am going to create and place in the earth My vicegerent who will enforce my orders among my creatures on my behalf. This vicegerent will be Ādam and his progeny which will take his place, obeying Allah and judging between men with equity.”<sup>8</sup> It was thus common to most of the commentators not to exclude the role of Ādam in the capacity of a sovereign ruler. al-Qurṭubī, (d. 671/1273) in his famous exegesis, interprets the same verse more emphatically in the political context. According to him, the verse provides the basis for the appointment of the Caliph who shall be heard and obeyed. He shall unite the opinions and execute the commands. al-Qurṭubī shows the consensus of the ‘*ulamā*’ over the mandatory nature of the office except Āthām who holds that if the people themselves maintain the right order and establish the truth, they would free themselves from the necessity of the *Imān*. He, however, refutes Āthām’s viewpoint by quoting the verses from three different places in the Qur’ān.<sup>9</sup> Like al-Māwardī, the *Ijmā*’ of the companions furnished him a strong basis for his argument. He says that while dispute arose among the companions of the Prophet Muḥammed (P.B.U.H) as to the appointment of a proper person for the Caliphate, the issue of the Caliphate itself was never disputed.<sup>10</sup>

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<sup>6</sup> al-Ṭabarī, Ibn Jarīr, *Jami’ al-Bayān ‘an ta’wīl al-Qur’ān*, 2:30.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

<sup>9</sup> Qurṭubī, *al-Jāmi’ li Ahkām al-Qur’ān*, 2:30.

<sup>10</sup> Ibid.

The Caliphate of Ādam through this verse is thus interpreted as the beginning of mankind and a succession to the previous creation on the earth, the beginning of a continuous series of one generation to the previous one, and finally his role as a trustee to enforce the Divine commandments. al-Māwardī, like other famous commentators of the Qur'ān, takes these possibilities into account, but his preference for the interpretation where the word Caliph is interpreted as the executor of the Divine commandment can be ascertained from his interpretations of the other verses in the Qur'ān. Another verse also related to the inception of the universe and humanity reveals the object of the creation thus: “ Lo we offered the trust to the heavens and the earth, and the hill, but they shrank from bearing it and were afraid of it and man assumed it.”<sup>11</sup> Here by the word ‘trust’ al-Māwardī means the Divine commandments.<sup>12</sup> Man’s consent to take the trust means his willingness to take the responsibility of their execution. It can, therefore, be deduced that Ādam the first human being, entitled as Caliph, was a trustee of the Divine commandments in this capacity. His basic responsibility was the proper execution of these commandments. al-Māwardī also used the word ‘trust’ in the fourth *sūra* in the same sense where the believers are urged to give the trusts to their right owners.<sup>13</sup> Here again al-Māwardī has taken the word ‘trust’ (*Amāna*) in the same meanings of the Divine authority. The word is used on both occasions in the sense of authority and Divine commandments. Ādam was thus a bearer of trust in the capacity of Caliph.

The word Caliph as singular has been used on one more occasion with reference to the Prophet David whom Allah addresses as Caliph. It is clear from the text of the verse that the word is used in a strictly political sense. The verse reads: “O David, We have

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<sup>11</sup> *al-Qur'ān*, 33:72 .

<sup>12</sup> *al-Māwardī, Tafsīr*, 33:72.

<sup>13</sup> *Ibid.*

made you the Caliph in the earth, so judge between the men with truth and do not follow thy desire.”<sup>14</sup> In explaining this verse, al-Māwardī says that the Caliphate of David combined both prophethood and the rule over people.<sup>15</sup>

al-Māwardī subjected the word to a variety of meanings where it is used in plural form. In each case al-Māwardī has interpreted it according to the context of the verse. For instance in *Sūra al-An‘ām* the word has been used thus: “ He it is who has placed you as Caliphs of the earth and has exalted some of you in rank above others, that He may try you by (the test of) that which he has given you.”<sup>16</sup>

Again in *Sūra al-Fāṭir* the word has been used thus:”<sup>17</sup> He it is Who has made you the Caliphs in the earth.” Here al-Māwardī meant by the Caliph either humanity as a whole or some groups thereof. The use of the word in this sense has persisted down to our own age. al-Mawdūdī, (d. 1400/1979) a famous Qur’ān commentator of the twentieth century, also quoted the word to denote the vicegerency of every human being on the earth. Clarifying the theme of the verse in *Sūra al-An‘ām*, he says that all the human beings on the earth are the Caliphs of Allah in a sense that Allah has given many things to them as trust and has given them control over those things.<sup>18</sup>

Writing about man’s vicegerency to the previous generations, al-Māwardī quoted Qatāda as saying that the people of every age are the Caliphs to the previous generation.<sup>19</sup> This interpretation of the word Caliph can be verified from the use of the word in *Sūra A‘rāf* where the Prophet Hūd addressed his people in these words: “ and remember when He made you the Caliphs after the people of Nūh.”<sup>20</sup>

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<sup>14</sup> al-Qur’ān, 38:26.

<sup>15</sup> al-Māwardī, *Tafsīr*, 38:26.

<sup>16</sup> al-Qur’ān, 6:165.

<sup>17</sup> al-Qur’ān, 35:39.

<sup>18</sup> Mawlānā Abū A‘lā al-Mawdūdī, *Tafhīm al-Qur’ān*, 6:165.

<sup>19</sup> al-Māwardī, *Tafsīr*, 35:39.

<sup>20</sup> al-Qur’ān, 8:69.

A little further in the same *Sūra* the prophet *Ṣāliḥ* repeats the similar words thus: “and remember when He made you the Caliphs after the people of ‘Ād...”<sup>21</sup> Here instead of taking it in any limited sense the word has been used in a broad sense. The individuals of every succeeding generation are considered as Caliphs to the previous generation.

In the verse of the *Sūra al-An‘ām* referred to in the above paragraph, al-Māwardī also interpreted the word in various other contexts. Every person holding some responsibility is a Caliph so that the system of the world may be regulated in the right way. al-Mawdūdī also shares this viewpoint completely. Having recognized the Caliphate of every human being on the earth, he further clarifies this theme that Allah has classified all the Caliphs according to different grades. Some of the Caliphs have a wider sphere of responsibility while the others have a limited sphere of responsibility.<sup>22</sup>

al-Māwardī also interpreted this word to prove the necessity of the Caliphate for the followers of the Prophet Muḥammed (P.B.U.H). They are called as the Caliphs to the previous nations and since there would be no more Prophets after the Prophet Muḥammed (P.B.U.H.) they would occupy this status right to the end.<sup>23</sup> Here al-Māwardī was not alone in holding this opinion. al-Zamakhsharī (d. 538/1144) also considered that the word referred to the followers of the Holy Prophet: since he was the last of the prophets and his community came at the end of all the communities. Al-Zamakhsharī also highlighted another aspect of the same verse by indicating that man’s control over everything in the universe means his Caliphate.<sup>24</sup>

There is another sense in which the word applies to the followers of the Holy

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<sup>21</sup> Ibid.

<sup>22</sup> al-Mawdūdī, *Tafhīm*, 6:165.

<sup>23</sup> al-Māwardī, *Tafsīr*, 6:165.

<sup>24</sup> al-Zamakhsharī, Muḥammed ibn ‘Umar, *al-Kashshāf ‘an haqā’iq al-Tanzīl Wa ‘Uyūn al-Aqāwīl fī Wujūh al-tanzīl*, 4vols, 6-165.

Prophet (P.B.U.H). Since they succeeded in establishing Islamic society, they were made responsible in their collective capacity to execute the Divine commandment through the establishment of the agency of the Caliphate.

In our study so far we have seen that the word has been used in various senses.

- The Caliph is a Divinely appointed representative on the earth who has to enforce the Divine commandments as a trust.
- Mankind succeeded jinn as the representatives on the earth.
- Every succeeding generation is Caliph to the previous generation.
- In a strictly political sense the word is used twice as a singular. In both cases it is applied to the Prophets who were made responsible for the execution of the commandments of Allah.
- Every man trying to revive the religion of Allah is a Caliph whether he has the power or not.
- Every man holding some responsible post with a limited sphere of responsibility is a Caliph. In this capacity some of the men are placed above others to run the system of the world successfully.

It is obvious from the above study that like other commentators of his time, al-Māwardī used the word both in the political as well as non-political context. Neither has it been used merely within a political context nor has he isolated it from political connotations. In two places it has been used in the Qur'ān to indicate the sovereignty of the Prophet. The *Ḥadīth* literature conforms to the same viewpoint and uses the word both in the political as well as non-political context. The companions, therefore, adopted the word Caliph in all these senses and applied the word both to the ruler as well as to a deputy in any field of life. But the word did not assume the status of a revealed text for the ruler and al-Māwardī used it interchangeably with the words *Amīr*



*al-Mu'minīn, or Imān.*

### **The Prophetic Way of Establishing an Islamic Order**

As mentioned above, the word Caliph is applicable both to a sovereign ruler executing the commandments of Allah as well as to a person concerned with the revival of religion of Allah. Ādam was a Caliph as a sovereign ruler but not all the succeeding Prophets were sovereigns. Yet they were Allah's Caliphs because of their concern to revive the religion. The Prophets laid down a set pattern and linked the enforcement of Divine injunctions with the ability and strength of the believers. In this process, if a sufficiently large number of people of a given society accepted the religion and had ability to enforce the religious injunctions, they were bound to establish an Islamic government so as to regulate their collective lives in accordance with those religious injunctions.

The establishment of an Islamic government consequently depends upon the collective ability of the members of an Islamic society for which it is necessary to follow the pattern set by the Prophet.<sup>25</sup> The followers of a Prophet had the experience of a full-fledged Islamic society after going through several stages. They were subsequently made responsible for implementing the religious commandments at a collective level for which the government was considered indispensable. From such an order it follows that the Islamic government is established in consequence of, and not prior to, the transformation of society as a properly Islamic one. At no stage during their early *Da'wa*, did the Prophets give a call to the believers to hurry the process of reform through establishment of government. In *A'lām al-Māwardī* states the proper order of the scheme of the Islamic injunctions that transformed the society into an Islamic one.

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<sup>25</sup> Mawlānā Ameen Aḥsan Iṣlāhī adhered to the same viewpoint in his book *Tafhīm Dīn*. He thinks the revival of religion at social level prior to the establishment of government (*Tafhīm Dīn*, PP.137-139).

He sets forth the example of the Holy Prophet (P.B.U.H) who set an example in establishing this pattern.<sup>26</sup>

### **The First Stage**

After prophethood the work of preaching was initially limited to a close circle of believers. al-Māwardī considered it a right method according to which the prophetic work is carried out. No attempt was made to achieve slightly what was beyond the capacity of the believers in view of time and circumstances. The Prophet (P.B.U.H.), therefore, merely conveyed the message to his relatives and to those close to him as prescribed in the Qur'ān: “ O thou enveloped in the cloak, arise and warn”<sup>27</sup>

After winning over a few converts to his religion, he conveyed his message openly in the light of the following Qur'ānic prescriptions: “ so proclaim that which you are commanded, and withdraw from the idolaters”<sup>28</sup>

At this stage the Divine message was limited only to the unity of Allah as well as to the reward and punishment of the hereafter.<sup>29</sup> That was another point thought implicit in the scheme of the religion. It was necessary for the believers to build strong faith in Allah and in the hereafter before they could be the rightful recipients of other religious injunctions. Without firm belief in Allah and the hereafter it was considered futile to expect them to carry out other injunctions in the right manner and at the proper time. This approach can be supported by the statement attributed to the Companions that they first learnt faith and then it was easy for them to act upon the injunction of Islam.

<sup>26</sup> al-Māwardī, A'lām, PP.282-285.

<sup>27</sup> al-Qur'ān, 74-1-2.

<sup>28</sup> al-Qur'ān, 15:94.

<sup>29</sup> al-Māwardī, A'lām, P.282.

## The Second Stage

After the unity of Allah, al-Māwardī describes the manner in which the Islamic methods of worship and injunctions were introduced; and the methods of worship took precedence. The angel Gabriel taught the Holy prophet ( P.B.U.H) both ablution and prayer and both these by virtue of the Divine commandment through the Holy Qur'ān were made incumbent on all the Muslims of the *umma*. In the ninth year the prayer was made obligatory after the journey of the Prophet (P.B.U.H) from the *Masjid Ḥarām* to the *Masjid al-Aqṣā*. No other injunctions related to the worship were made incumbent until he migrated towards *Medina* where the residents of the city became his supporters.<sup>30</sup>

The proper order according to which the religious injunctions were imparted was thus explained. After belief in Allah and the hereafter the foremost priority was given to the '*Ibādat*', thus indicating the need to fortify the relationship between man and Allah. On such foundations, the building up of the community of believers was considered possible. The task of the Prophet (P.B.U.H.) was not only to educate the people but also to teach them wisdom and purify their morals.<sup>31</sup> The community of believers, raised on these lines, could act upon the religious injunctions pertaining to all aspects of life and was consequently in a position to establish the government.

Due regard was given to the capacity of the followers in making them follow the different injunctions in the realm of '*Ibādat*'. Prayer was made compulsory before any other religious injunction because it was comparatively the easiest of all the acts of the worships. However, prayer remained an individual act as long as Muslims were in Mecca. Ibn Hishām says that in the early days the companions used to pray secretly on

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<sup>30</sup> Ibid, P.286.

<sup>31</sup> al-Qur'ān, 3-164.

the outskirts of Mecca.<sup>32</sup> The holy Prophet (P.B.U.H), along with his cousin, ‘Alī, used to pray in a similar manner.<sup>33</sup>

### The Third Stage

In Medina, in the second year of the *Hijra*, fasting was ordained. Then the change of *Qibla* from Jerusalem to the *Ka‘ba* took place. Following that the *zakā‘* and the ‘*īd* prayer were made compulsory. The Friday prayer was substituted for the noon prayer. *Zakā‘*, *Hajj*, and ‘*Umra* were not made compulsory until the Muslims were strong enough to establish an Islamic community in Medina.<sup>34</sup> al-Ṭabarī indicates this second year of *hijra* in which these commandments were made compulsory one after another as the most eventful year.<sup>35</sup> Thus a gradual process led to a complete implementation of all the Islamic injunctions. The *Zakā‘* was made obligatory when it could be implemented at a collective level. Far from being an individual responsibility depending on the choice of members of the community, it was from the very start a collective obligation which was made an official responsibility after the acquisition of strength. The same principle was at work regarding *Hajj* and ‘*Umra*. No injunctions were revealed to make them compulsory until the conquest of Mecca.

As for the al-Aḥkām, some of them related to what al-Māwardī classified as common sense like fornication and murder and were made unlawful immediately after the start of the ‘warnings’ in Mecca. At this stage the status of these injunctions was moral and not legal or political owing to the lack of strength for their proper implementation. As for the things that were difficult to determine by reason, the rulings concerning their lawfulness or unlawfulness were not laid down as long as the Prophet

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<sup>32</sup> Ibn Hishām, Seerat, al-Nabī, vol.1, P.297.

<sup>33</sup> Ibid, P.278.

<sup>34</sup> Ibid, P.287

<sup>35</sup> al-Ṭabarī, Tārīkh al-Rusul Wa al-Mulūk, PP.18-19.

(P.B.U.H) and the Muslims were in Mecca. Only after the *Hijra* were such rulings revealed. As the believers grew in strength and number, they were proportionately subjected to more laws and commandments. The injunctions that could be carried out in Medina were not revealed at Mecca. At Medina when they acquired a distinct identity, the religious injunctions acquired a collective status. Gradually other injunctions pertaining to all spheres of life were revealed. According to al-Māwardī, then, before a man or people are expected or ordered to undertaking an obligation, it must be judged that they have the ability to undertake that obligation. Where that ability is lacking, they will be absolved from undertaking the obligation. That was a typical method of the Prophet (P.B.U.H) according to which the commandments were made compulsory after judging an individual's capacity both at individual and collective level. A *Ḥadīth* in the Muslim clarifies the same theme. It is narrated from 'Abd Allah b. 'Umar that the Holy Prophet (P.B.U.H) used to take the oath of allegiance to listen and obey and used to say (to us to act upon) such injunctions that we are able to undertake.<sup>36</sup> Since the Muslims were weak in Mecca and the rulings concerning unlawful (*Ḥarām*) and lawful (*Ḥalāl*) could not be implemented there, no attempt was made to achieve the task until they migrated to Medina where they had a safe abode in which these rulings could be implemented. So the lawful and the unlawful were made clear, as were the permissible (*Mubāḥ*) and prohibited (*Ḥāzār*). al-Māwardī considered all this to have been carried out with great wisdom (*Ḥikma*). This was described as an established principle of Prophetic method and injunctions of *sharī'a*.<sup>37</sup>

### **Prophethood, Sovereignty, and Government**

Interpreting the verse of the Qur'ān where Allah enjoins the Muslims to give the

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<sup>36</sup> "Kitāb al-Imārā", Ṣaḥīḥ Muslim, 632.

<sup>37</sup> al-Māwardī, A'lām, P.287.

‘trust’ to their rightful owners,<sup>38</sup> al-Māwardī cites three interpretations, all of which emphasize the need to adopt a collective and systematic approach to implementing the Islamic injunctions. In the first interpretation, he stresses the political aspect and recommends that affairs of leadership should be entrusted to those who are able to undertake this responsibility.<sup>39</sup>

The validity of the verse, according to the second interpretation of al-Māwardī, is with reference to ‘Uthmān b. Ṭalḥa who was the custodian of the keys of the *Ka’ba*. His status as a custodian of the keys was confirmed through this revelation.<sup>40</sup> From this principle it follows that every man performing a job in a society on the basis of his ability is confirmed in his status.

In the third interpretation, on the authority of Ḥasan and Qatāda, it has been considered as a general principle that should govern society as a whole. Every man should be given what he is best fitted for.<sup>41</sup> The proper implementation of this principle would give authority to those people who are best fitted to exercise it. Individual appointments should reflect ability so that worthy candidates are chosen for the position that will make use of their skills. The verse was revealed after the conquest of Mecca when the Islamic community had been established.

al-Māwardī dealt with the relation of the Prophet to authority in the incident of Ṭālūt (*Saul*) and Jālūt (*Goliath*). The children of Israel challenged the right of Ṭālūt to kingship when their prophet gave them the tidings of his appointment as a king. Their challenge was based on two considerations: (1) he was a man of an obscure origin; (2) he was not a wealthy person.

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<sup>38</sup> al-Qur’ān, 4:58.

<sup>39</sup> al-Māwardī, *Tafsīr*, 4:58.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Ibid.*

The prophet indicated the legitimacy of his rule on two grounds: (1) he was a strong man; (2) he was more knowledgeable.<sup>42</sup>

In narrating this incident al-Māwardī also deals with the problem of whether it is legitimate for the prophet to undertake a job under some worldly king. For a proper answer to this question al-Māwardī raised a question in the context of the Prophet David: whether he was a Prophet when he killed Jālūt. al-Māwardī quoted two arguments without indicating his preference for any one of both arguments. The argument that justifies his being a prophet at the time of killing Jālūt shows that only prophets accomplish such unusual things and men other than the prophets cannot accomplish such things.<sup>43</sup>

The second argument was that David was not yet elevated to the status of a Prophet because it is not proper for a Prophet to undertake a job under the supervision of a man who is not a Prophet.<sup>44</sup>

To know al-Māwardī's preference for one of the above two arguments we need to turn to the *sūra* of Joseph where al-Māwardī deals with the same problem.

Interpreting the verse according to which the Prophet Joseph addressed the king in these words: "set me over the storehouses of the land," al-Māwardī quoted two interpretations. According to the first interpretation, the notion of storehouses here implies persons, since the sayings and the actions are hidden in those persons. They are therefor treasures.<sup>45</sup>

al-Māwardī deals with the second interpretation in a more detailed manner. According to it the treasures here mean the treasures of wealth. Another possibility

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<sup>42</sup> Ibid, 2:247.

<sup>43</sup> Ibid, 2:251.

<sup>44</sup> Ibid.

<sup>45</sup> Ibid, 12-55.

which he went on to quote was that the prophet Joseph had asked to be appointed as the food minister.<sup>46</sup>

From this follows the debate about the legitimacy of man's proposing himself for some post for which he thinks himself properly qualified. For a satisfactory answer to this problem al-Māwardī relied upon a saying narrated from *Ibn Serīn* who narrated it from Abū Hurayra that the Caliph 'Umar disputed with him over his appointment in Bahrain. The Caliph 'Umar persuaded him to take the employment which he had refused. The Caliph inquired as to why he refused to undertake a job while the Prophet Joseph had asked for it.<sup>47</sup> So al-Māwardī seems to derive the conclusion from this that it is right to offer oneself as a candidate for a job if one thinks oneself eligible for the post.

In the context of the same incident al-Māwardī deals with the problem that if a ruler is unjust, people have different views over the legitimacy of accepting a government job. According to one opinion it is right to accept the job provided one takes it in a right manner, because the Prophet Joseph did by serving under the rule of the Pharaoh of time. A person will then be judged on the basis of his actions and not on the basis of the actions of others.<sup>48</sup>

The second opinion is that it is not legitimate to take such an employment. It is wrong either to assist such a person in his wrong policies or to become an instrument for his wrong policies.<sup>49</sup>

The persons who justify Prophet Joseph's undertaking the job give two arguments. First, the pharaoh of the time of Prophet Joseph was a just person while the Pharaoh at the Prophet Moses was an unjust person. Second, instead of looking at his actions, Prophet Joseph had his eye upon (the management of) pharaoh's wealth. Hence he could

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<sup>46</sup> Ibid.

<sup>47</sup> Ibid.

<sup>48</sup> Ibid.



not be held responsible for his acts. al-Māwardī, without completely indicating his preference for any viewpoint, arrived at a conclusion based on the following three points:<sup>50</sup>

(1) It is legitimate for a person to undertake such matters not requiring *ijtihād* in their implementation like alms and *zakāʾ*. Undertaking such acts is legitimate under an unjust ruler because of *naṣṣ* on it (everything already clarified according to the rules and he has just to enforce it).

(2) What is not legitimate is that (unqualified rulers) should undertake (tasks) where *Ijtihād* is necessary-like (issues concerning) *ḥaḳ*. So accepting the office from an unjust ruler is not legitimate because he manages (areas) on which he has no right and exercises *ijtihād* for which he is not qualified.

(3) It is legitimate for a qualified man (to perform *ijtihād*) to undertake (tasks) where there is a scope for *ijtihād* such as in settlements of disputes and provided he is allowed to follow another *mujtahid's* opinion; if the ruling is concerning two consenting parties or mediation between two disputing parties. However, it is not permissible if the issue falls within the category of compulsory commandments.<sup>51</sup>

What is clear from the above three principles is that al-Māwardī allows employment under the unjust ruler provided that the employee can execute the policies consistent with Islam not requiring *Ijtihād*. Every command already exists clearly in written form and the employee has just to enforce it. But if the ruler unnecessarily interferes in the rules and exercises *ijtihād* which he does not deserve, then carrying out such policies is not justified and employment in this case is illegitimate. And finally, subject to his competence the employee can accept the job on the condition that he will accept

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<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> Ibid.

responsibility for the issues in which there is room for *ijtihād*; and that he will not be bound to execute all official commandments.

### The Limits of Obedience to the Ruler

In the fifth section of the Qur'ān the verse states: "O you who believe, obey Allah, and obey his prophet, and those who are in authority among you. And if you dispute concerning a thing, refer it to Allah and His Prophet if you believe in Allah and the hereafter"<sup>52</sup> al-Māwardī interprets this verse in the light of *Aḥādīth* and explains his views regarding the limits of this obedience towards the ruler.

First of all he quotes a *Ḥadīth* from *A'mash* b. 'Alī and Saḥb bin Abū Hurayra who narrated that: " who obeys me obeys Allah and who disobeys me disobeys Allah, and who disobeys my *Amr* disobeys me."<sup>53</sup> Here 'those in authority' are considered to be the rulers. al-Māwardī supports this interpretation with the statement of Ibn 'Abbās (d. 67-8/686-8), Abū-Hurayra, Suddī, and Ibn Zayd (d. 122/740), all of whom agree on this point. The tradition clearly states the rule that the ultimate objective of every man should be obedience towards Allah. But this obedience is possible only by obeying the Prophet Muḥammed (P.B.U.H.). In other words the will and plan of Allah are made known to mankind only via Prophets. There can be no obedience to Allah without rendering obedience to the Prophet (P.B.U.H).

This theme is also apparent in other parts of the Qur'ān. In the third section the verse reads: " say (O Prophet) if you love Allah then follow me Allah will love you and

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<sup>52</sup> al-Qur'ān, 4:59.

<sup>53</sup> al-Māwardī, *Tafsīr*, 4:14.

For more details see, "Kitāb al-Aḥkām", *Ṣaḥīḥ al-Bukhārī*.

pardon your sins.”<sup>54</sup> In the fifth section of the Qur’ān it has been mentioned: “whosoever obeys the Prophet, indeed he has obeyed Allah.”<sup>55</sup>

Obedience to a person is also obligatory whom the Holy Prophet (P.B.U.H) has appointed or who is successor to him. Consequently disobedience to him is considered a disobedience to the Holy Prophet (P.B.U.H). There is, however, a difference between the obedience to Allah and his prophet and obedience to a ruler. The ruler is appointed to enforce the Divine will which has been revealed to the Holy Prophet ( P.B.U.H). He has no independence to act contrary to the Divine will in any matter. Obedience to him is obligatory as long as he remains obedient to Allah and His Prophet. The Caliph Abū-Bakr clarified the same theme when he asked the people to render obedience to him as long as he remained obedient to Allah and His Prophet ( P.B.U.H).

al-Māwardī explains the extent and limits of obedience by quoting a *Ḥadīth* from *Hishān* b. ‘Urwā from Abū-Ṣāliḥ b. Abū Ḥurayra. It is narrated that: “ you will be governed after me by the governors. The righteous will govern you righteously and the wicked ones will govern you wickedly. Listen to them and obey them in all what is in conformity with the truth and pray behind them. If they are good it is both to your and to their (advantage). And if they are bad it will be against them and still to your (advantage).”<sup>56</sup>

By quoting another *Ḥadīth* al-Māwardī shows that the ruler has to be followed only in right actions. He quotes the tradition as follows: “ obedience to the ruler becomes necessary if he obeys Allah. The obedience is not binding if the ruler’s orders are not in conformity with the *Sharī’a*. In such a situation disobedience to the ruler is justified.

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<sup>54</sup> al-Qur’ān, 3:31.

<sup>55</sup> Ibid, 4:80.

<sup>56</sup> al-Māwardī, *Tafsīr*, 4:59.

And obedience to the ruler should not be at the expense of the obedience to the prophet of Allah.”<sup>57</sup>

To further support this viewpoint he quotes another tradition from Nāfi‘ b. ‘Abd Allah. In the words of the tradition: “ obedience to the ruler is obligatory regardless of individual likes and dislikes with the only exception when orders are contrary to the *Sharī‘a*. In such cases obedience is not binding.”<sup>58</sup>

Both of these traditions just mentioned require the people to render obedience to the rulers in matters that are lawful, and not to shake off the burden of their authority even if they commit some acts contrary to the commandments of the *sharī‘a*. But the believers are, at the same time, required not to co-operate with the ruler in his unjust policies. They have to adopt the course of actions which is consistent with the scheme of the *sharī‘a*. This viewpoint is based on the teachings of the Qur’ān and *Ḥadīth*. The Qur’ān puts emphasis on believers to cooperate with one another over virtue and piety and not to cooperate over sin and transgression.<sup>59</sup> In the words of a *Ḥadīth*, there is no obedience to ruler in (matters that involve) disobedience to Allah and His Prophet (P.B.U.H).

### **The Necessity and Merits of Authority**

According to al-Māwardī, the absence of authority would lead to mutual strife in society. The un-organized and lawless people would soon be driven to barbaric behavior. There would be none to restore the rights of the poor and the weak. Men are, therefore, inclined to submit to the authority of a leader to prevent mutual injustice and

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<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

Also see “Kitāb al-Imārā” Sahīḥ Muslim;

<sup>59</sup> al-Qur’ān, 5:2.

to settle their disputes.<sup>60</sup> al-Māwardī finds support for his viewpoint from the *Ḥadīth* that ‘ the sultān is the shadow of Allah on the earth with whom every oppressed individual finds a support.’<sup>61</sup>

To further indicate the advantages of his strength and authority al-Māwardī says: “ Allah puts the things right with the ruler more than He puts them right through the Qur’ān.”<sup>62</sup> al-Māwardī’s purpose in quoting this *Ḥadīth* is obvious: that for some people the guidance of the Qur’ān is insufficient and a strong deterrent is required to prevent them from making mischief and spreading disorder.

According to al-Māwardī, authority of men over the earth has its origin in the will of Allah. It is based on the same principles according to which the rest of the universe is organized. According to the text of the Qur’ān, Allah is able to achieve everything by His power directly without the need to call upon anyone. However, He has preferred to manage all the affairs through His lieutenants. This principle is at work both in the heavens and in the earth. While the angels manage the affairs in the heaven, the management of the earthly affairs is entrusted to the kings. In support of this viewpoint. al-Māwardī quotes the following tradition: “ to Allah belong the guardians in the heavens and the guardians in the earth. His guardians in the heaven are the angels and his guardians in the earth are those (kings) who hold their provisions and protect them from the people.”<sup>63</sup>

Indicating the preference of tyranny over anarchy, a theme that is characteristic of his political thought, he again relies on the *Ḥadīth* of the Holy prophet (P.B.U.H.). In the words of the *Ḥadīth*: “the unjust ruler is better than anarchy. In the both there is no

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<sup>60</sup> al-Māwardī, *A.S.*, P.10.

<sup>61</sup> al-Māwardī, *Adab*, P.137.

<sup>62</sup> *Ibid.*

<sup>63</sup> *Ibid.*

Not found in famous nine books of *Ḥadīth* collection.

good. And in some mischief there is an option (an option between the lesser of two evils).”<sup>64</sup>

Whilst maintaining a political system based on religion and justice to be his ideal, his aversion to anarchy led him to regard any kind of authority better than its complete absence. He quotes a *Ḥadīth* to this effect: it is narrated from Abū Hurayra that the people of the *Ajam* were reviled in the presence of the Holy Prophet (P.B.U.H), so he forbade this and said: “ do not revile them. They have inhabited the cities wherein live the people.”<sup>65</sup>

After a brief survey and analyses of al-Māwardī’s political concepts as stated in the Qur’ān and *sunna*, we now turn to the *Rāshidūn* period because of its close proximity and immediate succession to the era of the Holy Prophet (P.B.U.H.). The methods of the accession to the power in this period were considered to be the precedents, which according to al-Māwardī were models for succeeding generations. al-Māwardī developed a comprehensive theory explaining the nature of these appointments and deduced a number of important principles.

### **The Caliphate of Abū-Bakr**

After the passing away of the Holy prophet (P.B.U,H),the election of Abū-Bakr was completed within a single session at *Saqīfa Banī Sa‘ida*. Referring to the speech of the Caliph ‘Umar, Madelung has thrown light on the fact that the meeting at *Saqīfa Banī Sa‘ida* was not representative enough to be made a precedent for the future.<sup>66</sup> The quick procedure to solve the succession problem was adopted to ward off the outbreak of *fitna* that could be erupted due to several contending claims to power.<sup>67</sup> The text of the

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<sup>64</sup> Ibid, Again missing from famous nine books of *Aḥādīth* collection

<sup>65</sup> Ibid, falls in the same category as above.

<sup>66</sup> Madelung, Wilferd, Succession to Muḥammed (P.B.U.H), P.33.

<sup>67</sup> Ibn Kathīr, al-Bidāya, vol: 5, P.430.

speech makes it clear that the city of Medina could not be kept for long in a state of confusion without a head of the community. Had there occurred a slight delay in the choice of *Amīr*, the *Anṣār* would have chosen an *Amīr* of their own. As the events of *Saqīfa Banī Sa'ida* indicated, the *Anṣār* either considered themselves as the legitimate claimants of the office or were prepared to share this right with the *Muhājirūn*. In both cases the consequences would have been unfavorable. The Caliph 'Umar also alluded to the fact that it was because of the personality of *Abū-Bakr* that the election was ultimately approved universally.<sup>68</sup> If the same procedure were repeated in case of someone else it would cause nothing but *fitna*. The *Anṣār* and *Muhājirūn* unanimously chose *Abū-Bakr* for the post of the Caliph. In the light of the developments that took place at *Saqīfa Banī Sa'ida*, al-Māwardī deduced and stressed the importance of the following principles:

### ***Ijmā'* of the Companions**

At first, the application of the word *ijmā'* does not seem to be appropriate because of the differences that initially arose between the Companions with regard to the establishment of the Caliphate. The speeches and exchange of the arguments between the *Anṣār* and *Muhājirūn* at *Saqīfa Banī Sa'ida* and the gathering of 'Alī and some associates at the house of *Fāṭima* and their delay in taking of an oath of allegiance<sup>69</sup> made it difficult to reach a unanimous decision. However, the differences were resolved and an agreement was ultimately reached: thus the companions in fact succeeded in securing *ijmā'*. According to al-Māwardī, the status of *Ijmā'* is not affected if the differences are overcome and reconciliation of the opinions is ultimately secured.<sup>70</sup> It , however, appears from the account of developments that took place in *Saqīfa Banī*

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<sup>68</sup> Ibn Kathīr, *Ibid*, P.429.

<sup>69</sup> al-Ṭabarī, *Tarīkh*, vol. 2, P.236.

*Sa'ida* that after mutual differences, practically all the Companions agreed over the Caliphate of Abū-Bakr, the one exception being Sa'd b. 'Ubbāda. According to *Ibn Kathīr* (d. 774/1372), 'Alī and *Zubayr* took the oath of allegiance either on the same day or the following day after the passing away of the Holy Prophet (P.B.UH). In support of his claim he said that 'Alī never stopped praying behind Abū-Bakr, never remained isolated, and participated along with the Caliph in the *Jihād* campaigns against apostates.<sup>71</sup> In another report Ibn Kathīr states that both 'Alī and *Zubayr* apologized for the delay in taking the oath of allegiance and explained their delay as being due to their exclusion from the election of the Caliph. They felt that they had the right to participate in the consultation process.<sup>72</sup> Both of them acknowledged that Abū-Bakr was the most deserving person for this post. He was 'the second of the two in the cave' and was directed by the Prophet (P.B.U.H) to lead the Muslims in the prayer.<sup>73</sup>

Ibn Kathīr has related an incident involving Sa'd and Abū-Bakr in which Abū-Bakr reminded Sa'd of one occasion when the Holy Prophet (P.B.U.H.) affirmed the right of the *Quraysh* to the Caliphate. According to this saying, good people follow their good people and bad people follow their bad people. Sa'd acknowledged this by saying: " you have uttered a right thing."<sup>74</sup>

According to Ibn Kathīr all this took place on the same day when the Holy Prophet (P.B.U.H) passed away. The next morning both the *Muhājirūn* and the *Anṣār* assembled and the oath of allegiance was completed. From these accounts of the developments, it is clear that the differences were removed within a short period of time. In the light of these developments Ibn Kathīr also maintained it to be an *Ijmā'* of the companions.

<sup>70</sup> al-Māwardī, *Adab al-Qādi* vol. 1, P.479.

<sup>71</sup> Ibn Kathīr, *al-Bidāya*, vol. 5, P.189.

<sup>72</sup> *Ibid*, P.163.

<sup>73</sup> *Ibid*.

<sup>74</sup> *Ibid*, P.160.



al-Ṭabarī, on the other hand maintains that the Caliphate of Abū-Bakr was not acknowledged by ‘Alī until six months later.<sup>75</sup> Concerning Sa‘d he said that he never took the oath of allegiance at all. He never prayed behind the Caliph and did not perform the pilgrimage under official patronage.<sup>76</sup> However, the message of the Caliph to Sa‘d quoted by al-Ṭabarī confirms that the oath of allegiance of the rest of the people was by then completed.

According to al-Ṭabarī, Abū-Bakr sent the message to Sa‘d : “ everybody including the people of your own tribe have taken the oath of allegiance.” The text of this message supports the arguments against the possibility that some faction from the *Anṣār* persisted in their refusal to take the oath of allegiance. The message then continues: “ therefore, you too should take the oath of allegiance.” According to al-Ṭabarī, Sa‘d answered in the negative.<sup>77</sup> However, it is clear from the message that everybody by then had agreed to the Caliphate of Abū-Bakr.

Whatever the differences, between the accounts of both Ibn Kathīr and al-Ṭabarī regarding the timing of the oath of allegiance from different sections of community, both are agreed that it was a unanimous decision of the *Umma*. It was the first critical issue that the Companions were confronted with after the passing away of the Holy Prophet (P.B.U.H) and they ultimately solved it in a manner acceptable to all. H.A.R.Gibb rightly calls it the first historic and most decisive exercise of *Ijmā‘*.<sup>78</sup>

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<sup>75</sup> al-Ṭabarī, *Tarīkh*, vol. 2, P.236, This is according to a long version of Zuhri quoted by al-Ṭabarī However, al-Ṭabarī also quoted two other statements, which are in clear contrast to this statement. Firstly, on the authority of Ḥabīb b. Thābit, he narrates that when ‘Alī heard that Abū-Bakr was in the mosque and was taking the oath of allegiance, he immediately went out without proper dress to give the oath of allegiance. Secondly, on the authority of Ibn Jubair, he narrates that ‘Alī refused to accept Abū Sufiyān’s support against Abū-Bakr and said that he gave oath of allegiance to Abū-Bakr because he thought him eligible for this office.

<sup>76</sup> Ibid, P.244.

<sup>77</sup> Ibid.

<sup>78</sup> H.A.R. Gibb, “Constitutional Organisation”, *Law In The Middle East*, vol.1, P.4

The *Ijmā'* of the companions was thus considered to give the Caliphate a good start and solid foundations. However it would be wrong to assume that al-Māwardī maintained it to be a legal requirement in the establishment of the Caliphate. The Caliphate is rightly established if a few prominent members of the community take the oath of allegiance to a deserving man having necessary qualifications for the office. Though the required unity between the people of power and influence would be lacking in absence of *ijmā'* over the choice of the Caliph, it would be still a rightly established Caliphate if some prominent members agree over it<sup>79</sup> and the people of the city follow the lead.<sup>80</sup>

### **The Importance of the *Naṣṣ***

al-Māwardī did not believe in the right of Abū-Bakr to the Caliphate on the basis of *Naṣṣ* as was held by some jurists like Ḥasan Baṣrī (d. 110/728), Ibn Ḥazm (d. 456/1064), and Ibn Taymiyya (d. 728/1328).<sup>81</sup> Like most of the *Sunnī* jurists, he was of the opinion that the Prophet (P.B.U.H) did not leave any clear-cut instructions over the issue of succession. The Caliphate of Abū-Bakr, according to him, was established by the *Ahl Ḥall wā al-'Aqd*. This appears to be a stronger view: the Caliph 'Umar is reported to have expressed the same views shortly before his death. Moreover had there been a *Naṣṣ* over the Caliphate of Abū-Bakr, he would have let it known to the people and would never have suggested the names of 'Umar and Abū 'Ubayda for the Caliphate. But while there was no *Naṣṣ* over the right of any person to the Caliphate, the issue was ultimately settled through recourse to the *Naṣṣ* regarding the right of the tribe of the *Quraysh* to the Caliphate.<sup>82</sup>

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<sup>79</sup> al-Māwardī, *A.S.*, P.13

<sup>80</sup> *Ibid*, P.14

<sup>81</sup> Madelung, *The Succession to Muhammad (P.B.U.H)*, P.54.

<sup>82</sup> al-Māwardī, *A.S.*, P.12.

al-Māwardī's account shows that Abū-Bakr, along with the prominent associates from *Muhājirūn*, could not settle the issue of the Caliphate before the announcement of the *Naṣṣ*.<sup>83</sup> A careful study of developments in *Saqīfa Banī Sa'ida* validate the authenticity of this account. To establish their claims to the office, both *Muhājirūn* and *Anṣār* delivered speeches in support of their candidates. The accounts of those speeches in al-Ṭabarī and Ibn Kathīr throw light on their concern for the office in the light of their past services. Sa'd whom the *Anṣār* chose as their leader, attributed the past victories of the Muslims to their group.<sup>84</sup>

According to Sa'd, the *Muhājirūn* were feeble and unable to defend themselves in the land of their origin, Mecca. After their migration to Medina, it was the *Anṣār* who subdued the whole of Arabia for them and gave Islam a dominant position.<sup>85</sup> He thus clearly implied that the right of authority, therefore, now legitimately belonged to a group who was able to put the community of believers in an effective and dominant position. Abū Bakr, on the other hand, without denying their past services, recounted some services of *Muhājirūn*<sup>86</sup> and then instead of making it only the point of discussion, called their attention to the future situation to find a solution that should be acceptable to all sections of the community. He argued that the people would not accept the rule of anyone except the *Quraysh* owing to their eloquence of speech, their close terms with the people, their status among the Arabs.<sup>87</sup>

As al-Māwardī puts it, it was following the quoting of a tradition to this effect that most of the *Anṣār* hastened to take the oath of allegiance at the hand of Abū-Bakr.<sup>88</sup> Ibn Kathīr's account also confirms the same version with slightly different wordings.

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<sup>83</sup> Ibid

<sup>84</sup> al-Ṭabarī, *Tārīkh*, vol.2, P.242; S.M.Yūsuf, *The Choice Of A Caliph In Islam*, P.5

<sup>85</sup> al-Ṭabarī, *Tārīkh*, vol. 2, P.242.

<sup>86</sup> al-Ṭabarī, *Tārīkh*, vol. 2, PP. 242-243; S.M. Yūsuf, *The Choice Of A Caliph In Islam*, P.5

<sup>87</sup> Mawlanā, Yūsuf Kandlavī, *Ḥayāt al-Ṣaḥāba*, vol. 2, P. 18.

According to him Abū Bakr narrated the tradition to Sa'd: " the matter of the Caliphate belongs to the *Quraysh*. The good people among them follow the good people of the *Quraysh* and bad people follow the bad people of the *Quraysh*."<sup>89</sup> After this the oath of allegiance was completed in a short time.

According to al-Māwardī, since the agreement was secured among the companions, that the right of the Caliphate belonged to men of *Qurashite* origin, it did not take long before the choice fell upon the most senior member of the *Quraysh*, Abū-Bakr.<sup>90</sup> Because of this *Ijmā'* no *Anṣār* is reported ever to have contested this right in the subsequent course of the Islamic history. It was also due to the observance of the same principle that the right of the two subsequent Caliphs to the office was immediately recognized.

### **Determining the required Number of Persons for electing a Caliph**

From the Caliphate of Abū-Bakr al-Māwardī deduced the principle of the required number of persons necessary for holding the Caliphate. As stated earlier, the *ijmā'* was the symbol of a strong Caliphate and reflected the unity of the Muslims on this issue; but it was not a requirement without which the Caliphate could not be legitimately established. al-Māwardī stated two aspects of this issue. Firstly, that the 'people of power and influence' of one city can elect the *Imān*. Quoting the viewpoint of the '*ulamā'* who think it necessary to seek the consent of the people of power and influence of all the cities, he refuted their position by quoting the Caliphate of Abū-Bakr.<sup>91</sup> Through *ijmā'*. Abū Bakr's Caliphate was made stronger, but it was rightly established before the *ijmā'* was secured. The second aspect is related to determining

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<sup>88</sup> al-Māwardī, *A.S.*, P.12.

<sup>89</sup> Ibn Kathīr, *Seerat*, P.160.

<sup>90</sup> al-Māwardī, *A.S.*, P.12.

<sup>91</sup> *Ibid*, P.13.

the number of persons who must be present to appoint the Caliph. Since five persons determined the Caliphate of Abū-Bakr, this was considered to be a standard number for determining any Caliphate.<sup>92</sup> al-Māwardī even considered the viewpoints of other schools who maintained the required number to be less than five. al-Māwardī reinforced this argument by citing the example of ‘Umar’s nomination of six persons and instructing them that five of them should appoint the sixth one as a Caliph. On both occasions the nominations were acceptable to the *umma*.<sup>93</sup>

### Appointment of the Best Person as a Caliph

Another principle deduced from the Caliphate of Abū-Bakr was that people of power and influence should appoint the best person who should combine all the qualifications necessary for the position of Caliph. However, under exceptional circumstances he maintained the Caliphate of the less preferred ( *mafḍūl* ) to be right one and allowed the people of power and influence to elect such a person. Moreover, it was considered necessary to elect a person who should be acceptable to the people at large.<sup>94</sup>

### The Caliphate of ‘Umar

According to al-Māwardī the Caliphate of ‘Umar was a direct consequence of the nomination of Abū-Bakr. From this nomination al-Māwardī deduced several principles. The *Imān*’s right to nominate the successor is legitimate because of Caliph ‘Umar’s nomination by Abū-Bakr and general recognition of the principle by the Companions.<sup>95</sup> Following the example of the Ijmā’ that took place in *Saqīfa Banī Sa‘ida*, the nomination of ‘Umar was widely approved through another *ijmā’* of the Companions.

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<sup>92</sup> al-Māwardī, *A.S.*, P.13, al-Māwardī has given the names of those five persons from *Muhājirūn*. After their *ijmā’* over the Caliphate of Abū Bakr, the Anṣār followed their lead and took oath of allegiance at the hands of Abū Bakr. Those five names are: ‘Umar, Abū ‘Ubayda, ‘Usayd b. Khudāyr, Bashīr b. Sa‘d, and a freed slave of Abū Huzayfa, Salām.

<sup>93</sup> Ibid.

<sup>94</sup> al-Māwardī, *A.S.*, P.15

There was in fact no serious disagreement against this nomination. According to Abū Salmā b. ‘Abd al-Raḥmān, during his last illness Abū-Bakr sent for ‘Abd al-Raḥmān b. ‘Awf and inquired from him about ‘Umar. He replied that ‘Umar was better than his (Abū-Bakr’s) opinion about him.<sup>96</sup> He then sent for ‘Uthmān b. ‘Affān and asked his opinion about ‘Umar. ‘Uthmān replied that as far as he knew, ‘Umar’s inward being was better than his outward behaviour. None of them was like him.<sup>97</sup> Another prominent member Usayd b. Khūḍayr was consulted. He said: “ I find him very good after you. ‘Umar is pleased with the work that pleases Allah. And he is displeased with the work that displeases Allah.”<sup>98</sup>

Against these strong approvals, we also find some disapproval regarding the strictness of the Caliph. For instance Ṭalḥa b. ‘Ubayd Allah is reported to have come to the Caliph after the Caliph Abu Bakr had his will dictated and said: “ I am spokesman for the people who are behind me. They say you are well aware of ‘Umar’s strictness over us during your lifetime. What will happen after your death when affairs would be handed over to him? Think well before what you do. Allah would definitely question you about what you are doing.” To this Abū-Bakr replied: “ sit me up. Do you threaten me with the fear of Allah? Woe to a man who is not decisive in administering your affairs. When Allah asks me I will reply that I have appointed such a man over your people who is good for them. Go and convey this message to the people.”<sup>99</sup>

According to another narrative from ‘Ā’isha, when the death of Abū Bakr approached, he nominated ‘Umar as Caliph. ‘Alī and Ṭalḥa came to him and asked him whom he had chosen as Caliph. Abū Bakr replied, ‘Umar. Both of them said: “ what

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<sup>95</sup> Ibid, P.18.

<sup>96</sup> Yūsuf, *Ḥayāt al-Ṣaḥāba*, P.26.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid, PP.28-29.

would you answer to Allah.” Abū Bakr said: “ do you threaten me with Allah. Indeed I know Allah and ‘Umar better than you. I would say that I have appointed the best one as the Caliph over the people.”<sup>100</sup>

So there was a mixed response from the people towards the nomination of Abū Bakr. Some people including the senior companions favoured the nomination while some others opposed it and complained about the strictness of ‘Umar. From different conversations between the Caliph and different groups of the companions, it is clear that some of them showed reservation about the strictness of ‘Umar. Hence they reminded the nominating Caliph to be mindful of his duty towards Allah. The nominating Caliph assured them of his concern for his own accountability to Allah and for looking at the matter with deliberation. He, however, showed his resolve to continue the nomination. From this nomination, some of the principles that al-Māwardī strongly adhered to, appear to have been deduced in the following manner:

The Caliph has a right to nominate the candidate for the office. This was the most basic principle that al-Māwardī deduced from this nomination. That all the influential and the prominent members came to the Caliph and showed their approval or disapproval for the nomination virtually amounted to the acknowledgement that he was fully entitled to make this nomination. While they differed and argued with him, supported or opposed him and some of them reminded him of his duty towards Allah, none of them challenged his right to the nomination. None of the prominent members accused him of despotic exercise of authority that did not exclusively belong to him.

The common people showed the same response. They came to the Caliph to convey their viewpoint through the elders. Having put forward their views, they considered the

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<sup>100</sup> Ibid, P.29.

Caliph more eligible to make the final choice and did not criticize the Caliph for despotic exercise of authority.

From this nomination another principle was confirmed: that the Caliph should choose the best person as the next Caliph. First it was made clear from the speech and assurances of Abū Bakr to the people that he did not spare any effort to nominate the best person for them. Secondly, the different consultations between the prominent members and Abū Bakr made it clear that everybody was concerned with the choice of the best person. Apart from strictness, 'Umar's character was not blamed in any respect. al-Māwardī therefore considered it a responsibility of the Caliph to take this principle into account. From the election of Abū Bakr he was led to the same consideration that the people of power and influence should nominate the best person, but he was flexible in allowing them to nominate the less preferred candidate as a Caliph in view of time and circumstances.<sup>101</sup> However he does not seem to be willing to grant the same concession to the nominating Caliph.

From the way the opposing opinions were reconciled within a short time and agreement secured over the nomination of 'Umar, the principle was confirmed that the Caliph had precedence in exercising the right to nominate a successor and the right of nomination belonged to the Caliph more than anybody else.<sup>102</sup> Secondly, it was also confirmed that if the Caliph was thoroughly credible in his lifetime regarding every matter and policy for the people, he should also be trusted to take a decision regarding the affairs of the *Umma* after his lifetime.

People's right to be consulted was established because the Caliph listened to their suggestion regarding the nomination of the person of their choice. They were equally

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<sup>101</sup> al-Māwardī, *A.S.*, P.15.

<sup>102</sup> *Ibid*, P.19.



eligible to criticize the Caliph's decision of nomination. Yet they could not hold the Caliph ultimately responsible to them. They could just remind him of his duty towards Allah but were bound to trust him once they were heard and listened. It was necessary for the Caliph to see that the choice of his candidate on the whole was acceptable to the people so that when the decision was submitted to the people for their final approval there should be no hurdle in the way of securing their oath of allegiance.

Three steps were taken in a specific order: (1) the Caliph's initiative in making a nomination; (2) consultation with the prominent members and making the choice final; (3) adherence of the people through *Bay'a*. The people were asked to assemble in *al-Masjid al-Nabvī*. According to al-Ṭabarī, Abū-Bakr asked for a written statement issued to this effect. People were asked: “ do you agree upon the person whom I am nominating as my successor. By Allah, in concluding this matter I did not spare any effort to fully exert myself. I am not appointing any of my relatives as my successor but ‘Umar Fārūq. So you listen to him and obey him.”<sup>103</sup>

People with one voice replied in the affirmative and endorsed the proposal. At all the stages of seeking approval of the associates or the people at large the Caliph thus took every section of community into his confidence in a systematic manner.

### **The Caliphate of ‘Uthmān**

As noted above this Caliphate was held in direct consequence of the principle of nomination. By this time the Caliph's right to the nomination was almost established. Following the exercise of the right by the Caliph Abū Bakr and the Caliph ‘Umar, the senior companions and the community as a whole agreed to the principle of nomination by the reigning Caliph.

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<sup>103</sup> al-Ṭabarī, *Tārīkh*, vol. 2, PP.352-353.

First of all, it was the Caliph himself who considered it his right to nominate the succeeding Caliph. al-Māwardī alluded to this right of the Caliph in many places in his al-Aḥkām. al-Māwardī cites an incident on the authority of Zuhri that Ibn ‘Abbās found the Caliph ‘Umar restless on account of not being able to find a suitable candidate for the Caliphate. When his attention was drawn to the ablest persons of the time, he pointed out some serious drawbacks in all of them that did not render them completely capable of fulfilling the conditions of the Caliphate.<sup>104</sup> Here the Caliph’s concern, anxiety and exertion to find a proper candidate for the community showed that he considered himself responsible to nominate the Caliph.

Further support for this can be found in another incident, which leads to the same conclusion. The Caliph’s anxiety about the lack of a suitable candidate was again apparent. The Caliph said that if Abū ‘Ubayda or Sālim b. Mawlā had been alive, he would have nominated one of them as the Caliph.<sup>105</sup> This again attests to his belief in his right of nomination. His nomination of the group of six persons was solely his own decision. ‘Umar alone determined their number and the choice. al-Māwardī deduced from this the principle that the choice and the nomination of the *Shūrā* belonged to the Caliph. He has authority to choose and nominate the members of the *shūrā* who could then choose the Caliph from among themselves.<sup>106</sup>

By carrying out the will of the Caliph exactly as he wished, the people of power and influence confirmed the Caliph’s right to the nomination. Accordingly no alterations were proposed or made in the committee. The only difference of opinion is reported to have come from ‘Abbās, the Prophet’s (P.B.U.H) uncle, who criticized ‘Alī for

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<sup>104</sup> al-Māwardī, A.S., P.21.

<sup>105</sup> Abū al-Kalām, Masla Khilāfat, P.165.

<sup>106</sup> al-Māwardī, A.S., P.22.

participation in the *shūrā* but ‘Alī ignored this criticism and the will of the Caliph was carried out completely as he wished.<sup>107</sup>

After a careful study of the Caliph ‘Umar’s exercise of his choice in determining a nomination, al-Māwardī stated the rights of the people to be consulted but also set the limits to this consultation. In each case the Caliph listened to everybody, gave arguments for not accepting their proposals and made a decision of his own, which he considered best for the community.<sup>108</sup> From this, al-Māwardī deduced the principle that it was the right of the people to be heard and listened if they proposed a candidate but the choice of appointing a nominee for the post of the Caliph ultimately rested with the Caliph.

It is the Caliph’s right to appoint the *shūrā* and authorize it to decide the issue. Here again the Caliph’s will, though a final one, indicated the importance of consultation. A period of three days was allowed to make a consultation and to decide the matter. The members of the *shūrā* were required to consult the masses and to give weight to their opinion.

The principle that al-Māwardī deduced from the Caliphate of Abū Bakr was again confirmed: that the *Imān* was bound to nominate the best person. Abū Bakr made it clear before the people, in his speech, and held himself responsible before Allah for making the best choice. He repeated the same viewpoint before the prominent members of the community when they reminded him about his accountability regarding the choice of the best person. His assurance to them regarding the choice of the best person was in fact his agreement with them over this principle. In the case of the Caliph ‘Umar, the nomination of the best person was the main concern. ‘Umar’s overriding concern for

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<sup>107</sup> Ibid, P.18.

<sup>108</sup> al-Māwardī, A.S., PP. 21-23.

the choice of the best person for the job can be seen from number of events: his restless attitude over the want of a proper man for the office,<sup>109</sup> his estimate of all the available candidates to be falling short of the required qualities of the Caliph, and his refusal to nominate someone among the six existing candidates of almost equal stature.<sup>110</sup>

‘Umar took care not to make the office of the Caliphate hereditary. He did not nominate his son for the office nor did he allow him to become a *shūrā* member. His criterion for the choice of six candidates was that the Prophet (P.B.U.H) was happy with them in his lifetime.<sup>111</sup> The seventh man Sa‘eed fell in the same category. But he was excluded because he belonged to the tribe of the Caliph.<sup>112</sup> Strict care was taken to eliminate the possibility of making the Caliphate hereditary. The Caliph’s concern regarding this matter was so grave that he is said to have admonished both ‘Uthmān and ‘Alī that if one of them were raised to the office, he should avoid imposing his relatives upon the people. al-Māwardī did not go as far as to give it the status of precedent and he allowed hereditary succession with several restrictions.

The Caliph’s deliberate omission of Sa‘eed of his own tribe, though a scrupulous regard for the Islamic norms, could not be accepted later on as a legal requirement regarding the nomination of succeeding Caliphs. al-Māwardī, therefore, quite frankly admitted that if a relative of a Caliph was not his son or father, he could nominate him as a Caliph as he could nominate any one else.<sup>113</sup> In the case of a son or father, instead of outrightly excluding them from the post, as the Caliph ‘Umar did in his lifetime, he recommended their nomination provided the people of power and influence ratify this

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<sup>109</sup> Ibid, P.21.

<sup>110</sup> Ibid, PP.21-22.

<sup>111</sup> Ibn Kathīr, *al-Bidāya*, vol. 7, P.111.

<sup>112</sup> Ibid.

<sup>113</sup> al-Māwardī, *A.S.*, P.19.

nomination.<sup>114</sup> Regarding the *shūrā*, its role in the election of the Caliph, and its relations with the Caliph, the following important principles were laid down:

- (1) The nomination of the *shūrā* by the *Imān* is legitimate.
- (2) The legitimacy of the Caliphate through this *shūrā* is in fact the legitimacy of the right of the previous Caliph to nominate this *shūrā*.
- (3) The right of the Caliphate would remain within that *shūrā*.<sup>115</sup>
- (5) As soon as the Caliph is appointed, the *shūrā* would cease to exist. It is then subject to the will of the appointed *Imān* whether to continue with the *shūrā* or not.<sup>116</sup>
- (6) The *Shūrā* is not authorized to appoint any new *Imān* in the lifetime of the living *Imān* or to appoint someone after him. It is acceptable if the Caliph allows the nomination of someone else with his own consent. Otherwise, the nomination of a successor belongs to the Caliph. Even in the interest of the *Umma*, the prior approval of the *Imān* is necessary so as to avoid any schism. Māwardī supports this principle with the precedent of the Caliph ‘Umar: after receiving the fatal injury but whilst still being conscious, he settled the issue of the Caliphate by appointing people to elect a Caliph.<sup>117</sup> Everybody endorsed that decision and affirmed the Caliph’s entitlement to this right.

### **The Caliphate of ‘Alī**

The Caliph ‘Umar imposed a restriction on the migration and settlement of the Companions in the conquered lands.<sup>118</sup> This restriction was lifted during the reign of the Caliph ‘Uthmān.<sup>119</sup> With the spreading of the Companions throughout the Islamic lands the question was now raised whether the Caliphate would be rightly established with the

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<sup>114</sup> Ibid.

<sup>115</sup> Ibid, P.22.

<sup>116</sup> Ibid.

<sup>117</sup> Ibid, PP.22-23.

<sup>118</sup> Yūsuf, *Hayāt al-Ṣahāba*, P.40.

<sup>119</sup> Ibid.

consent of people of power and influence residing in Medina. Alternatively if they consisted of all the companions throughout the Islamic lands, how would it influence the establishment of the Caliphate?

al-Māwardī took into account two viewpoints and ultimately concluded that the Caliphate is rightly established with the agreement of the people of the capital city. Consequently he does not attach any significance to the viewpoint according to which the participation of the people of all the cities is necessary. Five prominent members of the capital city or even fewer can legitimately establish the Caliphate.<sup>120</sup> But the precedents he relied upon clearly reflected the fact that the persons who thus established the Caliphate were the most influential members of the society. This raises the issue of the position of the Caliphate of ‘Alī. The majority of the people of Medina took the oath of allegiance at his hand. Both Ṭalḥa and Zubayr, members of the *shūrā* in the election of ‘Uthmān, took the oath of allegiance at his hand.<sup>121</sup> According to Ibn Kathīr all the people who participated in the battle of *Badr* took the oath of allegiance at the hands of ‘Alī.<sup>122</sup>

As noted before one of the conditions for the establishment of the Caliphate was that the choice of the people of power and influence must fall upon the best person. Although under exceptional circumstances the election of the less preferred (*mafḍūl*) was also justified, it was allowed to the people of power and influence under the special contingency. At the time of the establishment of the Caliphate of ‘Uthmān, it was a unanimous opinion of the Muslim world that the most eligible persons for the Caliphate were either ‘Uthmān or ‘Alī. Consequently after the martyrdom of ‘Uthmān, the most

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<sup>120</sup> al-Māwardī, *A.S.*, P.13.

<sup>121</sup> Ibn Kathīr, *al-Bidāya*, vol. 7, PP.181-182.

<sup>122</sup> *Ibid*, P.207.

eligible person was now 'Alī.<sup>123</sup> Moreover 'Alī had combined all the required qualifications of the Caliphate in his character.

The situation that prevailed after the martyrdom of the Caliph 'Uthmān had some common characteristics with the situation after the passing away of the Holy Prophet (P.B.U.H). The Islamic lands were without a Caliph. There was a need to immediately bring the situation under control and this could not be achieved without installing a Caliph who could give continuity to the enforcement of the laws of *sharī'a*, punish the criminals, protect the highways, and patronize religious obligations. Just as in the case of the Caliph Abū Bakr, the prominent members of the society including Ṭalḥa and Zubayr assembled and requested him to assume the office. After showing reluctance, 'Alī ultimately took charge when all the prominent members insisted to take the office. All the requirements necessary for the office were thus fulfilled. Most of the prominent members offered the post to 'Alī although he did not request it. According to al-Māwardī, this was the right order of the establishment of the Caliphate of any person deemed fit to hold the office.<sup>124</sup>

Two broad categories that al-Māwardī deduced from the Caliphate of the previous three Caliphs were either the election by the people of power and influence or the designation by the previous Caliph. The Caliphate of 'Alī fell within the former category. The establishment of this Caliphate was therefore like the Caliphate of Abū Bakr and was installed by the people of power and influence.

According to the Kharjites, 'Alī turned apostate by accepting the arbitration proposal from Mu'āwiah's side for the settlement of their dispute. They believed in the legitimacy of 'Alī's rule before the battle of *Siffīn* but not afterwards when the parties

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<sup>123</sup> Ibid, P.146.

<sup>124</sup> al-Māwardī, A.S., P14.

sued for peace through the appointment of the arbitrators. al-Māwardī took ‘Alī’s decision as a sound one, which consequently did not affect the legitimate character of his rule. He regarded the *Kharjites* as rebels and maintained ‘Alī’s mode of behavior towards them as the standard one.<sup>125</sup>

He also believed in the legitimacy of ‘Alī’s Caliphate on the basis of a tradition from the Holy Prophet (P.B.U.H). According to the tradition: “ if you appoint ‘Alī, you will find him rightly guided.”<sup>126</sup>

In al-Māwardī’s view the Caliph should ideally be the best person from the community and should combine all the qualifications in his character. At the time of appointment, Caliph ‘Alī was unanimously considered to be the best person. Both Ṭalḥā and Zubayr, acknowledged him to be the best one among the companions who lived to that time.

In the foregoing discussions we were concerned with al-Māwardī’s treatment of the choice of the Caliph in the *Rāshidūn* period. The methods associated with the choice of the Caliph during this period became standard precedents during the subsequent course of Islamic history. In our next chapter we shall examine them in more detail to see how they guided al-Māwardī in determining the legitimacy of the *Umayyad* and the *‘Abbāsīd* rule. We shall examine al-Māwardī’s treatment of some changed modes of acquiring authority during this period. We shall also see whether they conformed to the standard precedents or just met the minimum requirements of legitimacy to regulate the system in a smooth manner.

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<sup>125</sup> Ibid, P.88.

<sup>126</sup> al-Māwardī, *Adab*, P.138.



## Chapter Two

### Legitimate Means of Acquiring the *Imāmate*

#### No Fixed Rule for the Choice of the Caliph

The absence of any definite procedure to choose a Caliph in Islam reflected the inherent flexibility of its scheme to accommodate various solutions to this problem provided those solutions were not inconsistent with the basic teachings of the Qur'ān and the *Sunna*. Simultaneously, it pointed to a great responsibility on the Companions to solve this problem by choosing a Caliph capable of holding society together, which had just assimilated in its ranks people with different cultures and backgrounds. Hence, in employing different procedures with regard to the choice of the Caliph, due weight was accorded to different factors; but posterity was never bound to the strict observance of any definite procedure. This was deliberate and quite in consonance with the changing, elastic and dynamic spirit of Islam.<sup>1</sup>

Islam, which claims to be a universal and lasting religion, could hardly have incorporated any static and rigid method, which would have eventually outlived its utility among the people with different background and culture.<sup>2</sup> However in the choice of the early Caliphs, the underlying consultative spirit which manifested itself through consensus among the people of power and influence, ratified by the general approval of the masses, was the basic criterion which gave legitimacy to the rule of the Caliph. The process thus adhered to was, however, a partial fulfillment of the whole process in determining the legitimacy of a Caliph. Since the Caliphate had succeeded the Prophethood, it owed its legitimate existence to the task of perpetuating the pattern set

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<sup>1</sup> S.M. Yūsuf, The Choice of a Caliph in Islam, P.3.

up by the Prophet (P.B.U.H) in his lifetime. So, while the importance was attached to the manner in which the authority was acquired, a much more important criterion for the legitimacy of the authority was exercising it in a right way.

An overview of above paragraphs may serve as a necessary background to the study of the detailed methods of acquiring authority as dealt by al-Māwardī. A survey of his writings very soon reveals that in the spirit of a true Islamic jurist, he derived his conclusions regarding politics from the Qur'ān and the *Sunna* as two primary sources. Where direct guidance from these two primary sources was not possible, he took the period of the *Rāshidīn* Caliphate as a model for the later generation.<sup>3</sup> He fully brought into focus the various developments connected with the accession of the Caliphs to authority in this period and considered them as the standard precedents for later times. But in the same chapter he also legitimized the accession of the *Umayyads* and the *Abbāsids* whose accessions to power did not seem to conform to the spirit of the *Rāshidīn* period. His legitimizing of somewhat divergent practices can be understood in his recognition of the wide realm within which those different methods of accession to authority were accommodated. The establishment of the Caliphate, a religious act, was incumbent on the Muslims as *farḍ kifāya*.<sup>4</sup> Like all religious acts it could also be subjected to two varying standards, an ideal standard, and a legitimate standard. According to former, it was required to be established both according to the legal requirements as well as the religious spirit. The second merely required the fulfillment of the minimum legal requirements which entitled it to be recognized in the law. In Adab, al-Māwardī explained the spirit and character of religious injunctions by describing these two standards of an act. According to him, for every religious act Allah

<sup>2</sup> Ibid.

<sup>3</sup> Shawkat 'Alī, Masters of Muslim Thought, P.46.

<sup>4</sup> al-Māwardī, A.S., P.11.

has made two states: (1) an ideal state, (2) a legitimate state. The first state provides opportunities for the best person to excel according to its requirements. But the man falling short of performing the best was entitled to practise the minimum required so as not to be deprived of the reward and this latter state is considered to be blessing in form of dispensation from Allah.<sup>5</sup> From his writings we can judge that al-Māwardī also saw the relevance of this principle in the context of different modes of acquisition of authority, as they prevailed during different periods in course of Islamic history. On the one hand, he maintained the patterns of the *Rāshidūn* Caliphate as the model practices. But on the other hand, the exercise of the right of nomination by the ruler within his own family was also maintained to be a legitimate one. In the *Rāshidūn* period the standards of legality were very strict. Due to their scrupulous regard for ethical norms the early companions were driven to set such high standards. Thus we see that none of the *Rāshidūn* Caliphs appointed a Caliph from within his own family. Although they were not legally restricted to do so, they did not think it commensurate with the religious spirit of Islam. Against such background it is understandable that during this period the different methods of acquisition of authority met legal requirements and were strictly in line with the religious requirements in their ideal form.

The *Umayyads* and the *‘Abbāsids* were content to fulfil the minimum legal requirements. But sometimes these minimum requirements were ignored, and the issue of the Caliphate was decided on the battlefield. Although the conquest or use of force did not acquire a legitimate means of acquiring authority, the government established in consequence of this method was conditionally recognized as legitimate; so as to regulate the collective life in accordance with the requirements of *shar‘a*. Conquest or use of

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<sup>5</sup> al-Māwardī, *Adab*, P.96.

force, as a means of acquisition of authority was thus tolerated reluctantly. With the development of this situation the main emphasis of the jurists was consequently shifted to the acts of the ruler. Bernard Lewis explains this situation in these words: “ With the passage of time, the question of legitimate accession seems to have lost its importance, and the attention of the jurists was shifted from the manner in which authority was acquired to the manner in which it was exercised. The hard lesson of a time of upheaval brought what was in fact a new principle- that any authority, however acquired, was legally valid as long as it preserved a basic minimum of legality, i.e., of respect for Islamic legal norm.”<sup>6</sup>

Since al-Māwardī was an eminent jurist of his time who profited a great deal from the experience of his predecessors,<sup>7</sup> he knew well the evolution and importance of this principle up to politics of his own time. Throughout the al-Aḥkām al-Sultāniyya, al-Māwardī, following the pattern of his predecessor put great emphasis on the enforcement of Islamic practices as the main responsibility of the ruler. He subordinated all other considerations to the achievement of this end. He brought together the views of the jurists of different schools of jurisprudence and gave systematic exposition to the theory of the Caliphate. Nevertheless conformity to the *sharī'a* remained his most basic criterion that would accord legitimacy to the ruler; and the different modes of the choice of the Caliph were only means for the achievement of this end. In other words, the ruler does not become legitimate through prescribed methods of election if he did not enforce *sharī'a*.

A usurper, on the contrary, capturing power by illegal means became legitimate in due course of time if he enforced *sharī'a*. Hanna Mikhail in his book Politics and

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<sup>6</sup> Bernard Lewis, “On the quietist and activist traditions in Islamic political writing”; Bulletin of the School of Oriental And African Studies, P.141.

<sup>7</sup> Shawkat 'Alī, Masters of Muslim Thought, P.47.

Revelation gave expression to a similar idea when he said, “ the *Imām*, by entering into contract with even a single representative of the religious Law pledges himself to uphold this Law, which is the ideal constitution of the Muslim community. If the essence of contract is pledge by one who already has power, to act in accordance with the Law, then discussion of legitimacy would have to shift to the acts of the ruler. According to al-Māwardī, a ruler would attain legitimacy, i.e. rendering obedience to him becomes obligatory, only when he carries out his duties in accordance with God’s Law.”<sup>8</sup>

### **An Inquiry into Motives of the al-Aḥkām**

al-Aḥkām is al-Māwardī’s book, which deals at length with the problems and issues related to the institution of the Caliphate. In it al-Māwardī has centralized the matters of social, religious, and political life of his period upon this institution.<sup>9</sup> In running the affairs of the Muslims the role of the Caliph has been enhanced; the institutions previously independent of his control are suggested to be incorporated within its jurisdictions.<sup>10</sup> Yet one is amazed to see the actual position of the Caliph who was not in a commanding position to enforce all that was required of him through the al-Aḥkām.

So the question arises: was the composition of al-Aḥkām an exercise in futility, i.e., making demands on the Caliph that he was actually incapable of translating into practice or did some deeper motives prompt al-Māwardī to compose the book? H.A.R.Gibb has stated three reasons, which led al-Māwardī to compile the book. Through the second and the third reasons he refutes emphatically the objections raised by those who regard it a mere speculative study or an Islamic counterpart to Plato’s Republic or More’s

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<sup>8</sup> Hanna Mikhail, Politics and Revelation, P.22.

<sup>9</sup> H.A.R.Gibb, “Māwardī’s theory of the Caliphate”; Studies on Civilization of Islam, P.153.

<sup>10</sup> B.S.Amoretti, “Foreword”; Politics and Revelation, P.XVIII.

Utopia.<sup>11</sup> In first place he calls our attention to the fact that al-Māwardī's interest in political issues might rightly have been regarded as a sufficient inducement, had he himself not stated otherwise at the outset of the al-Aḥkām.<sup>12</sup> The introduction begins with these words: "As the laws of governance are more applicable to those in authority but because these latter, being occupied with politics and management, are prevented from examining these laws as they are mixed with all the other laws, I have devoted a special book to them. Thus in response to the person to whom my obedience is due in this affair, I have made known to him the *Madhhabs* of the *fuqahā'* so that he sees both that his rights are respected and that his duties are fulfilled and that he honors the dictates of justice in their execution and aspires to equity in establishing his claims and in the fulfillment of other's claims."<sup>13</sup>

While it is clear from above text that the book was written in response to the directives of the authority, the exact person to whom these words are addressed is still unidentified. Gibb therefore suggests exploring the person by seeing the context in which the book was written. Gibb rightly perceived, and it is confirmed by the chronicles of the period,<sup>14</sup> that by this time the *Buwayhids* had lost their firm grip over the affairs. Internal fighting and the civil wars among the *Buwayhids* led to their gradual weakening and it gave the Caliph the opportunities to recover some of his lost powers. During this phase not only did the Caliph's position improve significantly, but owing to the overall situation of the Muslim world another factor contributed to its strength still further. Maḥmūd of Ghazna(d. 421/1030), who had risen to power, constantly professed

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<sup>11</sup> H.A.R.Gibb, "Māwardī's theory of the Caliphate", Studies on the Civilization of Islam, P.153.

<sup>12</sup> *Ibid*, PP.151-52.

<sup>13</sup> al-Māwardī, A.S., PP. 7-8.

<sup>14</sup> Ibn Kathīr, al-Bidāya; Ibn Athīr, al-Kāmil fi al-Tārikh etc.

loyalty to the Caliph.<sup>15</sup> al-Māwardī, therefore, in response to request by a higher authority clarified the rights and duties of this institution.

Gibb has refuted the charge that it was an empty speculation on two grounds: (1) being a jurist and a man of affairs he could not involve himself in such speculations.<sup>16</sup> Gibb makes it clear that in the capacity of a jurist he was responsible for bringing the theory into line with the practices of the time. But the second part of the argument brings an added stress that in the case of al-Māwardī it was all the more necessary because apart from being a jurist he was actually involved in practical politics of his days.

Consequently in the capacity of a jurist he is to be seen drawing a lot upon the opinions of his predecessors. He straightaway repeated some of the legal material evolved by the jurists of the previous generations. But he was not content with a mere repetition of the views of the jurists, and applied the underlying principles of their views to the actual problems of the day. He expanded their views to make them fit into the circumstances of his days.<sup>17</sup> In this process apart from repeating the main legal stuff of the jurists of the previous generations he had to see the validity and its relevance with regard to the circumstances of his time. The composition of the al-Aḥkām has therefore to be judged not only in terms of bringing together the divergent *fiqh* views of the previous jurists, but also in terms of working out the new principles to suit the circumstances of his days.

The above reasons explaining, to a large extent, the compilation of the al-Aḥkām may well be augmented by a few more reasons:

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<sup>15</sup> H.A.R.Gibb, "al-Māwardī's Theory of the Caliphate"; Studies on the Civilization of Islam, P.152.

<sup>16</sup> *Ibid*, P.153.

<sup>17</sup> *Ibid*.

At the time of composition of the al-Aḥkām, the Caliph was not so powerful to make such an ideal program a living reality. The *Buwayhid* Amīr had shared many powers and exercised them on his behalf. Yet as a jurist al-Māwardī believed that the juristic exposition of any program must be made in an ideal and most standard form. According to him neglect of any law in actual practice should not lead to its neglect in juristic exposition.<sup>18</sup> He, therefore, went on to state not only the full details of all the institutions as they should ideally exist but criticized other jurists for their partial treatment of the same subject or neglecting it completely.<sup>19</sup> Consequently through the al-Aḥkām, al-Māwardī makes an exposition of *fiqh* injunctions in their standard form and considers it as the responsibility of a jurist so that Muslims should not lose sight of their proper place in their scheme of collective life.

Along with the statement of the *fiqh* rules in their ideal form, al-Māwardī in many places also stated the bare minimum. He gave due regard to the capacity of the individuals in any given situation and described the least required of them according to *sharī'a*. For example, we see that he argues that ideally it is best to appoint the most excellent man as *Imān*, nevertheless he concedes that inferior person is to be recognized as a right *Imān* provided that he possesses the basic qualifications.<sup>20</sup> For the establishment of congregational prayer he has devoted a separate chapter explaining the responsibilities of the ruler and the *fiqh* requirements for the fulfillment of this obligation in its ideal form. Yet he maintained it to be quite legitimate for the Muslims to pray singly at home if the authorities prevent the congregational prayer.<sup>21</sup> It would appear that absence of favourable conditions for the congregational prayer would never reduce all the relevant details to unimportance. Similarly we see that he gave the Caliph

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<sup>18</sup> al-Māwardī, A.S., P.362.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid, P.15.



extensive authority in directing the affairs of the Muslim Empire. But the Amīr who was exercising the powers on his behalf was to be accommodated within the set-up provided this did not upset the real purpose for which the Caliphate was brought into existence. So al-Aḥkām on the one hand was an ideal program stating the ideal requirements of *sharī'a* and all responsibilities of the ruler. At the same time it did not ignore the situation as it existed and stated the minimum requirements of the *sharī'a* at any given time. Where a complete set of ideal instruction was given, al-Māwardī obviously meant that bringing it into practice depended upon availability of means, resources and favorable circumstances. If it was realized that the required conditions did not exist at the moment of its writing then without renouncing to state the ideal solutions the immediate practicable solutions were worked out and stated for the concerned subjects. al-Māwardī saw the hope for the deteriorating masses in complete restoration of the right order under the leadership of the Caliph. Consequently the legitimacy of the *Buwayhid* Amīrs was also made conditional with the enforcement of the *sharī'a*. Any neglect on their part would entitle the Caliph to take full advantage of the newly emerging Sunnī dynasty<sup>22</sup> under the leadership of Maḥmūd of Ghazna which could thus be made as an instrument of bargain: to force the *Buwayhids* to carry out the right order in a just manner. The detailed program in the al-Aḥkām was, therefore, considered an indispensable need of the time for supplying the full details of the rules of politics and the administration according to an Islamic system of life.

In the light of above study it becomes clear that al-Aḥkām dealt with the religious commandments, as they should exist in their ideal form but at the same time it was not unrelated with the minimum religious requirements of the contemporary period for

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<sup>21</sup> Ibid, P.159.

<sup>22</sup> al-Māwardī, A.S., P.34.

regulating the system in a legitimate manner. It dealt not only with the Caliphate as it ideally ought to have existed but also took into account its constraints during the *Buwayhid* period and therefore stated the minimum requirements for its legitimacy. Right from the beginning of the al-Aḥkām al-Māwardī was concerned with the basic question of legitimate accession to the authority. al-Māwardī, therefore, dealt with various methods at a great length throughout the first chapter of the al-Aḥkām. Before analyzing and examining those methods in detail we should first look into the nature and character of the institution of the Caliphate as stated at the outset of the al-Aḥkām. In the following text of the passage:

“ Allah, may His power be radiant, has delegated a leader to the *Umma* who stands in as a successor to prophethood, and has encompassed the affair of the nation by him; He has handed over the affair of political management to him so that management of affairs may proceed from the legitimate *Deen* and so that speech may be contained in a unanimous opinion and is adopted by all people. *Imāmate* is thus a principle on which the foundations of the nation are established and by which the public interest of the *Umma* is maintained: by it the good ordering of matters of public interest ensures the stability of affairs in general and by it other particular or specialised administrations arise. It is therefore necessary to first present the rules governing *Imāmate* before any other rule of governance and to mention what pertains in particular to an examination of these rules before any other examination of the *Deen* so that all further rules of administration may be classified accordingly in their corresponding or analogous sections.”<sup>23</sup>

From the above passage it is clear that al-Māwardī maintained the *Imāmate* as a divinely ordained institution in succession to the prophethood, to take care of the

collective affairs of the *Umma*. al-Māwardī inherited this concept from the *Asharites* and preferred it to the viewpoints of the *Mu'tazilites* and philosophers who regarded it to be an achievement of reason. The difference between both viewpoints was in fact due to the difference of the arguments on which both schools based their opinions. The *Mu'tazilites* defended the role of reason in establishment of *Imānate* and argued that it was but natural for a man with sound judgement to submit to the authority of a leader who thereby prevented the mutual injustices and settled disputes among men. What is clear from this argument of the *Mu'tazilites* is that man instinctively knows the dangers of anarchy and is naturally endowed with the capacity to overcome it through appointing a leader. Philosophers went a step further and denied the superiority of revelation over the reason. Revelation, they said, was a crude way of addressing the masses whose intellect is limited.<sup>24</sup> Philosophers, therefore, could not assign revelation any role beyond rendering to an ordinary man some assistance which intellectually advanced people already know through their knowledge and experience. Consequently, according to them, the evolution of laws and political organization must have had their origins in the will of human beings.

al-Māwardī, having high regard for the *Imānate* as next in importance to the prophethood, believed in the insufficiency of reason for reaching any solution to such a complicated human problem. al-Māwardī recognizes the importance of reason in determining man's path but believes in its insufficiency as a complete guide to lead him to the ultimate destination.<sup>25</sup> Reason, at best, can achieve the negative establishment, mere avoidance of discord and strife. Its establishment through religion would at once

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<sup>23</sup> Ibid, P.8.

<sup>24</sup> Hanna Mikhail, *Politics and Revelation*, P.4.

<sup>25</sup> al-Māwardī, *Adab*, P.133.

satisfy the positive aspect of man's religious worship as well as a negative way of avoiding the civil discord and mutual strife.<sup>26</sup>

Having thus proved the necessity of *Imāmate*, al-Māwardī thought it equal in importance to acquisition of knowledge or waging of *jihād*. If somebody eligible for it takes the responsibility, all the Muslims are excused; if nobody takes it up, then the people of *ikhtiyār* will constitute an electoral college and choose the ruler by means of an electoral college.<sup>27</sup> Both the ruler and the electors must fulfill the conditions deemed necessary for them in their respective capacities. *Ahl Ikhtiyār* must possess three conditions.

Justice with all its requirements.

Knowledge, which should enable them to choose the right persons according to the needs of the time.

Insight and wisdom to distinguish the fittest person.<sup>28</sup>

Some important principles can thus be derived: Regarding the choice of the Caliph the Muslim community has been divided into three classes: namely the rulers, *ahl Ikhtiyār* and the general masses. While the upper two classes are instrumental in making this choice, the masses have just to confirm the choice of *Ahl Hal Wa al 'Aqd* through their oath of allegiance.

The theory clearly denies the claims to this office through Divine nomination.<sup>29</sup> In principle, the residents of the capital city do not have advantage over the people of the rest of the cities. Nevertheless al-Māwardī accommodated this convention which had been in vogue since old times on two grounds. One, because the residents of capital city come to know about the death of the *Imām* earlier than the people in other cities.

<sup>26</sup> E.I.J. Rosenthal, *Political Thought in Medieval Islam*, P.29.

<sup>27</sup> al-Māwardī, *A.S.*, P.11.

<sup>28</sup> *Ibid.*

Second, the person deserving the office is usually found in the city of *Imām*. al-Māwardī recognized what had generally happened throughout the course of Islamic history. People of power and influence were normally those who formed the *shūrā* of the Caliph or stayed with him in the capital city. As they acted swiftly to choose the Caliph or to give practical shape to the will of the deceased Caliph the capital city acquired importance as compared to the other cities.<sup>30</sup>

### **The Qualifications of the *Imām***

al-Māwardī describes seven conditions necessary for the *Imām*.

1. Justice together with all its conditions;
2. Knowledge which equips them for *Ijtihād* in unforeseen matters and for arriving at relevant judgements. al-Māwardī made the acquisition of the *fiqh* knowledge a necessary condition for the of the Caliph because it was through *ijtihād* that he could deal with the newly arising problems of the society.
3. Good health in their faculties of hearing, sight and speech such that they may arrive at a sound assessment of whatever they perceive. Since the whole machinery of the government revolved round the central figure of the Caliph, he was naturally expected to be extraordinary in fitness of bodily organs so as to carry out the multiple functions associated with his person in efficient manner.
4. Sound in limb, free of any deficiency which might prevent them from normal movement. The stress again on the health and physical fitness indicates the importance so necessary for the successful conduct of the affairs by the rulers. From this emphasis it follows that the role of the Caliph was not confined to the matters of the court. The Caliph was required to lead the military expedition to the battlefield. People could not

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<sup>29</sup> Qamaruddin Khan, *al-Māwardī's Theory Of The State*, P.28

<sup>30</sup> *Ibid*, PP.11-12.

obviously look for the leadership to such persons wanting in qualities of good health and free movement.

5. A judgement capable of organizing the people and managing the offices of administration. This essential condition makes it necessary for him to possess a sharp and vigilant eye over the affairs of the administration and ability to select the right persons for the right job.

6. Courage and bravery enabling them to defend the territory of Islam and to mount the *jihād* against the enemy;

7. The *Imāms* are of *Quraysh*, because of the text (of a prophetic *Ḥadīth*) on the matter and by virtue of consensus. al-Māwardī strictly opposes any objection against this condition on account of the prophetic tradition and the consensus of the companions. He refers to the event of *Thaqīfa Banī Sā'da* where Abū Bakr quoted the saying of the prophet: “ the *Imāms* are of the *Quraysh*” in consequence of this declaration the Anṣār renounced their claims and submitted to the rule of the *Quraysh*.<sup>31</sup>

### **The Two Main Methods Regarding the Choice of *Imān***

The *Imān* could be appointed in one of the two ways: (1) by means of election; (2) by means of designation.

According to the first method, the people of power and influence were required to constitute an Electoral College that in turn would choose the Caliph.

The second method that was often in vogue rested simply on the choice of the Caliph by the previous Caliph.<sup>32</sup>

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<sup>31</sup> Ibid, P.12.

<sup>32</sup> Ibid.

## Election

How numerous should be the people of power and influence for the establishment of the *Imāmate* in a right manner? al-Māwardī first quotes a school adhering to the view that the greater part of people of power and influence throughout the country are entitled to the *Imāmate* through consensus. *Imām* al-Ash‘arī (d.935/1528) attributes the same opinion to *Āthām*-a *Mu‘tazilite* jurist.<sup>33</sup> *Imām* al-Ash‘arī considered this matter in a wider context and also quoted the opinion of the school who did not attach importance to the number of persons necessary for the establishment of the Caliphate. According to them, whatever the number of these people it is necessary that, in principle they should neither unite under falsehood nor should there be any imputation on their characters.<sup>34</sup> However, al-Māwardī refutes this opinion by quoting the example of Abū Bakr whose Caliphate was held only after five persons present on the occasion took the oath of allegiance and the rest of the people followed suit.<sup>35</sup>

But here al-Māwardī does not give the matter a thorough consideration omitting a discussion on the special circumstances which justified this election, as later on explained by ‘Umar.

al-Māwardī then quotes the opinion of the *Kūfī ‘Ulamā’* who regard the presence of three persons enough to carry out this function on the analogy of a contract of marriage. One person was to take charge by virtue of the acceptance of the other two such that there one who decides the matter supported by other two who acted as witnesses. al-Māwardī goes a step further when he states the principle enunciated by *Imām* al-Ash‘arī that a single person was enough to make this election valid. The example he quotes again goes back to *Rāshidīn* period when the Prophet’s ( P.B.U.H.) uncle ‘Abbās is said

<sup>33</sup> *Imām* al-Ash‘arī, *Maqālāt al-Islamiyyīn*, vol. 2, P.133.

<sup>34</sup> *Ibid.*

<sup>35</sup> al-Māwardī, *A.S.*, P.13.

to have persuaded ‘Alī to stretch out his hand for the oath of allegiance.<sup>36</sup> If we study al-Māwardī’s viewpoint as a whole we will come to recognize that the minimum or maximum limit for the number which he stated was not considered to be absolutely binding in all circumstances. When al-Māwardī starts from the Caliphate of Abū-Bakr he maintains the strength of five persons quite eligible to elect the Caliph in a right manner. Upon closer analyses it would seem that more important than their number was the place and the influence they had acquired among the people. This is verified by the manner in which al-Māwardī quotes the opinion of Prophet’s (P.B.U.H) uncle ‘Abbās who said to ‘Alī: ‘stretch out the hand for the oath of allegiance. When people will come to know that Prophet’s (P.B.U.H) uncle had given the oath of allegiance to the Prophet’s cousin they would acknowledge this bay‘a. So in this case, the consent of just a single person was deemed enough to hold the Caliphate. The reason can be seen from the words of the text: that people would accept this contract because the persons involved in the oath of allegiance were influential enough to be accepted by the masses. Hence we can safely deduce that it is not the number that is important according to al-Māwardī but the influence that they might exert over the people in making their choice acceptable. This explains why he put so much emphasis on the qualities and qualifications of the persons responsible for the choice of the *Imān*. In this respect he followed the viewpoint of al-Ash‘arī who quoted the required number in somewhat similar manner. With him too the number of persons was not as important as the influence they had amongst people and the extent to which they could make their choice acceptable to them. But he was more emphatic than al-Māwardī in regarding the condition of knowledge and piety as highly necessary for the people responsible for the

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<sup>36</sup> Ibid.



choice of *Imān*.<sup>37</sup> This is evident when he gives importance to the viewpoint according to which only such a group is eligible to choose the *Imān* whose members cannot unite over falsehood nor can they be blamed (on any account of sinfulness).<sup>38</sup> In essence he seemed quite agreed that more important than the number was the good character and their influence over the people to make their choice acceptable.

### **The Choice between Equally Qualified Candidates**

In the case of choosing between two equally qualified candidates al-Māwardī in the first instance shows his preference for the aged one but then reverts to allowing the *Ahl Ḥal Wa al-'Aqd* to choose anyone, provided the age of puberty has been reached by both candidates.<sup>39</sup>

Although it was up to the people of power and influence to decide ultimately between equally qualified candidates, they were to be guided by the requirements of the time and circumstances. The general principle that al-Māwardī lays down was that the choice between the different candidates with varying capabilities should depend upon the time and circumstances. If the choice was to be made between a man with wider learning and a man with greater courage, the choice was to be made for the one who was better fitted to lead the people according to requirements of particular situation. If the country was at war with some other country or there was a fear of external danger, the one with more courage was to be preferred. If there was a danger of heresy or the object was the tranquility of the masses, the man with wider learning was to be given preference.<sup>40</sup>

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<sup>37</sup> *Imān* al-Ash'arī, Maqālāt al-Islāmiyyīn, vol. 2, P.133.

<sup>38</sup> Ibid.

<sup>39</sup> al-Māwardī, A.S., P.14.

<sup>40</sup> Ibid.

### **Striving for the Caliphate not a Cause of Disqualification**

If two candidates dispute with each other concerning their right to the *Imānate*, they will not be deprived of the office on this account. To find precedents for this ruling he quoted the examples of some companions whose striving for the office did not deprive them of the right to the Caliphate. There are two opposite viewpoints regarding this issue. According to one, the person aspiring for the public office automatically becomes disqualified from holding it. This is based on the tradition of the Holy Prophet (P.B.U.H) according to which the Holy Prophet (P.B.U.H) refused to allot the office to its aspirants. On the other hand, al-Māwardī also quoted the saying of the Caliph ‘Umar who did not think it wrong on account of the Prophet Joseph demanding it.<sup>41</sup> Consequently, a person who honestly judging himself qualified for the office of the Caliphate contests for its acquisition would not be deprived of it. The apparent contradiction between both viewpoints can be removed by holding that aspirants must be judged by their actions and competence. A well-intentioned man eligible to hold the office should not be deprived of it merely on account of aspiring for the office. On the other hand, the one seeking it desperately without enough competence and excellent character should not be allowed to assume it.

### **The Caliphate of the Preferred (*afḍal*) and less Preferred (*mafḍūl*):**

A person having the basic qualifications for the Caliphate cannot be substituted by someone who comes after his appointment to the Caliphate even if the latter is better one. Even in the presence of a more qualified person the less qualified can hold the office provided he has basic qualifications for the Caliphate.<sup>42</sup> al-Māwardī was led to this conclusion due to his aversion to tyranny and schism. This was the viewpoint that

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<sup>41</sup> For detailed discussion the reader is referred to the chapter six.

<sup>42</sup> al-Māwardī, *A.S.*, P.15.

found equal favor among all the four schools of jurisprudence. Writing about the same period, the great Ḥanfī scholar Abū Yusr al-Bayḏāwī (d.493/1099) completely al-Māwardī' viewpoint in this respect. According to him, it is necessary in first place that the *Imān* be a man of (unsurpassed) excellence among all men in knowledge, piety, courage and lineage. Yet if the preferred candidate is passed over in favor of the less-preferred one, the *Imāmate* of the less preferred would be quite legitimate provided he has the basic qualifications for becoming the *Imān* and adjudicating the cases.<sup>43</sup> Both al-Māwardī and Bayḏāwī were led to the same conclusion for construing the main khilāfa on the Imāmate of prayer. Like al-Māwardī Bayḏāwī also thought it necessary to select the best and the most excellent person for the *Imāmate* of the prayer. But if some less preferred (*Mafḏūl*) is selected to lead the prayer, it is legitimate to offer the prayer behind him in accordance with the saying of the holy Prophet (P.B.U.H): “ offer your prayer behind every man good or bad.” al-Māwardī has alluded to the opposite viewpoint maintained by Jāḥiẓ (d.255/868) and others. According to them the *Imāmate* of the less preferred would be legitimate if the preferred was absent at the time of election. If he was present and was ignored, then the *Imāmate* of less preferred would not be legitimate.<sup>44</sup> al-Māwardī maintained this viewpoint against the opinion of majority of ‘*ulamā*’. His preference for the latter viewpoint can be understood in the light of the arguments quoted above.

At the same time he also refuted the *Shīite* claim in the light of this principle who always believed in the *Imāmate* of the best candidate. According to the *Shīites*, since ‘Alī was the best person after the Holy prophet (P.B.U.H), all those who assumed the office afterwards were usurpers. al-Māwardī's emphasis on the necessity of the election

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<sup>43</sup> Abū-Yusr, al-Bayḏāwī, *Uṣūl al-Dīn*, P.188.

<sup>44</sup> al-Māwardī, *A.S.*, P.15.

also refutes the *Shī'ite* claim regarding the appointment of the ruler through Divine will. According to him a man alone fulfilling the requirement of becoming the Caliph still needs to go through the process of the election. This would accord him the legal status, which he cannot possess otherwise.<sup>45</sup> To justify his claim he says: a man qualified to become judge does not automatically become so unless duly supported by someone. The same criterion would be much more applicable in case of the Caliph.<sup>46</sup>

### **Refutation of Two Simultaneous *Imāns***

al-Māwardī altogether excludes the possibility of two *Imāns* contemporaneously. al-Baghdādī (d.429/1037) and al-Ash'arī had agreed to the existence of two *Imāns* provided the respective areas under their rule were separated by the sea. But al-Māwardī did not consider the existence of two simultaneous *Imāns* as legitimate under any circumstances. In Adab al-Māwardī explained the viewpoint of the minority school who legitimized the existence of two or more *Imāns* at one time on both religious and worldly grounds. According to them, every *Imān* within the area of his control would be stronger for managing the affairs in a right and efficient manner. The religious justification they advanced was that if simultaneous existence of two Prophets in one time was legitimate and did not lead to the forfeiture of Prophethood, it should be truer about *Imānate* and should not lead to its forfeiture as well.<sup>47</sup> In refutation of this viewpoint, al-Māwardī quotes the opinion of the majority school who did not consider the existence of the two *Imāns* legitimate at one time from religious viewpoint. They based their viewpoint on the tradition from the Holy Prophet ( P.B.U.H). In the words of

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<sup>45</sup> Ibid, P.16.

<sup>46</sup> Ibid.

<sup>47</sup> al-Māwardī, Adab, P.138.

tradition: “ when the oath of allegiance is given to two Amīrs, appoint one of them and kill the second of them.”<sup>48</sup>

Who was more eligible to the office if both of them claim it simultaneously? After giving the careful thought to the opinions of the *fuqahā'* on this matter, al-Māwardī concludes that the legitimate Caliph would be the one who first received the oath of allegiance. If both of them claim to have received it first the *Imāmate* of both would be annulled. A new election would determine to whom the Caliphate belongs. The obvious motive in making such proposition was to reject the *Imāmate* of the *Fāṭmīds*. Although the doctrine equally went against the Caliph in Spain, it was the *Fāṭmīd* who posed the real threat and the argument was really directed against them.<sup>49</sup> Other schools of *Sunnī* jurisprudence equally favoured the viewpoint. The *Hanfī* scholar Bayḍāwī who regarded the existence of the two contemporaneous *Imāns* as illegitimate advanced the similar viewpoint. According to him, the one who established his *Imāmate* earlier deserved to command the allegiance of the people. Unless the one who came later overwhelms him by force, the *Imāmate* of the former shall be valid.<sup>50</sup> The *Zaydīs*, a moderate *Shī'ite* sect, initially maintained the simultaneous existence of two *Imāns* as illegitimate, but they ultimately reconciled to the legitimacy of the existence of two Caliphs in the same period.<sup>51</sup>

### The *Imān's* Right of Nomination

The *Imān* can nominate his successor without prior consent of the people of power and influence except his father or son. However, in allowing him to do so al-Māwardī makes the Caliph bound to nominate the best person having all the qualifications of the

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<sup>48</sup> Ibid.

<sup>49</sup> A.K.S.Lambton, *State and Government in Medieval Islam*, P. 90.

<sup>50</sup> Abū-Yusr Bayḍāwī, *Uṣūl al-Dīn*, PP.189-90.

<sup>51</sup> A.K.S.Lambton, *State and Government in Medieval Islam*, P.30.

Caliph. If the nominating Caliph fulfills this legal requirement, the people of power and influence cannot alter his nomination.<sup>52</sup> But the right of nominating the less preferred (*mafḍūl*), which al-Māwardī allowed to the people of power and influence, was not acknowledged in the case of nominating the *Imām*. Thus if the nominating *Imām* appoints the less preferred candidate against the will of the people of power and influence, they were entitled to ratify his nomination. So in this case the *Imām*'s right of nomination could not be an absolute one. al-Māwardī's openly sanctioned the *Imām*'s right to nominate any of his relatives except his father or son.<sup>53</sup> It indicates that he favored both the *Umayyad* and the 'Abbāsīd accession to the power. At first, it does not seem to be justified because though the Caliph is allowed to nominate his relative, he is at the same time responsible to appoint the best person who may not necessarily be always from his relatives. But if the *Imām* ignores this legal requirement and nominates the less preferred candidate ( *Mafḍūl*), the people of power and influence could alter his nomination. If the *Umayyads* or the 'Abbāsīd Caliphs sometimes nominated the less preferred candidates, they took care to get their nomination ratified from the people of power and influence. Hence the nomination of less preferred acquired a legitimate status. It was not in accordance with the true spirit of the practice of the *Rāshidūn* period because both the Caliph Abū-Bakr and Caliph 'Umar showed an aversion to establish the rule in their own family. When the Caliph 'Alī was asked about the nomination of his son, Ḥasan, he neither supported the idea nor opposed it but left it to the judgement of the people.<sup>54</sup> It could thus be derived that, subject to eligibility, the son of the Caliph could be chosen as a Caliph if the people of power and influence agreed.

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<sup>52</sup> al-Māwardī, *A.S.*, P.18.

<sup>53</sup> al-Māwardī, *A.S.*, P.19.

<sup>54</sup> al-Ṭabarī, *Tārīkh al-Rusul wa al-Mulūk*, Vol. 4, P.112.

al-Māwardī's principles of nomination and election regarding the choice of the Caliph seem to be mutually inconsistent in some respects. He allowed the Caliph to exercise some unlimited powers. His nomination was considered to be so absolute that even the people of power and influence could not alter it. They were bound to ratify it and could not alter it in view of some constraints or circumstances. Abū Ya'lā (d.455/1063) rightly differed from this viewpoint and maintained the confirmation of the people of power and influence as necessary. With him the nomination by the *Imām* was nothing more than a suggestion which in order to be binding needs the approval of people of power and influence. Indicating the necessity of their confirmation he says: "it is legitimate for the Caliph to appoint the heir-apparent and the presence of the people of power and influence is not necessary."<sup>55</sup>

Up to this point there is no difference of opinion between him and al-Māwardī. Both men reached identical conclusions from the precedents of the *Rāshidūn* period. Abū-Bakr and 'Umar exercised their right of nomination without making themselves bound by the opinion of the people of power and influence. But Abū-Ya'lā does not give the heir apparent the status of the Caliph because the existence of two Caliphs in one time is illegitimate. The Caliphate of the heir apparent can be established only after the death of the nominating Caliph on the approval of the people of power and influence. While the nomination of the heir apparent is the right of the Caliph for which it is not necessary to consult the people of power and influence, the right of the heir-apparent to become Caliph is subject to the will of the people of power and influence.<sup>56</sup>

The historical precedents on which al-Māwardī relied for his viewpoint seem more to favour Abū-Ya'lā. To vindicate his viewpoint al-Māwardī referred to the nomination of

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<sup>55</sup> Abū Ya'lā, *A.S.*, P.10.

<sup>56</sup> *Ibid.*

the Caliph 'Umar by Abū-Bakr. But if we examine the inaugural speech of the Caliph 'Umar we come to know about his indifference to the office. He showed his willingness to give it to the person who was eligible for the office. Another saying quoted from his speech also has the same meaning that the Caliphate cannot be held except with the consent of the Muslims.<sup>57</sup>

It seems also necessary to analyze another argument on which al-Māwardī based his viewpoint. A six member committee chose the Caliph 'Uthmān. al-Māwardī says that the Caliph 'Umar directly chose all the members of the committee and did not make himself bound by the people of power and influence. From this al-Māwardī derived the principle that the will of the Caliph is binding on the subsequent generation because all the companions unanimously agreed to carry out the will of the Caliph. No alteration was subsequently made in the formation of the committee.

From this it can be deduced, according to al-Māwardī, that the will of the Caliph is absolutely binding on the people in case of appointing the Caliph. But this is open to objection. All the six person chosen by 'Umar were men of a great integrity and all the prominent members agreed with the decision of the Caliph. So the exercise of the right was not an absolute one but was confirmed by the people of power and influence. Secondly during the *Umayyad* period 'Umar b. 'Abd al-'Azīz ( d.101/720) was raised to the office of the Caliphate by the will of Caliph Sulaymān who had nominated him during his lifetime. But after the assumption of the office the latter left it to the people to choose the Caliph according to their will. It was on the insistence of the people that he accepted and resumed the office.<sup>58</sup>

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<sup>57</sup> Ibn Kathīr, *al-Bidāya*, vol. 5, P.187.

<sup>58</sup> *Ibid*, vol. 9, P.157.



The reigning *Imān* cannot dismiss his successor until there is a visible change in him.<sup>59</sup> Here al-Māwardī's view looks to be too rigid to keep pace with changing circumstances. Previously we saw that al-Māwardī made the *Imān* so powerful as to allow him to exercise this right exclusively. But in this case he has reduced his powers so much that he is not allowed to exercise his right of changing the nominee in changed circumstances. Such a limitation also seems to be inconsistent with al-Māwardī's principle that the Caliph should give due regard to the circumstances and appoint a person who can lead the people in particular situation corresponding to his abilities. Now owing to the legal restriction preventing a change of candidate in changed circumstances, the Caliph cannot carry out both orders at one time. Abū-Ya'lā on the other hand gives the Caliph a free hand to make this change. Abū-Ya'lā justified it on the ground that just as a man can change his will in favour of some person, he can also change his will for his successor.<sup>60</sup> al-Māwardī on the other hand maintains it to be quite invalid on the part of the ruler. He is very strict in this regard and does not even allow the successor to resign once he has been nominated in this capacity.<sup>61</sup> Abū-Ya'lā again gives the ruler a free hand to make alterations according to the will of the *Imān* during his lifetime. The reason for the difference between both jurists is that Abū-Ya'lā does not take the designation of the heir apparent too seriously. He maintains him merely as a designate and not as an *Imān* during the lifetime of the reigning *Imān*. The will of the *Imān* is consequently no more important than his will in other matters. He is eligible to change the nominee and bring a different person of his choice in the same way as he can change his will in other matters.<sup>62</sup> al-Māwardī on the other hand is occupied with the nomination of the best person. Upon the fulfillment of this condition no further change

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<sup>59</sup> al-Māwardī, *A.S.*, P.20.

<sup>60</sup> Abū Ya'lā, *A.S.*, P.10.

<sup>61</sup> al-Māwardī, *A.S.*, P.20.

is justified to substitute the heir apparent with another one unless there is a visible change in his character. al-Māwardī strictly adhered to this principle and did not even permit the heir apparent to forego his right to become the Caliph. Initially he could decline the offer but after his acceptance, he was bound to carry out the will of the Caliph and continue his present status. Only under one condition could the Caliph accept his resignation, i.e, if a substitute with equal qualification could be found. In brief neither is the Caliph empowered to remove him from his status without satisfactory reason nor can he surrender his right in case there is no satisfactory substitute for him.<sup>63</sup> al-Māwardī is to some extent flexible when he allows the Caliph to change the nomination of the previous *Imān*. The right to change the candidate who is second or third in order of nomination is allowed though the Caliph's nomination is absolute in the case of an immediate successor. This right of the Caliph to change the second and the third candidate was probably recognized in view of time and circumstances. It was necessary to recognize the validity of the same principle in respect of immediate successor subject to the ratification by the people of power and influence.

If the reigning *Imān* appoints someone absent and it is not known whether he is living or dead, his *Imāmate* is invalid.<sup>64</sup> Abū-Ya'īā holds his *Imāmate* to be quite valid but defers the enforcement of *Imān's* will until the nominated person made his appearance. During the period of his absence *Ahl Hall Wa al-'Aqd* can appoint someone as a deputy who will have to relinquish the office on the appearance of appointed person.<sup>65</sup>

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<sup>62</sup> Abū Ya'īā, *A.S.*, P.10.

<sup>63</sup> al-Māwardī, *A.S.*, P.20.

<sup>64</sup> *Ibid*, PP.20-21.

<sup>65</sup> Abū Ya'īā, *A.S.*, P.10.

A successor is not allowed to appoint anyone while the Caliph is still alive.<sup>66</sup> al-Māwardī's prohibition is understandable if we judge it in relation to some other principles. Had the successor been allowed to appoint someone during the lifetime of the reigning Caliph, it would have been inconsistent with the Caliph's right of nominating more than one successor and determining the order of their succession. The successor's will to appoint his own successor would have necessitated removing the *Imām*'s appointee or limiting his choice to the appointment of one successor. Moreover during his lifetime it is alone his right to exercise the authority to the exclusion of others. If the orders of both the Caliph and the successor were allowed to prevail it would amount to two Caliphs at one time. Consequently the successor cannot be allowed to exercise his authority in any respect prematurely during the lifetime of the Caliph.

If the Caliph resigns of his own accord then his Caliphate is delegated to the successor and his resignation has the same affects as his death.<sup>67</sup> al-Māwardī adhered to the mainstream of *Sunnī* political thought. Abū-Ya'lā shared the same viewpoint. According to him, on the resignation of the Caliph the Caliphate shall be transferred to the heir apparent. The process shall be irreversible and is not subject to the will of the Caliph to withdraw the resignation. The resigning person cannot change his mind nor can the heir-apparent give up his right in favour of resigning Caliph.<sup>68</sup> Both al-Māwardī and Abū-Ya'lā used the word voluntary to indicate that the forced abdication cannot be considered along the same line as voluntary abdication. Consequently it will have no responsibility on the incumbent.

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<sup>66</sup> al-Māwardī, *A.S.*, P.21.

<sup>67</sup> al-Māwardī, *A.S.*, P.21.

<sup>68</sup> Abū Ya'lā, *A.S.*, P.10.

The reigning *Imān* can appoint more than one successor and decide the order of the succession in accordance with his preference. This is justified by the analogy of the Prophet's (P.B.U.H.) appointment of Zayd b. Ḥārith as a commander of the faithful when dispatching a military campaign to the battle of Mūtā. The instructions were imparted from the Prophet (P.B.U.H) that if Zayd is assassinated, Ja'far b. Ṭalḥa shall replace him; in case he is assassinated too then 'Abd Allah b. Rawāḥa will take charge; if he too meets a similar fate, then Muslims after consulting each other can choose their ruler. al-Māwardī says that if the Prophet did this with regard to the *Amirate*, the like is true with regard to the Caliphate.<sup>69</sup>

Such a proposal was made because if during the lifetime of the reigning *Imān* the heir apparent died or became ineligible due to a disqualifying incapacity, there should be some replacement to give continuity to the office. H.A.R.Gibb considered it a weak analogy supported by a weaker legal argument, so that al-Māwardī himself finds it necessary to cite the historical precedents as constituting the proof of *Ijmā'*.<sup>70</sup>

al-Māwardī himself realized that this analogy was open to objection. Leading a military campaign to the battlefield requires vastly different qualities than those required of a ruler to deal with variety of administrative problems. In al-Māwardī's own words: "if it is argued that it is the contract of authority with a particular character and condition and that contract with a particular condition and authority are not based on such specific conditions and characteristics, then it must be replied that it is a general matter of public interest which should be addressed with more largesse than in the case of private contracts between individuals."<sup>71</sup>

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<sup>69</sup> al-Māwardī, *A.S.*, PP.22-23.

<sup>70</sup> H.A.R.Gibb, "Māwardī's theory of the Caliphate"; *Studies on the Civilization of Islam*, PP.157-158.

<sup>71</sup> al-Māwardī, *A.S.*, P.23.

If we examine this analogy carefully it would seem that it was the logical outcome of al-Māwardī's previous mistake where he regards the nomination by the *Imām* as only the condition of establishment of the Caliphate and ignores the confirmation by the people of power and influence in this process. As a result of this, al-Māwardī took the appointment of the Caliph just like other appointments of various kinds. Indeed the Caliph's right in other appointments is decisive. But the appointment of the Caliph, as we have seen previously, should be subject to the approval of the people of power and influence. The appointment of the commanders by the Prophet (P.B.U.H) was absolute in its own right while the appointment by the *Imām* has to go through several stages before it is binding.

Rosenthal quotes the principle of public welfare as the basis of this analogy. However, he also looks at this analogy from another point of view. He says that the title of the Caliph as *Amīr al-Mu'minīn* is due to the Caliph's being a military commander of the Muslims. Since waging *jihād* was one of the essential duties of the Caliph, what was decreed for the emirate could be transferred to the *Imānate*.<sup>72</sup> al-Māwardī reinforces his argument by citing two more examples from the *Umayyad* and the 'Abbāsīd dynasties. In both cases 'ulamā' gave their unqualified recognition to this principle of succession. In the first place al-Māwardī quotes the example of Sulaymān b. 'Abd al-Malik (d.99/717) who pledged succession to 'Umar b. 'Abd al-'Azīz and after him Yazīd b. 'Abd al-Malik ( d.105/724). Even though Sulaymān's judgement was not accepted as a proof, his acceptance of judgement by those amongst the 'ulamā' of followers (who had seen the time of Companions) and who were his contemporaries and among those who do not fear the censor of those who censure in the matters regarding

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<sup>72</sup> E.I.J.Rosenthal, Political Thought in Medieval Islam, P.35.

truth constitute proof. Similarly Hārūn al-Rashīd (d.193/809) is said to have consulted the most excellent of the '*ulamā*' before nominating his three sons in successive order.<sup>73</sup>

On the authority of most of contemporary jurists, al-Māwardī made the subjects responsible just to recognize the Caliph and not to see or know him. However, the people of power and influence were bound to see and know the Caliph. Having recognized him, the whole *Umma* was obliged to entrust their affairs with unquestioning obedience to him so that he could carry out all the affairs in a smooth way.<sup>74</sup> However, this unquestioning obedience was compulsory for the subjects if the ruler carried out his responsibilities properly. Neglect of these responsibilities on his part would lead to aversion and hatred of the subjects resulting ultimately in his downfall.<sup>75</sup>

### **Deposition of the *Imān***

According to al-Māwardī two main defects disqualified him from office: lack of decency and physical deficiency.<sup>76</sup>

al-Māwardī laid down certain conditions regarding the deposition of the *Imān* through lack of decency. Firstly, the people of power and influence could depose an unscrupulous ruler who fell prey to ambitions. Secondly, the people of power and influence could depose the *Imān* for lack of decency if they were able to do it. Thirdly, it was legitimate for the people of power and influence to carry out the deposition of the *Imān* and was not incumbent on them. According to the text of al-Māwardī: "the people of power and influence cannot change him until his state has changed."<sup>77</sup> The electors cannot dismiss someone they have made the contract of allegiance to as long as his condition has not changed". al-Māwardī represented the viewpoint of *Shāfi'i* School.

<sup>73</sup> al-Māwardī, *A.S.*, P.24.

<sup>74</sup> *Ibid*, P.26.

<sup>75</sup> al-Māwardī, *Adab*, P.139.

<sup>76</sup> *Ibid*, P.29.

By comparison, the *Ḥanblī* scholar Abū Ya'lā was opposed to deposition on moral grounds. He only limited it to the physical incapacity.<sup>78</sup>

### **Physical Disability:**

In order to undertake various responsibilities and to lead campaigns obviously required the ruler to be a very fit person and free from physical deficiencies. al-Māwardī, therefore, dealt with various disabilities that render the *Imān* unfit in the capacity of a ruler.

Physical disability was considered to be of three kinds:

Loss of senses

Loss of limbs

Loss of ability to supervise and direct<sup>79</sup>

Like Bāqillānī (d.403/1013) and Juwaynī (d.478/1085), al-Māwardī considered the loss of senses as a disqualification. al-Māwardī dealt with the matter more thoroughly by dividing this loss into temporary and permanent one. He ultimately concluded that if the period of disease was shorter than the period of health, it would not prevent the *Imān* from continuing the office. But if the period of health was shorter than the period of disease then there was a difference of opinion among the *fuqahā'*.

A group of *fuqahā'* says that since such a man is prevented from assuming the office, he should also be prevented from continuing it.<sup>80</sup> His mental disorderliness would adversely effect the affairs of government. The other group however argued that *Imān*

<sup>77</sup> al-Māwardī, *A.S.*, P.20.

<sup>78</sup> Abū Ya'lā, *A.S.*, PP.20-21.

<sup>79</sup> *Ibid*, P.30.

<sup>80</sup> *Ibid*, PP.30-31.

could be disqualified only if he had permanent disorderliness, just as at the time of installation he was required to be of perfect health.<sup>81</sup>

Loss of eyesight would exclude a man from becoming *Imām* or continuing it. This was an agreed point among the jurists. However examples could be found where the ruler, without the quality of eyesight, was not deprived of the office in Iran and in *Ḥamnid* Mesopotamia.<sup>82</sup> al-Māwardī strongly insisted on this qualification and argued that if such defect disqualified the *Qāḍī* from holding the post, how could the *Imām* continue the office.<sup>83</sup>

The defect of eyesight that renders the person unable to see during the nighttime does not disqualify him from *Imāmate*, since such a defect is often temporary. The weakness of the eyesight is of two kinds:

1. The inability to differentiate between two persons justifies the exclusion from *Imāmate*.
2. Despite weak eyesight if he can differentiate between persons, he continues to be eligible for the office.<sup>84</sup>

*Imām* Juwaynī adhered to the same viewpoint. According to him the loss of vision rendered the man disqualified in the same manner as the loss of senses. But if the *Imām* was able to perform his work with difficulty, he was not to be excluded from the *Imāmate*.<sup>85</sup>

An impotent person could not be precluded from assuming the office since there was nothing in this inability to hinder the good judgement and running the administration in

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<sup>81</sup> al-Māwardī, *A.S.*, P.31.

<sup>82</sup> Azīz al-Azmeh, *Muslim Kingship*, P.176.

<sup>83</sup> *Ibid*, P.31.

<sup>84</sup> *Ibid*.

<sup>85</sup> Juwaynī, *al-Ghiyāthī*, P.58.



a good manner.<sup>86</sup> *Imām* al-Juwaynī did not disqualify the eunuchs from becoming the Caliph.<sup>87</sup> By the same logic the loss of smell could not deprive a man from becoming Caliph. al-Māwardī disqualified the person without hands or feet to become *Imām*. This defect would incapacitate the ability to fulfil his responsibilities in a good manner.<sup>88</sup> *Imām* al-Juwaynī, however, differed from him and regarded him quite capable of assuming the office.<sup>89</sup>

Deafness dumbness precluded the man from becoming *Imām*. al-Māwardī, however, quoted some *fuqahā'* who thought if such defects occurred after the assumption of the office, the *Imām* should not be prevented from continuing the office. They argued that he might smoothly carry out the business through gestures or through writing.<sup>90</sup> *Imām* al-Juwaynī, however, altogether excluded such persons from *Imāmate*. He was of opinion that just as these defects rendered them ineligible from becoming *Imām*, they would exclude them from the *Imāmate* in the same way if they occurred during the *Imāmate*.<sup>91</sup>

### Loss of Limbs

Regarding the loss of some limbs al-Māwardī went into great details, some of which are purely of theoretical interest. The essence of all details amounts to this: if such a loss does not prevent him from performing his official responsibilities, it is not of any significance. A deaf or impotent person otherwise well qualified to carry out the affairs of the government effectively is perfectly eligible to become *Imām*. If the loss of the limbs prevents him from carrying out his job efficiently, he would be ineligible to

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<sup>86</sup> Ibid, P.32.

<sup>87</sup> Azīz al-Azmeh, *Muslim Kingship*, P.176.

<sup>88</sup> al-Māwardī, *A.S.*, P.33.

<sup>89</sup> Azīz al-Azmeh, *Muslim Kingship*, P.176.

<sup>90</sup> al-Māwardī, *A.S.*, P.32.

<sup>91</sup> al-Juwaynī, *al-Ghiyāthi*, PP.57-58.

assume the office. For example, a person without a leg or arm or without arms and legs become ineligible to become *Imām*.<sup>92</sup>

### Loss of Ability to supervise and direct

According to al-Māwardī, the *Imānate* could not cease to exist if the *Imām* lost his control to direct the affairs in accordance with his will. Someone seizing this control but continuing to act in his name and without showing any clear opposition was legally entitled to carry out the business of government. He was only required to rule and govern according to the commands of religion and justice.<sup>93</sup> For a detailed discussion, we shall turn to this topic later on.

If the heir to the *Imām* fell prisoner to the enemy, he could not continue as a ruler if there were no prospects of his release. Similarly the *Imām* falling prisoner to the enemy could not continue his office if there were no prospects of his release.<sup>94</sup> al-Māwardī attached more importance to the office and the figure of the *Imām* than to his heir. In the case of *Imām* the whole *Umma* was made responsible to seek his liberation from the enemy and he was to continue to remain as *Imām* until they accomplished it.<sup>95</sup> In the case of heir, no such provision was laid.

If the *Imām* fell prisoner to rebel Muslims who installed an *Imām* of their own, the subjects were required not to break the oath of allegiance with their own *Imām* if there were some prospects of his release. If there were no prospects of release, then they were required to install an *Imām* of their own but not to give allegiance to the *Imāms* of the rebel.<sup>96</sup> al-Māwardī thus stuck to the principle of refusing to acknowledge the existence of two simultaneous *Imāms*. The rebel Muslims at this time were various seditious

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<sup>92</sup> Māwardī, *A.S.*, P.33.

<sup>93</sup> *Ibid*, P.34.

<sup>94</sup> *Ibid*.

<sup>95</sup> *Ibid*.

groups in different Iraqi provinces supported by the *Fāṭmīds*.<sup>97</sup> al-Māwardī did not recognize their right to install the Caliph. Of course, in recognition of overwhelming position of rebel Amīr, he legitimized his rule subject to his oath of allegiance to the Caliph. But he did not legitimize the rebel Caliph installed in place of the 'Abbāsīd Caliph. The people of power and influence were required to install their own Caliph.

### Summary & Conclusion

The lack of any fixed principle regarding the choice of the Caliph gave the jurists a broad framework within which certain methods came to be acknowledged as legitimate. The will of the nominating Caliph, the importance of the opinion of the people of power and influence, and confirmation of the people through the oath of allegiance were always taken into account as the necessary ingredients of the election of the Caliph. His legitimacy in fact depended more on the way he exercised the power and the legal requirements for the acquisition of the authority had the secondary importance.

The al-Aḥkām was written with a view to covering both the aspects, i.e., the mode of the acquisition of the authority as well as the manner of exercising it. The ideal solution proposed to the different problems raised objections from the critics that the book ignored the hard realities of the time and stated what was beyond the capacity of the rulers and the ruled.

H.A.R.Gibb has refuted this charge on the ground that in capacity of a jurist al-Māwardī could hardly afford to be a philosopher- idealist to make an empty speculation. On the persuasion of an eminent personality al-Māwardī composed the book as a proposed constitution for the Caliphate that was fastly recovering its lost vigor. On this

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<sup>96</sup> Ibid, P.35.

<sup>97</sup> al-Baghdādī, A study of al-Māwardī's Political Thought, P. 175.

question al-Māwardī himself was convinced that any juristic exposition must be set in its most standard and ideal form. The mere thought of any *fiqh* rule as being too good for immediate future should not deter a jurist from stating the standard *fiqh* nature of that rule.

He criticized some other jurist for this omission. However, apart from stating the ideal he also gave due regard to the time, circumstances, the subjects and the rulers for whom he was writing. He also stated the minimum legal requirements for the rulers and the ruled. The *Imāmate* of the less preferred (*Mafḍūl*) both at state level and for prayer, emphasizes on establishment of congregational prayer and yet allowing it to be said singly under unfavorable conditions furnish the examples of both idealism and realism. al-Ahkām, therefore, states both the ideal requirements of the *khilāfa* as well as its minimum legal requirements so as to regulate the system in a legitimate manner.

The methods of acquiring the Caliphate during the *Umayyad* and the *‘Abbāsids* were acknowledged as legally valid as long as other legal requirements were fulfilled. The tendency to avoid family rule during the *Rāshidīn* period was regarded as the mark of high piety. Hence the *Umayyad*'s consolidation of the rule within their family was not considered illegitimate. Accordingly the will of the Caliph in form of legal document, securing the approval of *Ahl Ḥall Wa al-‘Aqd* and finally the approval of the masses in form of the oath of allegiance gave the new Caliph the right to rule.

We have seen that the acquisition of authority through legal means was the first requirement of legitimacy. Even the Usurper's right to rule, under the law of necessity, was recognized when he submitted to the lawful authority of the Caliph and undertook the fulfillment of those legal requirements. Having met this basic requirement, his right to continue as a legitimate ruler rested upon carrying out the business of administration according to requirements of religion and justice. al-Māwardī deals with details in

respect of those requirements at great length and assigns the ruler certain duties and responsibilities which we shall study in our next chapter.

## Chapter Three

### The Functions and Responsibilities of the Caliph

#### The Qur'ānic Injunctions

What criteria does the Qur'ān lay down regarding the responsibilities of the ruler? Can we infer from the *Sharī'a* injunctions that the rulers are required to carry out certain obligations and responsibilities?

A number of the Qur'ānic injunctions are addressed to the Muslims as a whole.<sup>1</sup> Consequently the Muslims are responsible to appoint a ruler for their enforcement. For instance, enforcement of *Hudūd*, establishment of the congregational and the 'Īd prayers, guarding of frontiers, protection of the wealth of orphans and mad persons are collective responsibilities which cannot be carried out except through appointment of a ruler.<sup>2</sup>

Since Islam was concerned both with the individual and the community, it was meant to be regulated both at a private and a public level. Consequently the ruler's sphere of authority was defined and his responsibilities were fully explained. It was virtually the nature and character of these responsibilities which largely determined the type of ruler required for their proper enforcement. Hence Rosenthal sees a link between the qualities and qualifications of the ruler and the duties he was expected to perform, as stated by al-Māwardī.<sup>3</sup>

The most basic responsibilities of the ruler were religious in nature. However, before facilitating the practice of religion for the subjects, the ruler was himself required to be a

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<sup>1</sup> Through various injunctions, Muslims are addressed as a whole. That is why the verses containing some commandments begin with: 'O you who believe'.

<sup>2</sup> al-Baghdādī, *Uṣūl al-Dīn*, P.272.

practising Muslim.<sup>4</sup> Having met the elementary requirement of its fulfilment, where he was just an equal among equals, he was made responsible to establish the religion among the Muslims. Among ten responsibilities assigned to a ruler, al-Māwardī put his religious responsibilities above all other responsibilities in order of preference. The reason for this preference seems to be based on the following verse of the Qur’ān: “ those who, if we give them power in the land establish worship and pay the poor due and enjoin kindness and forbid inequity.”<sup>5</sup>

Several things are clear from this commandment of the Qur’ān.

It is necessary for the ruler that he must be himself steadfast in prayer since only then can he be entrusted to establish it in the land over rest of the people.

Once installed in authority the ruler has the double responsibility of establishing the prayer. As an individual person the ruler is required to establish it as his personal obligation. And as a head of the Muslim community, he has the responsibility of establishing it over rest of the people.

The foremost duties of the rulers are religious in nature. Fundamentally the office of the ruler acquires legitimacy upon the fulfillment of these duties.

Prayer and *Zakāt*, far from being only personal affairs of every Muslim, are at the same time public affairs, the accomplishment of which is both a moral duty of the individual as well as a legal duty falling within the jurisdiction of the rulers.

al-Māwardī thus attributed the exercise of the ruler’s authority primarily to the enforcement of religious obligations. He put great emphasis on the importance of establishing these obligations within the political context. He clarified the responsibilities of both the rulers and the ruled and extracted support from the verses of the Qur’ān bearing the

<sup>3</sup> E.I.J. Rosenthal, Political Thought in Medieval Islam, P.51.

<sup>4</sup> al-Māwardī, Tashīl, P.190.

<sup>5</sup> al-Qur’ān, 22:41.

same theme. He quoted the verses from *Sūra al-Tawba* and drew conclusions regarding the membership of the Muslim society. In the light of the text, he clearly debarred those Muslims who refuse to accept the responsibility of establishing prayer and paying *Zakāʾt*. In *Naṣīḥat al-Mulūk* he identifies basically two kinds of person deprived of the benefits of the membership of the Muslim community.<sup>6</sup> They are (1) an apostate who has renounced Islam after accepting it; (2) a criminal who has violated a law of Islam. In the latter category he also included those persons who are guilty of omitting the above mentioned two fundamental obligations either through denying their obligatory nature (in which case they will be treated like apostates) or missing them due to laziness. The rest of the Muslims are qualified for membership of society. The text which al-Māwardī relies upon clearly debar all those members, who despite having made claim to embrace Islam refuse to accept these two duties as regular obligations of Islam. The pronouncement goes as thus: “ if they repent, establish prayer and pay *Zakāʾt*, then they are your brothers in religion.”<sup>7</sup> The same theme recurs after a few verses in the same *Sūra* telling the believers to leave such people (exempt them) who fulfil these two basic commandments. It is said: “ if they repent, establish prayer and pay *Zakāʾt*, then leave their path.”<sup>8</sup>

In the *al-Aḥkām*, al-Māwardī puts them in the category of criminals on the authority of four schools of jurisprudence and suggests to the ruler the different measures to bring the criminals back to the right path. al-Māwardī made it clear in the *al-Aḥkām* that all four schools of jurisprudence agreed to disqualify the person, refusing to bear these responsibilities, from the membership of the society. al-Māwardī on the authority of the four *Imāms* divided the culprits into various kinds and suggested the responsibilities of the ruler regarding their treatment according to the nature of their omission. If they omit these

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<sup>6</sup> al-Māwardī, *Naṣīḥat*, P.468.

<sup>7</sup> *al-Qurʾān*, 9:11.

<sup>8</sup> *al-Qurʾān*, 9:5.



obligations due to laziness they were to be reprimanded and forced to be punctual. If they persisted in their refusal then they were to be kept in jail. If they insisted on principle that these obligations are not part of Islam, then they were to be treated in the same way as apostates. But before exacting punishment on them they were to be convinced so that they might reform themselves.<sup>9</sup>

al-Māwardī's adoption of this viewpoint was precedent guided. Realising his responsibilities with regard to one of these two fundamental obligations the first ruler of Islam, Abū Bakr (R.A.A), fought the people who despite being Muslims refused to pay *Zakāʾ*. Against the advice of certain companions to defer their punishment, he fought them on the ground that a ruler couldn't absolve himself of these two fundamental duties. With reference to his office he expressed his responsibilities in the following words: " the Prophet (P.B.U.H) fought for three things: the testimony that there is no God except Allah, the establishment of prayer and the payment of *Zakāʾ*. And Allah said that if they repent, establish prayer, and pay *Zakāʾ*, then leave their way. By Allah, I would neither add to them anything nor shall I tolerate any omission from them."<sup>10</sup>

From that time onward it became the regular practice of the Muslim rulers to associate their most basic responsibilities with the establishment of these two fundamental obligations. The Caliph 'Umar is reported to have secretly watched the prayer of the persons to whom it was his intention to assign some important official responsibility. The *Umayyads* and the '*Abbāsids* inherited the practices of the *Rāshidūn* Caliphs and continued to assign to the provincial governors the responsibility of leading the Friday Prayer as well as the '*Īd* prayers. To impress upon the minds of the people the religious character of their authority, the '*Abbāsids* fully identified their rule with the establishment of these obligations. Their

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<sup>9</sup> al-Māwardī, *A.S.*, PP.83-84.

<sup>10</sup> Jaṣṣās, *Aḥkām al-Qur'ān*, vol. 2, P.82.

rule which was famous for allowing free intellectual activity to all schools of jurisprudence also witnessed the compositions of different rules stating the responsibilities of both the rulers and the subjects with regard to the fulfilment of these religious obligations. We shall deal with the details later on as stated by Māwardī before we examine what else the Qur’ān requires of the ruler as his regular functions.

### **Establishment of Justice among the People**

The word Caliph, in a strictly political sense, was applied to the Prophet David. He was reminded about his responsibility in these words: “ O David, we have made you the Caliph in the land, so judge between the people with justice and do not follow thy desire...”<sup>11</sup>

To be able to fulfill the responsibility of administering justice, the ruler was required to undertake a number of responsibilities. It covered not only the settlement of disputes between contending parties through the establishment of the institution of judiciary, but also the establishment of a strong executive for the maintenance of law and order, and the establishment of institutions to prevent the oppression of the weak. All institutions to achieve this end were, consequently, required to be brought into existence.

### **Moral Responsibilities of the Ruler**

Morally the rulers were also bound to uphold their functions in a vigilant manner. The Qur’ān links the whole congregation of the Muslim society into a single bond where they were obligated to mutually co-operate with one another over virtue and piety and withhold from co-operation over sin and transgression.<sup>12</sup> Consequently whereas all the Muslims are required according to their ability to act upon this commandment, the ruler’s responsibilities multiply for bringing the institutions into existence both for exhorting people to the right path through persuasion as well as preventing them from evil through legal means.

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<sup>11</sup> al-Qur’ān, 38:26.

In the light of our study of the Qur'ānic verses examined thus far it is clear that many obligations imposed over the Muslims depended upon the appointment of a ruler. The numbers of responsibilities studied so far can be classified into the following categories.

- There are commandments which are directly addressed to the rulers or referred to as directly the responsibilities of the rulers.
- There are some commandments which are addressed to the Muslims as a whole. Since everybody cannot perform them directly and as one is forced to achieve them through some agency, they ultimately become the responsibilities of the rulers.
- There are some commandments which the ruler shares with all the Muslims. Since his sphere of authority is broader than anyone else, he becomes the most exclusive agent for enjoining virtue and preventing evil.
- Apart from imposing the laws and religious commandments, administering the affairs of the state, maintaining the law and order, the ruler was also considered responsible for the moral refinement of society. In this capacity he was to make use of all possible means conducive to the achievement of his ends.

The Caliph had the duty of preserving religion against any intrusion from the outside. He was made responsible for checking the innovations of those who attempted to introduce innovations into religion.<sup>13</sup>

We shall now take the Caliph's different responsibilities one by one which we have discussed so far, in his various capacities.

### **Religious Responsibilities**

First and foremost, the Caliph was a religious figure. In this capacity al-Māwardī assigned to the ruler some important functions of fundamental importance. In the first place

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<sup>12</sup> al-Qur'ān, 5:2.

he was made responsible for preserving the religion. The preservation of religion depended upon his active supervision and directly patronising all religious obligations himself. He was also made responsible for doing it according to the first generation of the *Umma*.<sup>14</sup> In the case of some religious obligations the responsibilities of the ruler were considered to be so extensive that al-Māwardī devoted separate chapters to an explanation of the responsibilities of the ruler.

### **Prayer**

In the history of the early Islamic era, it was the mosque from where most of the official policies were announced. The Caliph was also required to be the *Imām* of the prayer or he was required to appoint a deputy to do the same job on his behalf. It was in fact due to his leadership both in spiritual and temporal affairs that the office of the Caliph combined in theory a spiritual and secular function.<sup>15</sup> al-Māwardī realised in the proper enforcement of these practices the solution to some of the political problems of his time. He was not content to describe merely the *fiqh* details of the prayer but fully involved the ruler in the appointment of *Imāms* in official mosques, with his active participation in their administration, stating the limits of his authority, and explaining his relationship with the *Imām*. His commentary on the Friday prayer clearly reflects the idea that his motives in the al-Ahkām were hardly theoretical. Along with discussing the responsibilities of the Caliph, the *Imām*, and the people, he fully accommodated the *Buwayhid* authorities and justified their assumption of authority on behalf of the Caliph.<sup>16</sup> We can study his emphasis on different aspects of prayer under the following headings:

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<sup>13</sup> al-Māwardī, A.S., P.10.

<sup>14</sup> al-Māwardī, A.S., P.28.

<sup>15</sup> I.R.Netton, A Popular Dictionary of Islam, P.143.

<sup>16</sup> al-Māwardī, A.S., P.159.

### Appointment of the *Imān*

During the *Buwayhid* period, when the Caliph was divested of his executive authority, he in fact depended for legitimacy upon the exercise of his authority as a religious leader of the community. He continued to exercise his right of appointing the *Imāns* in the mosques. However, the Caliph's exercise of authority was restricted to the official mosques. al-Māwardī stated the necessary qualifications for eligibility to the *Imāmate* but maintained the *Imāmate* of the less preferred (*mafḍūl*) to be the right one. Hence without giving up the formula of holding the jurist scholar to be the best-qualified person for the office, he maintained any *Imān* to be a legitimate one who met the basic qualifications provided he was appointed by the authorities.<sup>17</sup> Three important consequences follow from the text of al-Māwardī determining the ruler/subject relationship:

1. The appointment of *Imāns* in official mosques was a right which exclusively belonged to the ruler. Any interference on the part of people was strictly forbidden.
2. Without relaxing the criteria for the appointment of the *Imān*, al-Māwardī gave the ruler a free hand in appointing even a less preferred man. In this appointment, we can see a close parallel to al-Māwardī's legitimisation of a less preferred candidate for the post of the Caliph.
3. The responsibility of the ruler in making such an appointment was recommended and not obligatory. In the case of no appointment from the ruler, the right reverted to the people to make up the deficiency.

However, the private mosques were to be left in the possession of the people. The Caliph could interfere only if people either requested him for an appointment or did not agree over the *Imāmate* of a person. Once appointed as *Imān*, people had no right to depose him unless they had sound reason to do so.

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<sup>17</sup> Ibid, P.150.

In the case of conflict between the *Imām* and the Caliph, the Caliph's will prevailed. In the case of private mosques too, the Caliph was quite capable of nominating any individual as an *Imām* in the presence of better-qualified persons, if people of the mosque could not reach an agreement over the appointment of the *Imām*. The ruler's exercise of this right was however to be tolerated and not to be commended as the preferable course was still to appoint the better qualified person as the *Imām*. Abū Ya'lā, a *Ḥanbalī* scholar and contemporary of al-Māwardī, held a different viewpoint. According to him, in the case of disagreement over the choice of *Imām*, people could decide by drawing lots.<sup>18</sup>

### The Criteria for Preference

al-Māwardī seemed to be in agreement with Sarakhsī (d.483/1090), a *Ḥanafī* scholar, in regarding 'ilm as the top qualification.<sup>19</sup> al-Māwardī says: "if there is a *faqīh* who is not a reciter, and a reciter who is not a *faqīh*, the *faqīh* takes precedence over the reciter as long as he knows the opening *Sūra*, since what is necessary to know of the Qur'ān is limited, while the possible incidents which may happen during the prayer are without limit."<sup>20</sup> This is in clear contrast to Abū Ya'lā's judgement who preferred the reciter to the *faqīh*, as long as he was aware of the rulings concerning the prayer. He preferred better recitation over knowledge as far as the prayer was concerned.<sup>21</sup>

### Organisation of the Mosques

al-Māwardī divided the mosques into two categories: official mosques and private mosques.

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<sup>18</sup> Abū Ya'lā, *A.S.*, P.98.

<sup>19</sup> Calder.N, 'Friday Prayer and Juristic Theory of Government', In *BOAS*, 1986, P.40.

<sup>20</sup> al-Māwardī, *A.S.*, P.153.

<sup>21</sup> Abū Ya'lā, *A.S.*, P.97.

The official mosques included those mosques where ‘*Īd* prayers and Friday prayer were said as well as those mosques frequented and revered by the people under the care of the Sultān. All the affairs in this mosque were to be administered by the authorities.

In al-Māwardī’s account, the structures of religious and political authority were governed by the same principles. A less preferred (*mafḍūl*) Caliph could appoint a less preferred (*mafḍūl*) *Imām* who in turn was fully authorised to appoint a deputy to lead the prayer in his absence. In the case of no appointment of the deputy by the *Imām*, people were still required to ask the ruler’s permission if it was possible.<sup>22</sup> The purpose of recognising a wide official control through these arrangements was to create unity among the adherents of the four schools which represented the *Sunnī* population at that time. In this process the ruler was required to maintain equality and benefit from all four schools. The ruler was made responsible for forcing them to keep their differences within limits and renouncing them where they threatened the unity of the ‘*Umma*. Thus the *Ḥanafites* were told that whereas it was their right to pray at the last time of a prayer, it was necessary for them to pray early if a *Shāfi‘ī Imām* was leading the prayer. Similarly, the *Shāfi‘ites* could be forced to say the words of *Iqāna* twice against the requirements of their *fiqh* if they followed a *Ḥanafite Imām*.

### **Ruler’s Impartiality among Different Religious Schools**

al-Māwardī made the ruler responsible for mediating impartially among the adherents of the four schools of jurisprudence. It was indeed a most important responsibility of the ruler to preserve the religion according to the pattern of the *Salaf*, guard the faith in its original form, and combat innovations in every guise.<sup>23</sup> He was also made responsible for establishing prayer and *Zakā* and facilitating fasting and *Ḥajj*. Yet in the process of

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<sup>22</sup> al-Māwardī, *A.S.*, P.153.

<sup>23</sup> al-Māwardī, *A.S.*, PP.27-28.

preserving the faith and carrying out the above religious obligations, the ruler was bound to act according to the agreed principles of all the religious schools and leave the followers free in matters of detail. All the schools of jurisprudence were thus assured their right to preserve their identity. At the same time, they were to be forced to treat these differences as minor and resolve them for the sake of unity. The ruler, along with acknowledging the right of religious schools to exist independently, was also made responsible for keeping them united.

To overcome differences among various schools, al-Māwardī gave the ruler a right to appoint *Imāms* from the four schools. He worked out a broad framework<sup>24</sup> within which he dealt with the responsibilities of the ruler, the *Imām*, and the subjects. He stated the opinions of different schools before the ruler recognised his right to act upon any one of the opinions and did not make him bound by the opinions of one school. His aim in recognising the less preferred (*mafḍūl*) as a legitimate *Imām* was to minimise the tension which could arise among the different schools due to conflicting criteria to the *Imānate*. The ruler was thus made responsible for treating all the four schools equally.

From the equal treatment of all the four schools regarding the appointment of an *Imām*, it necessarily followed that al-Māwardī did not allow a viewpoint of a single school to prevail under the official patronage. This also explains his quoting of more than one juristic opinion with regard to a matter without sometimes indicating the preference of one over the other. He left it to a ruler to follow an opinion of any one of the four schools. Indicating the nature of different rulings of al-Aḥkām ‘Azīz al-Azmeh says: “Māwardī thus brought to bear on the various topics of public authority various textual and other precedents from which contemporary legal judgement could be made by the discretionary legal power of the

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<sup>24</sup> al-Māwardī, belonging to *Shafi’i* school of thought, freely relied upon the opinions of four schools and recognized ruler’s right to exercise *Ijtihād* or to act upon any one opinion. He acted in true spirit of *Imām*



Caliph. Although al-Māwardī often indicates preferences for certain positions, there is no implication that these were in any way binding on the Caliph, who had the same capacity for the legal decision as does a judge.”<sup>25</sup>

Much of al-Juwaynī’s criticism against al-Māwardī, therefore, seems to be invalid: he blamed al-Māwardī for leaving his reader in confusion by quoting two or three opinions over a matter without indicating his preference for anyone.<sup>26</sup> al-Māwardī adhered to the principle that, in running religious affairs the ruler should not rely upon the viewpoint of one school but he should provide an equal patronage to all the four schools.

For maintaining a balance among all four schools the ruler could force the adherents of all four schools:

1. To pray behind the less preferred (*mafḍūl*) *Imān* if he was officially appointed,
2. to pray behind the *Imān* of any one of the four Schools,
3. to follow the *Imān*’s method of prayer and not to stick to the viewpoint of his own *Imān*,
4. to say the *Adhān*, *Takbīr* according to the viewpoint of the *Imān*. For the sake of desired unity, the followers behind the *Imān* were required to abandon their method of prayer if it was in conflict with the *Imān*’s method of prayer.
5. to avoid schism, the people were required to seek the permission of the ruler for the appointment of an *Imān* if it was possible,
6. to avoid holding a second congregational prayer in the same mosque at any one time. This was considered an illegitimate act. Although saying the congregational prayer was considered twenty seven times more rewarding than the individual prayer, people were

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*Shafi’i* who thus explained his viewpoint: “ we regard our opinion correct but admit the possibility of mistake in it. Similarly we regard the viewpoint of other school wrong but admit the possibility of soundness in it.”

<sup>25</sup> Azīz al-Azmeh, *Muslim Kingship*, PP.169-170.

<sup>26</sup> al-Juwaynī, *al-Ghiyathī*, P.67.

required to ignore it if it was in conflict with the achievement of desired unity. It might appear as an act leading to schism and disunity.<sup>27</sup>

From above discussion it is obvious how much a ruler was involved in patronising congregational prayer and organising the affairs related to the mosque. The ruler was responsible for taking care of this obligation with regard to himself, the *Imām*, the various schools, and the subjects. However the ruler's responsibilities were far greater in the case of the Friday Prayer because it was a more important congregational prayer than other prayers. According to al-Māwardī, in the time of the *Jāhiliyya*, the name of Friday was '*urūba*. It was then named *al-Jum'a* only for a big gathering of the Muslim in this day for prayer.<sup>28</sup> The Friday Prayer was not only religiously important as a communal prayer but became politically important because the oath of allegiance was confirmed by the masses after this prayer. Moreover, it was the seat from where the name of the Caliph was mentioned.<sup>29</sup> It also reflected the continued allegiance of the provincial governors to the Caliph through the *Khuṭba*. Omission to take the name of the Caliph in the *khuṭba* amounted to revolt. We have therefore now to observe the importance of this prayer within the political context and see the ruler's involvement in its establishment.

### Friday Prayer

al-Māwardī began his commentary on the validity of the Friday Prayer by quoting an important difference between the *Shāfi'ites* and the *Hanafites*. This difference was with regard to the existence of the Sultān as a prerequisite to the appointment of the *Imām*. With the *Hanafites* the Friday prayer was valid when the Sultān led the prayer or appointed an *Imām* to lead the prayer.<sup>30</sup> The *Shāfi'ites* regarded the appointment from the Sultān as a

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<sup>27</sup> al-Māwardī, *A.S.*, P.151.

<sup>28</sup> al-Māwardī, *Tafsīr*, 62:9.

<sup>29</sup> B.C.Amoretti, "Forward" to '*Politics and Revelation*', P.xviii.

<sup>30</sup> al-Māwardī, *A.S.*, P.154.

recommended and not a compulsory act for the validity of the Friday Prayer. Abū-Ya'lā shared al-Māwardī's viewpoint on the authority of Aḥmad b. Ḥanbal, that the appointment of the *Imān* was a recommended and not a compulsory condition for the validity of the Friday Prayer. People could themselves establish it even without the Sultān's authority.<sup>31</sup>

This difference was of great significance since it reflected the approach of both schools to the issue of authority. The *Ḥanafites* considered the presence of authorities essential for preventing any *fitna* due to a large gathering. One of the famous jurists of this school, Sarakhsī maintained the presence of the authorities as a deterrent for those who deliberately missed the Friday Prayer.<sup>32</sup> Another aspect he related to the importance of the *Imān*'s presence was that his absence would lead to *fitna*, because people arriving at the mosque earlier than others would perform it, and since the Friday Prayer was held once, others would miss it. The ruler was therefore the most suitable man to deal with this matter.<sup>33</sup> The *Ḥanafites* were so strict in this regard that in their opinion if the inhabitants of a city left the city due to fear or some other reason but returned after a few days, they could not now establish the Friday Prayer unless they took a new permission from the ruler.<sup>34</sup>

The *Shāfi'ites* and the *Ḥanblites* who did not consider the existence of the authorities necessary for the validity of the prayer based their viewpoint on the traditions of the Holy Prophet (P.B.U.H). The *Ḥanafites* relaxed this condition in the absence of Islamic authorities but retained it as long as the authority was in the hands of those who enforced the *Sharī'a*. Otherwise, people could organise it for themselves.<sup>35</sup>

Another distinction connected with the previous one, and highlighted by al-Māwardī, was the condition of the city. The city was defined as the place where a person in authority

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<sup>31</sup> Abū Ya'lā, *A.S.*, P.103.

<sup>32</sup> Calder Norman, 'Friday Prayer and juristic theory of Government', *BOAS*, P.37.

<sup>33</sup> *Ibid.*

<sup>34</sup> *al-Fatāwā al-Hindiyyā*, *Kitāb al-Ṣalāt*, P.146.

<sup>35</sup> *Ibid.*

saw that the *Hudūd* were established, as well as a *Qāḍī* dispensed judgements. Whereas *Imām Mālik*, *Aḥmad b. Ḥanbal* and *Shāfi'ī* did not maintain it as a necessary condition for the validity of the Friday Prayer, the *Ḥanfites* insisted on the necessity of this condition because of the presence of the authorities to deal with any disturbance that might arise due to the presence of a large gathering.<sup>36</sup>

Regarding the number of mosques where the Friday Prayer could be held within the same city or village, al-Māwardī maintained that if all the persons could be accommodated within a single mosque, it would not be right to hold it elsewhere. But if the space was lacking, then after quoting two opinions, al-Māwardī seems to have favoured the viewpoint that as long as the arrangement could be made without inconvenience, it was better to hold it in a single place. However if it was not possible, the arrangements could be made in other mosques.<sup>37</sup> Abū Ya'lā shared al-Māwardī's opinion on most of these points. He agreed with al-Māwardī that it was preferable to hold the Friday prayer in the same mosque. But if there was not enough space in the mosque, or weak persons were unable to attend, then it could be held in two or more mosques due to necessity. But the preferable course was to hold it in one place by making use of the space outside the mosque. According to him when *Aḥmad b. Ḥanbal* was asked whether he ever knew of 'the holding of a Friday Prayer after a Friday Prayer, he replied in negative.'<sup>38</sup>

By way of summary we can say that whereas both writers agreed on many opinions, there were minor differences with regard to details they quoted to support their viewpoint. Both writers were in agreement that it was not right to hold two Friday Prayers if the authorities prevented such arrangement. But in case people did not comply with the orders of the authorities and held the Friday Prayer in two different places, then one of those

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<sup>36</sup> Calder Norman, 'Friday Prayer and juristic theory of Government' *BOAS*, P.37.

<sup>37</sup> al-Māwardī, *A.S.*, P.155.

<sup>38</sup> Abū Ya'lā, *A.S.*, P.107.

prayers would be valid while the other would be invalid. But here al-Māwardī's treatment of the problem was limited. He merely quoted two viewpoints of the *Shafi'ī* school. According to one of them, the prayer said earlier was a valid one. According to the second view, the prayer said in the main mosque where the Sultān prayed would be the valid one.<sup>39</sup> Abū-Ya'lā was not content with the mere repetition of this viewpoint. Along with quoting opinions of both schools with the different views, he also quoted the arguments on which they were based. On the authority of Aḥmad b. Ḥanbal, he attached more significance to the presence of the Sultān as a decisive factor for the validity of the Friday Prayer. Quoting the argument for the first opinion according to which, Abu-Ya'lā like al-Māwardī had preferred and declared valid the prayer of those who had said it earlier, he went on to say that holding second Friday Prayer after the first one without any sound reason would make its validity doubtful if the ruler did not attend it.<sup>40</sup>

The second viewpoint which Abū Ya'lā supported was that the presence of the Sultān validated the Friday Prayer even if such a prayer was said afterwards. The reason for the validity was that all the responsibilities then transferred to the ruler. This was again in conformity with the practice of Aḥmad b. Ḥanbal who fasted on the same day as the ruler when the day of fasting was doubtful.<sup>41</sup>

Although the *Imām* could hold the adherents of all four schools to his viewpoint in the mosque, the ruler could not force the *Imām* to act contrary to the requirements of his religious school in the same way. The *Imām* was warned that if he carried out the injunctions of the ruler and led the prayer in violation of the requirements of his school, the prayer would be invalid.<sup>42</sup> al-Māwardī allowed the *Imām* to resist the orders of the ruler if he directed him to lead the prayer against the rules of his own *fiqh*. However, to avoid the

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<sup>39</sup> al-Māwardī, *A.S.*, P.155.

<sup>40</sup> Abū Ya'lā, *A.S.*, P.107.

<sup>41</sup> *Ibid.*

displeasure of the authorities he could appoint a deputy who shared the viewpoint of the ruler.<sup>43</sup>

Regarding the right of the authorities to prevent the Friday Prayer, the *Hanafites* were of the opinion that the rulers were justified if they had a sound reason for it, but if they prevented it without any sound reason, then the people of the city were justified in establishing it on their own.<sup>44</sup> al-Māwardī did not go to that extent and justified the saying of the prayer at home if the authorities prevented the holding of the Friday Prayer publicly.<sup>45</sup> The *Hanafites* also recognised the right of the *Imān* to hold the prayer in his palace provided that he allowed free entry to everybody. But if he did not allow this concession to the people, then the Friday Prayer would not be valid.<sup>46</sup>

al-Māwardī concluded his discussion regarding the prayer with the description of five more *Sunna* prayers. They are the two '*Īd* prayers, the Solar and lunar eclipse prayers, and the Rain prayer. Here al-Māwardī confined himself by quoting the two different opinions that existed among the *Shāfi'ites*, one group regarding it as strongly recommended while the other maintaining it to be incumbent on some of the people.<sup>47</sup> The *Hanifites*, unlike the *Shāfi'ites*, did not place all these prayers in the same category. They regarded the two '*Īd* Prayers as obligatory, the two Solar and Lunar prayers as recommended, and Rain prayer as recommended (*Mustahab*).<sup>48</sup> In the case of all five prayers the *Shāfi'ites* maintained that they could be said both separately or with the congregation. The *Hanafites*, on the other

<sup>42</sup> al-Māwardī, *A.S.*, P.156.

<sup>43</sup> Ibid.

<sup>44</sup> al-Fatāwā al-Hindiyya, vol. 1, P. 146.

<sup>45</sup> al-Māwardī, *A.S.*, P.159.

<sup>46</sup> al-Fatāwā al-Hindiyya, vol. 1, P.148

<sup>47</sup> al-Māwardī, *A.S.*, P.156.

<sup>48</sup> al-Fatāwā al-Hindiyya, vol. 1, PP.149-154.

hand, maintained that four prayers out of these five should be said with the congregation. Only the Rain prayer could be said separately.<sup>49</sup>

### Suppressing Innovations

First of all, the ruler was required to prevent himself from introducing any innovation. al-Māwardī says: “he must guard the deen as it was established in its original form and about which the first generations of the *Umma* are agreed.”<sup>50</sup>

It is clear from the above statement that the ruler was not allowed to introduce any innovation which was contrary to the established principles of religion or agreed principles of the jurists of the first generation. Hence any deviation on his part amounted to introducing innovation.

The responsibility of the ruler to work within the framework of the early jurists also required him not to impose his religious viewpoints on others. If he ever did so, that was also regarded as innovation. al-Māwardī’s emphasis on this viewpoint showed his keen awareness of the past Islamic history. Ibn Muqaffa’s advice to the Caliph Manṣūr to integrate the different religious views into a single official *fiqh* was not approved by Imām Mālik when the Caliph Manṣūr sought his permission to implement his *fiqh* throughout the Muslim lands under his control.<sup>51</sup> In the face of strong pressure from the ‘Abbāsid Caliphs Aḥmad b. Ḥanbal conformed to the viewpoint of Imām Mālik when he refused to accept the official creed of the ‘created Qur’ān’.<sup>52</sup>

<sup>49</sup> Ibid.

<sup>50</sup> al-Māwardī, *A.S.*, PP.27-28.

<sup>51</sup> Abū Zahra, *Imām Mālik*, PP. 179-180.

<sup>52</sup> Abū Zahra, *Aḥmad b. Ḥanbal*, P.145. Ma’mūn was the first Caliph to institute a Miḥna for imposing the Mu’tazilite doctrine of a created Qur’ān under official patronage. Aḥmad b. Ḥanbal refused to acknowledge the doctrine of a created Qur’ān and was therefore imprisoned and persecuted (I.R.Netton, *A Popular Dictionary of Islam*, P.23) during the age of Mu’taṣim. The Caliph Wāthiq continued the *Miḥna* but reverted to the doctrine of uncreated Qur’ān towards the end of his life. ( Suyūṭī, *Tārīkh al-Khulāfā*, P.457 ) His successor Mutawikkil, however, completely renounced the *Miḥna* and Mu’tazila. (I.R.Netton, *A Popular Dictionary of Islam*, P.185).

al-Māwardī regarded the emergence and the development of the differences among the various schools as natural as long as they were constructive and were not based on any prejudice. But he pointed to the simultaneous existence of the opponents and the hypocrites who accentuated those differences and introduced innovations in the guise of religion. The ruler was, therefore, required not to allow himself to be lured into favouring any school of jurisprudence at the expense of others. Since their aim was the satisfaction of their lusts, they tried to make the ruler the most effective tool of realising their aims.<sup>53</sup>

Having warned the ruler of the existence of such elements, al-Māwardī warned clearly what consequences could follow if a king fell victim to their plots and designs. If they succeeded in their designs, it would ultimately lead to the downfall of the government. No one with the right faith would be ready to accept the officially imposed innovations. The constant threat of revolt from different quarters of the people would ultimately oblige the ruler to recruit a large army that would be a burden on the public treasury. At any stage when the ruler finds himself unable to pay their salaries they would rise and spread anarchy in the country.<sup>54</sup>

The principles stated above could be applied to any ruler and any group with such motives but al-Māwardī at the end pinpointed the *Khārijites* for adopting such an attitude. al-Māwardī was highly critical of their behaviour and attitude and advised the ruler to avoid such people.<sup>55</sup>

al-Māwardī considered it to be a responsibility of the ruler to deal with them most systematically according to the nature of their crime. He relied upon the methods of the Caliph ‘Alī in dealing with the innovators. He suggested that the ruler should ignore such innovators who have kept themselves apart from other people within an area and do not

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<sup>53</sup> al-Māwardī, *Nasīhat*, P.118.

<sup>54</sup> Ibid, P.119.

<sup>55</sup> Ibid, PP.118-119



constitute a threat to the population. This view was again according to the method of the Caliph ‘Alī who addressed the *Khārijites* thus: “...three things are, however, incumbent on us: we must not prevent you from entering the mosques of Allah to remember the name of Allah therein, and we must not initiate any fight against you, and we must not withhold the *fay* from you as long as your hands are united with ours.”<sup>56</sup>

If they preached their views and mixed with the people, the recourse was still to be sought to the argument rather than force. Before taking arms against them, the ruler was advised to make every effort to persuade them to return to the right path.<sup>57</sup>

#### **Method of suppression:**

al-Māwardī thought it the responsibility of the ruler to bring the innovators back to the right path through policy of consent rather than force. al-Māwardī said: “...if an innovator appears, or someone of dubious character deviates from this *deen* he should make clear to him the legal proof of his error, explain the right way to him and take the appropriate measures regarding his liability and his punishment such that the *deen* is protected from blemish and the ‘*umma* is prevented from going astray...”<sup>58</sup> Several principles are clear from this statement: (1) the ruler is required to be a *Mujtahid* or he was required at least to work in consultation with a *Mujtahid* to deal with such situation according to *fiqh* requirements.

1. The ruler was not only required to act in a legal capacity but also as a moral reformer to rectify those who deviated from the right path. After their deviation, the ruler’s treatment towards them should be based on sympathy.
2. The ruler was required not to develop any prejudice against those who differed on religious points.

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<sup>56</sup> al-Māwardī, *A.S.*, P.88.

<sup>57</sup> *Ibid*, PP.88-89

<sup>58</sup> al-Māwardī, *A.S.*, P.28.

3. The ruler was required to deal with them systematically. Initially they were to be convinced by argument.<sup>59</sup> In developing such a viewpoint al-Māwardī must again have relied on the precedents of past Caliphs. Ibn al-Jawzī states that before waging battle against the *Khārijites* the Caliph ‘Alī persuaded them through argumentation by appointing Ibn ‘Abbās from his side. The exchange of the arguments produced positive effects on the *Khārijites* and many of them joined ‘Alī.<sup>60</sup> The Caliph ‘Umar b. ‘Abd al-Azīz is reported to have invited the *Khārijites* to hold debate (*Munāẓara*) which in fact took place.<sup>61</sup> al-Māwardī also showed the necessity of holding debate (*Munāẓara*).<sup>62</sup> The ruler was, therefore, advised to use force as a last measure. But while al-Māwardī suggested various measures for punishing the deviants, he strictly disallowed to impose the death penalty on them. He based his view on the tradition of the Holy Prophet (P.B.U.H). In the words of the *Ḥadīth*: “ The blood of a Muslim is not to be shed except in three circumstances: rejection after belief, adultery after being a *Muḥṣan*, or killing someone other than in retaliation.”<sup>63</sup>

Such a formulation al-Māwardī again confessed to have deduced from the Caliph ‘Alī with regard to the *Khārijites* who separated from him at Nehrvān. al-Māwardī says: “ ...he appointed a governor over them and they submitted to him for a while; ‘Alī maintained peace with them until they killed the governor. He then sent word to them that they should hand over the person who had done the killing, but they refused, saying: “ all of us killed him,” to which he replied: “ all of you should surrender and I will kill some of you.” He then went to them and killed most of them.”<sup>64</sup>

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<sup>59</sup> al-Māwardī, *A.S.*, P.89.

<sup>60</sup> Ibn al-Jawzī, *The Devil's Deception*, P.31.

<sup>61</sup> Maudūdī, *Khilāfat wa Mulūkiyyat*, PP.190-191.

<sup>62</sup> al-Māwardī, *Naṣīhat*, P.467.

<sup>63</sup> al-Māwardī, *A.S.*, P.89.

<sup>64</sup> al-Māwardī, *A.S.*, P.89.

## Settlement of the Disputes

Another important responsibility assigned to the Caliph was the settlement of the disputes among the subjects through establishing the limits of Allah. It could be achieved effectively if the ruler acted impartially among his subjects and prevented them from mutual injustices through their proper enforcement. al-Māwardī says that their blood, wealth, chastity, and personalities were to be protected against any encroachment. The ruler was thus required to promote maximum harmony and co-operation among the citizens. No strong person was to be allowed to oppress a weak person and no weak was to be victimised.<sup>65</sup>

## Peace and Security

Providing peace and security was considered as one of the most primary duties of the ruler. al-Māwardī regarded it necessary due to two reasons:

1. The routes were to be kept safe for the travelling of all subjects. The jurists had always regarded it as one of the primary responsibilities of the ruler. However the emphasis on this point might also directly be related to al-Māwardī's own time. Facilitating the *Hajj* obligation was one of the ruler's responsibilities. Ibn Kathīr mentions it under the events of many years of the same period that this obligation remained suspended.<sup>66</sup> By putting emphasis on this responsibility of the ruler, al-Māwardī must have reminded the authorities of his time to make the necessary arrangements for the fulfillment of this obligation.
2. People should also have no hindrance to conduct their business safely. In Nasīhat al-Mulūk, al-Māwardī stressed that the ruler should adopt strict measures against robbers on the highway for the safe conduct of business and trade.<sup>67</sup>

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<sup>65</sup>al-Māwardī, Nasīhat, P.203-204.

<sup>66</sup>Ibn Kathīr, vol. 12, (Ibn Kathīr mentions the suspension of *Hajj* under the incidents of many years during first half of eleventh century).

<sup>67</sup>al-Māwardī, Nasīhat, P.467.

To make it possible al-Māwardī strongly emphasised the need for the enforcement of the Islamic law. In this connection he says: “ the establishment of the limits of Allah, the regulation of his injunctions among the people, maintaining justice in the cities and enforcement of the right order regarding their blood, wealth, and chastity and protecting them from wrong and offences of any kind and promoting harmony among them.”<sup>68</sup>

Such an emphasis was not alone the characteristic of al-Māwardī. Almost all the jurists counted it among the responsibilities of the ruler. In his book, al-Siyāsa Shar‘iyya Ibn Taymiyya prescribed punishments to do away with crimes. Interpreting a verse of the Qur’ān “ and when you decide among the people you must decide in a just manner”<sup>69</sup> he said that people are ordered to appoint arbiters regarding the rights and the limits. For example, regulation of His limits over the decoits, thief, and adulterer deserve the attention of the government. To further support his viewpoint he quoted the following statement of the Caliph ‘Alī: “ it is incumbent upon the people to establish the government whether it is a bad or good.”

People asked the Caliph ‘Alī that installation of a good ruler is a right thing, but why a bad ruler should be installed.’ The Caliph ‘Alī replied: “ by the ruler the limits are established, the routes are kept safe, *jihād* is waged, and *fay’* is distributed.”<sup>70</sup>

al-Baghdādī, a contemporary of al-Māwardī, highlighted the importance of this institution with reference to the establishment of the same duties. He says: “ it is incumbent on the Muslims to have an *Imān* who implements their rulings, establishes the limits of Allah, leads the army to war and arranges the marriage of the widows and distributes *fay’* among the people.”<sup>71</sup>

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<sup>68</sup> al-Māwardī, Naṣīḥat, PP.203-204.

<sup>69</sup> al-Qur’ān, 4:58.

<sup>70</sup> Ibn Taymiyya, Siyāsa Shar‘iyya, P.55.

<sup>71</sup> al-Baghdādī, Uṣūl al-Dīn, P.271.

In his book, Nasihat al-Mulūk, al-Māwardī reiterated the same theme. He stated that the duties of the ruler include the establishment of the limits of Allah. He also held the ruler responsible for establishing justice in the city as well as a right order regarding their blood, wealth, and chastity of the subjects. It was also incumbent upon him to promote harmony and prevent injustice.<sup>72</sup>

The above measures, however, merely ensured internal peace and security. To provide a defence against foreign invasion the ruler was required to maintain a strong army. Its existence was necessary for the protection of the frontiers of the country. The ruler was advised to remain vigilant against any surprise attack of the enemy.<sup>73</sup> al-Māwardī turned towards this issue in his book Tashīl al-Nazar and considered its existence to be a very important one. At the outset it becomes obvious that al-Māwardī was addressing contemporary issues because he clearly stated the military basis of the ruler's authority which was so typical of al-Māwardī's time. al-Māwardī said: "because of them (the soldiers) he became king until he dominated, acquired authority until he was able to rule."<sup>74</sup>

### **The Receipt of *Fay* and *Zakā***

This was also one of the basic responsibilities of the ruler. The *Fay*' was the wealth which was received from the enemy without any conflict. Collection and distribution of *Zakā* was one of the most fundamental responsibilities of the ruler. At the outset of the chapter al-Māwardī makes it clear by the use of a prophetic tradition that legally the ruler was entitled to claim *Zakā* and nothing else from the wealth of the Muslims.<sup>75</sup>

From what kind of wealth could the ruler claim the payment of *Zakā*? al-Māwardī divided every person's belongings into concealed and manifest goods. The ruler's right to

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<sup>72</sup> al-Māwardī, Nasihat, P.203-204.

<sup>73</sup> al-Māwardī, A.S., P.28.

<sup>74</sup> al-Māwardī, Tashīl, P.216.

<sup>75</sup> Ibid, P.168.

order the payment of *Zakāṭ* was restricted to the second category. As for the *Zakāṭ* over the concealed goods like gold, silver and merchandise, the person was to be left to himself and the ruler was neither responsible nor authorised to order from him anything in that respect. The ruler's responsibilities began only with the manifest goods. Although this obligation was to be performed under the supervision of the authorities, al-Māwardī also took into account the other opinion which considered it just a recommendation and a man was also allowed to perform this obligation on an individual basis. Abū Ya'lā held a different opinion regarding this issue. He agreed with al-Māwardī in authorising the ruler to demand *Zakāṭ* on the manifest goods. Although he did not make it compulsory for the people to perform this obligation through the ruler, he regarded it as a preferable course if the people made payment through the authorities. al-Māwardī suggested two viewpoints, and without showing preference for one over the other, ultimately demanded the authorities to fight those who adhered to neither of the above viewpoints. Abū-Ya'lā on the other hand clearly indicated its payment through the authorities as a preferred course.<sup>76</sup> Its individual payment was less preferred although it was a permissible act. Both writers agreed that a man who fell into none of these categories was to be fought. Regarding a man who refused to pay *Zakāṭ* to the authorities and gave it privately, al-Māwardī relied on the opinion of Abū-Ḥanīfa who prevented the authorities to fight him. Abū-Ya'lā, however, arrived at the same conclusion without quoting any *Imān* on this issue. Abū-'Ubayd (d.227/841), an early *Shāfi'* jurist of the ninth century, dealt with the problem at some length. He was of the opinion that up to the age of the Caliph 'Uthmān, the receipt and payment of the *Zakāṭ* had been solely a matter of official concern. Afterwards people were divided on the issue. Some of the companions continued to treat it as an official matter while others thought that it could be performed individually as well. To the former group belonged Ibn 'Umar, 'Ā'isha, and

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<sup>76</sup> Abū-Ya'lā, *A.S.*, P.119.

Sa'eed b. 'Musayyab. When some people asked them whether a person should give *Zakāʾ* to the authorities if he feared its misuse by them, they insisted that the *Zakāʾ* should still be given to the authorities.<sup>77</sup> The companions who differed on this viewpoint gave two arguments: first, if they feared the misuse of the *Zakāʾ* amount, they were bound by scripture to pay it to the needy and deserving persons. The second reason was with reference to some companions, that only those people were required to give it to the rulers who were either on an official role or who were the beneficiaries of the government.<sup>78</sup> The *Ḥanafites* were far stricter regarding the role of the authorities in receipt and the payment of *Zakāʾ*. Unlike al-Māwardī, they would not tolerate its distribution privately. According to them, the authorities could order a man to make a second payment even if they were aware that he had already paid *Zakāʾ* to some needy person. They also considered a usurper's right to the receipt of the *Zakāʾ* amount as a legitimate one.<sup>79</sup>

al-Māwardī distinguished between two types of authorities appointed for collection and distribution of *Zakāʾ*. In the case of both he clearly explains the responsibilities and the powers of both the ruler and the appointed person. If the appointed person was delegated the authority to collect the *Zakāʾ*, he could not be forced to act according to a ruler's *ijtihād*. On the points of difference among the jurists he was to be authorised to act according to his own *ijtihād*. Nor could he be bound to act according to the *ijtihād* of the owner of the good. Here the same principle was at work according to which the *Imām* of the mosque was authorised to hold everybody to his viewpoint. Neither the ruler nor the owner of the goods could force him to act according to the requirements of their *fiqh*. But the *Imām*'s right to

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<sup>77</sup> Abū-'Ubayd, *Kitāb al-Amwāl*, P.506.

<sup>78</sup> *Ibid*, P.507.

<sup>79</sup> al-Fatāwā al-Hindiyya, vol. 1, P.184.

act according to his *ijtihād* would be recognised if the appointed authority was merely granted the power of execution.<sup>80</sup>

If the authorities arrived late for the collection of *Zakāʾ*, then those responsible for the payment were required to note: if the delay occurred due to their engagement with other people for the same purpose, they were required to wait as the authorities could approach everybody one after another. But if they were apprehensive of crossing the reasonable time limit before the arrival of the authorities, they were entitled to pay the *Zakāʾ* on their own.<sup>81</sup> The *Ḥanafites* who were more strict regarding the payment of *Zakāʾ* to the authorities took into account the official constraints but regarded the prior approval of the authorities necessary. If a person distributed the *Zakāʾ* amount on his own without seeking a prior approval, then the authorities could force him to make a second payment.

#### **Extra Legal Responsibilities of the Subjects**

al-Māwardī recognised the right of the authorities in acting upon their *ijtihād* in collecting the amount of *Zakāʾ* and made the owner of goods bound to obey them. However, if the owner of the goods realised that the authorities received a lesser amount than the required one, he was required to make up the deficiency by paying the difference in order to be absolved in the eyes of Allah.<sup>82</sup>

#### **The Responsibility of Subjects towards Corrupt authorities**

al-Māwardī states two kinds of officials, one of them being unjust in collection but fair in distribution, and the other one, fair in collection but unjust in distribution. As for the first person, al-Māwardī maintained it permissible for the subjects to conceal their wealth from him although he equally allowed them to hand it over if they wished to do so. But for the

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<sup>80</sup> al-Māwardī, *A.S.*, P.172.

<sup>81</sup> *Ibid*, PP.172-173.

<sup>82</sup> al-Māwardī, *A.S.*, P.173.



second type of person, there was no alternative for the people except to make the payment of *Zakāʾ* a second time if they were forced to pay it to the collector. It was because if the deserving man did not receive the *Zakāʾ* amount, the affluent class of the society was not absolved of its obligation regarding the poor people.<sup>83</sup> The suggestion of this kind contained a veiled criticism of the corrupt authorities because the ruling regarding the affluent class to pay it twice if the authorities were not fair in distribution was bound to create hatred in the minds of people against the authorities. Here al-Māwardī differed with *Imām* Mālik whom he quoted as saying that the payment of *Zakāʾ* to such a man was an accepted one and paying it a second time was not obligatory.<sup>84</sup> Abū-Yaʿlā here differed with al-Māwardī on two points. Whereas al-Māwardī maintained that people were equally allowed to conceal their belongings or to pay them to an unjust collector, Abū-Yaʿlā considered it better for them to give it to the ruler (unjust in collection) but permissible for them to conceal the wealth and pay it on their own.<sup>85</sup> People were thus persuaded to co-operate with the authorities even if they demanded more than what was obligatory. If the distribution was fair, the additional money would obviously be spent on the betterment of the poor. The second point of difference was that Abū-Yaʿlā on the authority of Aḥmad b. Ḥanbal opposed al-Māwardī's viewpoint and maintained that if the people were forced to make the payment to a man who was unfair in distribution they were not bound to pay it a second time. He quoted many traditions to support his viewpoint while he quoted just one tradition for al-Māwardī's point of view.<sup>86</sup>

After the commencement of the period of *Zakāʾ*, if a person claimed to have paid it due to a delayed arrival of the authorities, his claim would be valid. But if the person in charge doubted his claim he could force him to take an oath. al-Māwardī quoted two opinions about

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<sup>83</sup> Ibid.

<sup>84</sup> al-Māwardī, *A.S.*, P.179.

<sup>85</sup> Abū Yaʿlā, *A.S.*, P.134.

taking an oath regarding the payment of *Zakāʾ*. According to one, it was obligatory on the person to take the oath if the man in authority asked him. According to the second, it was recommended and the claimant was not bound to take it if he thought it unnecessary.<sup>87</sup> Abū-Yaʿlā differed with al-Māwardī by holding that the payment of *Zakāʾ* to the authorities as irretrievable. On the authority of Aḥmad b. Ḥanbal he also ruled out the justification of the oath taking by the authorities.<sup>88</sup>

### The Sphere of Responsibility for the Ruler and Subjects

al-Māwardī fully authorised the man in authority to distribute *Zakāʾ* without being required to do so in the presence of the owner of the goods if the latter doubted his honesty and thought his own presence necessary. Similarly, he could not force the owner of the goods to be present during the distribution of *Zakāʾ* because the latter was absolved of the obligation after handing it over to the ruler.<sup>89</sup> Both had a legal status and could not trespass upon their jurisdictions. After the payment of *Zakāʾ* to the ruler, if the ruler lost the money, neither the ruler nor the subject could be responsible for the payment. The ruler was not entitled to reject the claim of the subject if he claimed the loss of wealth prior to the payment of *Zakāʾ*. He could at most ask him to take an oath if he doubted his credibility.<sup>90</sup> Abū-Yaʿlā again differed with al-Māwardī on this point and did not think it proper for the authorities to demand an oath from the owner of the goods.<sup>91</sup>

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<sup>86</sup> Ibid.

<sup>87</sup> Māwardī, *A.S.*, P.179-180.

<sup>88</sup> Abū-Yaʿlā, *A.S.*, P.136.

<sup>89</sup> al-Māwardī, *A.S.*, P.184.

<sup>90</sup> Ibid, P.185.

<sup>91</sup> Abū-Yaʿlā, *A.S.*, P.139.

If the subjects denied the receipt of *Zakāʾ* but the ruler claimed to have distributed it among them, the ruler was to be trusted. But the subjects would also continue to deserve the *Zakāʾ*.<sup>92</sup>

The above were the rights and duties of both the ruler and the subjects with regard to the receipt and payment of *Zakāʾ*. After the establishment of prayer this was considered as one of the most necessary obligations of the ruler. In his book Nasīhat-al-Mulūk al-Māwardī highlighted the same aspect of the ruler's responsibility with great emphasis. He quoted the Prophet (P.B.U.H) as saying while sending Mu'ādh b. Jabal to Yemen: " and teach them that Allah has made *Zakāʾ* obligatory on them. It will be taken from the rich people and will be given to the poor people."<sup>93</sup>

### **The Appointment of Competent and Honest Persons**

According to al-Māwardī, the management of the affairs of the country was a labour and trial.<sup>94</sup> The effective management of this task consequently required the recruitment of trustworthy persons and appointment of worthy counsellors capable of undertaking those tasks delegated to them.<sup>95</sup> Consequently, the ruler was required to be very careful in the exercise of his choice. al-Māwardī says in Nasīhat al-Mulūk: " he should appoint some of them as his consultants and should allow their participation. They should work as a link between him (the ruler) and them (subjects) and should work as assistants over the rest of the people. The ruler was required not to entrust anyone of them except after test, experience, and trial and after testing that the qualities of advice, affection, chastity, consultation and keeping secrets and keeping faith for him are manifest in them..."<sup>96</sup>

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<sup>92</sup>al-Māwardī, A.S., P.185.

<sup>93</sup>al-Māwardī, Nasīhat, P.447.

<sup>94</sup>Ibid, P.183.

<sup>95</sup>al-Māwardī, A.S., P.28.

<sup>96</sup>al-Māwardī, Nasīhat, P.333.

The above criterion was considered as a standard on which the Prophets in the past relied and likewise the other polities based on religion. Their establishment required staff and assistants and nothing could be put right except through a gradual process and correct ordering as well as improvement through change from the present condition to a better one. This resembled the Divine pattern and was the most decisive in deriving from Allah the continuous infallibility (*iṣmā*) and *Tawfīq*.<sup>97</sup>

al-Māwardī seeks Qur'ānic support for his viewpoint and quotes the following verses from the Holy Qur'ān: (1) “And when We took from the children of Isrā'īl a pact and raised among them twelve *Naqīb*.”<sup>98</sup>

“And Moses chose of his peoples seventy men for our appointed trust.”<sup>99</sup>

al-Māwardī also recognised its necessity from the *Sunna* of the Prophet (P.B.U.H). He says: “ and the Prophet (P.B.U.H) chose a group from among his companions for his deputyship and consultation.

On the eve of *Bay'at Riḍwān* he chose a delegation and for his service a group, and for the leadership of the army a group, and for his correspondence and writing, another group.”<sup>100</sup>

It is obvious from the order of the above pattern that al-Māwardī required the entrusting of every task to those who were best fitted to do it. It is also clear that apart from being competent they were required to be trustworthy and honest. He constantly referred to these requirements as the pre-requisites of the ruler's associates. The perfect model for al-Māwardī was Māmūn's when he expressed his requirement in these words: “ I am looking for a man for my affairs who has all of the qualities of goodness, who is modest in his behaviour and resolute in his ways, a man who has been refined by manners and

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<sup>97</sup> Ibid, P.334.

<sup>98</sup> Ibid, al-Qur'ān, 5-12.

<sup>99</sup> Ibid, al-Qur'ān, 7-155

strengthened by experience, a man who if entrusted with secrets acts accordingly and if entrusted with important matters moves to execute them, a man whose forbearance causes him to be silent and whom knowledge causes to speak, a man for whom the moment is enough and for whom a glance is sufficient, a man who has the intrepidity of Amīrs and the perseverance of the wise, the humility of the *'ulamā'* and the understanding of the *fuqahā'*; if people treat him well, he is grateful and if put to the test by their mistreatment, he is patient; he does not sell the portion of today only to be deprived the next; a man who captures the hearts of men by the sharpness of his tongue and the beauty of his eloquence."<sup>101</sup>

al-Māwardī frankly admitted that these qualities were seldom perfected in one person. The administration would consequently suffer in proportion to the deficiency of those qualities lacking in the person. In the absence of honest officials the administration would be corrupted.<sup>102</sup> But his stress on competence was no less striking than his emphasis on honesty. Talking about the different aspects of this, he says that although it was not a requirement of religion, it was a condition of good administration which was inseparable from religion<sup>103</sup>. In al-Māwardī's ideal model for close associates of the ruler, most of the required qualities were related to the quality of competence. The qualities like resolution, strength, experience, ability to execute, sharpness of mind and judgement were related to the quality of competence. The stress on the quality of competence was an agreed principle according to the famous jurists. The *Imām* al-Juwaynī favoured the installation of a less preferred (*mafḍūl*) ruler if he had the ability to administer the public affairs. He clearly favoured to a more knowledgeable man who lacked the ability to run the public affairs in an

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<sup>100</sup> Ibid,

<sup>101</sup> al-Māwardī, *A.S.*, P.38.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

effective manner.<sup>104</sup> We can also find a parallel to this thought in the writings of Ibn Taymiyya who went to great lengths to stress the need for these qualities for the ruler. He considered competence to be just as necessary as honesty. He also thought it necessary for the ruler to appoint such persons as governors, *Wālī* or *Hākīm* who were the fittest for the job. If he managed to do it, i.e, to bring the fittest man to the job, he had then performed his duty. He pointed to the two aspects of authority, the power and trust...every office is suitable for a man with corresponding abilities. For instance, the man in charge of military affairs should be brave and well aware of warfare tactics.<sup>105</sup>

The source of strength is knowledge, justice and ability to enforce the rulings of the *sharī'a* over which the book of Allah and the *Sunna* of the Prophet (P.B.U.H) provide guidance.

The source of trust is fear of Allah. The ruler should not sell the hereafter for this worldly life. He should disregard popular censure.<sup>106</sup>

Finally al-Māwardī required the ruler to be highly vigilant and required him to personally look after public affairs. The ruler was required to be himself, watchful in the execution of policies and should avoid excessive reliance on the delegation of authority. Although al-Māwardī indicated passion as the worst enemy in execution of the public affairs, he did not allow that the ruler should involve himself in excessive worship excessively lest it should detract him from public affairs.<sup>107</sup>

Quoting the verse of the Qur'ān in which the Caliph David was ordered to administer justice al-Māwardī said that Allah did not merely delegate the *khilāfa* to David but ordered him to personally execute the affairs of the Muslims. He evidently meant to show by this

<sup>104</sup> al-Juwaynī, *al-Ghiyāthī*, P.47

<sup>105</sup> Ibn Taymiyya, *Siyāsa Shar'īyya*, P.17.

<sup>106</sup> *Ibid*, P.98.

<sup>107</sup> al-Māwardī, *A.S.*, P.29.

example that if the Prophet (P.B.U.H) was not exempted from the execution of these policies, how much a Muslim ruler would be bound by that obligation.

With reference to this responsibility of the ruler, al-Māwardī, however, maintained that it was not the ruler alone who should be responsible for performing his job effectively. Every man was responsible within his sphere of responsibility and was required to be watchful over his subjects. al-Māwardī quotes the tradition of the Holy Prophet (P.B.U.H): “ everyone of you is a shepherd and will be asked about his flock.”<sup>108</sup>

Every subject was considered responsible for the flock under his control. Success of the system consequently depended upon everybody fulfilling his role in an effective manner. If the subjects were neglectful of their duties, this was bound to affect the ruler. Explaining the mutual dependence of the ruler and the subjects, al-Māwardī considered that the need of the ruler towards the subjects was never less than was the need of the subject towards the ruler. Both were like one body. One could not flourish at the expense of the other. If the subjects perished, the rulers would also perish. And if the people suffered in their wealth and blood it was ultimately bound to recoil upon the ruler.<sup>109</sup>

If the rulers lost the zeal and passion to reform the corrupt masses, they were virtually contributing towards their own destruction. al-Māwardī says in this respect: “ the reluctance of the governor to fulfil his responsibility for bringing about reform despite the corruption among the masses is like the removal of a head from a body following the destruction of bodily organs.”<sup>110</sup>

### **Summary & Conclusion**

The establishment of the religious obligations, according to al-Māwardī, was the most important responsibility of the ruler. Primarily his office acquired legitimacy upon

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<sup>108</sup>Ibid.

<sup>109</sup>al-Māwardī, *Nasihat*, PP.354-355.

complete observance of these obligations. Among the religious obligations, the establishment of prayer was first and foremost. People were urged to bear with an unjust ruler as long as he established the prayer. No other single religious act gave the ruler a right to continue his rule over the Muslim masses, as did the prayer.

The establishment of prayer and the other religious obligations, however, were considered only as parts of a ruler's overall responsibility with regard to preservation of the religion. The ruler was also responsible for doing away with innovations. The use of force, in the process, had to be exercised as a last measure. Prior to the taking of this measure, the ruler was responsible for reforming the deviants through arguments and persuasion. From this it necessarily followed that the ruler was not merely confined to the execution of law by force but he was responsible for the purification of people's thought as well as rectifying their morals.

Being the main custodian of the law, the ruler was responsible for its proper execution for settling the disputes among the subjects, providing them with peace and security, making the routes safe for travelling and performing the *Hajj* obligation.

The ruler was also responsible for building up a strong army and managing their affairs in a proper way so that they should protect both the subjects and the rulers against their enemy.

The proper receipt and payment of *Zakāt* was among the primary responsibilities of the ruler. For maximum benefits to reach the needy, its proper receipt and just distribution was necessary.

The choice of competent and honest people for the important official posts was also considered an important duty of the ruler. The union of virtue and competence in the same person entitled him to the post for which he was eligible.

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<sup>110</sup>Ibid.



Finally vigilance and active supervision of public affairs were required of the ruler for fulfilment of his responsibilities.

In our study thus far, we have examined that not only did al-Māwardī link the legitimacy of the ruler to acquisition of authority in a legal manner but also with carrying out a number of religious, moral, social, and legal responsibilities according to requirements of religion and justice. In the next chapter we shall examine how did Māwardī go on to determine the legitimacy of the *'Abbāsīd* rulers with respect to the fulfillment of the above requirements.

## Chapter Four

### Māwardī and the ‘*Abbāsīd* Authorities:

#### The Concept of Political Legitimacy

##### Historical Background

Following the martyrdom of the third *Rāshidūn* Caliph, ‘Uthmān, the *umma* found itself embroiled, for a considerable period, in a series of civil wars. When the situation calmed down, it was the *Umayyads* who ultimately succeeded in establishing themselves in authority. The futility of frequent revolts against the authorities led jurists to justify revolutionary means only under favourable conditions when the probability of the success was high.<sup>1</sup> The hard-hit descendants of the *Hāshimites* who had reached similar conclusions by their own sufferings at *Umayyad* hands, began to employ secret but peaceful methods to achieve their objective of acquiring the Caliphate. After initial disagreement over the transfer of leadership to the ‘*Abbāsīds*, the followers of descendants of the *Banī Hāshim* ultimately joined hands with the ‘*Abbāsīds* in planning the overthrow of the *Umayyads*.

After taking the reins of leadership into their hands, the ‘*Abbāsīds* had to assess the situation realistically. Although the *Umayyads* had firmly established their control over the masses, the manner in which they exercised their authority had made them unpopular among the masses.<sup>2</sup> The era of their rule was subsequent to the *Rāshidūn*

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<sup>1</sup> Sulṭān Khālīd Hethlain, *Iftā’ and Response of Prominent Muftīs to the Umayyads and Early ‘Abbāsīd Rule*, Unpublished Thesis, University of Birmingham, P.233

<sup>2</sup> Ḥasan Ibrāhīm Ḥasan, *Tārīkh al-Islam, al-Siyāsī wa al-Dīnī wa al-Thaqāfī wa al-Ijtimā’ī*, vol. 1, P.29.

period. Hence people longed for a leadership which could restore a just order in a proper manner.

The 'Abbāsids judged the whole situation cautiously. They launched the movement with the main objective of restoring the rights of *Ahl Bayt* but provided leadership to all those dissatisfied with *Umayyad* rule on various grounds. According to Hitti, the 'Abbāsids also provided a platform to all those who were politically, economically, and socially dissatisfied with *Umayyad* rule.<sup>3</sup> They acted very cautiously, wisely avoided any confrontation with the authorities, and kept their activities secret for a considerable period of time.

With the rapid decline of the *Umayyad* authorities in post *Hishām* era, the 'Abbāsīd movement grew proportionately stronger. They were eventually able to seize authority from the *Umayyads* after defeating their last ruler, Marwān II, in 750 A.D, near the river Zāb.<sup>4</sup>

#### 'Abbāsīd Da'wa

Already after the fall of Kūfā two months before the battle of Zāb, al-Saffāh (d.136/753) had been proclaimed as the Caliph. Soon after his accession to the throne he delivered the *Khuṭba*, outlining the aims, purposes and policies of his government. The *Khuṭba* began thus "Praise be to God," he said, "Who chose and honoured Islam as the best of His religions ... He made us its shelter, its fortress, its supervisors, its protectors and defenders... He singled us out to be the blood relations of His Messengers and the progeny of his forebears... He placed us in an exalted position in Islam and among its followers, and He revealed a book to the Muslims reminding them of this." At this point he quoted a number of verses from the Qur'an about the rights of relatives, as if they

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<sup>3</sup> Philip. K. Hitti, History of the Arabs, P.282.

<sup>4</sup> Ibid, P.285

were concerned specifically with the Prophet's relatives. "The blundering *Saba'iya*" he resumed, "claim that there are others who have a better title to leadership, government and *Khilāfa*. Those disgusting men! How could that be? O people, it was through us that God led the people on the right path after their wandering... God revealed the right path to Prophet Muḥammed (P.B.U.H) as a token of His grace and kindness. When the Prophet Muḥammed (P.B.U.H) died, his companions occupied his seat of authority. With their authority resting on *Shūrā* (consultation), they took charge of the heritage of the nations. They acted justly in regard to it, using it in proper ways, bestowing it upon those who deserved it and keeping themselves clear of it... Then there arose Banū Ḥarb and Banū Marwān. They grabbed that heritage for their own use, claiming it all for themselves, and they oppressed those entitled to it. God gave them a long rope until they angered Him. And when they did so, he avenged Himself on them through us. He restored to us what was ours by right and led the community back to the right path through us. He helped us to win the victory and assume authority so that we may 'succour those who have been weakened in the land.' He made us the end as we had been the beginning... *Kūfans*, you harbour love and friendship for us. You never changed in this respect. The persecution of tyrants never made you waver. Our time has come and God has brought you our rule. With us you are the most favored people. I hereby increase your stipend by one hundred *Dirhams* ... but beware that I am al-Saffāḥ (the shedder of blood) and the destroying avenger."<sup>5</sup>

From this point onward Dāwūd b. 'Alī continued this *Khuṭba* thus: "O people," said Dāwūd, " by God, we are not seeking this authority in order to gain more silver and gold... but because of our anger at the usurpation of our rights, our zeal for our cousins and our concern for your welfare ... The Almighty and Blessed lord, His Messenger and

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<sup>5</sup> Muḥammed Hadī Ḥussein and Abdul Ḥamid kamālī, The Nature of Islamic State, PP.59-61.

al-‘Abbās are your guarantee that we shall govern you in accordance with what Allah has revealed, administer your affairs in accordance with the book of Allah, and lead you in accordance with the practices and the ways of the Prophet of Allah. May the Banū Ḥarb, the Banū-Ummayyad and the Banū Marwān perish. They preferred the life of this world to the eternal one... they practiced inequity, they oppressed the people, they violated the women, they spread crime and were unjust in their dealings with the people throughout the land. ‘The wrath of Lord came down upon them while they slept’ ... O *Kūfans*, by Allah, we were persecuted and deprived of our right until Allah helped us through our party, the people of *Khurasān*. Allah has shown you through them what you have been longing to see. He has produced in your midst a *Khalīfa* from among the descendants of *Hāshim*. Receive with thanks what Allah has granted you: obey us; do not deceive yourselves; for the authority we wield is yours. Since each dynasty has a capital of its own, your city is our capital.”<sup>6</sup>

### **Analysis of Da‘wa**

The very first claim of the ‘*Abbāsids* regarding the legitimacy of their rule was that they were the direct choice of Allah or as Binder has interpreted it that Divine providence had elevated them to this status.<sup>7</sup> The Caliph Manṣūr is also reported to have claimed during his reign that he was a Divine representative on the earth.<sup>8</sup>

Such a claim made within an Islamic context raises a number of grave questions. To begin with, if the rise of the ‘*Abbāsids*, to power was the manifestation of the Divine will, the means to acquire this power could not have been so worldly oriented. A revolution, which they identified as having been achieved with Divine assistance,

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<sup>6</sup> Muḥammed Hadī Ḥussein and Abdul Ḥāmid Kamālī, *The Nature of the Islamic State*, PP.59-61.

<sup>7</sup> Leonard Binder, “Ghazālī’s theory of the Caliphate”; M.M.Sharīf, *History of Muslim Philosophy*, vol.1, PP. 776-777.

<sup>8</sup> Ḥasan Ibrahim Ḥasan, *Musalmanon Kā Nazm Mamlekat*, P.63.

should have been by and large beyond any moral reproach through all the phases of its development. But by their acts and policies the ‘*Abbāsids* proved that they stood in glaring contrast to what they actually claimed. The letters of al-Saffāh’s father to Abū Muslim (d.137/754) to put to death every Arabic-speaking person in *Khurasān*,<sup>9</sup> Abū-Muslim’s atrocities against the masses,<sup>10</sup> and the ‘*Abbāsids*’ exhuming of dead bodies of the *Umayyads* and subjecting them to cruel treatment<sup>11</sup> reflected the fact that they fell short of even the minimum requirements of justice. The fact that the ‘*Abbāsids* committed such immoral acts and still continued to claim themselves as the fortress and shelter of Islam<sup>12</sup> indicates that such claims were not as much their religious convictions as their attempt to realize their political motives in religious guise.

Māwardī’s account of the *Rāshidūn* period reveals that none of the Caliphs in the same period attributed his accession to the rule as a consequence of direct Divine involvement. Whether through nomination or election, their appointment came through human agency duly endorsed by the people through an oath of allegiance.<sup>13</sup> As Caliphs they were still human beings accountable for their policies and actions both before the people and Allah. The sense of their increased responsibility prevented them from making any special claims but rather led them to self-denial. Abū Bakr in his first inaugural address to the people ruled out any possibility of Divine connection and asked the people to put him right if they found him going astray.<sup>14</sup> Basing their rule on the *Shūrā* system, not only did they tolerate criticism but encouraged it. The claims of the ‘*Abbāsids* regarding the Divine origin of their authority are consequently unsupported in al-Māwardī’s account of Islamic politics. However, the office of the Caliphate was

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<sup>9</sup> Ibn Kathīr, *al-Bidāya*, vol. 10, P.33.

<sup>10</sup> Ibid, PP.56-57.

<sup>11</sup> Ibid, P.38.

<sup>12</sup> See the Da‘wa text at the begging of this chapter.

<sup>13</sup> al-Māwardī, *A.S.*, P.12.

maintained to be a freely contracted office, which depended on the free will of those who contracted it. Of course bringing it into existence was incumbent on the Muslims according to the mutual consultation of the believers. But it was not stated in any text of the Qur'ān or the Ḥadīth (*naṣṣ*) that the office belonged to a particular family and that it should be maintained through *naṣṣ* as the 'Abbāsids claimed.

Prior to the advent of their rule, the restoration of the rights of the *Ahl Bayt* had supplied the strong basis for the ideology of revolution. Now their own elevation to the throne, and not that of their 'Alīd cousins, meant that such restoration had been achieved. But the slogan continued to serve as the means to fortify their claims to the leadership on a permanent basis. Declaring themselves to be the closest in relation to the Holy Prophet (P.B.U.H), they thought the right of the Caliphate should revert to them for ever. They shared the viewpoint of their 'Alīd cousins that the Caliphate must belong to the kinsmen of the Prophet (P.B.U.H) but maintained that their ancestor 'Abbās was closer in relationship to the Prophet (P.B.U.H) than anyone else.<sup>15</sup> Hence they considered themselves the most legitimate claimants of the Caliphate due to their being the descendants of 'Abbās. Thus, from the concept of confining the Caliphate to the *Quraysh*, the 'Abbāsids moved further to confine it to themselves alone until they would pass it on to the Mahdī.<sup>16</sup>

al-Māwardī's concept of office of the Caliphate negates all such notions. Relationship to the Holy Prophet (P.B.U.H) does not qualify any person to lay claim to the Caliphate on that basis. Three reasons taken from al-Māwardī's account suffice to prove the above argument:

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<sup>14</sup> Ḥasan Ibrahim Ḥasan, *Tārīkh*, vol. 1, P.64.

<sup>15</sup> Ibn al-Athīr, *al-Kāmil*, vol. 5, P.199, *Manṣūr*, in his letter to Nafs Zakiyya, gave a number of arguments to validate this point.

<sup>16</sup> See the Da'wa text at the beginning of this chapter.

1. al-Māwardī does not mention the relationship to the Holy Prophet (P.B.U.H) as a pre-requisite for a claim to the office of the Caliphate. The Caliph needs to be from the *Quraysh* but not necessarily from the family of the Holy Prophet (P.B.U.H).<sup>17</sup> Nor did 'Abbāsīd ancestor, al-'Abbās consider himself as a worthy candidate for the office. The only sect to believe this claim was *Rāwandiyya* who, according to *Imām* al-Ash'arī, believed in the legitimacy of the Prophet's uncle al-'Abbās through *naṣṣ*.<sup>18</sup>
2. al-'Abbās, the Prophet's uncle was never thought of as a serious candidate for the Caliphate throughout the *Rāshidīn* period.
3. 'Alī b. Abī Ṭālib did not claim the Caliphate for himself but recognized the first three Caliphs as legitimate.

The above arguments are supported through the following text of Māwardī. In the words of the text as quoted in the al-Abkām: “ ‘Umar, may Allah be pleased with him, entrusted the matter of the *Imāmate* to a council, consisting of the most prominent members of the community, and this was then accepted by the community which was convinced of the validity of this way of contracting the *Imāmate* and of the fact that the rest of the Companions had been excluded from it. ‘Alī replied to al-'Abbās, may Allah be pleased with them both, after the latter criticized him for participating in the council: “ it is a big and important issue in Islamic affairs of Islam and I did not think I should be excluded from it.” Thus the contract of the *Imāmate* was fulfilled by a consensus agreement.”<sup>19</sup>

In order to fortify their claims to the Caliphate, the 'Abbāsīds quoted a number of revelations from the Qur'ān and specified their application to the Prophet's (P.B.U.H)

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<sup>17</sup> al-Māwardī, A.S., P.12.

<sup>18</sup> Imām al-Ash'arī, Maqalāt Islāmiyyīn, vol. 2, P.135.

<sup>19</sup> al-Māwardī, A.S., P.18.



relatives, to which they thought of themselves as most uniquely entitled to lay claims. The *Umayyads* were severely criticized for the omission of this acknowledgement.<sup>20</sup>

Interpreting the same verses in his exegeses, al-Māwardī does not adhere to the same viewpoint. For instance, interpreting the verse: “ Allah’s wish is but to remove far from you the uncleanness, O folk of the household, and cleanse you with a thorough cleansing.”<sup>21</sup> Along with other interpretations al-Māwardī quotes the interpretation by Ibn al-‘Abbās, that the *Ahl al-Bayt* in this verse refers to all the wives of the Prophet (P.B.U.H) and the application is restricted to them alone.<sup>22</sup>

The second revelation quoted to justify their rule refers to the following verse of the Qur’ān: “ Say (O Muhammed, unto mankind): I ask of you no reward therefore, except loving kindness among kinsfolk.”

al-Māwardī quotes five interpretations, none of which alludes to the establishment of the *‘Abbāsīd* claim to the Caliphate.

First of all, al-Māwardī quotes Ibn al-‘Abbās along with other narrators thus: “ its meanings are that you should not hurt me because of my relationship with you, this exclusively refers to the entire body of the *Quraysh* because there was none among them except that there existed a relationship between him and the Holy Prophet (P.B.U.H.).

The second interpretation is that of ‘Alī b. Husayn along with others in this way: “ it means that you should fulfill your obligation of relationship with me.”

According to the third interpretation, which is from Ibn Zayd: “ it means that you should love and support me in the same way as you love and support your own relatives.”

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<sup>20</sup> See the Da‘wā Text at the begging of the this chapter.

<sup>21</sup> al-Qur’ān, 33-33.

<sup>22</sup> al-Māwardī, *Tafsīr*, 33-33

The forth interpretation puts emphasis on: “ cherishing love with Allah and seeking nearness towards him through obedience and right actions.” Ḥasān and Qatāda reported this interpretation.

According to the fifth and the last interpretation: “ it means that you should love your relatives and promote relationship with them.”<sup>23</sup>

But the ‘*Abbāsids* to serve their political objectives, attempted to strengthen the validity of their claims in the light of interpretations of the *Qur’ānic* revelations. In the course of bringing change to society, they referred to the Holy Prophet ( P.B.U.H) as their predecessor for which they claimed full credit. The authority was then transferred from the Holy Prophet (P.B.U.H) to the rightly guided Caliphs who were sincere in making right use of it and they passed it on to their deserving successor.<sup>24</sup> It is here that contradiction within their *Da’wa* become obvious. If the Caliphate was a succession to the Prophethood through his progeny, how could the assumption of the authority by the *Rāshidūn* be justified? If their assumption of the authority were legitimate as accepted by the ‘*Abbāsids*, their own claims to the authority on the basis of relationship to the Holy Prophet (P.B.U.H) would lose all significance.

The political character of their tactics is obvious. In order to appease all sections of society; they managed to accommodate contradictory claims within their *Da’wa*. In order to consolidate their rule it was necessary to satisfy the masses on religious grounds more than ruling them on the basis of force. Some sections from the people of *Khurasān* believed in the Divine right of the kings and accorded a special status to the progeny of the Holy Prophet (P.B.U.H.).<sup>25</sup> Hence the ‘*Abbāsids* thought it expedient to base their claims on both elements. However, in order to satisfy a large section of

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<sup>23</sup> Ibid.

<sup>24</sup> See the *Da’wa* Text.

<sup>25</sup> Ḥasān Ibrāhīm Ḥasan, *Tārīkh al-Islam*, vol. 2, P.18.

society who believed in the traditional *Sunnī* theory of the Caliphate, it was necessary to indicate their commitment towards the theory acceptable to the jurists under whose influence most of the *Sunnī* population fell. In fact, to go ahead with a political strategy which could secure the obedience of the bulk of the masses on religious grounds led them to base their claims on different grounds.

After the consolidation of their rule throughout the empire, it was obvious that they did not differ much from their *Umayyad* predecessors. In their *Da'wa* they had promised to return to the practices of the *Rāshidūn* period but in fact perpetuated the evil characteristics of the *Umayyad* period. The *Shūrā* continued to remain suspended as before. In matters concerning the public treasury they did not accept the restrictions of *Sharī'a*: to treat it strictly as a public trust but the ruler often spent the wealth according to his discretion.<sup>26</sup>

The *'Abbāsids* claimed authority on the basis of lineage to the Holy Prophet (P.B.U.H), while at the same time they thoroughly praised the practices of the *Rāshidūn* period. In actual practice they reverted to the traditional *Sunnī* theory of the Caliphate (i.e, *ahl sunna wa al-Jamā'a*) to which most of the *Sunnī 'ulamā'* adhered. Sourdél says that about this time three different claims to authority existed throughout the Muslim world. The first of these three regarded 'Alī as a legitimate Caliph or *Imām* both on account of his kinship with the Holy Prophet (P.B.U.H) and his early conversion to Islam. His descendants were to inherit the Caliphate from him. According to this viewpoint the Caliphate was thus limited to the one family.<sup>27</sup>

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<sup>26</sup> al-Mawdūdī, *Khilāfat wa Mulūkiyyat*, P.195.

<sup>27</sup> Sourdél, *Medieval Islam*, P. 107

Opposed to them were the *Khārjites* who believed that this right should revert to the best person of the community regardless of his status or tribe. He is worthy of deposition if he is found wanting in observance of religious law.<sup>28</sup>

The 'Abbāsīd Caliph held a middle position between these two extremes. The ruler, according to the 'Abbāsīds, was to be chosen from the community, who undertook to lead the community according to religious law without fear of ever being deposed.<sup>29</sup>

The contrast with the promised return to the *Rāshidūn* Caliphate quickly became obvious. Having established themselves in authority, they had the opportunity to establish a system based on consultation, free choice of the Caliph, and recognizing every man's right to free criticism. But they were determined to continue the same autocratic rule as that of the *Umayyads*. However, since the revolution was achieved in the name of Islam, as champions of the faith and religion they claimed to replace the 'secular' *Umayyads*, they had to impress upon the people the religious character of their regime. They put on a cloak, which was claimed to have been worn by the Holy Prophet (P.B.U.H). They also kept the sceptre and bonnet as sacred relics, which gave their rule legitimacy.<sup>30</sup>

In observance of religious obligations they surpassed their *Umayyad* counterparts. But at the same time they also continued and in some respects surpassed the royal practices of the *Umayyads*.<sup>31</sup>

The 'Abbāsīds combined in their character some contradictory qualities and characteristics. They ruled despotically and resorted to repressive measures. But sometimes they were overcome by religious sentiments and forgave their adversaries.<sup>32</sup>

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<sup>28</sup> Ibid. P.108

<sup>29</sup> Ibid.

<sup>30</sup> Shawkat 'Alī, *Masters of Muslim Thought*, vol. 1, P.14.

<sup>31</sup> Goldziher, *Muslim Studies*, vol. 2, P.60.

<sup>32</sup> Naeem Siddīqī, *Ma'rka Dīn wa Siyāsāt*, P.41.

They patronized the ‘*ulamā*’ and were surrounded by them; but they also encouraged sports and music as regular parts of the court life.<sup>33</sup> In their zeal to enforce Islamic injunctions, they took steps to make Islam prevail, but to please all the people of the society they allowed some concessions inconsistent with the principles of Islam.

Long experience and involvement in the affairs of the empire had afforded them a keen insight into the politics of their time. In the period immediately following the assumption of authority they were engaged in quelling revolts, which had occurred in the name of religion, to which they were indebted for their own rise to power. At the outset of their rule they promised to bring reform through restoration of a right and a just order<sup>34</sup> which they were now bound to carry out.

#### **The Attitude of the Leading Jurists towards ‘*Abbāsīd* Rule**

The ‘*Abbāsīds*, therefore, had to pursue a religious policy and get the support of the ‘*ulamā*’ to facilitate their task. The famous ‘*ulamā*’ of the time had a mixed response towards the regime. One of the most famous of the ‘*ulamā*’ of the period was *Imām* Abū Ḥanīfa (d.150/767). Being averse to the policies of the late *Umayyads*, he justified the rebellion of *Imām* Zayd (d.122/740) against the *Umayyads* and persuaded people to join the revolt. He gave a *fatwā* to the effect that those joining Zayd’s forces were like those who went to the battle of *Badr* in the company of the Holy Prophet (P.B.U.H.).<sup>35</sup>

With the transfer of authority to the ‘*Abbāsīds*, Abū Ḥanīfa first gave allegiance and extended his support towards them. With the passage of time, as it became clear to the *Imām* that the ‘*Abbāsīds* were just as wanting in fulfillment of their responsibilities as the *Umayyads*, he began to criticize them but did not break his oath of allegiance with

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<sup>33</sup> Ibid.

<sup>34</sup> D.B.McDonald, Development of Muslim Theology, Jurisprudence and Constitutional Theory, P.93.

<sup>35</sup> Mawlānā Manāzīr Aḥsan Geelanī, Ḥaḍarat Imām Abū- Ḥanīfa Kī Siyāsī Zindagī, P.151.

them.<sup>36</sup> The Caliph Manṣūr (d.158/774) was keen to seek his co-operation and offered him a judicial post but the *Imām* Abū Ḥanīfa refused to co-operate with the authorities. He also supported the revolt of Nafs al-Zakīyya (d.145/762) against Manṣūr. After some time, Manṣūr again offered him the post and the *Imām's* constant refusal to accept the offer resulted in constant persecution of the latter at the hands of Manṣūr.<sup>37</sup>

*Imām* Mālik's (d.179/795) attitude towards both the *Umayyads* and the '*Abbāsids* had been neutral during the progress of the revolution.<sup>38</sup> When his disciples asked him regarding participation in the revolution in favour of the '*Abbāsids* he remarked, " let Allah take revenge on an oppressor by means of another oppressor and take revenge on both of them."<sup>39</sup>

But once the '*Abbāsids* were established in authority, *Imām* Mālik not only accepted the regime as legitimate but also went on to co-operate with the authorities. According to *Imām* Mālik:" the '*Abbāsids* policies might not be in conformity with the *Sharī'a* standards, yet the revolt could not be justified because it would lead towards further deterioration. He sanctioned to cultivate relations with the authorities but only with the intention of advising them to enjoin the good and forbid the evil. He himself lived up to the standards of his teachings and when reprimanded by someone for his frequent visits to the authorities, he remarked: " if I do not visit them, whom would they listen to for advice."<sup>40</sup>

*Imām* al-Shāfi'ī (d.205/820) explained the purposes of the *Imāmate* in the following words: " under the shadow of the *Imāmate* the believer takes rest and the non-believer also lives peacefully. Under the leadership of *Imāmate*, war is waged, peace is

<sup>36</sup> S.K.Hethlain, *Ifṭā' and Response*, PP.295-296.

<sup>37</sup> Manāzir Aḥsan Geelanī, *Ḥaḍarat Imām Abū Ḥanīfa kī Siyasi Zindagi*, PP.460-466.

<sup>38</sup> S.K.Hethlain, *Ifṭā' and Response*, P.306

<sup>39</sup> Abū Zahra, *Imām Mālik*, P.54.

<sup>40</sup> S.K.Hithlain, *Ifṭā' and Response*, P307-308; al-Qāḍī 'Iyāḍ, *Tartīb al-Madārik*, vol. 1, P. 207.

established, and routes are safeguarded. It is the *Imāmate* which restores the right of the oppressed from the oppressor until the pious men are pleased and feel secure from the wicked ones.”<sup>41</sup>

So keenly was the *Imām* al-Shāfi‘ī conscious of the need of its establishment that he agreed to the legitimacy of any Caliphate even without *bay‘a* under unfavourable conditions. But instead of confining the Caliphate to *Banū Hāshim*, he regarded it to be the privilege of the entire body of the *Quraysh*.<sup>42</sup> With such views and ideas about the necessity of the Caliphate, the ‘*Abbāsīd* Caliphate naturally met the standards of *Imām* al-Shāfi‘ī. As wielders of authority they were recognized as legitimate because they agreed to remain active in the service of religion and despite their shortcomings they were able to enforce Islamic practices to a considerable extent.

#### **al-Māwardī and the Legitimacy of ‘*Abbāsīd* Rule**

From the above study it is clear that contemporary jurists, in recognition of the powerful status of the ‘*Abbāsīds*, maintained their rule as legitimate although they were considered guilty of many violations of the *sharī‘a* rulings. Since the ‘*Abbāsīds* agreed to carry out the right order, their rule was tolerated despite their acquisition of authority in an unconstitutional manner. al-Māwardī followed the jurists of the traditional *Sunnī* theory but dealt with the problems of authority more thoroughly and systematically than his predecessors. The status of the ‘*Abbāsīds* can be determined precisely in the light of those principles. What place did they occupy in al-Māwardī’s account of Islamic politics?

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<sup>41</sup> Abū Zahrā, *Imām al-Shāfi‘ī*, P.121.

<sup>42</sup> *Ibid.*

As mentioned earlier, al-Māwardī legitimized the rule of the less preferred person.<sup>43</sup> He could not, therefore, justify the ‘*Abbāsīd* rebellion against the *Umayyad* authorities on the basis that this right should revert to the best man from the family of the Prophet (P.B.U.H).

The ‘*Abbāsīds* revived their claims to the Caliphate on the basis of their close relationship with the Holy Prophet (P.B.U.H). According to al-Māwardī’s viewpoint, they could not be legitimate successors to the Prophet (P.B.U.H) in the matter of authority since on the basis of this relationship they did not deserve the office more than any other member of the *Qurayshite* origin. In fact, seeing no hope for their desired goals within the framework of the traditional *Sunnī* theory, they embarked upon revolutionary means to seize authority from the *Umayyads*.

The *Khārijites* who demanded strict obedience to the law maintained that any departure from the fundamental obligation would place a believer out of the community and turn him an apostate. The principle equally applied to the Caliph who was required to submit to the judgement of the community, which could designate or depose the Caliph.<sup>44</sup> The legitimacy of the ‘*Abbāsīds* was thus challenged by them on the ground that they were not the best persons to uphold the *sharī’a*. Moreover, they were considered as worthy of deposition under the accusation of the breach of religious law.<sup>45</sup>

Notwithstanding these strong reasons against the legitimacy of the ‘*Abbāsīd* rule, al-Māwardī maintained their rule as legitimate. Although they relied upon repressive policies and unfair means both for the success of the revolution and consolidation of their rule, they were now the holders of authority, which was necessary for the required accountability for the above violations. At the same time the organization of public

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<sup>43</sup> al-Māwardī, *A.S.*, P.15.

<sup>44</sup> Sourdel, *Medieval Islam*, P.109.

<sup>45</sup> *Ibid*, P. 108.



affairs as well as the upholding of the right and just order could not be held in suspension<sup>46</sup> for which people could only look towards them as the representative of authority. Hence the breach of constitutional principles by the ‘*Abbāsids* could be tolerated and they could be recognized as legitimate if they submitted to the legal requirements of accession to authority and carried out a number of religious and administrative responsibilities.

But the objection remains that the ‘*Abbāsīd* claims to the authority through the lineage of the Holy Prophet (P.B.U.H) was altogether inconsistent with the viewpoint of al-Māwardī who strongly adhered to the traditional *Sunnī* theory. How then could their acquisition of authority be legitimately recognized or how could they further hold it on legitimate grounds?

In fact, their manifesto, claiming authority on the basis of the lineage to the Prophet (P.B.U.H), was more a political ploy than a code of sacred religious beliefs for them. It contained some mutually contradictory provisions on which the ‘*Abbāsids* relied to entice the maximum popular support. According to the Encyclopaedia of Islam: “ the legitimacy of the ‘*Abbāsids* thus depended on various arguments, whose vogue changed with the times, arguments which were sometimes radically opposed to those upon which the *Umayyad* legitimacy had been based and which sometimes approximated to them.”<sup>47</sup> This did not escape the attention of the jurists. The ‘*Abbāsids* were, therefore, judged by their actions rather than by some contents and provisions of *Da‘wa*.

In actual practice the ‘*Abbāsids* were considered legitimate due to reverting to the traditional *Sunnī* theory. In discussing the three schools regarding the legitimacy of authority about this time, Sourdel put them into the category of those adhering to the

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<sup>46</sup> al-Māwardī, A.S., PP.53-54.

<sup>47</sup> .Sourdel, art. “Khalifa” Encyclopaedia, vol. IV, P.939.

traditional *Sunnī* thought. As opposed to their claim to the Caliphate through Divine right they actually adhered to the *Umayyad* viewpoint, acceptable to the contemporary ‘*ulamā*’, and perpetuated it. In the words of Sourdél: “ in any case, the concept of power held by the *Umayyads* was defended anew by the ‘*Abbāsids* who acceded to the Caliphate in 750, and was justified chiefly in the course of the ninth century by the *Hanblite* doctors.”<sup>48</sup>

The ‘*Abbāsids* did not consider their appointment through Divine agency as having exempted them either from popular consensus or from the oath of allegiance to the people of power and influence. As Sourdél puts it: “ taking the oath was always necessary before a caliph could effectively ascend the throne. In this way of proceeding, the approval of the community was reconciled with the maintenance of power by a single dynasty, and the foundation of sovereignty remained the contract agreed at the taking the oath or *bay’a* between each new sovereign and his subjects; this created obligations on both sides which it was in principle impossible to break...”<sup>49</sup>

In executing the requirements of Islamic law, they did not assign to themselves any special role for interpreting the law as Divine agents. It was the religiously learned who were allowed to play a pivotal role in its codification.

Since the ‘*Abbāsids* agreed to establish a system based on religion and justice in a traditional *Sunnī* way, they were recognized as the legitimate rulers of Islamic lands. That this system was in fact carried out was to be confirmed through the regulation of certain Islamic practices on their part at the collective level. al-Māwardī dealt with those fundamental responsibilities of the ruler at length and divided them into a wide range of religious, legal, political, and moral responsibilities, which will now be described to see

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<sup>48</sup> Sourdél, *Medieval Islam*, P. 110.

<sup>49</sup> *Ibid*, P.113.

how closely the 'Abbāsids adhered to them. Did they deserve the legitimacy they acquired, through fulfillment of those responsibilities?

## The Establishment of Religious Obligations

### Prayer

The most important obligation after faith, says al-Māwardī, is the establishment of worship related to the body, i.e., prayer and fasting. Prayer takes precedence because it is the comparatively easier of the two. It consists of both fear and love towards Allah and is an important means to establish a bond between man and Allah.<sup>50</sup>

Such emphasis regarding the prayer was both on an individual and a collective level. Its establishment at the collective level was considered to be the responsibility of the government. This viewpoint was based on the text of the Qur'ān. According to the text: “ those who, if we give them power in the land, establish worship and pay the poor due...”<sup>51</sup>

And through the text of a *Ḥadīth* the believers were clearly advised to avoid confrontation with their rulers as long as they were active in establishment of this obligation.<sup>52</sup>

The Holy Prophet (P.B.U.H), when appointing governors to the different areas, assigned to them the leading of prayers as one of their primary responsibilities. The precedent was fully established during the *Rāshidūn* period and subsequently acknowledged by both the *Umayyads* and the 'Abbāsids.

During the *Umayyad* period when the rule of the best man (*afḍal*) no longer prevailed, the ruler was still required to lead the prayer in order to demonstrate the unity

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<sup>50</sup> al-Māwardī, *Adab*, P.96.

<sup>51</sup> al-Qur'ān, 17-41.

<sup>52</sup> “Kitāb al-Imāra”, *Ṣaḥīḥ Muslim*.

of the religious and political functions. As a governor of Medina, Marwān (d.65/684) used to lead the prayer and the famous Companions used to pray behind him.<sup>53</sup> People were averse to his rule and tolerated it reluctantly but were reconciled with the exercise of the religious functions as a ruler. This remained the typical mode of behaviour of the Companions and their followers during the *Umayyad* period.

Hence al-Māwardī, in the context of explaining various religious responsibilities of the ruler, devoted a special chapter to the establishment of this obligation. Its administration was solely the responsibility of the authorities. al-Māwardī pointed out the difference between the official and private mosques. He also considered the officially appointed *Imām* as acceptable one even if he possessed fewer qualifications.<sup>54</sup>

In addition to putting emphasis on the need for sound administration on the part of the rulers if the inhabitants of a country were caught up in calamities, he also required them to lead the special prayers on such occasions. These prayers include *Kasūf* (solar eclipse), *Khasūf* (lunar eclipse) prayers, and *Istisqā* (rain) prayer.<sup>55</sup>

The importance which the 'Abbāsids attached to this obligation can be assessed by an event during the reign of the Caliph Hārūn al-Rashīd. *Imām* Abū Yūsuf (d.181/797) convened a court session in which he declared that the testimony of the Caliph's minister could not be accepted. Following the complaint by the minister, Hārūn asked Abū Yūsuf as to why his testimony could not be accepted. *Qāḍī* Abū Yūsuf told the Caliph that he had heard him saying: " I am the slave of the Caliph. Moreover he does not perform the congregational prayer." Listening to this Hārūn kept quite. Afterwards,

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<sup>53</sup> Abū al-Kalām, *Masla Khilāfat*, P.95.

<sup>54</sup> al-Māwardī, *A.S.*, P.150.

<sup>55</sup> *Ibid.*

the same minister had a mosque built within the premises of his residence and began to offer the congregational prayers.<sup>56</sup>

### *Zakat*

In fulfillment of this important obligation, al-Māwardī saw ‘a sympathy toward the poor, co-operation with needy persons, containment of mutual hatred, prevention of the severing of relations and persuasion to cultivate relations...’<sup>57</sup>

al-Māwardī attributes the widening gap between the rich and the poor to the lack of the observance of this obligation. al-Māwardī says: “ when hope fades and need grows intense, hatred takes place and envy intensifies, and leads towards the isolation of the poor from the rich until it leads towards severe competition for grabbing wealth by both. The payment of *Zakāʾ* is an exercise for one to attain generosity...”<sup>58</sup>

From the above text it is clear that the payment of the *Zakāʾ* aims to guarantee the well being of the whole society, with everybody sharing its benefits. It was, therefore, from the very start a collective obligation. According to al-Māwardī, it was made compulsory for the companions at the time when its establishment was possible at a collective level.<sup>59</sup>

Accordingly, we see in the al-Aḥkām, al-Māwardī fully explained the responsibilities of both the authorities and the subjects regarding the fulfillment of this obligation. He assigned the responsibility to the government, to administer this affair through appointed designates.

He preferred its distribution through the representatives of the government. Here he took into consideration the opinions of two schools; one of them considered it

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<sup>56</sup> Naeem Siddiqui, Maʾrka Dīn Wa Siyāsāt, P.115.

<sup>57</sup> al-Māwardī, Adab, P.98.

<sup>58</sup> Ibid.

<sup>59</sup> al-Māwardī, Aʾlām, P.287.

obligatory to pay it only to a man appointed by the government, individual payment being disallowed. The second school, however, allowed the individual payment.<sup>60</sup> al-Māwardī gave latitude to both schools but fully authorized the ruler to make sure that everybody responsible for the payment fulfilled the obligation. He also made it obligatory on the part of the ruler to fight those who were guilty of omission just as the Caliph Abū-Bakr fought those who refused to pay *Zakāʾ*. Deliberate non-payment of *Zakāʾ* was considered tantamount to rebellion.<sup>61</sup>

### *Ḥajj*

Similarly, great stress was laid on governmental responsibility for facilitating the performance of *Ḥajj*. One of the primary responsibilities of the Caliph was to keep the routes safe for those travelling throughout Muslim lands.<sup>62</sup> This responsibility was more important in the case of the *Ḥajj* routes because in the eyes of people the authorities were responsible for the safety of *Ḥajj* routes and the people could perform this obligation only if the authorities undertook to fulfill this responsibility properly. As a result it was generally assumed that the government which failed to keep the routes safe, neglected one of its basic responsibilities. The 'Abbāsids showed keen interest in patronizing this obligation so as to confirm their position as the legitimate claimants of authority. During the early 'Abbāsīd regime the founding fathers of the dynasty mostly led the *Ḥajj* expeditions. The Caliph Maṣṣūʾ led the expedition shortly before his death.<sup>63</sup> During the late 'Abbāsīd period when the authorities did not pay proper attention to this responsibility, people severely criticized them on account of their neglect of this fundamental responsibility. For this omission, many chronicles noted

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<sup>60</sup> al-Māwardī, *A.S.*, P.168.

<sup>61</sup> *Ibid*, P.168.

<sup>62</sup> *Ibid*, P.28.

<sup>63</sup> Ibn al-Athīr, *al-Kāmil*, vol.6, P.21; Ibn Kathīr, *al-Bidāya*, vol. 10, P.103.

with special concern, in the context of the events of the late 'Abbāsīd era, the inability of the authorities to make the *Hajj* arrangements.<sup>64</sup>

However, al-Māwardī made a distinction between the responsibilities of the rulers with regard to the establishment of this obligation and the establishment of other obligations like prayer and *Zakāt*. In the case of the establishment of the first two obligations the authorities were duty bound to take action if a subject was found guilty of omission. But if someone deliberately neglected the *Hajj* obligation, the authorities could not force him to perform it. The only thing the authorities were entitled to do was to forcibly take money from his belongings after his death and make someone perform this obligation on his behalf.<sup>65</sup>

### **Fasting**

Fasting is one of the five pillars of Islam. The person observing the fast has to abstain from satisfying most of his bodily requirements from early morning until sunset. It is a form of personal worship for every person but all the Muslims have to share this devotional religious exercise in the same month and are made responsible to keep the uniformity of the time and the rules.

al-Māwardī did not make the authorities responsible for forcing people to carry out this obligation in the same way in which they could force them with regard to the establishment of prayer and *Zakāt*. The authorities were only entitled to appoint the officials to prevent an open violation of the sanctity of the month, because Muslims were strictly forbidden to probe into the affairs of the other person. If a person was not found guilty of open violation, the official could not inquire into his private life and the person was to be trusted for what he claimed. In the case of open violation, however, the

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<sup>64</sup> Ibn al-Athīr and Ibn Kathīr have mentioned this omission on the part of authorities under the events of years of fourth and fifth century AH.

authorities could punish him in order to preserve the sanctity of the atmosphere. Or if a person did not fast without any excuse and made it publicly known without hesitation, he was to be punished for this omission<sup>66</sup> until he repented as this jeopardized the sanctity of the religious commandments.

### **Enforcement of Islamic Law**

Islamic law stretches beyond the mere settlement of mutual disputes. It covers all aspects of human life. Instead of leaving the religious and moral issues to an individual's discretion, it brings them within a collective context. Similarly it deals with the laws of war. It also covers the economic aspects of life. Family laws like marriage,<sup>67</sup> divorce<sup>68</sup> and inheritance<sup>69</sup> are also dealt with at great length. Above all, it also claims to contribute to the moral development of man and society by supplying details about religious aspects of life like prayer<sup>70</sup>, *Zakāʾ*, *Hajj*<sup>71</sup>, and fasting.<sup>72</sup>

The Prophet (P.B.U.H) organized the affairs of the Muslim community according to the Divine commandments. His practices were based on the revelations of the Qur'ān. A Muslim ruler, installed to inherit the functions of the Prophet (P.B.U.H), had consequently to depend for his legitimacy upon the continued enforcement of these commandments. No ruler who failed to carry out this responsibility in a proper manner could, therefore be recognized as a legitimate ruler of a Muslim community. The Qur'ānic injunctions clearly support this viewpoint. According to a verse of the Qur'ān: "whoso judgeth not by which Allah hath revealed: such are disbelievers (*Kāfirūn*)."<sup>73</sup> In

<sup>65</sup> al-Māwardī, *A.S.*, P.314.

<sup>66</sup> Ibid.

<sup>67</sup> al-Qur'ān, 4-3.

<sup>68</sup> al-Qur'ān, 2-229.

<sup>69</sup> al-Qur'ān, 4:11.

<sup>70</sup> al-Qur'ān, 4:102.

<sup>71</sup> al-Qur'ān, 4:97.

<sup>72</sup> al-Qur'ān, 2:185.

<sup>73</sup> al-Qur'ān, 5:44.



two other verses in the same context such rulers are mentioned as unjust (*ẓālimūn*) and evil-livers (*fāsiqūn*).<sup>74</sup>

Interpreting these verses, al-Māwardī, on the authority of Ibn al-‘Abbās, divided such rulers into two categories: (1) those who neither acknowledged the importance of such revelations nor enforced them. They were declared as non-Muslims. (2) Those who acknowledged their importance but did not enforce them. They were called the unjust (*ẓālimūn*) and evil-livers (*fāsiqūn*).<sup>75</sup>

The legitimacy of the ruler was thus closely linked to the enforcement and continuation of these laws. The importance attached to this responsibility explains why the Companions and the jurists tolerated the early *Umayyads* in recognition of their carrying out the Islamic commandments at the public level. This view remained prevalent throughout the course of Islamic history: all the jurists adhered to the viewpoint. The legitimacy of the ruler ultimately depended on his commitment to enforce Islamic commandments at a collective level.

The four *Imāms* of the *Sunnī* schools of jurisprudence, despite their critical attitude towards the ‘*Abbāsīd* authorities did not break their oath of allegiance because they recognized the necessity of political organization for the enforcement of Islamic law. All the succeeding jurists conformed to their viewpoint. To give a few examples, al-Baghdādī, (d.429/1037) a famous *Shāfi‘ī* jurist and a contemporary of al-Māwardī, was of the opinion that the ruler owed his legitimate existence to the continued enforcement of the Divine commandments. The ruler ensures internal security, provides defence against external aggression and ensures the well being of the destitute.<sup>76</sup> al-Māwardī maintained that government operated and existed not only in succession to the

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<sup>74</sup> al-Qur’ān, 5:45-47.

<sup>75</sup> al-Māwardī, *Tafsīr*, 5:44.

<sup>76</sup> al-Baghdādī, *Uṣūl al-Dīn*, P.271.

Prophethood to deal with the affairs related to the hereafter, but also as an institution for the management of the affairs of this world through the enforcement of religious commandments.<sup>77</sup>

al-Qurṭubī alluded to the unanimous agreement of the Companions on the appointment of the ruler immediately after the Prophet (P.B.U.H) passed away. al-Qurṭubī justified their decision by the argument that the Companions considered the continuation of Divine commandments as their foremost duty. He pointed out that although the issue of the best candidate was the subject of dispute for a while, the appointment of the ruler itself did not become a controversial issue.<sup>78</sup>

In the post-*Rāshidūn* period when the elective character of the Caliphate underwent a considerable deterioration, the attention of the jurists was consequently shifted to the acts and the policies of the ruler. The 'Abbāsids, along with relying on other factors for the success of their revolutionary movement, highlighted the *Umayyad* shortcomings with respect to their failure for carrying out their functions properly. After the assumption of authority they reiterated the need to fulfill responsibilities through their commitment in the *Da'wa*.<sup>79</sup> To strengthen and consolidate their rule they pursued a religious policy throughout the empire to provide an ideological legitimization to their rule.<sup>80</sup> It is important to note that the 'Alīds<sup>81</sup> and the *Khārjites* rose in rebellion against the 'Abbāsids and justified their uprisings on account of the failure on the part of the 'Abbāsids to adhere to the Islamic principles properly.

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<sup>77</sup> al-Māwardī, *A.S.*, P.10.

<sup>78</sup> al-Qurṭubī, *al-Jāmi'*, 2-30.

<sup>79</sup> See the text of the *Da'wa* at the beginning of this chapter.

<sup>80</sup> Hanna Mikhail, *Politics and Revelation*, P.16.

<sup>81</sup> Ibn al-Athīr, *al-Kāmil* vol. 5, PP. 202-204, When Maṣūūr's commander 'Īsā, laid siege on the city of Medina and offered Nafs Zakiyya (The 'Alī leader) amnesty if he surrendered, the latter turned down his offer. He reiterated his viewpoint that he called him to act upon the teachings of the Qur'ān and the *sunnah* of the Prophet (P.B.U.H).

Unlike the *Umayyads*, the *‘Abbāsids* did not concentrate upon the expansion of the empire, but instead focussed their attention upon the promotion of the various branches of learning and knowledge. As they impressed upon the minds of their subjects the religious character of their rule, they took a keen interest in patronizing the religious sciences and gave the religious scholars an important place in their court. Their era was considered very important in the development of the religious sciences. The work of codification was started and completed under the supervision of the religious scholars in this period.

al-Māwardī, concerned with proposing the *fiqh* solutions to contemporary issues, held the ruler responsible for their enforcement. The composition of the al-Aḥkām was primarily an effort in the same direction. al-Māwardī wrote this book to assist the ruler in the management of different religious, legislative, administrative, and political affairs according to Divine law.<sup>82</sup>

### **Existence of a Strong Judiciary**

al-Māwardī’s concern to keep the judiciary independent of the executive control is vividly illustrated in his description of the qualifications of the *Qāḍī*. Apart from his being a Muslim, male, freeman, and of perfect health, he is required above all to possess the soundness of character and legal competence. With reference to the sound character al-Māwardī says: “ he must be of just character, a quality requisite in all kinds of authority. Justice consists in being true in speech, manifest in his fulfillment of a trust, free of all forbidden acts, careful to guard himself against wrong actions, free of all doubt, equitable both when content and when angry, chivalrous and vigorous both in his *deen* and his worldly affairs.”<sup>83</sup>

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<sup>82</sup> al-Māwardī, A.S., PP.7-8.

<sup>83</sup> Ibid, P.99

Such qualities obviously require men of strong character who should neither succumb to the pressure of the authorities nor submit to the influence of the wealthy class, thereby keeping the judiciary independent of external control. Recruitment of such people was meant to give the judiciary an independent status enabling the judges to protect the subjects against the arbitrary and unjust official control.

al-Māwardī, therefore, in the context of describing justice as a broad principle of society, attached foremost importance to the justice administered by the government towards its subjects. The ruler was required to base his policies on consent rather than force or arbitrary exercise of power.<sup>84</sup> Government by consent was meant to be a responsible government: whose personnel were to be put under legal restraints and held accountable for a breach of law. This could be achieved only through independent judges who were authorized to act even against the top executive authorities.

Did the 'Abbāsids allow the judges to act independently and maintain a sound judicial system?

Against the general assumptions, that the 'Abbāsids maintained an autocratic system of government, Sourdel calls the 'Abbāsid Caliph a quasi despot because of restraints put on him by his entourage and public opinion.<sup>85</sup> Besides other high officials, their entourage also included a chief justice. The first man to be given this office was the *Qāḍī* Abū Yūsuf in the reign of Hārūn.<sup>86</sup>

The policy to recruit pious '*ulamā*' for the judicial posts had begun from the earliest period of the 'Abbāsid Caliphs. From the very start of their rule, the 'Abbāsids realized the importance of a strong and independent judiciary. The Caliph Manṣūr is reported to have indicated the necessity of an impartial judge as the most important of all four

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<sup>84</sup> al-Māwardī, *Adab*, P.142.

<sup>85</sup> Sourdel, *Medieval Islam*, P.126.

<sup>86</sup> Ibn Kathīr, *al-Bidāya*, vol. 10, P.148.

constituent elements in the make up of the empire. In his words, “ a judge who could decide without the fear of ‘censor from those who censor’.”<sup>87</sup> He is also reported to have constantly persuaded and pressurized the *Imām*, Abū Ḥanīfa, to accept the post of chief justice, which the latter refused. He also went to *Imām* Mālik and asked his permission for making his *fiqh* the official doctrine. *Imām* Mālik did not accept the proposal and tried to convince the Caliph that it would fail to create the desired unity.<sup>88</sup> The Caliphs Hārūn and al-Māmūn acquired the services of Abū Yūsuf, Yaḥyā b. Aktham, and Aḥmad b. Dāwūd (d.240/854).<sup>89</sup>

The question naturally arises that did such a policy reflect a genuine desire on the part of the ‘*Abbāsids* to see the full restoration of justice based on Islamic law, or was it done to pacify people who, as past experience had shown, could be stirred if the ‘*ulamā*’ stood outside the government?<sup>90</sup>

Although the ‘*Abbāsids* were committed to maintaining justice through the recruitment of pious ‘*ulamā*’ to judicial posts, sometimes their personal and royal interests distracted them from pursuing a just policy and they rejected their advice under the excuse of expediency.<sup>91</sup> This did not happen too often and sometimes the ‘*ulamā*’ stood opposed to the Caliphs and resisted their unjust policies. A few examples would show the validity of this:

A famous incident is related about *Qāḍī* Ḥifṣ b. Ghīyāth (d.196/811). He decided against Marzabān, a famous slave of Zubayda (d.216/831). Marzabān constantly referred to the fact that he was the slave of Zubayda (the Caliph Hārūn’s wife), but the *Qāḍī* did not take any notice, decided against Marzabān and sent him to jail. The news

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<sup>87</sup> Ibn al-Athīr, *al-Kāmil* vol. 5, P.9.

<sup>88</sup> Manāẓir Aḥsan Geelānī, *Muqaddima Tadwīn Fiqh*, P.206

<sup>89</sup> Manāẓir Aḥsan Geelānī, *Imām Abū Ḥanīfa Kī Siyāsī Zindagī*, PP.495, 532,535

<sup>90</sup> Naeem Siddīqui, *Ma’rka Dīn wa Siyāsāt*, P.90. Na’eem Siddīqui is of the opinion that the ‘*Abbāsids* recruited the ‘*Ulama*’ to the judgeships in order to forestall the prospects of revolution.

spread across Baghdād. Zubayda became furious at this and immediately ordered his release. The prisoner was at once set free. When the *Qāḍī* came to know about the release of the prisoner he warned either to send the prisoner back to jail or else he would not preside over the court any further. The man, who set the prisoner free, in anticipation of some penalty, requested Zubayda to permit him to temporarily send the prisoner back to jail. The request was granted. When Hārūn came, Zubayda showed much anger and said: “ your judge is foolish. He has insulted me. He should be suspended immediately.” In order to settle the matter peacefully Hārūn wrote to the *Qāḍī* to ignore the matter and exempt the slave Marzabān. Meanwhile the *Qāḍī* came to know about the dispatch from Hārūn. He began to expedite the rest of the case very quickly but before he could complete it, Hārūn’s messenger made his appearance. The *Qāḍī* asked him to wait until he had finished. The messenger called his attention but the *Qāḍī* paid attention to him only after the decision had been sealed. Then he read the letter and said: “ convey my regards to the king and say that the *Qāḍī* had decided before your letter was received.” The messenger said that the deliberate delay which the *Qāḍī* had made, would also be reported. The *Qāḍī* paid no attention to this and said: “ tell him what you want”. The messenger narrated the whole story to Hārūn. Hārūn did not show any displeasure but laughed and ordered thirty thousand *dirhams* to be given to the *Qāḍī*. Now Zubayda’s desperation knew no bounds. She said to Hārūn: “ our marriage bond should not continue any further unless you dismiss *Qāḍī* Ḥiḥṣ.” The matter was ultimately resolved by transferring the *Qāḍī* Ḥiḥṣ to Kūfa.<sup>92</sup>

The following example quoted by al-Māwardī in the *al-Aḥkām* shows how keenly the ‘*Abbāsids* were interested in the administration of justice and how sometimes they

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<sup>91</sup> Na‘eem Siddīqī, *Ma‘rka Dīn wa Siyāsāt*, P.75

<sup>92</sup> Khaṭīb Baghdādī, *Tārīkh Baghdād*, vol. 8, PP.191-192

went as far as to decide against their own kith and kin on the complaints of ordinary and weak persons.

‘It is narrated that al-Māmūn, may Allah be pleased with him, used to personally sit in the court for grievances on Sundays; one day he rose to leave a sitting when a woman in rags confronted him, saying: “ O flower of the Just to whom even uprightness itself is guided, O *Imām* by whom the whole land has been illuminated! A widow takes her complaint to you, O support of the realm, against whom, without means of defense, a lion has made an attack: he has seized lands from her after she was rendered incapable and had become separated from her family and children.

al-Māmūn lowered his eyes a moment and then raised his head saying: “ Before less than what you have spoken of, patience and fortitude themselves would have weakened; my heart is sickened by your sadness and affliction. Now is the time for midday prayer, so depart and bring your adversary on the day I shall promise to you: the court sits on Saturday, and if I sit on that day I will see that you receive justice; if not, then at the Sunday sitting.”

She then departed and attended on Sunday in the first row. al-Māmūn then asked her: “Against whom do you lodge a complaint?” She replied: “The one standing by your side, al-‘Abbās, the son of the Amīr of the Believers.” al- Māmūn then told his *Qāḍī*, Yaḥyā b. Aktham, (while others say that it was his wazīr Aḥmad b. Abī Khālid), to hold a sitting with both of them and to investigate the case - which he did, in the presence of al-Māmūn. When the woman raised her voice and one of the attendants reprimanded her, al-Māmūn said: “Leave her, for surely it is the truth which is making her speak, and falsehood which is causing him to be silent,” and he ordered that her land be restored to her. al-Māmūn’s action in having the investigation take place in his presence, but without taking it up in person, was indicative of good administration in two ways:

firstly, it concerned a judgement which might have been in favour of or against his son: one may not pronounce judgement in favour of one's son, although one may pass judgement against him; secondly, the litigant was a woman with respect to whom al-Māmūn was too highly placed to respond; moreover his son, by virtue of his rank found himself in a position in which no one other than the Caliph could enforce the law. Thus al-Māmūn referred the investigation, in his son's presence, to someone who was able to converse with the woman and so resolve the claim and elucidate the pertinent facts- but it was al-Māmūn himself, who issued the executory judgement and enforced the law...;<sup>93</sup>

In pursuance of their religious policy the 'Abbāsids deemed it necessary to recruit the religiously learned whom the people acknowledged as their religious leaders on account of their scrupulous regard for Islamic principles and vast religious knowledge. It explains why the early 'Abbāsids desperately wanted to acquire the services of the famous jurists like Abū Ḥanīfa, *Imām* Mālik, and Sufyān al-Thawrī (d.161/778). These jurists declined the offers because the portfolio was not completely independent of royal influence. Apart from the dependence of the judges on the executive authorities for their removal and appointment, sometimes decisions were not taken impartially if the royal interests were at stake.

It was in the reign of Hārūn that the judiciary was made more effective and independent. To attain this goal the Caliph Hārūn al-Rashīd appointed *Imām* Abū Yūsuf as the chief Justice and gave him full authority to appoint and remove the judges. The pattern thus established was followed during the subsequent 'Abbāsīd period. Giving an overall picture of administration of justice during the 'Abbāsīd era the Encyclopaedia of Islam acknowledges a certain degree of independence of the *Qāḍīs* both in the Capital

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<sup>93</sup> al-Māwardī, *A.S.*, P.128.



City and provinces. Clarifying this further, it is highlighted that men of high learning were appointed for judicial posts and it was not uncommon for them to resist official control. As the time went on, the judiciary acquired more strength and after the end of 3<sup>rd</sup>/ 9<sup>th</sup> century with the establishment of high court, the arbitrary powers of the Caliph were restricted still further.<sup>94</sup>

With the appointment of *Imām* Muḥammed (d.189/804), *Imām* Yaḥyā b. Aktham and Aḥmad b. Dā'ūd as chief justices the policy to make the judiciary stronger was allowed to continue by the 'Abbāsids. Such a policy pursued over a period of time had lasting influences. During the period of disintegration of the 'Abbāsīd Empire when the independent dynasties came into existence, the dynasts followed the 'Abbāsīd pattern in upholding the impartial character of the judiciary.<sup>95</sup>

To put a further check on the haughty behaviour of the executive officials, the 'Abbāsids perpetuated and strengthened the office of judicial redress. Its functions included: the investigation of abuse of power by the rulers towards the subjects...; to investigate the extortion made by agent collectors when exacting tax on property...; restitution of things seized by force...; the supervision of the *Waqf* institutions...; the execution of those judgements which the *Qāḍīs* had suspended due to their own weakness and incapacity in applying them to the party against whom the judgement has been made...; to see that public acts of worship are respected like Friday prayer, the 'Īd prayer, and the *Ḥajj* and the *Jihād* etc...<sup>96</sup>

al-Māwardī traces the origins of this institution to the time of the Caliph 'Alī. With the advent of the *Umayyads* its need became increasingly felt as the dissension began to take place among the people. 'Abd al-Mālik and 'Umar b. 'Abd al-'Azīz laid the

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<sup>94</sup>D.Sourdel, art, "Khalifa", *Encyclopaedia*, vol. IV, P.941.

<sup>95</sup> Mnāzir Aḥsan Geelanī, *Imām Abū Ḥanīfa Kī Siyasī Zindagī*, P.550.

<sup>96</sup> al-Māwardī, *A.S.*, PP.121-125

foundations of this institution, to investigate wrongs and order restitution. The 'Abbāsids perpetuated this system and were considered responsible for its healthy development. Sometimes they themselves sat in judgement in the case wherein some person was wronged, and they restored his rights to him. So the judiciary reinforced by *Naẓr al-Maẓālim* restored justice and served as a check on the arbitrary exercise of authority by executive officials.<sup>97</sup>

### **Status of the 'Ulamā**

al-Māwardī considered the administration of justice as the responsibility of the judiciary. The *Qāḍī*, to be able to perform his responsibilities efficiently was required to combine in his person the qualities of piety and courage. He was also required to possess a comprehensive knowledge of *Sharī'a*: in order to decide in accordance with the requirements of justice. According to al-Māwardī: “ he must have knowledge of the laws of the *sharī'a* and his knowledge must extend to a comprehension of its principles and to the execution of legal decisions based on these principles. The principles from which the laws of the *sharī'a* are based are four in number: first, he should have knowledge of the Book of Allah, may He be exalted, in such a way as to enable him to attain a proper knowledge of the various kinds of laws contained within the Book... second, he must have knowledge of the authentic *Sunna* of the Messenger of Allah (P.B.U.H), that is his sayings or deeds, and the way in which they have been transmitted- in multiple chains of transmission or isolated ones... third, he must have a knowledge of the interpretations arrived at by the first generations...; fourth, he must have a knowledge of analogy enabling him to refer matters about which the law is silent

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<sup>97</sup> Ibid, PP. 117-119.

to clearly formulated principles accepted by all, such that he knows how to deal with new situations and is able to differentiate the true from the false.”<sup>98</sup>

From the above criterion it is obvious that recruitment to the post of *Qāḍī* required the ‘*ulamā*’ to be highly independent, honest, and free from influences of the wealthy and the ruling classes. In addition to providing personnel for the judiciary the ‘*ulamā*’ were required to carry out some other responsibilities. They were required to provide honest bureaucrats. The ‘*ulamā*’ were also made responsible for guiding the people in matters of religion.<sup>99</sup> They were required to combat the growth of innovations in society. They had to impart education to the masses in various religious branches. Apart from these responsibilities they were assigned special responsibilities in the political context. Māwardī fully works out the ways and methods according to which both the ‘*ulamā*’ and the rulers should behave towards each other. The following are some of the important responsibilities, which they owed to one another.

### **Responsibilities of Rulers Towards the ‘*Ulamā*’**

1. Here al-Māwardī begins with his advice to the ruler that in the first place he should be thoroughly conversant with the religious sciences. Most important of all knowledge is the knowledge of religion that would give him a proper understanding of Allah and his signs. It also brings forth a variety of advantages like the welfare of this world and the hereafter. It is the foundation of the state, directing the ruler towards the right decision such as whether to fight the rebels and whether it was right for him to kill them. He can only be guided right in the light of knowledge towards faith and religion before waging

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<sup>98</sup> Ibid, P.100.

<sup>99</sup> al-Māwardī, *Adab*, P.93.

war against them. In the absence of religious knowledge rulers will be easily overcome and remain ignorant.<sup>100</sup>

2. The king or the ruler needs the company of the '*ulamā*' more than most of the other people.<sup>101</sup>
3. Rulers should spend their leisure time in reading the books of the '*ulamā*'.<sup>102</sup>
4. Rulers should cherish the love of the '*ulamā*' more than their love for the clown, singer or other artists.<sup>103</sup>
5. Rulers should not increase enmity between him and other religious factions.<sup>104</sup>
6. If the ruler is inclined towards knowledge, he should not permit it to become a source of earning his special favour. The ruler should rather grant everybody what he deserves.<sup>105</sup>

This is a brief description of al-Māwardī's recommendations of the responsibilities, which he thinks the ruler should adopt towards the '*ulamā*'.

### **Responsibilities of the '*Ulamā*' towards the rulers**

1. The '*ulamā*' should advise the rulers when asked to do so.<sup>106</sup>
2. They should restrict their advice to the minimum. Some '*ulamā*' show excess in demonstrating their knowledge. This becomes a source of anxiety for the ruler and makes him averse, as he has to deal with so many problems and cannot spare his time for knowledge as a specialist.<sup>107</sup>
3. The '*ulamā*' should advise and not teach.<sup>108</sup>

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<sup>100</sup> al-Māwardī, *Nasīhat*, PP.215-217.

<sup>101</sup> Ibid, P.100.

<sup>102</sup> Ibid.

<sup>103</sup> Ibid.

<sup>104</sup> Ibid, P.223.

<sup>105</sup> al-Māwardī, *Adab*, P.92.

<sup>106</sup> Ibid, P.91.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid. al-Māwardī assigns to the '*ulamā*' the role of reformers and does not allow them to contest the ruling power. This is directly opposed to the concept of *Wilayālat al-Faqīh* as it was introduced and practiced in modern Iran. According to al-Māwardī, only a man from the family of *Quraysh* could aspire

4. The '*ulamā*' should keep the pleasure of knowledge above all other pleasures.<sup>109</sup>
5. Knowledge should be a good compensation for all other luxuries. al-Māwardī supports his argument by quoting an author in these words: " A man who exclusively devotes himself in search of knowledge is not scared of solitude ."<sup>110</sup>
6. al-Māwardī advises the '*ulamā*' to avoid the doubtful earnings. They should impart religious education for the pleasure of Allah without expecting any worldly reward.<sup>111</sup>
7. He strictly warns the '*ulamā*' not to follow the rulers in those matters, which contradict religion and are inconsistent with the truth just to support their opinion and follow their whims.<sup>112</sup>

al-Māwardī shows his concern for the importance of the matter saying that in this respect most of the '*ulamā*' fumble either due to greed or threat. They then go astray and lead astray with serious consequences.<sup>113</sup>

The last obligation prescribed by al-Māwardī required the '*ulamā*' to keep them highly independent of official control. Indeed cooperation with the authorities must be from the viewpoint of bringing reform and not endorsing their wrong policies. al-Māwardī's support for the '*ulamā*' of the past whom he quoted in his writings shows that he always recognized those '*ulamā*' who maintained their honest and independent status. He recognizes them as ' the most excellent '*ulamā*' of the time who were not

to the office of the Caliphate. Moreover, it was illegitimate to rise in revolt against the ruler even though he might not be the best man of the community of Muslims. That being the case, the '*Abbāsids*' were considered to be legitimate rulers and the '*ulamā*' had to confine themselves to advice and exhortation. According to Khomenī, any man could become the ruler of Muslims if he had the knowledge of Law and quality of Justice. The '*Fuqahā*', by mutual agreement, were thought eligible to strive for their political ascendancy. Khomenī made the '*Fuqahā*' responsible to struggle for political domination of Islam. (Imām Khomeini, *Al-Hakūmat al-Islāmiyya*, , PP.16-17).

<sup>109</sup> Ibid, P.92.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

<sup>112</sup> Ibid, P.91.

<sup>113</sup> Ibid.

afraid of the censor of those who censor.’<sup>114</sup> al-Māwardī therefore attributed the existence of recognized *fiqh* work solely due to those pious ‘*ulamā*’ who rendered their contribution independent of all control.

H.A.R.Gibb acknowledged the independence of the ‘*ulamā*’ in these words: “ the religious institution of Islam was independent of the Caliphate or any other political institution, that its source of authority could not be controlled by political governors but were possessed by the community in its own right.”<sup>115</sup>

Hanna Mikhail disagrees with this interpretation of Gibb. In his research work, ‘Politics and revelation’, he refutes Gibb’s conclusion regarding the independent status of the ‘*ulamā*’. In support of his viewpoint he quoted a few arguments and concluded that al-Māwardī deserved full credit for including politics as a regular part of the juristic theory.<sup>116</sup>

That the ‘*ulamā*’ did not exist or work independently of official control has been stated by him in the following way:

Although the rulers did not arrogate to themselves the exclusive right to develop and codify either law or traditions, to see the ‘*ulamā*’ as arriving at consensus through independent activity would be an exaggeration.<sup>117</sup>

The statement seems to be doubtful because the famous ‘*ulamā*’ of the four schools appear to have arrived at the consensus through independent activity. As mentioned before, *Imān* Abū Ḥanīfa was offered a lucrative judicial post, which he refused to accept both in the *Umayyad* and the ‘*Abbāsīd*’ periods. Later on his pupils changed their stance about the government service but while performing their duties they showed resistance to unjust pressure.

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<sup>114</sup> al-Māwardī, A.S., P.23.

<sup>115</sup> H.A.R.Gibb, Studies On Civilization of Islam, P.12.

<sup>116</sup> Hanna Mikhail, Politics And Revelation, P.19.

The same was true of the famous *fuqahā* of other schools. For example, *Imām Mālik* took a bold stand on the issue of ‘forced divorce’. Despite severe persecution by the authorities he did not change his stance.<sup>118</sup>

Similarly *Aḥmad b. Ḥanbal* (d.241/855) had to face a lot of persecution for not complying with the authorities on the issue of the creation of the *Qur’ān*.<sup>119</sup> The right to interpret the dogma and all the injunctions of the faith remained exclusively the monopoly of the ‘*ulamā*’. Attempts on the part of some ‘*Abbāsīd* rulers to bring the ‘*ulamā*’ under their control were hotly contested by the latter and the struggle as Gibb remarks, ended with the victory for the orthodox ‘*ulamā*’.<sup>120</sup>

Moreover, in the process of codification of *fiqh* work they do not appear to have attached any importance to prestige or wealth. Two examples support this claim. When the Caliph *Manṣūr* told *Imām Mālik* that he would implement his *fiqh* as an official one, the latter strictly forbade him to do so. In the words of the *Imām Mālik*: “when the ‘*Abbāsīd* Caliph, *Manṣūr* performed *Ḥajj*, he said to me. I have made a firm resolve to copy all your books and ask the people from the towns and the cities to only act upon in accordance with those books and not to go beyond them.” When *Imām Mālik* was informed of *Manṣūr*’s intentions, he said: “O *Amīr* of Muslims, do not do this at all. People have accepted the sayings of their learned persons. They have listened to *Aḥādīth*. They have narrated traditions. People have started acting upon what has already been conveyed to them. The residents of every population should be left to pursue what they have decided about themselves.”<sup>121</sup>

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<sup>117</sup> Ibid, P.17.

<sup>118</sup> Abū Zahra, *Imām Mālik*, P.61.

<sup>119</sup> Abū al Ḥasan Alī Nadvī, *Saviour of Islamic Spirit*, PP.78-82.

<sup>120</sup> H.A.R.Gibb, *Studies on the Civilization of Islam*, P.12.

<sup>121</sup> *Manāzīr Aḥsan*, *Muqaddima Tadween Fiqh*, PP.205-206; al-She’rānī, *al-Mizān al-Kubrā*, PP.45-46.

In the reign of al-Mutawakkil (d.247/861), Aḥmad b. Ḥanbal was profoundly revered and considerable sums of money were sent to him as a gift from the authorities. These official rewards upset him to the extent that he is reported to have cried: “ this is a greater calamity for me than the punishment and imprisonment of the past.”<sup>122</sup>

In spite of all these punishments and inducements the ‘*ulamā*’ did not allow any official interference in codification of the religious law. They thus established examples due to which the *fiqh* work by the jurists remained independent thereafter.

2 Mikhail’s next objection was that the *fuqahā*’ and the *Ḥadīth* work neglected the constitution of the government beyond certain general principles.<sup>123</sup> It was later on al-Māwardī who made up what was ignored by the early jurists.<sup>124</sup> In his recent study, Azīz al-Azmeh has demonstrated that in the al-Aḥkām, there was much repetition of the legal principles produced in the course of centuries through the efforts of the *fuqahā*’.<sup>125</sup> It is right that he gave a new shape and order to scattered material but; most of the *fiqh* principles had already been laid down and al-Māwardī clearly referred to those principles in the al-Aḥkām when dealing with any problem.

The *fuqahā*’ dealing with various collective issues of collective life did not exclude the responsibilities of the Caliph. al-Māwardī repeatedly quotes the famous juristic opinions on a matter and represents the viewpoints of various schools. Indicating the purpose of the al-Aḥkām al-Māwardī clearly states at the outset that his main object was to bring together the views of different jurists regarding the government and the constitution.<sup>126</sup> In other words al-Māwardī was convinced that the *fuqahā*’ did not neglect the constitutional organization of the government but mixed the principles

<sup>122</sup> Mawlānā al-Mawdūdī, Tajdeed wa Ihya’ Dīn.P.63.

<sup>123</sup> Hanna Mikhail, Politics And Revelation, P.17-18.

<sup>124</sup> Ibid, P.19.

<sup>125</sup> Azīz al-Azmeh, Muslim Kingship, PP.169-170.

<sup>126</sup> al-Māwardī, A.S., P.7.



regarding it with other *fiqh* rules which it was now his responsibility to bring together in the form of a book.

Mikhail's next objection is that the men of religion were strikingly limited in the field of politics.<sup>127</sup> It is however suggested that the '*ulamā*' did not always seem to have been strikingly limited in the field of politics. Sometimes they enjoyed considerable influence. In order to exercise authority on religious grounds the '*Abbāsids* maintained a strong judicial system. For impartial justice the services of upright and highly learned were required. From the time of Māmūn (d.218/833) it was a regular policy that no decision would be valid until ratified by the chief justice. The '*ulamā*' thus not only delivered justice to the ordinary man but put brakes on royal despotism. The powers of appointment of the judges were also transferred from the Caliph and the provincial governor to the chief justice.<sup>128</sup>

The '*Abbāsids* were aware of the popularity, which the '*ulamā*' enjoyed among the masses. Despite their political despotism, they sought the support of the *Muftī* and judges in state policies.<sup>129</sup> Although they did not accept them as ultimate judges over their own political decision<sup>130</sup> as *Imām* Abū Ḥanīfa would have desired,<sup>131</sup> the Caliphs normally thought it wise to act through their medium.

In the reign of the Caliph Manṣūr, people of Muṣil revolted against the authority. Judges and the '*ulamā*' were summoned. Some of them said that owing to their breach of contract, putting them to death was lawful for Manṣūr but the decision of *Imām* Abū Ḥanīfa prevailed. According to him the *Sharī'a* did not grant them the right to conclude

<sup>127</sup> Hanna Mikhail, *Politics and Revelation*, P.18.

<sup>128</sup> Manāzīr Aḥsan Geelānī, *Imām Abū Ḥanīfa Ki Siyāsī Zindagī*, P.495

<sup>129</sup> Naeem Siddiqī, *Ma'rka Dīn Wa Siyāst*, P.75.

<sup>130</sup> D. Sourdel, art, "Khalifa", *Encyclopaedia*, vol. IV, P.941.

<sup>130</sup> Manāzīr Aḥsan Geelānī, *Imām Abū Ḥanīfa Ki Siyāsī Zindagī*, PP. 273-74, It was *Imām* Abū Ḥanīfa's view that if the ruler is guilty of a crime involving people, the *Qāḍī* who is nearer to him (serving in the area of ruler's residence) should convict him.

a contract regarding their own life. Hence it would be unjust for Manṣūr to put them to death.<sup>132</sup>

In light of the above discussion it can be concluded that the political authorities could not easily put limitations on the ‘*ulamā*’ and they exerted considerable influence in the politics of the country. It can, therefore, be said in the light of the preceding discussion, that the work of codification of the *fiqh* by the four schools was completed without any royal assistance and interference. Sometimes, the *fuqahā* performed it in face of severe opposition. They accepted the cooperation of the authorities only if it did not interfere with performing their work independently. Hence Gibb’s analyses about the independent status of the ‘*ulamā*’ are sound and much of Mikail’s criticism against it seems to be incorrect.

#### **Lack of Agreement over the Alternative Leadership:**

al-Māwardī was acutely conscious of the dearth of versatile characters who could combine the qualities of piety, good administration and politics. According to al-Māwardī, this problem was felt even as early as the reign of the Caliph ‘Umar. He narrates the following tradition thus: “ Ibn Ishāq (150/767) relates from al-Zuhrī (d.95/713) from Ibn ‘Abbās saying, ‘I came across ‘Umar one day in a state of distress: he was saying, ‘ I do not know what to do in this matter. I get up to settle the matter then I sit down.’ I said to him: ‘ Have you considered ‘Alī?’ He replied, ‘ he is surely suitable for it but he is a man with a sense of jest and I consider that if he took charge of your affairs he would not lead you on the path of truth that you are familiar with.’ I said: ‘ And where do you stand with ‘Uthmān?’ He replied, ‘ if I were to designate him he would have (his family of) Banū Abū Mu‘ayt lords of the people and the Arabs would

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<sup>132</sup> Na‘eem Siddiqui, Ma‘rka Dīn Wā Siyāsāt, P.121.

not turn to him but to strike off his neck. By Allah, if I were to choose him he would do this and when he had done it they would react accordingly.' I then said: 'And Ṭalḥa?' He replied, 'He is proud: Allah would not entrust the affair of the *Umma* of Muḥammed (P.B.U.H.) to him, considering what he knows of his pride.' I then said, 'And what of al-Zubayr?' He replied, 'surely he is a brave man but he asks about the *ḡaa'* and *mudd measures* in the Baqi' market- is this man to be entrusted with the affairs of the Muslims?' I then said, 'Sa'd ibn Abī Waqqāṣ?' He said, 'He is not the one- he is a warrior, well able to defend the squadron but as for being in authority, no!' I said, 'What about 'Abd al-Raḥmān ibn 'Awf?' He replied, 'Yes, you have mentioned the best of men, but he is weak. By Allah, O Ibn 'Abbās, only the strong person without violence, the one who is gentle without being weak, the one who is economical but without being miserly and the one who is generous without being wasteful is worthy of this affair.'"<sup>133</sup>

The Caliph 'Umar was restless due to the absence of the best-qualified man for the Caliphate. Although his attention was drawn to several prominent figures who were considered best at the time, he did not nominate any one of them as a successor due to some deficiency. It would certainly not have escaped his attention that some of the proposed names were better than the others in piety and religion. But his concern for good administration led him to find the person combining the quality of piety with the ability for good administration.

The same theme recurs in al-Māwardī's writings in the context of the 'Abbāsīd authorities. For the conduct of good administration, he quoted the Caliph al-Māmūn as describing the required qualities of the wazīr thus: "I am looking for a man for my

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<sup>133</sup> al-Māwardī, *A.S.*, PP21-22.

affairs who has all of the qualities of goodness, who is modest in his behaviour and resolute in his ways, a man who has been refined by manners and strengthened by experience, a man who if entrusted with confidential matters accordingly and if entrusted with important matters moves to execute them, a man whose forbearance causes him to be silent and whom knowledge causes to speak, a man for whom the moment is enough and for whom a glance is sufficient, a man who has the intrepidity of Amīrs and the perseverance of the wise, the humility of the *'ulamā'* and the understanding of the *fuqahā'*; if people treat him well, he is grateful and if put to the test by their mistreatment, he is patient; he does not sell the portion of today only to be deprived the next; a man who captures the hearts of man by the sharpness of his tongue and the beauty of his eloquence.”<sup>134</sup>

Having mentioned these qualities al-Māwardī admitted that it was very rare that all such qualities were perfected in a person. He had therefore to depend upon the men with lesser qualities for the higher administrative posts. The question then naturally arose as to whom he was willing to entrust the highest administrative responsibility if the choice was to be made between a pious but a less competent man or the one with less piety and better ability to rule?

After examining the opinions of the various schools al-Māwardī arrived at the conclusion that the *Imāmate* of the less preferred (*Mafḍūl*) was legitimate. He acknowledged the right of the people of power and influence to nominate him in the presence of the best man due to his popular standing, expediency, or any other reason provided he possessed the basic qualifications for the office.<sup>135</sup>

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<sup>134</sup> Ibid, P.38.

<sup>135</sup> Ibid, P.15.

The same question arose during the 'Abbāsīd's reign when it was queried as to who deserved to be preferred, the one with less piety but having the strength to manage affairs effectively or the weaker man who was more pious.? Aḥmad b. Ḥanbal clearly preferred the strong but less pious man to the pious but weaker man. The *Imām* argued that the strength of the strong would be for the Muslims while his lack of piety would be only against himself. Whereas the piety of the pious man would be for himself but his weakness would be against the Muslims.<sup>136</sup>

al-Māwardī considered the 'Abbāsīd rule legitimate on the same ground, since they met the basic qualifications for the Caliphate.

Another valid ground for continuation of their rule was to avoid conflict and bloodshed due to lack of agreement over the alternative leadership. The 'Abbāsīds themselves were conscious that as long as they performed their responsibilities in a good manner they could continue to exercise authority because there was no agreement among people over the leadership of a single person. The following dialogue quoted by Suyūṭī between the Caliph al-Māmūn and a pious man illustrates the point.

“Ibn ‘Asākir has stated it on the authority of Yaḥya b. Aktham. al-Māmūn used to convene the meeting of the *fuqahā*’ on Mondays to discuss *fiqh* problems. One day when the meeting was in progress, a man wearing simple dress and carrying shoes in his hands stood in the corner. He greeted the gathering and inquired as to the nature and purpose of the gathering. Was it for the sake of the unity of the *Umma* or as an expression of pomp and show? To this al-Māmūn replied that he meant by such gathering none of the two purposes. The reason of this was stated thus: this power was in the first instance bequeathed to my brother. Then it devolved upon me. I carefully

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<sup>136</sup> Kūnā Ḥasan Kātā, *al-Nazriyya Siyāsiyya ‘Ind Ibn Taymiyya*, P. 92.

reflected and found myself in need of unity of the Muslim cause so that all the Muslims of east and west should agree upon me. I saw that if I abandoned the government the security of Islam would be disturbed and public affairs would fall into confusion and there would be strife and discord. *Jihād* would cease to be performed and the Muslims will be hindered from performing pilgrimage and doing their duty. Therefore, I arose in defense of people. Should they be of one accord upon the man whom they approve, I would then resign the government to him. When they agree upon a man I would abdicate in his favour.”<sup>137</sup>

al-Māwardī seems to have adhered to the same reason for the continuation of the ‘*Abbāsīd*’ rule. To avoid a conflict and bloodshed, the one established in authority was allowed to continue his rule if he possessed the basic qualifications for the office and carried out his responsibilities in a good manner. The viewpoint was in conformity with the pattern of the companions and the jurists of the early *Umayyad* age.

al-Māwardī followed the line of the jurists who were indebted for their viewpoint to the *Ḥadīth* literature. In anticipation of such a situation they were guided by the injunctions laid down in *Ḥadīth* literature which exerted a lasting influence on the views of the jurists.

### **Impact of *Ḥadīth* Literature**

The *Ḥadīth* injunctions had a great and lasting influence on the views of the *fuqahā’*. Despite the differences regarding the interpretations of some *fiqh* problems among the *fuqahā’* of the four schools, all of them shared almost the same viewpoint with respect to their attitude towards political authority. Explaining the verse: “ O you who believe, obey Allah and obey the Prophet and those in authority among you” al-Māwardī quotes

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<sup>137</sup> Jalāl al-Dīn Suyūṭī, *Tarīkh al-Khulafā’*, P. 285.

A'mash b. 'Alī Shahb b. Abū Hurayra quoting the following tradition of the Holy Prophet (P.B.U.H), "who obeys me obeys Allah and he who disobeys me disobeys Allah, and who disobeys my Amīr disobeys me."<sup>138</sup>

A little further, explaining the last part of the verse ' those in authority' al-Māwardī first of all quotes the saying of Ibn 'Abbās, Abū Hurayra, Suddī, and Ibn Zayd, that here it means rulers.

Explaining the extent and limits of obedience within the context of the same verse, al-Māwardī quotes the *Ḥadīth* by Hishām b. 'Urwa who quoted from Abū Ṣāliḥ b. Abū Hurayra: " You will be governed after me by the governors. The righteous will govern you righteously and the wicked one will govern you wickedly. Listen to them and obey in all what is in conformity with the truth and pray behind them. If they do good, it is both for you and for them, and if they do bad, it will be against them and for you."<sup>139</sup>

Although al-Māwardī referred to some other interpretations in the context of the same verse, his main emphasis was upon its meanings with reference to the authorities. He explains further within the same context: "obedience to the ruler is necessary if it is consistent with obedience to Allah, without any disobedience to Him. Obedience to the rulers can change into disobedience but disobedience to the Prophet of Allah (P.B.U.H) is not justified due to obedience to the ruler."<sup>140</sup>

In support of his viewpoint he quotes another tradition from Nāfi' b. 'Abd Allah: " the Muslim is required to obey, irrespective of his likes or dislikes except when he is ordered against religious commandments. Then there is no obedience."<sup>141</sup>

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<sup>138</sup> al-Māwardī, *Tafsīr*, 4-59; "Kitāb al-Imāra", *Ṣaḥīḥ Muslim*.

<sup>139</sup> al-Māwardī, *Tafsīr*, 4-59.

<sup>140</sup> *Ibid*.

<sup>141</sup> Māwardī, *Tafsīr*, 4-59; "Kitāb al-Imāra", *Ṣaḥīḥ Muslim*.

Thus we see that al-Māwardī was indebted to the *Aḥādīth* for determining the criteria for obedience and disobedience to rulers. Obedience towards rulers was obligatory for Muslims but not in disobedience towards Allah and His Prophet (P.B.U.H). But while Muslims were urged not to co-operate with the authorities if they ordered something wrong, they were asked to bear with the authorities, pray behind them and not to raise the standard of revolt against them. This explains the attitude of the *fuqahā'* of the early *Umayyad* age. They managed to accommodate both the rulings of the *Sharī'a*. They prayed behind the *Umayyads*, co-operated with them in right policies but did not act upon their orders which were contrary to Islamic injunctions. al-Māwardī acknowledged their mode of practice to be the standard one. He therefore regarded it as one of the prerequisites for a *Mujtahid* to know the interpretations of the verses of the Qur'ān as arrived at by the first generations after the Holy Prophet (P.B.U.H).<sup>142</sup> Guided by their precedents, he acknowledged the '*Abbāsīd* authorities to be legitimate.

### Criticism

Our attempt thus far has been confined to highlighting al-Māwardī's appreciation of '*Abbāsīd* rule. Indeed, whilst appreciating the early '*Abbāsīds* for having carried out their functions in a good way, he thought them to be nowhere near the ideal practices associated with the Islamic model of an ideal state. In some respects he found the '*Abbāsīds* just as wanting as the *Umayyads* in their declining phase. In narrating an event al-Māwardī quotes a stranger on the occasion of pilgrimage who addressed the Caliph Manṣūr in a very critical manner. The criticism stands true about the other '*Abbāsīd* Caliphs as well.

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<sup>142</sup> al-Māwardī, *A.S.*, P.100



The stranger said “ Manṣūr’s greed has kept him away from public welfare.” Manṣūr expresses his surprise and asks how he could be greedy while he possessed gold and silver treasures. The stranger reiterates the point and says: “ can the greed infiltrate anybody more than it infiltrated you? Allah placed you over the Muslims and their wealth (you neglected their affairs and amassed wealth for yourself) and you constructed barriers (made of bricks) between yourself and them, with iron gates with armed guards. You imprisoned yourself in that (palace cutting yourself off) from them. You then sent your men fully armed for collecting money.

“You ordered that no man from the masses should see you except very few persons, the limited men being named by you. But you did not order access to be given to the wronged, the needy, the hungry, the weak and the beggar, although none has a right to this wealth equal to theirs... you amass wealth and do not distribute it. They (your retinue) said: “ He (the Caliph) has betrayed Allah and His Prophet (P.B.U.H), why should we not betray him and he has is accessible to us. They conspired that no information about public affairs should reach you except through them; none of your officials goes out but they destroy him if he opposes their policies, take your favour and downgrade him. When these evil practices became well known and widespread, people began to fear them and ranked them very highly...”<sup>143</sup>

Having thus highlighted the malpractices of the age al-Māwardī turns towards the remedies suggested by the stranger. He begins his advice by citing the example of the Chinese monarch. In his words: “ once I took a journey to China and the Chinese monarch had a hearing problem. His friends advised him to remain patient. He said he did not lament his misfortune but he wept for someone wronged knocking on his door

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<sup>143</sup> al-Māwardī, *Nasīhat*, P. 559-562.

whom he might not hear.” He said: ‘my hearing has departed but not my eyesight. Tell the people that none of them should wear the red dress except the oppressed ones.’ Then he used to ride an elephant on both ends of the day, looking for the oppressed one...”

“If you amass wealth for your son then Allah has given you an example of the child who is born out of his mother’s womb without any wealth in this world. And there is no wealth except that which is possessed by a miser’s hand... it is not you who gives to anybody but it is Allah who gives to whom He wills.

If you say: ‘I amass wealth to strengthen my rule’, then Allah has shown you the example of *Bani Umayya*. Their stores of gold, silver, soldiery and armament did not avail them when Allah did intend with them what He intended. Indeed for the people there are dignitaries (*‘ulamā’*) whose help they seek in your religion (Islam) and are content with them, so make them your retinue and they will guide you, consult them and they will put you on the right path.

Manṣūr said: “ I sent for them but they ran away from me.”

The stranger said: “ they feared that you would force them to move your way. Open your door to them and allow them to see you. Help the oppressed one and persecute the wrongdoer. Take the *fay* and the *ṣadaqāt* and distribute them justly among the deserving persons. I guarantee you on their behalf that they would come to you and assist you in rectifying the people.”<sup>144</sup>

### Summary & Conclusion

al-Māwardī adopted the position of the jurists who recognized and legitimized the ‘*Abbāsīd* government. Their viewpoint was clear: the issue of the Caliphate was settled

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<sup>144</sup> Ibid.

after violent warfare with the *Umayyads*. The holders of authority were now unwilling to go back to the *Rāshidūn* period or subject royal politics to the ideal *sharī'a*. However, at the same time, they were quite willing to regulate the *sharī'a* at public level, establish the religious obligations, ensure a strong judicial system, leave the '*ulamā'* independent in the elaboration and codification of *sharī'a*, maintain internal security and protect the frontiers of Muslim lands. Since the '*Abbāsids* performed the above responsibilities appreciably and showed keenness in identifying themselves with Islam, al-Māwardī, like other *fuqahā'*, had no hesitation in recognizing them as legitimate.

Guided by the *Ḥadīth* literature and the precedents of the early *fuqahā'*, he saw in their commitment towards Islam the required fulfillment which did not make them guilty of open breach of faith (*kufr bawā*). By recognizing the '*Abbāsids* as legitimate, the *fuqahā'* were not reconciled with the evils of tyrannical rule; but aimed at bringing change through reform, criticism, and non- co-operation over sin and transgression, co-operation with the authorities to bring reform by working inside the government etc.

Attempts to revive the practices connected with the ideal Caliphate by justifying rebellion would hardly have been an adequate recommendation. The best course, according to al-Māwardī, was to be content with the working of Islam at a public level and aiming at the attainment of practices associated with the ideal Caliphate through gradual and peaceful means.

The problem of legitimacy was not an acute one during the heyday of the '*Abbāsīd* power since the Caliph was both the holder of power and the religious head of the community. With the passage of time as the position and the power of the Caliph began to wane and he was confined to religious and judicial affairs, the jurists were confronted with the dilemma: why retain such a Caliph who for all practical purposes had lost his

previous position? al-Māwardī attempts to answer the question, and this will form the subject matter of our next chapter.

## Chapter Five

### al-Māwardī and the *Buwayhids*:

#### The concept of Political Legitimacy (continued)

##### Historical Background to the Advent of the *Buwayhids*

The 'Abbāsīd policy of equal treatment to the non-Arabs gave rise to 'Arab-'Ajam conflict which reached its culminating point during the age of Mu'taṣīm (d.227/841). The recruitment of Turkish soldiers to rectify the situation turned out to be a bad bargain in the long run because of their increased involvement in royal politics and their assuming the role of the Caliph-makers.<sup>1</sup> The Caliphs, on their part, wanted to reassert their authority and the resulting tug-of-war with the Turkish soldiers proved detrimental to the Caliphate.

After the murder of Muqtadir in 320/932, the precarious financial conditions and restless desire on the part of various administrative and military chiefs to exercise authority on behalf of the Caliph led towards the further weakening of the Caliph.<sup>2</sup> The rise of powerful dynasties in the outlying regions reduced the influence of the Caliphate to Baghdād and its surrounding regions. Nevertheless, the Caliph continued to remain a legitimate leader in the eyes of the Muslims. Hence there was a great desire on the part of the dynasts to be legitimized by the Caliph.

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<sup>1</sup> Suyūṭī, *Tārīkh al-Kulafā'*, PP.301-320.

<sup>2</sup> Ibn Miskawaihi, *The Experiences of The Nations*, vol.I, P.440; Ibn Kathīr, *al-Bidāya*, vol. 11, PP.167-168.

After the death of Tūzūn in 354/965, a Turkish military chief, Ibn Shīrẓād, succeeded who could not control the situation properly.<sup>3</sup> A *Buwayhid* ruler, Mu‘izz (d.356/966) had in the meanwhile consolidated his position as a powerful dynast. Seeing the capital city in a deplorable condition, he matured a plan to take possession of, and establish his authority in Baghdād. He entered Baghdād unopposed and took over the control of government into his hands.<sup>4</sup> Mu‘izz thus established the *Buwayhid* rule that lasted over a century in the central province of the Muslim lands with its capital at Baghdād.

### **The *Buwayhid*'s Treatment of the Caliphate**

After taking over the government and administration, one of the earliest issue worthy of attention for the *Buwayhids* was: what to do with the *Sunnī* Caliph.<sup>5</sup> The following options were available to them.

- (1) The *Buwayhids* could have rid themselves of the institution of the Caliphate altogether.
- (2) They could have replaced the *Sunnī* Caliph with his ‘*Alīd* counterpart<sup>6</sup> (or a person from the Imāmī sect) The *Shi‘īte* regarded the ‘*Abāssid* Caliph as the usurper since the Caliphate could be inherited by the progeny of the Holy Prophet (P.B.U.H) through the offspring of ‘Alī and Faṭīma.
- (3) They could have rendered allegiance to the *Faṭmīd* Caliph.
- (4) They could have allowed the *Sunnī* Caliph to continue in his office albeit in the capacity of a usurper.

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<sup>3</sup> Ibn al-Athīr, *al-Kāmil*, vol. 8, PP.448- 449.

<sup>4</sup> *Ibid*, PP.449-450.

<sup>5</sup> M.A.Shaban, *Islamic History, A New Interpretation*, vol.2, P.162.

<sup>6</sup> Ibn al-Athīr, *al-Kāmil*, vol.8, P.452. Ibn al-Athīr says that Mu‘izz, on the persuasion of his close associates, seriously thought of transferring the Caliphate to the ‘*Alīds*.

Out of these options they preferred the last one. It was not practicable for them to exercise the first choice of ridding themselves of the institution of the Caliphate. The time and circumstances did not allow acting upon the policy of doing away with the institution of the Caliphate. At this point, says Shaban, “their first instinct was probably to get rid of such an unnecessary figurehead but they were reminded that it would create more problems than it would solve.”<sup>7</sup>

At this point of their settlement in Baghdād, Mu‘izz was better aware than any one else that his power was not too overwhelming to outclass all the provincial governors of surrounding dynasties who gave allegiance to the *Sunnī* Caliph. It was therefore in keeping with the requirements of the time to leave the institution intact. In spite of their rise to power the *Buwayhids* could not yet claim to be undisputed masters of the Muslim world. Twelve years earlier Mu‘izz’s elder brother Imād al-Dawla (d.338/949) had rendered allegiance to both Mardāwīj (d.323/934) and the Caliph and had promised to take the names of both in *Khuṭba*.<sup>8</sup> Mu‘izz himself had left Wāsiṭ when the Caliph al-Mustakfi (d.338/949) along with Tūzūn had come out to evacuate the land of Wāsiṭ from him. As long as Tuzūn was alive, he did not attempt to capture Baghdād. It was only after the death of Tuzūn that Mu‘izz once again contemplated to capture Baghdād and bring under his subordination the same Turkish forces who had defeated him under the leadership of Tūzūn in Wāsiṭ two years ago.<sup>9</sup>

Moreover, the course of further events indicated that the institution of the Caliphate was necessary under the existing circumstances. On the suspicion of intrigue by the Caliph al-

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<sup>7</sup> M. A. Shaban, *Islamic History, A New Interpretation*, vol. 2, P. 162.

<sup>8</sup> Ibn al-Athīr, *al-Kāmil*, vol. 8, P.92.

<sup>9</sup> Mu‘īn al-Dīn Nadvī, *Tārīkh Islam*, P.385.

Mustakfi with the Turks for his deposition, Mu'izz blinded and imprisoned him.<sup>10</sup> This caused a storm of opposition in the *Sunnī* population and the Banī Ḥamdān of Mūṣil resolved to salvage the *Sunnī* Caliph from the hold of the *Shī'ite* rulers. The battle was almost won for Naṣir al-Dawla against Mu'izz when the last moment's stratagem saved the day for Mu'izz's army and his dynasty.<sup>11</sup> The humiliation of one *Sunnī* Caliph being taken so seriously, it would have been hard for the *Sunnī* population to reconcile with the abolition of the Caliphate. However, there were some other considerations too, which stimulated the *Buwayhids* to continue the *Sunnī* Caliphate. The Caliph was recognized at that time as an undisputed head of the *Sunnī* population. Shaban puts the same theme thus: "however, despite their differences, all the orthodox circles were agreed on the necessity of continuation of *Ameer al-Mu'minīn*."<sup>12</sup>

The second alternative, which seemed to be a religious necessity of the *Buwayhids*, was the replacement of the *Sunnī* Caliph by a *Shī'ite* Caliph. Mu'izz is reported to have almost committed himself to taking this step when a wise man's advice to refrain from this hasty step withheld him from taking this decision. The *Buwayhids* believed that the 'Abbāsids were usurpers who had forcibly occupied the Caliphate. Everybody of Mu'izz's circle endorsed his plan of transferring the Caliphate to the 'Alīd Caliph but the wise man's judgement prevailed. Against the opinion of everybody he did not favour the idea of replacing the *Sunnī* Caliph with the *Shī'ite* one. On Mu'izz's inquiry, he explained the reason of his opposition in these words: "according to you and your friends the 'Abbāsids

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<sup>10</sup> Ibn Miskawaihi, The Experiences of The Nations, vol. II, P.89; Ibn al-Athīr, al-Kāmil, vol.8, P.450

<sup>11</sup> Ibn Kathīr, al-Bidāya, vol. 11, P. 179; Ibn Athīr, al-Kāmil, vol.8, PP.454-455; Ibn Miskawaihi, The Experiences of The Nations, vol. II, PP.95-96

<sup>12</sup> M.A.Shaban, Islamic History, vol. 2, P. 162.



Caliph is not a legitimate Caliph. If you act according to your will and plan, under the patronage of *Sunnī* Caliph, you are free to do that. You might indeed force the Caliph to act according to your will. But if you replace him with the '*Alīd*' counterpart, people will treat him as a legitimate Caliph and then on his commands you might be put to death". The advice produced desired effects and Mu'izz refrained from replacement of the *Sunnī* Caliph with the '*Alīd* Caliph.<sup>13</sup>

The above statement truthful as it is, explains the partial motivation, which led to abandoning the idea of abolishing the *Sunnī* Caliphate. Mu'izz must have attached importance to some more practical consideration. We can note through the military exploits of the three *Buwayhid* brothers that they did not come from *Daylam* with religious mission to spread the *Shī'ite* version of Islam in the lands where they established their rule. Throughout the period of their government they concentrated on consolidating their rule without any concern to impose the *Shī'ite* dogma on the *Sunnī* population. Momentary desire might have led Mu'izz to consider abolishing the Caliphate but as a man of great experience and practical insight it could not be imagined of him to abolish the *Sunnī* Caliphate without giving the matter a thorough consideration. He had planned to govern Baghdād for a long period of time. It was therefore important for him not to alienate the *Sunnī* population who held the institution of the Caliphate in high esteem.

The volatile behaviour of the Turkish soldiers was too well known by that time. In the installment of the '*Alīd* Caliph, the Turks who were *Sunnīs* and were absorbed recently in his army might soon have changed his era into a period of civil anarchy. It would then have been difficult for the *Buwayhids* to contemplate a long-term rule. The *Sunnī* Caliph was

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<sup>13</sup> Ibn al-Athīr, *al-Kāmil*, vol. 8, P.452; Ibn Kathīr, *al-Bidāya*, vol. 11, P. 179.

also considered as the religious head of community and as such was greatly revered by the *Sunnī* people. Recognition from the *Buwayhids* would win them public support and give them a free hand in politics without any active interference by the Caliph. Had the Caliph himself opposed the *Buwayhid* rule, it would have been another matter. But the warm welcome by the *Sunnī* Caliph gave the *Buwayhids* an ample opportunity for continuing government in a legitimate manner and they lost no time in completing the legal requirements which legitimized their rule.<sup>14</sup>

### **The Religious Policies of the *Buwayhids***

The religious policies of Mu‘izz, which he carried out in his reign, demand careful analysis. At first, he seems to be a bigoted *Shī‘ite*, but a careful study of his religious policies makes it clear that he gave religion a subordinate place and aimed at using it as an instrument to realize his political objectives. Writers differ with regard to the exact nature of Mu‘izz’s policies. Mafizullah Kabīr<sup>15</sup> and H.A.Siddīqī regard his policies as prejudiced while Kraemer says his attitude was conciliatory.<sup>16</sup> In my opinion, both are right. Although he pursued some pro- *Shī‘ite* policies, his aim in doing so seems to have been more political than religious. His summoning of the body of the *Sunnī ‘ulamā’* towards the end of his life<sup>17</sup> seems to leave the impression that he had no pre-conceived hatred towards the *Sunnī* religion. In determining the kind of sect to which Mu‘izz belonged, Shaban’s statement

<sup>14</sup> Ibn al-Athīr, *al-Kāmil*, vol, 8, P.449. Ibn al-Athīr says that the Caliph Mustakfī expressed his delight at the arrival of Mu‘izz in Baghdād and justified his early hiding for dispersal of the Turks thereby facilitating Mu‘izz’s unopposed entry into Baghdād and preventing any bloodshed. There was a degree of truth in this statement because when the Turks knew that the Caliph had gone into hiding, they left Baghdād and went to Muşil.

<sup>15</sup> Mafizullah Kabīr, *The Buwayhid Dynasty of Baghdād*, PP.204-205.

<sup>16</sup> J.L.Kraemer, *The Humanism in the Renaissance of Islam*, P.40.

<sup>17</sup> Ibn Kathīr, *al-Bidāya*, vol.11, P.222

looks reliable when he says that beyond knowing the mere fact that they were the *Shīites* they did not know the specific details of the creed of the *Shīite* sects.<sup>18</sup> Kraemer's opinion also seems to endorse this point of view. According to him, Mu'izz attempted to bring about reconciliation between *Sunnīs* and *Shīites*.<sup>19</sup>

At the same time, certain measures implemented to protect and promote the *Shīite* religion indicate the high favour, which Mu'izz showed for the *Shīite* religion. He encouraged many *Shīite* practices, which offended the *Sunnī* population of Baghdad. He allowed the celebration of the *Muḥarram* ceremony, which took place on the tenth of the month. On that day in his reign, says Ibn Kathīr, women came out of their houses bare-headed, beating their faces.<sup>20</sup> The open vilifying of the companions of the Holy Prophet (P.B.U.H) also began during the same period.<sup>21</sup> Now the question arises: was it all out of his devotion to the *Shīite* cause or were these several attempts on the part of Mu'izz towards the realization of his political objectives? As a matter of fact, as will be examined below, his policies reflected both attitudes although the political aspect seemed dominant.

The religious obligation of appointing their co-religionist Caliph was abandoned for achieving his political objectives. However, simultaneously, at the time of their rise to power, after experiencing long vicissitudes, the *Shīites* had finally gained a firm footing in Baghdād.<sup>22</sup> It therefore could not be improbable that in order to make up the deficiency of nominating the *Shīite* Caliph, Mu'izz embarked upon a series of measures that won him

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<sup>18</sup> M.A. Shaban, *Islamic History, A new interpretation*, vol. 2, P.162.

<sup>19</sup> J.L. Kraemer, *Humanism in the Renaissance of Islam*, P.40.

<sup>20</sup> Ibn Kathīr, *al-Bidāya*, vol. 11, P. 215.

<sup>21</sup> *Ibid*; Ibn al-Athīr, *al-Kāmil*, vol.8, P.542

<sup>22</sup> Mafīzullah Kabīr, *The Buwayhid Dynasty of Baghdād*, P.202.

the support of his co- religionist. This also absolved him from the charge of adopting an anti-*Shīite* stance.

Once again the political nature of Mu‘izz’s policies becomes obvious when two more aspects of his policy are highlighted. Firstly, the more he seemed to promote the policies favouring *Shīism*, the more his *wazīr*, Muhallibī (d.352/963) seemed to redress the balance by sticking to moderate policies. Muhallibī did not allow the *Shīites* of Baghdād to go beyond a certain limit.<sup>23</sup> In order to satisfy both the sects, Mu‘izz and Muhallibī apparently pursued inconsistent policies. An apostate made a claim about the transmigration of souls. Muhallibī imprisoned him but owing to his *Shīite* origin Mu‘izz set him free.<sup>24</sup> Similarly when abuse of the Holy Prophet’s companions by the *Shīites* was reported to Mu‘izz, Muhallibī suggested that the offensive words be changed with words having broad meanings. He suggested that a curse be invoked on those who usurped the rights of the *Ahl Bayt* without naming the person. Now both the sects could interpret it to their own advantage.<sup>25</sup> According to Ibn Kathīr, Mu‘izz had appointed two spies, one in the *Sunnī* circle, the other in the *Shīite* circle and he had directed them to keep him informed of all the developments taking place within the circles of both communities. Both were highly paid and enjoyed a respectable place in his court.<sup>26</sup> Another distinguished feature that marked his rule was Mu‘izz’s decision to leave the *Sunnī* population free to practise according to the requirements of their own *fiqh*. Religious affairs, law, and the judiciary strictly remained under the influence of the Caliph and the ‘*ulamā*’. Finally Mu‘izz’s

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<sup>23</sup> J.L.Kraemer, Humanism in the Renaissance, P.40.

<sup>24</sup> Ibn al-Athīr, al-Kāmil, vol. 8, P.372.

<sup>25</sup> Ibn al-Athīr, al-Kāmil, vol. 8, PP.542-543; Mufīzullah Kabīr, The Buwayhid Dynasty of Baghdād, P.204.

<sup>26</sup> Ibn Kathīr, al- Bidāya, vol. 11, P.222;

summoning of the body of the '*ulamā*' towards the end of his life and putting queries on them about religious matters reiterates Shaban's basic assertion that beyond merely knowing the fact that they were *Shī'ites*, they did not know the specific details of the different types of the *Shī'ites*. When Mu'izz was told, says Ibn Kathīr, that the Caliph 'Umar was the son-in-law of the Caliph 'Alī, he swore to express his ignorance regarding this matter. He turned repentant before them and adopted the *Sunnī* faith.<sup>27</sup>

After Mu'izz, Bakhtiyār's (d.367/977) era is not worthy of any particular attention because of his involvement in civil wars. During the brief interval when relative peace and security prevailed, he gave himself up to a life of luxury and ease.<sup>28</sup> Following his dethronement, 'Aḍud al-Dawla's (d.373/983) reign began which may be said to be truly reflective of the policies of the *Buwayhids*. He committed himself most seriously to bringing about a genuine restoration of law and order. Both the *Sunnites* and the *Shī'ites* were banned from eulogizing the respective heroes of their communities. Adherents of both creeds were told to stick only to the Qur'ān and that it should only be a means of revealing their identity.<sup>29</sup> Compared to the early two *Buwayhid* rulers he remained a strict adherent of the policy of moderation.

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<sup>27</sup> Ibid; Ibn Miskawaihi, *The Experiences Of The Nations*, vol. II, P.245. Ibn Miskawaihi says that during his last illness, Mu'izz al-Dawla asked the jurists and theologians whether it was possible to turn repentant at that stage. They answered positively and proceeded to instruct him in what should he say and do.

<sup>28</sup> Ibn al-Athīr, *al-Kāmil*, vol. 8, P. 576.

<sup>29</sup> Ibn Kathīr, *al-Bidāya*, vol. 11, P.246; Ibn Miskawaihi, *The Experiences of The Nations*, vol.II, P.446, Commenting on the neutral policies of 'Aḍud al-Dawla, Ibn Miskawaihi says: " People (of different sects and tendencies) participated with each other in visitations and at the oratories after hostilities had been rife between them to the extent of mutual execration. They made truce and those tongues became mute which had brought about crimes and kindled riots, all owing to the protecting shadow of a strong ruler and a broad-minded administration."

### The *Buwayhids* and Legitimacy of the *Sunnī* Caliphate

Although the *Buwayhids* were *Shīites*, they did not pursue the policies that would make their rule inconsistent with the *Sunnī* way of life on a public level. The *Sunnī* jurists therefore found it convenient to legitimize their rule. At the apex of the authority the *Sunnī* Caliph reigned; he was still recognized as giving validity both to the *Buwayhid* ruler and the *umarā'* of the neighbouring dynasties. It was he who delegated authority to the *Buwayhid* rulers who were the real wielders of authority and in fact ran the administration. It is right that the Caliph gave legal validity to the measures they adopted, that his authorization was considered necessary had a significant importance. The very fact of reconciliation with the constitutional subordination to the Caliph indicated the willingness of the *Buwayhids* not to alter the old set-up they had inherited from the conquered people. So the question naturally arises whether this policy was contrary to their religious requirements or did they pursue it in a justified way?

The *Shīites* have a particular viewpoint regarding the Caliphate, which distinctly differs from the *Sunnī* viewpoint. According to the former, the Caliphate is one of the essential and cardinal features of the religion which through *Naṣṣ* was determined by the Holy Prophet (P.B.U.H) for the *Ahl Bayt*. With the *Sunnites*, it is one of the commandments of religion because the Muslims in their collective capacity were made responsible for carrying out certain obligations whose existence depends upon the maintenance of this institution.<sup>30</sup> Prior to the establishment of the *Buwayhid* rule, the *Sunnīs* were able to continue the historical *Sunnī* Caliphate. With the disintegration of the empire in the late 'Abbāsīd period the *Shīites* were also able to establish their rule in some parts of the empire. In that case

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<sup>30</sup> Azīz al-Azmeh, Muslim Kingship, P.171.

they did not render obedience to the *Sunnī* Caliph. With the establishment of the *Buwayhid* rule a new situation was created. The effective wielders of authority were the *Shīites* but at the top of the authority stood the Caliph whom the *Buwayhids* did not remove on purpose. On the social and political level both communities were allowed to practise their *fiqh*.

Paradoxically, far from being antagonistic to the existence of the *Sunnī* institutions, the *Buwayhids* insisted on the necessity of continued co-operation with them. Hence in addition to taking the practical measures to bridge the gap between both communities, the *Buwayhids* patronized the *Imānī* 'Ulamā' who accommodated the *Buwayhids* conciliatory attitude towards the *Sunnī* Caliphate and institutions. The era is famous for the transformation of the *Shīite* theology.<sup>31</sup> The concepts of the *Imāmate* and legitimacy of authority under the non-*Shīites* were interpreted in response to the new situation, rationalizing the existence of the *Sunnī* institutions. It was considered legitimate to provisionally accept the 'Abbāsīd Caliph, and to exercise authority themselves, without installing an 'Alīd Imām.<sup>32</sup>

The *Sunnī* jurists, in response to the detailed *Shīite* interpretations of the *Imāmate* and authority, had, therefore, also to explain the concept of the *Imāmate*, authority, and delegation in the context of new time and circumstances. Whereas al-Bāqillānī (d.403/1012) and al-Baghdādī (d.429/1037) dealt with these issues at some length, it was al-Māwardī who thoroughly dealt with the contemporary issues according to the *fiqh* requirements. He brought together the views of the past and contemporary jurists and systematized them in his book al-Aḥkām.

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<sup>31</sup> Heinz Halm, *Shiism*, P.52

<sup>32</sup> Kraemer, Humanism in the Renaissance of Islam, P.41.

### al-Māwardī's views on the Legitimacy of the Early *Sunnī* Caliphates

al-Māwardī conceived the establishment of the Caliphate as obligatory for the continuation of the *Shari'ī* politics as revealed to the Prophet (P.B.U.H) and practised by him.<sup>33</sup> The fulfillment of this obligation, according to the *al-Aḥkām*, was then carried out in the time of the *Rāshidūn* Caliphs. al-Māwardī regarded their age as a model one for succeeding generations. He acknowledged the different modes of appointing the Caliphs during this period as the standard precedents for the succeeding generations. The sphere of the ruler's responsibilities was determined and he was acknowledged as the head of the community both in religious and temporal affairs. The Caliphs exercised authority both for the revival of religion and the well being of the subjects.<sup>34</sup> In the administration of temporal affairs, they were just and impartial.<sup>35</sup> They put an end to tyranny and oppression.<sup>36</sup> At the same time they did not neglect their responsibilities with regard to the promotion of religion. They were concerned with the spread of the right cause and patronized their subjects in fulfillment of their religious obligations.<sup>37</sup> They were thus not merely content with the fulfillment of bare minimum but also set higher religious standards, which became standard precedents for succeeding generations. al-Māwardī thus shared the viewpoint of Ibn Khaldūn (808/1405) who, in the words of Azīz al-Azmeh, compared this period with the time of the Prophet (P.B.U.H). In his opinion: " the *Medinian* period, for all its brevity, was a quarry of moral and religious perfection, of altruism, unworldliness, and pure

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<sup>33</sup> al-Māwardī, *A.S.*, P.10.

<sup>34</sup> al-Māwardī, *Nasīhat*, P.119.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Ibid.*

<sup>37</sup> *Ibid*, PP.119-20.



justice...it shared with later, brief periods of the fully *Shar‘ist* Caliphate, in which it was copied.”<sup>38</sup>

In the post *Rāshidūn* era, the *Umayyad* and the ‘*Abbāsīd* Caliphates were established. al-Māwardī considered most of the rulers of these regimes as worldly oriented.<sup>39</sup> He severely criticized the *Umayyads* for introducing innovations and altering the ways of the *Sunna* of the Prophet (P.B.U.H).<sup>40</sup> Similarly, he did not spare the ‘*Abbāsīds* for their neglect of public welfare, their indulgence in expenditure on the construction of palaces, their lack of contact with the needy and the poor, and their depriving access to the oppressed.<sup>41</sup> In the light of the above remarks it would be wrong to assume, as Amoretti remarks, that there is a total absence of any form of criticism in al-Māwardī’s writings towards the orthodox Caliphal dynasties including the *Umayyad* dynasty which was ousted by the ‘*Abbāsīds*.<sup>42</sup>

At the same time, al-Māwardī praised some of the *Umayyads* and the ‘*Abbāsīds* for their commitment to uphold religious obligations. He also recognized their contribution with regard to the enforcement of religious commandments. In his view, the ‘*Abbāsīds* deserved full credit for the promotion of knowledge, for the enforcement of *Hudūd*, and for waging *jihād*.<sup>43</sup> Both his censor and praise for the same rulers meant that although he regretted the lack of religious spirit, which characterized the *Rāshidūn* era, he considered them legitimate rulers for carrying out a number of practices. He criticized them for evading that religious spirit ideally required of a ruler which, however, did not deprive them of legitimate status.

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<sup>38</sup> Azīz al-Azmeh, *Muslim Kingship*, P.164.

<sup>39</sup> al-Māwardī, *Naṣīhat*, P.121.

<sup>40</sup> *Ibid*, P.133.

<sup>41</sup> *Ibid*, P.560.

<sup>42</sup> B.C.Amoretti, “Foreword” *Politics and Revelation*, P.xix.

<sup>43</sup> al-Māwardī, *Naṣīhat*, PP.136-37.

Their fondness of wealth and luxury were not so much legally reprehensible as inconsistent with the religious spirit of Islam.

### **Attacks against Legitimacy of the Weak 'Abbāsīd Caliph:**

In the tenth and eleventh centuries, the Caliph had become weak and lost his previous powers and prestige. Theoretically his supremacy was recognized but in reality he depended for exercise of his authority on the *Buwayhids* who based their rule on military strength. As mentioned earlier, the *Buwayhids* did not abolish the institution of the Caliphate and exercised powers delegated to them by the Caliph. All official activities were carried out in the name of the Caliph. Although the *Buwayhids* selected the person of their own choice for the office, they nevertheless observed the necessary legal requirements for the deposition and the installation of the Caliph.<sup>44</sup>

But was the mere adherence to these legal requirements enough for the legitimacy of the Caliph? We have examined earlier that in the post *Rāshidūn* period the jurists linked the legitimacy of the ruler with his ability to enforce Islamic injunctions. al-Māwardī shared their viewpoint and clearly acknowledged that the institution was indebted to the management of religious and temporal affairs.<sup>45</sup> Objection could thus be raised as to how the Caliph could be considered legitimate if he had lost the substance of his authority in management of temporal affairs?

The rulers in Spain advanced the argument for the transference of the title to them on the same ground. Although the process of disintegration of the 'Abbāsīd Empire had since long set in, none of the dynasts dared to assume the title of the Caliph as long as the 'Abbāsīd

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<sup>44</sup>Ibn Athīr, *al-Kāmil*, vol.9, PP.80-81; Ibn Kathīr, *al-Bidāya*, vol. 11, P.15

<sup>45</sup> al-Māwardī, *A.S.*, P.10.

Caliph was strong enough to exercise his authority in an effective way. In the tenth century when the Turkish soldiers began to interfere in official matters and the authority of the Caliph was considerably reduced, ‘Abd al-Raḥmān III (d.350/961) claimed that the title should naturally revert to him. Previously, the *Umayyad* rulers of Spain had refrained from doing so, and in spite of assuming independence, had the *Khuṭba* read in the name of the ‘*Abbāsīd* Caliph. Ibn Khaldūn explained this change in their attitude and consequent assumption of the title of the Caliph due to the weakness of the ‘*Abbāsīd* Caliph in Baghdād. At this stage ‘Abd al-Raḥmān III advanced further justification of the assumption of the title because of the challenge of *Ismā‘īlism* to the *Sunnī* world to which he considered only himself in a position to respond effectively.<sup>46</sup> Internally he also claimed to preserve the religion according to the pattern of upright ancestors, revive the *Sunna* and defend the faith.<sup>47</sup> It followed from these claims that a ruler who was able to perform the most basic responsibilities associated with the office of the Caliph could be the legitimate Caliph of the Muslim world. The rulers of Spain thus thought that the title should now be conferred upon them.

Ibn Khaldūn’s grandfather in North Africa advanced a similar argument for his viewpoint regarding the Caliphate. According to him, with the weakness of the Caliph at Baghdād, the claims to the leadership of the whole Muslim world should now be transferred to Ibn Tumart(d.524/1130), the ruler of North Africa.<sup>48</sup>

But in spite of all the arguments noted above, al-Māwardī, like the majority of the jurists of the age, recognized the ‘*Abbāsīd* Caliphs legitimate during the period of his weakness. It

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<sup>46</sup> Janina Safran, “The command of the Faithful in Andalus”: A Study In The Articulation Of Caliphal Legitimacy; Int .J .Middle East Studies 30, P.190.

<sup>47</sup> Ibid, P.191.

was in fact this viewpoint which held ground in the long run. According to Azīz al-Azmeh, all the claimants, besides the ‘*Abbāsids*, could not continue with their claims as legitimate in the long run and the ‘*Abbāsīd* version remained an acceptable one.<sup>49</sup>

We can study al-Māwardī’s defence of the weak ‘*Abbāsīd* Caliph during the *Buwayhid* age by dividing the period into two parts. In part one we shall deal with the Caliph as he acted and performed his responsibilities in al-Māwardī’s own time. In the second part we shall discuss the weak Caliph during the early *Buwayhid* period. al-Māwardī believed all the ‘*Abbāsīd* Caliphs down to his own age to be legitimate, although from the tenth century onwards, most of them had lost the substance of actual authority and relied on the Amīr in the fulfillment of their task.

### **The Legitimacy of the ‘*Abbāsīd* Caliph in al-Māwardī’s Time**

Shortly before al-Māwardī’s time, the Caliph began to reassert his authority after remaining under the tutelage of the *Buwayhids* for a considerable period of time. In the words of Kraemer, al-Māwardī advanced an ideological legitimization for a restored Caliphate.<sup>50</sup> It is therefore not correct to assume the Caliph of al-Māwardī’s age as a puppet in the hands of the *Buwayhid* Amīr. The main factors, which contributed to the development of this situation, can be explained as follows:

After the period of unity under the reign of the *Buwayhid Amīr*, ‘Aḍud al-Dawla, his successors were soon involved in internal rivalries and mutual conflicts. After the death of ‘Aḍud al-Dawla, his successors could not solve the succession problem peacefully. Although Ṣamṣām al-Dawla (d.388/998) was a common choice of the dignitaries who

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<sup>48</sup> Azīz al-Azmeh, *Muslim Kingship*, P.166.

<sup>49</sup> *Ibid*, P.167.

raised him to the office of Amīr al-Umarā', his brother Sharaf al-Dawla (d.379/989) did not acknowledge him and eventually succeeded in defeating him and assuming the control of government.<sup>51</sup> Similarly after the reign of Bahā' al-Dawla (d.402/1011), Musharraf al-Dawla (d.416/1025) rose in rebellion against Sulṭān al-Dawla (d.415/1024) and succeeded in establishing his rule in Khuzistan and Iraq, though he later on acknowledged Sulṭān's control over some parts of the empire.<sup>52</sup> Jalāl al-Dawla (d.435/1043) succeeded Musharraf al-Dawla<sup>53</sup> whose period of government is well known for military revolts and anarchy.<sup>54</sup> The constant civil wars proved detrimental to the stability of the government and once again created problems for the *Buwayhid* government. Due to non-payment of salaries, the soldiers rose in rebellion and regular uprising on their part undermined the authority of the government.

The military insurrection of the Turkish soldiers, which subsided during the reign of Mu'izz al-Dawla and 'Aḍud al-Dawla due to their wise policies, again revived and contributed much to the undermining of the *Buwayhid* authority. Mu'izz al-Dawla absorbed the fallen forces of al-Baghdād into his army and treated them on an equal footing with the *Daylamites*.<sup>55</sup> 'Aḍud al-Dawla proved himself equal to the task of keeping both the *Daylamites* and the Turks united under his command. But none of the successors could continue the policies initiated by the two early *Buwayhid* monarchs, Mu'izz al-Dawla and 'Aḍud al-Dawla. The civil war between Ṣamṣām al-Dawla and Bahā' al-Dawla was in fact fought between the Turks and the *Daylamite* soldiers and the victory of Bahā' virtually

<sup>50</sup> Kraemer, *Humanism in the Renaissance of Islam*, P.63.

<sup>51</sup> Ibn al-Athīr, *al-Kāmil*, vol.9, P.48; Ibn Kathīr, *al-Bidāya*, vol. 11, P.260

<sup>52</sup> Ibid, PP.317-327

<sup>53</sup> Ibid, vol.9, P.376

<sup>54</sup> Ibn, PP. 403-409; Ibn Kathīr, *al-Bidāya*, vol. 12, PP.19-36 ;

meant the victory of the Turkish soldiers.<sup>56</sup> Having thus established their role, they began to interfere in political affairs in the late *Buwayhid* period. By the time of Jalāl's rule the Turks began to exert considerable influence over matters of governmental policy.

With the resumption of control by the Turkish soldiers, the position of the *Buwayhid* Amīr was undermined. The Caliph took advantage of this situation and began to re-assert his authority which he could hardly do previously.

Another factor, which led to the restoration of the Caliphate during the late *Buwayhid* period, was the passing of the initiative from the *Shīrites* to the *Sunnites* in the series of the protracted dissension's which had continued from the beginning of *Buwayhid* rule. In the age of Mu'izz al-Dawla when *Shīrite* practices were encouraged under official patronage, the *Sunnites* were helpless against this development. Following the peaceful and neutral age of 'Aḍud al-Dawla, the reign of Bahā' al-Dawla witnessed the *Sunnī* faction assuming the initiative.<sup>57</sup> This development coincided with the rise of Maḥmūd of *Ghazna* whose open professions of loyalties to the Caliph encouraged the Caliph to act in a bold manner. Regarding the changed positions of both communities in this period, Mafizullah says that the *Sunnīs* now held parallel ceremonies with the *Shīrites* and the Caliph asserted himself vigorously in religious matters.<sup>58</sup>

The natural effects of these developments resulted in the restoration of authority of the Caliph who now regularly began to assert his authority through his acts and policies. A few examples support this claim.

<sup>55</sup> M.A. Shaban, *Islamic History, A New Interpretation*, vol. 2, P.163.

<sup>56</sup> Mafizullah Kabīr, *The Buwayhid Dynasty of Baghdād*, P.89.

<sup>57</sup> *Ibid*, P.206.

<sup>58</sup> *Ibid*.

Up to the age of the Caliph Tāi' (d.393/1002) the *Buwayhids* played a key role in making and deposing the 'Abbāsīd Caliphs. With the uprisings of the Turkish soldiers, the same practice did not continue. Now the *Buwayhids* were themselves faced with the problem of constant insurrections of the Turkish soldiers. Sometimes they requested the Caliph to settle their disputes with the Turkish soldiery and the Caliph in fact settled their disputes by playing the role of a mediator.<sup>59</sup>

Making an appointment to the judicial post continued to remain the responsibility of the Caliph. Once Bahā' al-Dawla appointed Aḥmad al-Musāvī as the chief *Qāḍī*. The Caliph strongly objected to the appointment. The *Buwayhids Amīr* did not insist on his decision and immediately withdrew the appointment.<sup>60</sup>

The Caliph owed his legitimate existence primarily to the exercise of his authority as a religious figure. During the period under discussion the Caliph began to assert his religious powers in a more effective way. Qādir Bi Allah (d.422/1030) issued a famous proclamation known as the *Qādirite* creed. According to it, the *Mu'tazilites* were prevented from the propagation of rational interpretations of their religious ideas, which ran contrary to the views of the traditionists. Strong measures were also adopted with respect to heretics and they were prevented from spreading their ideas any further.<sup>61</sup> The open vilifying of the Companions of the Prophet (P.B.U.H) was declared unlawful. The fact that this creed was enforced testifies to the restored status of the Caliph. These injunctions were not limited to the lands under *Buwayhid* control but were conveyed to the powerful dynasts of the time. For instance, Qādir Bi Allah directed Maḥmūd of *Ghazna* (d.421/1030) for the revival of

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<sup>59</sup> Ibid, P.200.

<sup>60</sup> Ibn Kathīr, *al-Bidāya*, vol. 11, PP.285-286; Ibn Athīr, *al-Kāmil*, vol.9, P.182

<sup>61</sup> Ibn Kathīr, *al-Bidāya*, vol. 12, P.6.

the *Sunna*. Maḥmūd's compliance with the directive indicated that he recognized the Caliph as the religious head of the Muslim community.<sup>62</sup>

However, restoration of Caliphal authority during this period needs to be interpreted in a realistic manner. Although the Caliph's authority in religious and judicial affairs was fully restored and cases of resistance to unjust policies of the Amīr were not uncommon, the Amīr still retained initiative in the executive sphere. The Caliph continued to be a stipendiary of the *Buwayhids* right to the last years of their rule,<sup>63</sup> although they could not now easily interfere with his income resources. The Caliph's protest against the confiscation of *jawālī* (poll tax) by Jalāl al-Dawla (435/1043), the latter's attitude towards the protest and subsequent developments explain the position of both the Caliph and the Amīr during this period. On this occasion, writes Ibn al-Jawzī (d.751/1350), the Caliph wrote to Jalāl al-Dawla that he would have overlooked the negligible amount, had Jalāl al-Dawla taken it in a proper way. The unjust usurpation by Jalāl al-Dawla posed a challenge to his authority and prestige. In protest he threatened to leave the city, close the mosques and prevent the holding of the Friday Prayer. In reply Jalāl al-Dawla assured him of his complete subordination and clarified his constraints of facing the dissatisfied soldiers who demanded money for which he had no alternative except to take this money. From the following year he restored the Caliph's income to him.<sup>64</sup>

### **The Legitimacy of the Weak 'Abbāsid Caliph during the Early *Buwayhid* Period**

Compared to this age if we look at the early *Buwayhid* age, the Caliph Muṭī' (d.363/974) could not resist the unjust demands of the Amīr Bakhtyār (367/977) and had to sell his

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<sup>62</sup> Ibid.

<sup>63</sup> Maftzullah Kabīr, *The Buwayhid Dynasty of Baghdād*, P.192.



personal belongings to satisfy his demand of payment of a big amount of money.<sup>65</sup> Removal and installation of the Caliph during this period largely depended upon the will of the Amīr. Unlike Qāim bi Amr Allah (d.467/1074) who forced the *Buwayhid Amīr*, Jalāl al-Dawālā to restore his annual income which he had unjustly seized, the Caliphs of the early *Buwayhid* age were helpless against the regular usurpation of their income by the *Buwayhids*.<sup>66</sup> The Caliph was unable to carry out some of his religious responsibilities like making arrangements for the pilgrimage and waging *Jihād*. Yet having lost most of his actual authority the Caliph continued to perform some important religious and judicial functions which earned him a legitimate status and showed the existence of the institution to be necessary.

In the exercise of temporal affairs al-Māwardī relied upon the Amīr whose constitutional supremacy was still recognized. His legitimacy as an office holder was unaffected because as a Caliph he imparted his powers to the Amīr who exercised them on his behalf through the principle of delegation. We can sum up the arguments for his legitimacy under the following heads:

### **Observance of Legal Procedure**

Although the *Buwayhids* chose the person of their own choice as a Caliph during this period, their options were limited in making this choice. For instance, the *Buwayhid Amīr* had to choose a Caliph from the *Quraysh* lineage. The *Buwayhids* never chose a man having some defect, which could render him disqualified according to the *fuqahā'*. The *Buwayhids* also gave due regard to the opinion of the people of power and influence in the

<sup>64</sup> Ibn al-Jawzī, *al-Muntazam*, vol. 15, PP. 285-286.

<sup>65</sup> Ibn Miskawaihi, *The Experiences Of The Nations*, P.330; Ibn Kathīr, *al-Bidāya*, vol. 11, P. 230

choice of the new Caliph. They took an oath of allegiance to the Caliph. The *Umarā'* of the neighbouring dynasties then ratified it. On the death of each Caliph or Amīr it was renewed from both sides. Thus we see that after the deposition of al-Mustakfī, Mu'izz's choice fell upon Muqtadir's son Faḍal who was also a favourite of the dignitaries of the court. Similarly Qādir Bi Allah was a common choice of the *Buwayhids*, the dignitaries of the court, the *Daylamites* and the Turkish military chiefs.<sup>67</sup>

Even after the deposition of the Caliph the *Buwayhids* observed the legal procedure and immediately installed a new Caliph so as to give continuity to the office of the Caliphate. Moreover on the deposition of the Caliph, his signature was secured on the document of abdication and witnessed by the judges and the senior officials.<sup>68</sup> After the installation of the Caliph the traditional procedure of ratifying the oath of allegiance by the '*ulamā'*', the dignitaries of the court, the military chiefs, and finally by the people at the Friday Prayer, continued to be a regular practice throughout the *Buwayhid* period.

Having seen that the *Buwayhids* did not disregard the observance of the legal procedure in the choice of the Caliph, we now turn to the role played by the Caliph in some important affairs like the administration of the judiciary and religion. Although the Caliph was deprived of most of the executive powers, which were carried out in his name, some judicial and religious functions were performed directly under his supervision. His existence was therefore considered necessary.

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<sup>66</sup> Maftzullah Kabīr, *The Buwayhid Dynasty of Baghdād*, P, 191.

<sup>67</sup> Ibn Athīr, *al-Kāmil*, vol.9, P. 80; Ibn Kathīr, *al-Bidāya*, vol. 11, P.264

<sup>68</sup> Azīz al-Azmeh, *Muslim Kingship*, P.166.

### The Head of an Independent Judiciary

The Caliph's independence as a head of the judiciary was a function of most fundamental importance, which remained almost unchallenged throughout the *Buwayhid* period. Referring to this period, A.H.Siddiqī observed that since the '*Ulamā*' who were raised to the post of *Qāḍī* received very little or no salary, the institution remained completely immune from official interference.<sup>69</sup> Even the Caliph himself could not affect the normal work of the department. But he did not allow anybody else to interfere in the judicial business of the country. The *Buwayhid's* intervention in the administration of justice was very minimal compared to their influence over other departments.<sup>70</sup>

Mu'izz, the founder and the most powerful ruler of the *Buwayhid* dynasty, reduced the powers of the Caliph to a considerable extent. He nevertheless preferred to stand aside in the conduct of the judicial business of the country. He allowed it to continue under the supervision of the Caliph. On one occasion, sixteen years after the inauguration of his rule, he was caught up in economic crises. He decided to bring the judiciary also under his control. On the death of the *Shāfi'ī Qāḍī al-Qudāt*, Abū al-Sā'ib 'Utbā Al-Hamdānī in 340/961, Mu'izz gave this post to Abu al-'Abbās Abd Allah Ibn 'Alī Ibn Shawārib in exchange for an annual payment of two lacks *Dirhams*, to meet the requirements of the treasury. The Caliph Muṭī' could not reconcile himself to this measure and decided to exert moral pressure by declining to see him or appear along with him in public ceremonials. This measure together with a refusal to bestow honours on the appointee of Mu'izz forced the appointee to go to Mu'izz for the same purpose. The appointment was ridiculed to the extent that it did not find acceptance even by the co-religionists of Mu'izz. Two years later

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<sup>69</sup> A.H.Siddiqī, The Caliphate and Kingship in Medieval Persia, P.33.

Ibn Abī Shawārib was dismissed when an ‘*Alī*’ ascetic, Abū Abd Allah Dāi appealed to Mu‘izz in the name of ‘Alī Ibn Abī Tālib to cancel the appointment.<sup>71</sup>

So the judiciary continued to remain within the jurisdiction of the *Qāḍī* under the patronage of the Caliph. If sometimes the *Buwayhid Amīr* wanted to impose a man of his own choice against the choice of the Caliph, his attempt was resisted and did not succeed.

By another example we can also recognize the constraints of the *Buwayhids* in the conduct of judicial business at that time. *Qāḍīs* were free and uninfluenced in the selection of attestors. Once ‘Aḍud al-Dawla’s military General asked him for the inclusion of a name, via the *Qāḍī*, in the list of the attestors. ‘Aḍud warned him to refrain from interfering in judicial matters, which were exclusively the business of the *Qāḍī*. He said: “Neither you nor I have any say in the matter.”<sup>72</sup>

Of course while the Caliph exercised a check over the inclusion of the name, it nevertheless remained the business of the *Qāḍī* under the supervision of the Caliph.

### **The Delegation of Powers**

Universal recognition of right order based on religion and justice in medieval Islam had persisted up to the time of the *Buwayhids*. Hence the regulation of contemporary politics, like other aspects of life, had to be carried out according to its requirements. Within such a context it is easily understandable that during the period of instability before the *Buwayhids* when the different dynasts came to occupy the capital of the Caliphate, no conscious effort was ever made to alter the fundamental concept regarding the exercise of authority. Under the *Buwayhids* too, the fundamental concept regarding the exercise of authority remained

<sup>70</sup> Muftzullah Kabīr, “Administration of Justice under the *Buwayhid*”, *Islamic Culture*, P.69.

<sup>71</sup> *Ibid*, PP.70-71.

unchallenged. Accordingly the *Buwayhids*, following the tradition of previous dynasts, conformed to the practice of seeking their place by continuing the old system. Through a carefully worked-out formulation, al-Māwardī sought to regulate their mutual relations in which several religious obligations were imposed on both the Caliph and the *Buwayhids*.<sup>73</sup>

The legitimization of their exercise of power was conditional upon the fulfillment of those requirements. Through such a formulation both the Caliph and the Amīr were accommodated within the Caliphal set-up. Along with safeguarding the constitutional means of the acquisition of authority, the power realities of that period were also recognized.<sup>74</sup>

The Caliph, the lawful occupant of authority, had now become weak but was still recognized as the legitimate source of all authority. Pointing to this medieval attitude and practice, Rosenthal rightly remarks that the Caliph's right to impart authority to subordinates obliged even the self-appointed rulers to submit to the Caliph.<sup>75</sup>

In Islam it was classically hard to distinguish the worldly from the religious, for undertaking all the worldly affairs, it is claimed that man is bound to be compensated in the hereafter. Consequently every act has religious consequences, hence the legitimization of power through a religious source for which the Caliph was the highest authority. Since all authority could legitimately be derived from him, the principle of delegation was one of the cardinal features of al-Māwardī's formulation; and it was only through this that the *Buwayhids* could exercise authority effectively without compromising the constitutional

<sup>72</sup> A.H.Siddiqi, Caliphate and Kingship in Medieval Persia, PP.44-45.

<sup>73</sup> al-Māwardī, A.S., P.34.

<sup>74</sup> Ibid.

<sup>75</sup> E.I.J.Rosenthal, Political Thought in Medieval Islam, P.23.

status of the Caliph. But to be able to exercise the powers in a legitimate manner they were also made responsible for carrying out certain responsibilities the proper observance of which would turn their usurpation into a legal rule and would make delegation a proper device imparting validity to their rule.<sup>76</sup>

They took the oath of allegiance at the hands of the Caliph. They were bestowed honours by the Caliph in the ceremony regularly held on the death and deposition of every Caliph and Amīr.<sup>77</sup> According to Bosworth, the Caliph gave the seal of *Sunnī* orthodoxy and legitimacy to the secular ruler of Islam by sending them a formal document granting them lands (*'Ahd, Manshūr*). Usually such a grant was also accompanied with other insignia of royalty, a standard (*Liwā*), robes of honours (*Khilā, Tashrifā*), and above all, by an award of honorific titles (*Alqāb*).<sup>78</sup>

The quest for legitimacy on the part of the *Buwayhids* through these titles was so great that although *Shī'ite* in origin, they always sought their honorific title from the *'Abbāsīd* Caliph. They gave assurances of loyalty to the Caliph through written documents.<sup>79</sup>

All the three requirements amounted to recognizing the constitutional requirements, which they fulfilled. The Caliph on his part delegated his authority to them because at this moment it was only they who were in a position to exercise authority on his behalf. But the delegation was conditional on continued observance of the right order based on religion and justice.<sup>80</sup>

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<sup>76</sup> al-Māwardī, *A.S.*, P.38.

<sup>77</sup> A.H.Siddīqī, *Caliphate and Kingship in Medieval Persia*, P.38.

<sup>78</sup> C.E.Bosworth, "The Imperial Policy of the early Ghaznawids", *Journal of the Central Institute of Islamic Research*, Karachi, P.62.

<sup>79</sup> *Ibid.*

<sup>80</sup> al-Māwardī, *A.S.*, P.34.

With the recognition of the less preferred (*Mafḍūl*) as a legitimate Caliph, the '*Ulamā*' assumed some of the responsibilities, which ideally belonged to the Caliph. The Caliph acknowledged their role to interpret the law in all walks of life including politics. During the late '*Abbāsīd*' period, the weak Caliph was recognized as legitimate in the same manner. The Caliphate continued to be considered a religious necessity but the Caliph was too weak to exercise many of his powers in an effective way. The best solution to retain the Caliphate without losing its central figure was to delegate his powers to someone who could effectively exercise it on his behalf. The Caliph Rāḍī Bi Allah (d.329/940) was the first Caliph who realized the necessity of this principle. He authorized Ibn Rāi'q (d.330/941) to exercise authority on his behalf.<sup>81</sup> From that time onwards, it became an increasing desire of different provincial dynasts to occupy the seat of authority in the capital city and exercise these powers on behalf of the Caliph.

The inclusion of the Amīr, therefore, as an effective wielder of the authority added an effective person for lending support to the system which had become difficult for the Caliph to manage on his own. The Amīr was made responsible for assisting the Caliph in enforcing the commandments, which the Caliph could not properly carry out due to his increased weakness. The Amīr was required to exercise his authority within certain limits, and any permanent deviation on his part justified his exclusion from authority.<sup>82</sup> His legitimacy, therefore, depended on the exercise of his authority within a religious context. The '*ulamā*', therefore, continued to play their traditional role of explaining the law regarding all the aspects of life. The Amīr was responsible for its enforcement under the supervision of the Caliph. For instance, the '*ulamā*' explained the responsibilities of the

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<sup>81</sup> Ibn Miskawaihi, The Experiences Of The Nations, vol.1, P. 396I; Ibn Kathīr, al-Bidāya, vol. 11, P.432.

Caliph with regard to congregational prayer in the context of his time and circumstances. The Amīr was responsible for assisting the Caliph for its enforcement. Similarly in the case of the *Ḥajj* obligation the Caliph acquired the services of the Amīr to make the routes safe for people to perform the *Ḥajj* in peace and security.

In the light of the above facts we can say that the *Buwayhids* did not neglect their responsibility with regard to exercising their authority within a religious context. They might occasionally have had a strained relationship with the Caliph over the exercise of authority, but never brought into question the manner and the purpose of exercising the authority. The effective ruler, throughout the era of the weak Caliph, never disputed the complete guidance through religion regarding all aspects of life including politics, although he may have fallen short of its proper observance.<sup>83</sup>

Discussing the mutual relationship of the Sultān with the Caliph, Bernard Lewis avoids using the terms 'religious' and 'secular' since, as he states, there was no such division in Islam and the character of all the authority was regarded as religious in that period.<sup>84</sup>

Moreover there was no interference in the elaboration of the Divine law and it remained the function of the jurist. Nor could the deviations of the Amīr from Divine Law ever form valid precedents. Nor was he ever regarded as being above criticism if he violated it. Talking about the reign of the Caliph versus the strong Amīr Rosenthal says: " the whole of life is ordered by the religious, all-embracing Divine law. The authority and validity of this law were never questioned by any effective Muslim ruler, no matter what his own practice was. He could not abrogate the religious law, though he might at times set it aside. The

<sup>82</sup> al-Māwardī, *A.S.*, P.34

<sup>83</sup> E.I.J.Rosenthal, *Political Thought in Medieval Islam*, PP.23-24.

<sup>84</sup> Bernard Lewis, *The Political Language of Islam*, P.52.



unchallenged exercise of political power could not clear him from offences against the *Sharī'a*, though the Caliph would not dare to challenge him for want of effective power.”<sup>85</sup>

Realizing the validity of these principles with regard to the *Buwayhid* era, Rosenthal repeats similar impressions. He says that in view of the all-pervading character of the Divine Law, it was not possible for the *Buwayhids* to ignore the fundamental principle that the authority bestowed by *ijmā'* or the Muslim community on the lawful Caliph was the only acceptable authority to the Muslims.<sup>86</sup>

Concluding the contract with the Caliph, therefore, gave them legal status: through the delegation by the Caliph they became legitimate in the eyes of the Muslim masses. Hence without violating the juristic principles on which the theory of the Caliphate was based, it was possible to regularize the Caliph-Amīr relationship by accommodating both within the Caliphal set-up. As we can see throughout the period of the *Buwayhid* rule, on no occasion did they fall short of fulfilling the legal requirements, which legitimized their rule.<sup>87</sup> From the fulfillment of these legal requirements regularly carried out on the installation and deposition or the death of every Caliph and Amīr we can recognize and appreciate that the principle of the delegation of power was put into practice. For the *Buwayhids* it was an effective means of securing the loyalties of their subjects.<sup>88</sup>

Legally all the institutions derived their legitimacy from the person of the Caliph. It was also in recognition of this principle that the Amīrs of different dynasties were able to assert their control without at the same time refusing to acknowledge the Caliphal supremacy.

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<sup>85</sup> E.I.J.Rosenthal, Political Thought in Medieval Islam, PP.23-24.

<sup>86</sup> Ibid, P.28.

<sup>87</sup> A.H.Siddiqui, Caliphate and Kingship in Medieval Persia, P.38.

<sup>88</sup> Ibid.

Supporting the same idea, Azīz al-Azmeh states that in this system the powers were not derogated but delegated. Legitimacy, according to him, was the fulfillment of certain legal conditions.<sup>89</sup>

Irrespective of the bad treatment to which the Caliph was subjected, the institution of the Caliphate remained intact. If the Caliph interrupted the exercise of delegated authority by the Amīr whom he legitimized as the holder of authority, the latter's act of deposing the Caliph was not performed without conforming to the legal requirement of the procedure.

The signature of the deposed Caliph was secured in the first instance; if he did not cooperate in this regard, a letter of impeachment issued from the chief Justice duly signed by the high officials served the same purpose as an alternative method. In either case the legal requirements were fulfilled to effect the deposition.<sup>90</sup>

al-Māwardī's primary object in stating the theory of Caliphate was to assert the establishment of the right order based on religion and justice. According to al-Baghdādī, he considered the revealed law as the final authority.<sup>91</sup>

The weakness of the Caliph was accepted but his relations with the Amīr were regulated in such a way that the absolute character of the Caliphate should be least effected.<sup>92</sup>

If the power realities of the time did not allow the Caliph to exercise his temporal control as before, it was conceded that the immediate reconciliation on the part of the Caliph with the new situation would not bring matters to a constitutional crisis.<sup>93</sup> al-

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<sup>89</sup> Azīz al-Azmeh, Muslim Kingship, P.170.

<sup>90</sup> Ibid, P.166.

<sup>91</sup> Baghdādī, "al-Māwardī's contribution to the Islamic political thought", Islamic Culture, P.329.

<sup>92</sup> Azīz al-Azmeh, Muslim Kingship, P.170.

<sup>93</sup> al-Māwardī, A.S., P.34.

Māwardī qualified the further continuation of the Amīr in the same capacity provided his motives and actions were in accordance with the requirements of religion.<sup>94</sup>

In other words, in return for legitimizing the Amīr he was seeking the continued enforcement of the right order, and also to forestall the humiliation of the Caliph, as Rosenthal observed.<sup>95</sup>

In an irreversible situation this looked to be a good attainable solution according to al-Māwardī. Failure to ensure this continuity would result, as observed by al-Māwardī, in disorder and disturbance.<sup>96</sup>

To prevent any break in the continued application of the right order, al-Māwardī insisted on the re-adjusted power roles of the different persons within the Caliphal set-up. His following points are worthy of note with regard to both the Caliph and the Amīr in power sharing:

### **The Status of the Caliph**

He saw no impediment in the way of the constitutional status of the Caliph if he remained content with his real position in temporal affairs.<sup>97</sup>

Since the Caliph no longer exercised authority as ideally his office demanded but was still recognized as the legitimate head of the Muslim community, it was suggested to him to acquire the services of one who could assist him in the performance of his authority in temporal affairs. This would not be unconstitutional provided the person assisting the Caliph was not guilty of violating the right order based on religion and justice. The Caliph was nevertheless required to demand the different persons to submit to legal requirements

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<sup>94</sup> Ibid.

<sup>95</sup> E.I.J. Rosenthal, *Political Thought in Medieval Islam*, P.32.

and acquire those powers through delegation. The effective wielder of the authority had formally to accept the Caliph as the legitimate head of the Muslim community. The Caliph was also made responsible for seeing whether the administration was carried out in the right way. If he noticed any serious breach on the part of the effective authorities, he was authorized to summon and acquire the services of some other powerful dynast who would perform the same job for the Caliph in a right and more effective way.<sup>98</sup>

### **The Status of the Amīr**

With the weakening of the 'Abbāsid authorities, different persons rose to the position of exercising authority on behalf of the Caliph. In the first place it was the Turkish soldiers who dominated the Caliph. In a highly uncertain period that followed, this position began to be occupied by Ibn Rāi'q (d.333/944), the military Generals like Tuzūn and Bajkam (d.329/940) and provincial dynasts like Ibn Barīdī ( 333/944) and Naṣir al-Dawla. The *Buwayhids* successful occupation of Baghdād now gave them a similar role hitherto played by the different persons in the capacity of Amīr al-Umara'. al-Māwardī's choice of the word is broad enough to encompass all the categories including the *Buwayhid Amīr* when he had occupied this post.<sup>99</sup>

The term was equally applicable to the coming era when the *Buwayhids* themselves faced the prospects of being overthrown at the hands of some newly emerging dynast, like Maḥmūd of Ghazna or Tughril Beg (d.455/1063). Dealing with the role they had to play in the existing set-up, al-Māwardī assigned to them certain responsibilities, the accomplishment of which would give them a legitimate status.

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<sup>96</sup> al-Māwardī, *A.S.*, P.34.

<sup>97</sup> *Ibid.*

### The Responsibilities of the Amīr

The irregular situation consequent upon the act of usurpation could be regularized provided the usurper undertook to fulfil certain conditions under two broad categories: (1) recognizing the constitutional status of the Caliph and, (2) the enforcement of the right order based on religion and justice.<sup>100</sup>

The first category also included several other legal requirements most of which we have already discussed. The emphasis was made in general terms like the immediate and direct submission to the Caliph or showing no act of defiance or opposition. The Amīr's exercise of authority that belonged to the Caliph through delegation would then be legitimate but subject to fulfillment of requirements as stipulated in the second category.

The second category stipulated that the Amīr should continue the right order in an uninterrupted manner and upon the fulfillment of this requirement depended the onward legitimacy of his rule.<sup>101</sup>

al-Māwardī made it thoroughly clear that the Amīr, by virtue of his effective position, would perform the administrative functions on behalf of the Caliph and not in defiance to his authority, and the Caliph in turn would recognize his status as legitimate. A survey of al-Māwardī's text in the al-Aḥkām makes it clear that the temporary reconciliation on his part with the changed roles of both the Caliph and the Amīr was in fact an effective way of securing the right order to which the Caliphal office owed legitimacy. The reason behind the whole scheme, according to Azīz al-Azmeh, was to delegate the absolutism of the

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

Caliphate.<sup>102</sup> The office was certainly above the person of the Caliph.<sup>103</sup> The Caliphate owed legitimacy to the proper enforcement of the right order. At the period of the weakness of the Caliph when he was still regarded as the source of legitimate authority but lacked the resources to enforce the right order properly, he was required to be content with the exercise of nominal control and authorize the Amīr on his behalf to exercise the authority for the same purpose.

Such a formulation which sought to reconcile the theory of the Caliphate with the existing practices also offered a solution to the problem of the *Shī'ite-Sunnite* co-operation on official level. The fact that al-Māwardī won the favours of both the Caliph and the *Buwayhids* and was entrusted by both suggest that there was a fundamental agreement over the principles of al-Aḥkām. The *Buwayhids* were the *Shī'ites*. Their quest for a long rule over the population that was predominantly *Sunnī* brought them close to the path of compromise. They willingly chose to continue the *Sunnī* Caliphate they had inherited from the conquered people. al-Māwardī in acknowledgement of their positive treatment towards the Caliphate and the *Sunnite* institutions recognized them as legitimate. But to be legitimate in the eyes of their co-religionists they had to justify their political behaviour, which seemed contrary to the basic requirements of their religion. Being *Shī'ites* they were required to render allegiance to an *Imān* who believed that authority in fact belonged to their *Imān* and would be returned to him on his reappearance.<sup>104</sup> As the 'Abbāsīd Caliph failed to satisfy these requirements, the early *Imānī* jurists, following the period of great occultation, not only considered the 'Abbāsīd Caliphs illegitimate but strictly disallowed

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<sup>102</sup> Azīz al-Azmeh, Muslim Kingship, P.170.

<sup>103</sup> Ibid, P.176.

any co-operation with them. The later *Imānī* jurists, however, redefined the relationship with actual authorities during the period of occultation (*ghayba*). The beginning of their reliance on the reasoned argument (*Kalam*) paved the way for the development of their theology.<sup>105</sup> The 'Abbāsīd Caliph, according to them, might not be strictly a legitimate, the daily affairs could lawfully be carried out under his rule as long as he tolerated Shī'ism. Accordingly, they had to rely on the support of the *uṣūlī* 'ulamā' who undertook the task of reinterpretation of the *Shī'ite fiqh*.

#### **The 'Abbāsīd- Buwayhid Concordat:**

The recourse of the *Uṣūlīs* to the rationalist method, following the *Mu'tazilites* of their age, enabled them to justify the existence of the *Sunnite* institutions as well as the co-operation with the *Sunnite* authorities. Before examining some of the details of those religious and political reinterpretations it seems necessary to take an overview of those practical measures they took to promote co-operation with the *Sunnī* authorities and the institutions.

In the context of explaining the relation of the Caliph with the *Buwayhids* the writers have often highlighted the differences that existed between both. Focussing their attention upon the small periods in which their mutual relationship was strained, and, consequently, the Caliphs were deposed, they tend to forget the long periods of cordial relationship that existed between them. Indeed in maintaining the smooth relationship on a permanent basis both the *Buwayhid* and the Caliph had to agree over the terms and conditions without which it would have been difficult for both to co-exist for more than a century. If we omit the

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<sup>104</sup> Madelung, "Authority in twelver Shiism in the absence of the Imām" Religious Schools and Sects in Medieval Islam, P.170

occasional harsh treatment to which the Caliph was subjected, or when due to misunderstanding and power tussle the mutual relations of the Amīr and the Caliph were strained, we see the positive and willing initiative on the part of both parties to build up a happy and cordial relationship. The Caliph, realizing his position over the past years, was reconciled to limit his role to the enforcement of religion and patronizing the ‘*ulamā*’ in interpreting the law. As the effective representatives of the authority, he acknowledged the *Buwayhids* for carrying out the old system in a satisfactory manner. To this arrangement the *Buwayhids* had no objection. The power thus acquired by them was exercised vigorously and as time went on they tried to consolidate and strengthen their relationship with the Caliph. They cherished the desire, says the Encyclopaedia of Islam, to be treated as the fifth school of the *Sunnī* jurisprudence.<sup>106</sup> By a brief survey we can note the examples on the part of the *Buwayhids* to bridge the gap between them and the Caliph both by practical measures and through the efforts of the ‘*ulamā*’. The over-all impression we get from their reign of more than a century is that their treatment of the Caliph was not bad. Mu‘izz al-Dawla deposed and blinded al-Mustakfī when the former was sure that the feast arranged by him in honour of military officers was an intrigue by the Caliph for his deposition.<sup>107</sup> It was then impossible for him to allow somebody to continue at his own expense. After this we find one more example of deposition but without blinding. Bahā’ al-Dawla deposed the Caliph Ṭāi’ but treated him with consideration after his deposition. After that we also see the long reigns of Qādir bi Allah (d.442/1031) and Qā’im bi Amr Allah (d.467/1074) when the

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<sup>105</sup> Heinz Halm, *Shiism*, P.51

<sup>106</sup> CL. Cahen art, “Buwayhids or Buyids”; *Encyclopaedia of Islam*, vol. 1, P. 1352.

<sup>107</sup> S.M Nadvi., *Tārīkh Islam*, P.363.



mutual friendship and confidence increased. In support of the impression of the improved relationship, some more practical measures were taken which are quoted below.

To strengthen the relationship with the Caliph the *Buwayhids* gave their daughters in marriage to the Caliphs. In fact the tradition started as early as the reign of Bakhtiyār, the second *Buwayhid* ruler who gave his daughter to Ṭāi‘(d.393/1002). It was then ‘Aḍud who carried out the same practice during his reign.<sup>108</sup> The *Khuṭba* of the marriage was read by the *Sunnī Qāḍī* Abū ‘Alī Ḥasan b. ‘Alī al-Tanūkhī (d.342/953). Explaining the purpose of the marriage, Mafīzullah, on the authority of Miskawaihi, says that ‘Aḍud’s hope was that should a son be born to her, he would have him declared as the Caliph’s successor, so that the Caliphate and the *Emirate* might be united in the same dynasty.<sup>109</sup> It clarified the *Buwayhid’s* desire to see the unification of the temporal and spiritual authority within the same person. The other purpose obviously could be to win more support of the masses and their recognition as legitimate rulers of the Muslims. The measure also confirmed their liberal attitude towards the *Sunnī* creed. The purpose was to a large extent achieved by showing them as being on very intimate terms with the Caliph.

By their mutual understanding and good will the *Buwayhids* sometimes performed the issue of the deed of investiture to the various princes of the provinces. But for getting the same deed of the investiture from the Caliph they missed no occasion to observe the legal procedure and its requirements for demonstrating the importance of the office and to win popular sympathies through it.<sup>110</sup>

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<sup>108</sup> Muftzullah Kabīr, *The Buwayhid Dynasty of Baghdād*, P.57.

<sup>109</sup> Ibid.

<sup>110</sup> A.H Siddiquī., *The Caliphate and the Kingship in Medieval Persia*, P.33.

After the reign of Mu'izz al-Dawla it was realized by the *Buwayhids* that to be able to rule effectively the *Buwayhids* had to base their policies on fairness and justice without prejudice towards any section of the community they governed. Their main problem was the restoration of law and order. It was told to 'Aḍud al-Dawla that the main hurdle in way of this restoration was the *Shī'a-Sunnī* riots, which were spread by preachers of both communities.<sup>111</sup> He imposed a ban on sermons and tale telling by the preachers of both communities and prevented them from inquiring about the name of any Companion. People were advised instead to stick to the Qur'ān.<sup>112</sup> Adoption of such a measure was an important step forward to minimize and lessen the tension between both communities.

It was during the same age that for the first time, on the request of the Amīr 'Aḍud al-Dawla, the Caliph agreed to include his name in the *khutba* of the Friday prayer after his own name.<sup>113</sup> This Innovation by 'Aḍud al-Dawla and its continuation throughout the remaining *Buwayhid* period indicated the importance which the *Buwayhids* attached to the recognition by the Caliph. Through the person of the Caliph the *Buwayhids* made sure that the same practice was adopted by the provincial dynasts so as to confirm their legitimate status throughout the Muslim world. Such measures clearly indicated that the *Buwayhids* wanted to reduce the religious gap between both communities and sought reconciliation through being mentioned in the same *khutba* and in the same mosque.

The other practical measure which they took to identify their cause with the religious practices of *Sunnī* Islam, was their sharing of the right of drum-beating at the time of the prayer. 'Aḍud al-Dawla, again the pioneer of this custom, succeeded in getting permission

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<sup>111</sup> Mafizullah Kabīr., *The Buwayhid Dynasty of Baghdād*, P.67.

<sup>112</sup> Ibn Kathīr, *al-Bidāya*, vol. 11, P. 246.

<sup>113</sup> *Ibid*, P.248.

of the Caliph to share the right of the drum-beating three times a day during the prayer times.<sup>114</sup> Sultān al-Dawla and Jalāl al-Dawla, however, shared the same right with the Caliph during all the five prayer.<sup>115</sup> The increasing tendency of patronizing the *Sunnite* religious practices on the part of the *Buwayhids* clearly indicated their desire to minimize the gap with *Sunnites* on religious grounds.

The efforts of ‘Aḍud al-Dawla to provide patronage to the ‘*ulamā*’- of all schools sects also testify to his unprejudiced treatment of all schools. He made the routes safe to Mecca for the safe performance of the *Hajj*.

Funds were provided for the renovation of mosques without any special regard to both the *Shīite* and the *Sunnite* communities. Similarly the salaries of the *Imāns* of the mosques, jurists and *Muhaddithūn* were enhanced and regularized regardless of their affiliations to any community.<sup>116</sup> ‘Aḍud al-Dawla has been constantly referred to as having summoned the preachers of both communities and to have listened to their sermons with great care.

Apart from the above-mentioned practical measures, they also adopted the means and measures to reduce the gap between both communities. They patronized *Shīite* scholars, who justified co-operation with *Sunnite* authorities. The government encouraged the efforts on the part of these ‘*ulamā*’. It was in the late *Buwayhid* age that al-Murtaḍā (d.436/1044) showed the consistency of this viewpoint with the principles of *Shīite fiqh*.

From the time of enunciation of their doctrines they had regarded, in the absence of the *Imān*’s rule, all the governmental authority as illegitimate. Ideally suitable for a male heir of ‘Alī from the line of Faṭīma, the office could later on be taken by any *Shīite* member of

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<sup>114</sup> A.H Siddiquī, *The Caliphate and Kingship in Medieval Persia*, P.36.

<sup>115</sup> *Ibid*, P.38.

the Muslim community. As long as the *Imāns* were alive, the existence of any other *Imām* was illegitimate, hence all the 'Abbāsīd authority had been illegitimate.<sup>117</sup> But even after the period of the *Imāns* was over, the minimum criteria for the legitimacy of the *Imāmate* was that the ruler was required to believe that all the authority belonged to the *Imām*. In other words no *Sunnite* was qualified to hold the legitimate authority as a ruler. The best solution that the *Imānīs* found to deal with the problem was to adopt the method of the *Mu'tazilite*. The incorporation of the rationalistic arguments, therefore, now began to form a regular part of their teachings.<sup>118</sup>

Luckily for them, this synchronized with the need of the *Buwayhid* rulers. The *Buwayhids* provided all the patronage to the *Imānī* scholars whose books later on began to be regarded as the text for the *Imānī* religion.

al-Mufīd (d.413/1022) was the first famous jurist to reinterpret some of the *Shī'ite* views according to the rational method. Unlike his predecessors Kulaynī (d.328/939) and Sudūq (d.381/991-92) who confined themselves to revealed texts as interpreted by the *Imāns*, he relied both on the religious as well as the rational interpretations in explaining the fundamental concepts like the *Imāmate* and occultation.<sup>119</sup> He was officially encouraged in his views. 'Aḍud al-Dawla, is said to have paid personal visits to his home. After him, his pupil, al-Murtaḍā carried the same principle to its logical conclusion. Being a high favourite of the official authorities, he altogether relied on rational method and preferred to

<sup>116</sup> Ibn Miskawaihi, The Experiences Of The Nations, vol. II, P.443; Ibn Kathīr, al-Bidāya vol. 11, pp.251-252

<sup>117</sup> Madelung Wilferd, "Authority in twelver Shiism in the absence of the Imām"; Religious Sects And School In Medieval Islam, P.170.

<sup>118</sup> Ibid, P.167.

<sup>119</sup> A. J. Newman, The Development and Political Significance of the Rationalist (usūlī) and Traditionalist (Akhbārī) Schools in Imāmī Shi'ī History from the Third/Ninth to the Tenth/Sixteenth Century A.D., P.5.

apply it even where it conflicted with the *Shīite Fiqh* principles. Whereas his predecessors Kulaynī and al-Ṣudūq did not allow any kind of association with non-*Shīite* authorities, both al-Murtaḍā and his teacher al-Mufīd redefined the nature of illegitimate authority and permitted much greater accommodation with secular authority.<sup>120</sup> Again with the authorities, such a stand was consistent with the mode of their policies. The formation of cordial relations with the *Sunnite* population as well as with the Caliph was their choice. The rational interpretation of religious principles therefore suited their purposes best. Their quest for a better relationship with the *Sunnites* can be judged by the following remarks in the *Encyclopaedia of Islam*: “it is said that at this moment when the four schools remaining to the *Sunnites* were to be defined by them as exclusively orthodox, they would have wished that their form of *Shīism* might be recognized at the heart of *umma* as the fifth authorized school.”<sup>121</sup> al-Murtaḍā along with his brother Rāḍī was, therefore, asked to play the role of intermediary between the Caliph and them on the one hand and between the population and themselves on the other.<sup>122</sup>

We can judge from this gradual shift from the age of Kulaynī to the age of al-Murtaḍā that the rational reinterpretation of *fiqh* principles by the *uṣūlīs*, afforded the accommodation to the *Sunnite* political institutions as they worked under the Caliphal set-up. The *Buwayhid* rulers did not confine their patronage to the scholars of the *Shīite* circle, they patronized the *Sunnī* scholars as well. Abū-Bakr al-Bāqilānī, an orthodox *Sunnite* scholar, was appointed as the tutor of ‘Aḍud’s son.<sup>123</sup> The highly distinctive place that al-Māwardī enjoyed at the court of Jalāl ‘al-Dawla cannot be over-emphasized. The post of

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<sup>120</sup> Ibid.

<sup>121</sup> CL.Cahen, art. “Buwayhids or Buyids”, *Encyclopaedia of Islam*, vol. 1, P.1352.

<sup>122</sup> Ibid.

the *wizārate* was not confined to the *Shī'ites* alone but the orthodox *Sunnites* were also raised to the post and shared the responsibilities of administration with the Amīr. For instance in the reign of Bahā' al-Dawla, 'Amīd al-Juyūsh was raised to the post of *wizārate*. By his neutral and just policies, he was able to restore peace to the dynasty. He disallowed the *Shī'ites* from celebrating their ceremonies on the eve of *Muḥarram* and completely wiped out the Bandits and 'Ayyārūn. In the post 'Aḍud period we also see a continued cooperation of the authorities in preventing the followers of both communities from celebrating their festivals publicly. In the year 393/1002,<sup>124</sup> during the reign of Bahā' al-Dawla, both the *Shī'ites* and the *Sunnites* were disallowed to perform different rituals on the eve of *Muḥarram*. In the same way, in 398/1007, when the *Shī'ites* *Sunnite* riots erupted, the Caliph Qādir bi Allah, on the one hand ousted the *Shī'ite* jurist, Ibn Mu'allim, and on the other hand disallowed the *Sunnite* story tellers to earn money by taking the name of Abū Bakr and 'Umar.<sup>125</sup> Pursuing neutral policies thus restored peace. The Caliph was equally generous in giving patronage to the *Shī'ite* 'ulamā'. In the face of the common danger of the *Fāḥmīd* attack, the 'ulamā' of both communities were summoned to put the signatures on the resolution declaring their genealogy to be spurious. The Caliph Qadir bi Allah alongwith Bahā' al-Dawla secured the signature of Sharīf brothers as important.<sup>126</sup> The *Shī'ite* 'ulamā' took these favours by the Caliph positively. Accordingly we see the composition of a famous poem by al-Murtaḍā on the accession of the Caliph Qā'im bi Amr Allah.<sup>127</sup> In the post-'Aḍud period when the disputes arose between the *Buwayhids* and the

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<sup>123</sup> J.L.Kraemer, The Humanism In The Renaissance Of Islam, P.43.

<sup>124</sup> Ibn al-Athīr, al-Kāmil, vol.9, P.178

<sup>125</sup> Ibn Kathīr, al-Bidāya, vol.11, P.290

<sup>126</sup> Heinz Halm, Shiism, P.53

<sup>127</sup> Ibn Kathīr, al-Bidāya, vol. 12, P.29.

Turkish soldiery the Caliph was accepted as a mediator to put an end to these disputes. The fact that his decision was accepted and carried out reflects the existence of a good understanding between both.<sup>128</sup>

When the army rose in rebellion against the *Buwayhid* Amīr, Jalāl al-Dawla, due to a delay in payment of salary, it was again the Caliph who came to his rescue and eventually succeeded in persuading them to depart from there on good terms with the Amīr.<sup>129</sup> On another occasion when Jalāl al-Dawla was forced to evacuate the capital city again due to an army rebellion, he took shelter in the palace of al-Qā'im.<sup>130</sup> Differences indeed arose on different occasions but were ultimately resolved. Services of the 'ulamā' of both the communities were acquired to resolve the differences. al-Māwardī also played an important role in bringing both parties together. He mediated on behalf of the Caliph and persuaded the *Buwayhid* Amīr Jalāl al-Dawla to accept the demands of the Caliph.<sup>131</sup> Because he was equally trusted by the *Buwayhids*, they acquired his services when differences arose between themselves.<sup>132</sup> The Caliph also acquired al-Māwardī's services and sent him as an ambassador to Tughril Beg.<sup>133</sup>

As mentioned earlier, the Caliphate recovered some of its authority during the later half of the *Buwayhid* rule. The rise of powerful dynasties was a strong factor, which led to the development of this situation. The constant profession of loyalties by the provincial dynasts and their request for the titles and legitimacy added more prestige to the Caliphal dignity. However, despite their professions of loyalties to the Caliph, their assumption of authority

<sup>128</sup> Mafizullah Kabir, *The Buwayhid Dynasty of Baghdad*, P.200.

<sup>129</sup> Ibn al-Athīr, *al-Kāmil*, vol.9, P.446

<sup>130</sup> Mafizullah Kabir, *The Buwayhid Dynasty of Baghdad*, P.104.

<sup>131</sup> Ibn al-Jawzī, *al-Muntazam*, vol.15, PP.285-286

<sup>132</sup> Ibn Kathīr, *al-Bidāya*, vol. 12, P.36 ; Ibn al-Athīr, *al-Kāmil*, vol.9, P.455

was illegal because they were guilty of violating the principle of obedience to the Caliph and assumed control without his prior consent. So the jurists were faced with the problem of their legitimacy: Was it legitimate on their part to exercise authority without prior permission of the Caliph and afterwards making a request for legitimacy? Was it not a deviation from the regular and formal appointment by the ruler? al-Māwardī deals with this problem under the heading of *Emirate by force* ( *Imārat Istīla*), which we shall examine now.

### **Emirate by Force ( *Imārat Istīla* )**

To form a correct estimate of al-Māwardī's views on the 'Emirate by Force', we may begin with the qualifications of the Caliph as given in the al-Aḥkām and deemed necessary for his office. The following are those qualifications:

Justice together with all its conditions;

Knowledge which equips him for *ijtihād* in unforeseen matters and for arriving at relevant judgements;

Good health in their faculties of hearing, sight and speech such that they may arrive at a sound assessment of whatever they perceive;

Sound in limb, free of any deficiency which might prevent them from normal movement;

A judgement capable of organising the people and managing the offices of administration;

Courage and bravery enabling them to defend the territory of Islam and mount *jihād* against the enemy;

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<sup>133</sup> Ibn al-Jawzī, al-Muntazam, vol.15, P.289



Of the family of the *Quraysh*, because of the text (of a Prophetic *ḥadīth*) on the matter and by virtue of consensus.<sup>134</sup>

The portfolio of *wizārat al-Tafwīz* is of paramount importance next only to that of the Caliph himself.<sup>135</sup> al-Māwardī thought it necessary for the holder of the portfolio to possess qualifications similar to those of the Caliph. Although, he was exempted from the condition of the lineage of the *Quraysh*,<sup>136</sup> in view of the importance of the office, two extra responsibilities were entrusted to him. al-Māwardī says that he ought to be capable in two matters with which he is to be entrusted: war and *kharāj*.<sup>137</sup>

The scope of these responsibilities is by no means exhausted as we find that al-Māwardī has reiterated their importance and considered them necessary both for Amīr *Istīlā* and Amīr *Istikfā*.<sup>138</sup> It is necessary to define both emirates as stated by al-Māwardī in the third chapter of the *al-Aḥkām*. The Amīr *Istikfā* is one appointed by the choice of the Caliph in the areas still under his control.<sup>139</sup> The Amīr *Istīlā*, on the other hand, is one who has imposed his rule without prior consent of the Caliph.<sup>140</sup> al-Māwardī required both of them to possess all the above qualifications, which he mentioned in the context of both the Caliph and *wazīr*. In the former case no one was thought eligible to hold the office unless he possessed the required conditions, and the Caliph was bound to exercise his choice among the qualified candidates. In the latter case the task of the Caliph was facilitated if the usurper already possessed the required qualifications.

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<sup>134</sup> al-Māwardī, *A.S.*, P.12

<sup>135</sup> *Ibid*, P.37.

<sup>136</sup> *Ibid*.

<sup>137</sup> *Ibid*.

<sup>138</sup> *Ibid*, PP.48-49.

<sup>139</sup> *Ibid*, P.48.

<sup>140</sup> *Ibid*, P.53.

al-Māwardī thus proposed to recognize the provincial dynast as a legitimate ruler of the province where he usurped the authority without approval of the Caliph. From recommendation of granting legitimacy to the usurper as a full-fledged ruler of Muslim lands subject to the fulfillment of conditions of pact, that we shall deal with shortly, follow some important consequences.

The usurper was required to enforce the right order through fulfillment of the conditions of the pact under the direct supervision of the Caliph.

It was necessary to trust the usurper in the application of the right order if he was qualified to enforce it, i.e.; if he possessed all the qualifications stated by al-Māwardī.<sup>141</sup>

If he lacked those qualifications, he could still be regularized provided he accepted the representative from the Caliph for assisting him in carrying out the business of the province according to the requirements of religion and justice.<sup>142</sup>

Usurpation continued to be an unlawful means of acquiring authority. Even after regularizing the usurper, al-Māwardī did not consider the situation to be a substitute for the regular one when authority was acquired through lawful means.<sup>143</sup> It was therefore tolerated under the law of necessity.

The idea behind this legitimization was to deal with the irregular situation, consequent upon the act of usurpation, in the best possible way if it was impossible to rectify it according to ideal requirements. With the weakening of the 'Abbāsīd Caliphate the tendencies to assume autonomy in the outlying regions increased. However, the rulers in such areas, as a matter of policy, bound themselves to render allegiance to the Caliph who

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<sup>141</sup> Ibid, PP.54-55.

<sup>142</sup> Ibid, P.55

<sup>143</sup> Ibid.

was considered as the lawful occupant of authority throughout the Muslim lands. al-Māwardī, in the opinion of Gibb, was the first thinker who subjected it to a thorough treatment by rationalizing not only what had happened in the past but also by regularizing contemporary and future practices.<sup>144</sup>

Some dynasts had become so powerful that taking possession of the Central Provinces was not a difficult task for them. But out of reverence for the Caliph, who was recognized as the supreme legitimate leader in the eyes of the Muslims<sup>145</sup>, they rendered allegiance to him and avoided such a step. al-Māwardī, therefore, thought it necessary to regulate the mutual relationship between the Caliph and the *Amīr*. But he had to be careful that granting them concessions should be perfectly in accordance with the juristic theory of the Caliphate which he had propounded in the *al-Aḥkām*.<sup>146</sup> We have seen earlier that in the Central Provinces he proposed arrangements according to which a working relationship was established between the Caliph and the *Buwayhid* rulers. The Caliph was urged to reconcile with the exercise of his nominal control and delegate all the powers to the *Buwayhids* in administrative affairs. The *Buwayhids*, in turn, were required to accept the leadership of the Caliph in religious affairs and were also obligated to refrain from showing any act of disobedience to the Caliph. These two acts, however, were insufficient for the acquisition of their legitimacy unless they enforced the right order based on religion and justice.<sup>147</sup>

This was the pivotal point on which al-Māwardī's theory of the Caliphate was based. The purpose of all the arrangements, as he went on to explain, was to prevent any break in the continued application of the commandments of the right order based on religion and

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<sup>144</sup> H.A.R.Gibb, "Māwardī's theory of Caliphate"; *Studies on Civilisation of Islam*, P.162.

<sup>145</sup> Hanna Mikhail, *Politics and Revelation*, P.43

<sup>146</sup> H.A.R. Gibb, "Māwardī's theory of the Caliphate", *Studies on Civilisation of Islam*, P. 162.

justice.<sup>148</sup> The vast concessions granted to the Amīr were actually in recognition of his overwhelming power, which, though sometimes exercised arbitrarily against the Caliph, were never exercised to the detriment of the system of the Caliphate. al-Māwardī's formulation, therefore, overlooked the occasional lapses of the *Buwayhids*, and acknowledged their services of continuing the old system, which did not suffer any break at their hands.

As the head of the Muslim community, the Caliph was required to call upon a provincial dynast if he found the Amīr wanting in the enforcement of just order. The authority entrusted to the Amīr was, therefore, a great responsibility, which was to be withdrawn if the purpose remained unfulfilled.<sup>149</sup> In the same manner al-Māwardī worked out a compromise between the Caliph and the provincial dynast to ensure the enforcement of the right order. If the dynast did not fulfil the object, the Caliph was required to withdraw legitimacy from him.<sup>150</sup>

Both situations had occurred in the distant past and had persisted up to al-Māwardī's own time. The only difference was that in the Central Provinces the Caliph willingly delegated his powers to the Amīr, whereas the dynast in the outlying province assumed authority without prior consent of the Caliph. He ousted the appointee of the Caliph and replaced the Caliph's rule with his own rule. al-Māwardī avoided calling the situation at the centre an irregular one because the Caliph had willingly transferred his authority to the

<sup>147</sup> al-Māwardī, *A.S.*, P.54

<sup>148</sup> *Ibid*, PP.53-54

<sup>149</sup> *Ibid*, P.34.

<sup>150</sup> Gibb, *Māwardī's theory of the Caliphate*, P.162, Gibb argued that Māwardī proposed two different sets of arrangements for the Central Provinces and the outlying provinces. Māwardī gave vast concessions to provincial dynast (granting legitimacy even if he is guilty of neglect of enforcement of right order). Whereas no such concessions were given to the Amīr in central province. It is clarified that both the Amīr

Amīr through delegation, as we have previously seen in the case of Ibn Rā'iq. In the case of the outlying regions the developments began in an opposite manner. Here the principle of the delegation was made to work after the assumption of power by the dynast. In the former case the Amīr assisted the weak Caliph in implementing the policies of the government and the Caliph's acceptance of his assistance authorized the Amīr to lawfully carry out the administration of the government. In the latter case, no prior permission of the Caliph was sought and the delegation of the Caliph was requested after the establishment of the rule. Delegation, therefore, without imposing certain conditions, which should clearly have reflected subordination on the part of governors would have been ridiculous. al-Māwardī, therefore, imposed seven conditions on the provincial governor, the fulfillment of which would legitimize his rule. The Following are those conditions as stated by al-Māwardī in the al-Aḥkām:

- Protection of the office of *Imānate*, which is the successor of Prophethood, and the organisation of religious affairs, so that this obligatory institution of the sharī 'a is maintained and all rights and duties issuing from it are preserved;
- A manifest obedience to the deen which negates all possibility of rebellious or fractious behaviour on the part of the Amīr;
- Unanimity in friendship and mutual help such that the authority of the Muslims may be above all other peoples;
- Contracts issuing from governmental authority which are connected to the deen should be concluded, and the rulings and judgement pertaining to them should be executed; they should also not be invalidated by mere imperfections in such contracts, or annulled by

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and the provincial dynast were equally responsible for the enforcement of right order for acquisition of

mistakes in such contracts, or annulled by mistakes in the obligations ensuing from such contracts;

- The receipt of money for something due in accordance with the sharī'a must be paid in such a way that the person acquits himself of what is owing and the person receiving it acts licitly;
- The *ḥadd*-punishment should be executed correctly and should be applied to those who deserve them as the body of the believers inviolable except from the rights of Allah and His punishments;
- The Amīr must be scrupulous in protecting the religion from the things prohibited by Allah, must command the obligations of the religion if it is being obeyed and call to its obedience if it is being disobeyed.<sup>151</sup>

Although al-Māwardī regarded the enforcement of these laws to be a shared responsibility of both the Caliph and the Amīr, the latter had heavier responsibilities due to his real commanding position. Indicating the purpose of these laws, al-Māwardī clearly stated that they were meant to comprehensively cover the right order based on religion and justice.<sup>152</sup> In the Central Provinces, al-Māwardī required both Caliph and Amīr to carry out the same obligations where his purpose was the same. In the context of ten duties, which al-Māwardī assigned to the *Imān*, the required conditions were mostly included. One obligation which belonged to the Amīr and therefore was omitted in respect of the Caliph was mentioned in the context of 'curtailment of liberty' where the Amīr was required not to show disobedience to the Caliph. In both cases it was the joint responsibility of both the

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legitimacy.

<sup>151</sup> al-Māwardī, *A.S.*, P.54.

<sup>152</sup> Ibid

Caliph and his Amīr (in the case of the Central Provinces) and the Caliph and Amīr (in the case of an outlying region) to fulfil the duties that originally belonged to the Caliph. al-Māwardī did not assign the Amīr at the Central Provinces a complete role in the fulfillment of obligations, which he conceded to the Amīr in the outlying Provinces. It was because of the presence of the Caliph who supervised the whole business carried out in his name. The *Buwayhids* were required to assist the Caliph in the execution of their responsibilities. The same treatment was accorded to the *Amīrs* at a provincial level who lacked the quality of the *Mujtahid*. They were strictly forbidden to exercise authority unless the Caliph appointed a delegate for assisting them in this task. al-Māwardī clearly warned that till such a time as this condition was met, the rulings of the Amīr would remain suspended.<sup>153</sup> In both cases strict measures were to be applied if the concerned authorities showed laxity in running public affairs under the Caliphal authority. In the Central Provinces, the Amīr was required to show manifest obedience to the Caliph and act strictly according to the requirements of religion and justice. If he failed to achieve these objectives in a desired manner, the Caliph was then required to summon someone who would rid the Caliph and his subjects of Amīr's rule.<sup>154</sup>

No such method was available at the disposal of al-Māwardī to punish the provincial dynast. He, therefore, sought an alternative method of proposing to withhold legitimacy from him until he accepted a delegate from the Caliph for his assistance in the enforcement of the right order based on religion and justice.<sup>155</sup> al-Māwardī, however, did not consider the presence of the Caliph's representative necessary if the provincial dynast possessed the

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<sup>153</sup> Ibid, P.55

<sup>154</sup> Ibid.

<sup>155</sup> Ibid.

required qualifications. In that case, he was qualified to carry out the required conditions of the pact as mentioned before. If he did not possess those qualifications, he was bound to seek guidance of the Caliphal representative whose presence was necessary to make sure that all the conditions of the pact were carried out.<sup>156</sup> Under both arrangements it was a carefully worked-out compromise between the Caliph and the holders of actual power for continuing the right order based on religion and justice in an uninterrupted manner.

In formulating the conditions of both the pacts, al-Māwardī was influenced by the circumstances of the past and his own time. At no stage in the Central Provinces did any ruler exercising temporal authority refuse to acknowledge the authority of the Caliph. The role of the Caliph in matters of law and religion also remained unchallenged. Moreover, all the temporal authorities regarded the Caliph as the main authority in whose name all official business was carried out. No act was lawful –no appointment valid unless it was carried out in the name of the Caliph. Hence al-Māwardī did not regard the situation as irregular. By declaring the continuation of the right order based on religion and justice as a shared responsibility of both the Caliph and the Amīr, al-Māwardī overcame the problems. But at the level of the outlying regions, al-Māwardī, even after fulfillment of strict conditions, called the situation an irregular one.<sup>157</sup> al-Māwardī's purpose in doing so was to reinforce the importance of Caliphal control over the people of the whole of the Muslim world. The *Fāṭmīds* had established a rival Caliphate in North Africa and Egypt. In Spain the universal claims of the 'Abbāsīd Caliphs were not accepted any longer. Hence it stood in further danger of being treated as an institution whose days were now over.<sup>158</sup>

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<sup>156</sup> Ibid.

<sup>157</sup> al-Māwardī, *A.S.*, P.55

<sup>158</sup> A.H Siddiquī, *Caliphate and the Kingship in Medieval Persia*, P.46.



Moreover, there were tendencies on the part of some provincial dynasts to overlook its authority and had these been allowed to persist, the consequent destruction of the Caliphate would have brought in its wake the loss of the bond of unity between them owing to allegiance to the Caliph.<sup>159</sup> al-Māwardī, therefore, maintained it to be a necessary institution. Even in the time of its weakness the irregularities consequent upon its weakness could be met partially by temporary arrangements out of necessity. The same theme recurs through the text of al-Māwardī under the heading of *Imārat Istīla*. Sometimes the concessions to the Amīr are justified to transform the irregular situation into a regular one.<sup>160</sup> Sometimes it is called a departure in its laws and condition, only allowed to save the continued application of *sharī'a*.<sup>161</sup> Sometimes these concessions are defended as being permissible only in conquest and under compelling circumstances.<sup>162</sup>

By thus declaring the situation an irregular one even after fulfilling all the requirements of the pact by the provincial dynast, al-Māwardī wanted to put an end to the misuse of aggression in the future. By the same token he also legitimized the *Buwayhid's* demand of submission from the provincial dynasts. In the case of failure on their part to comply, the *Buwayhid's* annexation of their lands could be legitimate.

The irregular situation consequent upon the act of the usurper could be brought back to normal in one of two ways: Either the Caliph should have forced the usurper into obedience because he was both religiously and legally bound to obey the Caliph even if he was bad. This was obviously impossible due to the overwhelming position of the dynast. An alternative method was to induce him to submit to the authority of the Caliph. Although it

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<sup>159</sup> Ibid

<sup>160</sup> al-Māwardī, *A.S.*, P.54.

<sup>161</sup> Ibid, P.53.

too could not be fully realized, it was not altogether without prospects. Even in its partial fulfillment al-Māwardī perceived the possibility of compromise that could be acceptable to both parties. The following factors went in support of the pact:

(1) Whereas it was the strong desire on the part of the dynasts to exercise authority, they had no aversion to submission to the control of the Caliph in religious affairs. Gibb says that at no stage during his career did Maḥmūd ever show disobedience to the Caliph or to any of his governors.<sup>163</sup> Hence it was not impossible to press them for more in favour of the Caliph in return for the legitimacy they so restlessly desired.

(2) In the eyes of both the Amīr who exercised the power, and the subjects whom they governed, the Caliph was the supreme legitimate leader of the Muslim world.<sup>164</sup> It was impossible to disregard the sentiments of the governed subjects, if the Amīr ever contemplated a long-term rule.

The provincial governors were therefore required to submit to the conditions of the pact and to the authority of the Caliph. The Caliph on his part was required to recognize their rule as the legitimate one if they carried out those obligations and were not guilty of violating the *sharī'a*. Due to lack of an alternative to regulate the situation in a proper manner this was regarded as the best available method to deal with the situation, but still was regarded as falling short of standard procedure under normal conditions.

The legitimate government thus coming into being was in defiance of the recognized constitutional principles. We have seen previously that in addition to recognizing the methods of accession to authority during the *Rāshidūn* period, al-Māwardī also legitimized

<sup>162</sup> Ibid, P.54.

<sup>163</sup> H.A.R.Gibb, Ibid, P.162.

<sup>164</sup> Hanna Mikhail, Politics and Revelation, P.43

the methods of choosing the Caliph during the periods of the *Umayyads* and the *Abbāsids* on the authority of the *'ulamā'* of the contemporary period. Now when he was faced with the problem of legitimizing the *Emirate* by force, it amounted to a breach of those principles on which the Caliphate was based. With the recognition of the usurper as a legitimate holder of authority, not only did the breach of moral and legal principles go unnoticed but the person guilty of this breach was also legitimized.

As for the violation of the constitutional principle, it was clear that after the seizure of authority by the dynast, its immediate restoration was not possible. Hence, it was necessary to ensure the enforcement of the *sharī'a* in an uninterrupted manner.<sup>165</sup> The dynast's act of rebellion continued to be unlawful because al-Māwardī did not treat the situation as a regular one.<sup>166</sup> On the contrary its holder after being forced into certain conditions was legitimized only to continue the right order in an uninterrupted manner. Similarly the deviation from the principle of obedience to the Caliph was still regarded as illegitimate. But once the deviation occurred in consequence of which the deviating person succeeded in establishing his control, he was conditionally legitimized so as to safeguard the rest of the *sharī'a*.<sup>167</sup> Conquest and usurpation continued to be illegitimate means of acquiring authority but the usurper and the conqueror were legitimized subject to enforcement of the right order based on religion and justice.

The principles thus applied on the political circumstances of his day were derived from al-Māwardī's religious thought. According to the rules of the *Sharī'a*, it is necessary for

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<sup>165</sup> al-Māwardī, *A.S.*, P.54

<sup>166</sup> *Ibid*, P.53

<sup>167</sup> *Ibid*, PP. 53-54

man to survive by eating lawful things.<sup>168</sup> But if survival itself is jeopardized due to scarcity of lawful food, one is allowed to eat unlawful food.<sup>169</sup> The scarcity of lawful food has relaxed the condition for survival, which is the more important of the two. Similarly, if recourse to lawful means was impossible due to incapacity of punishing the rebel, the main purpose of enforcement of the right order could not be surrendered in any case. Both relaxations were justified under compelling circumstances so as to put an end to their misuse in the future.

The above argument was reinforced by another one when al-Māwardī stressed the relaxation still further. He justified relaxation under the principle of public interest. al-Māwardī said: “ if it is feared that matters of general interest will be harmed, the conditions may be less rigorous than those relative to a particular or individual interest.”<sup>170</sup>

In the former case the principle of necessity was invoked and relaxation was allowed without differentiating between individual and collective necessity. In the latter one, further relaxation has been granted with reference to public interest.

The jurists argued that if it was impossible to simultaneously act upon two rulings of the *sharī'a*, the one involving the lesser harm should be adopted. The jurists consequently relaxed conditions, which were impossible to achieve for safeguarding public interest. The violation of constitutional rule regarding the accession to authority was tolerated to avoid bloodshed and outbreak of anarchy. al-Ghazālī (d.505/1111) justified the rule of the usurper under the principle of necessity. He said: “ necessity makes the restricted things lawful. We

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<sup>168</sup> al-Qur'ān, 2-172.

<sup>169</sup> al-Qur'ān, 2-173.

<sup>170</sup> al-Māwardī, Ibid, P.55.

know that eating carrion is unlawful. But death is more severe than it.”<sup>171</sup> al-Ghazālī further explained that rejecting authority of the ruler was not a wise course when it was impossible to change it. Even if it fell short of the full requirements, it should be considered as valid under the law of necessity. From this viewpoint we understand that al-Ghazālī regarded usurpation unlawful except under necessity, just as carrion was made lawful for a starving man.<sup>172</sup>

*Imān* al-Juwaynī (d.478/1085), who belonged to the same *Shafi’ī* school of jurisprudence as al-Māwardī, expressed similar views on the law of necessity and relaxation of conditions in the context of public interest. He said that the law of necessity governing the individual person was less flexible compared with the same law applying to the whole body of Muslims. In the case of the individual person, the relaxation of eating the unlawful food was suspended as soon as he was out of danger of death. But the same concession was to be granted still further if the Muslims as a body faced a problem in their collective capacity. In his book *al-Ghiyāthī*, he discussed the problem when the Muslims as a body were caught in some problem. His viewpoint was that just as under individual necessity unlawful becomes lawful, the same conditions apply to the Muslims in their collective capacity in a more pressing manner. He says: “ some people think that if Allah’s creation is involved in unlawful earning, the same law would apply to it which applied to a man who is forced to eat the dead. But this is not right. Because if the people as a whole continue to wait until they reach the stage of necessity, the energies will exhaust, ... physical strength will vanish, especially if one is repeatedly forced into such a condition. In that case the men

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<sup>171</sup> al-Ghazālī, *al-Iqtisād fī al-I’tiqād*, P.121.

<sup>172</sup> *Ibid*

of skill and industry will not be able to continue their professions. Agriculture and other means on which people depend for their livelihood will become extinct. This will result in wholesale mass killing, including those soldiers who are energetic and have fighting capabilities and protect the borders.”<sup>173</sup>

*Imān* al-Juwaynī clearly expressed that where Muslims in their collective capacity faced some problem, they were allowed more relaxation than in the case of an individual person.

al-Māwardī applied the same law to the political circumstances of his time. According to him, the continued enforcement of the right order was the main public interest. Violation of constitutional rule regarding accession to authority by the rebel could be overlooked under compelling circumstances, provided he continued to enforce the right order based on religion and justice under the supervision of the Caliph.

### **Summary & Conclusion**

The Turkish soldiers, recruited by the ‘*Abbāsids* for the benefits of the empire, eventually assumed the role of Caliph maker and the attempts on the part of the Caliphs to reassert their authority set both parties at war which in the long run proved detrimental to the Caliphate. In the tenth century, the precarious position of Baghdad treasury, restless desire of dynasts to exercise authority on behalf of the Caliph and the rise of powerful dynasties in the outlying regions reduced the control of the Caliphate to Baghdād and its surrounding regions. Despite its reduced role, the Caliph continued to be treated as a main legitimizing authority. Before the advent of the *Buwayhid* many dynasts of equal strength wanted to consolidate their authority but the Turkish soldiers retained the initiative. After

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<sup>173</sup> al-Juwaynī, *al-Ghiyāthī*: *Ghiyath al-Umam fi al-Tiyāth al-Zulam*, P.218.

the death of Tuzūn, a Turkish military chief, Ibn Shīrẓād succeeded him, for whom the task of handling the administration proved to be a difficult one. It gave Mu'izz al-Dawla a good opportunity to invade Baghdād and to consolidate his rule there.

The *Sunnite* Caliphate did not suffer abolition at the hands of those who did not believe in its legitimacy. Several practical considerations prevented Mu'izz al-Dawla from taking this hasty step. He was told that the replacement of the *Sunnite* by the *Shī'ite Imām* would mean the virtual transfer of authority from Mu'izz al-Dawla to the *Shī'ite Imām* and it would make the *Shī'ite Imām* as the source of all authority for his co-religionists. Due regard for the *Sunnite* population, who were in the majority, as well as the absorbed Turkish soldiers in the army who were also *Sunnites*, exerted powerful constraints to go on with the old system.

But the *Sunnite* Caliphate was also faced with some problems of legitimacy. al-Māwardī defended the *Sunnite* Caliph of the *Buwayhid* period on account of performing several functions that gave him a legitimate status. Religion, law and the judiciary continued to remain within the jurisdiction of the Caliph. The establishment of religious obligations continued to be performed through the person of the Caliph. The Caliph was still allowed a free hand to combat the innovations introduced into religion by the heretics. On many occasions the Caliph executed heretics, stopped innovations, and imposed some religious doctrines of faith thus allowing little scope for interference by innovations into the *Sunnite* faith.

Although the authority was transferred to the effective holder of power, he always met al-Māwardī's criterion of meeting the minimum requirement for recognizing the

constitutional supremacy of the Caliph. The *Buwayhids* strictly adhered to all the procedural requirements for the legal validity of their rule.

It was the principle of delegation that saved the Caliphate from extinction. Without being obligated to part with the Caliphate, al-Māwardī accommodated the real holder of power (Amīr) within the framework of the Caliphate. By constant emphasis on the importance of delegation by al-Māwardī, it necessarily followed on the one hand that the person of the Caliph was not an end in himself who was required to exercise authority regardless of time and circumstance. On the other hand, he was considered as a means to realize the end of enforcing the right order based on the religion and justice, but still a necessary means to sanction and supervise all the authority according to the religious requirements. For that end he was required to be content with the exercise of nominal control over the temporal affairs and delegate all the authority to the one who could exercise it effectively. But while exercising nominal control in temporal affairs, he was nevertheless made responsible for exercising supervision over the effective holder of power. Therefore his role was not altogether reduced to insignificance in temporal affairs. Similarly, the Amīr of the Caliph whose dominant role in power sharing was acknowledged because of his effective position to exercise the authority was obligated to submit to the requirements of religion and justice. Power acquired through illegitimate means was thus subjected to religion and justice and its onward exercise could be legitimate only with reference to the continued application of religion and justice.

The *Buwayhid* period has been characterized as a famous one for a *Shīite-Sunnite* concord on the official level. The instances of the co-operation between the Caliph and the Amīr outnumbered the instances of the strained relationship between the Caliph and Amīr



or when the Caliph faced humiliation. Throughout the *Buwayhid* rule of one hundred and ten years only five Caliphs were installed to exercise authority. Promotion of good will between the Caliph and *Buwayhid* Amīr was the result of practical measures as well as the interpretation of the principles of the *Shī'ite fiqh* in response to new developments. The efforts of the prominent jurists from both sides in bringing about reconciliation are worthy of note.

The problem of legitimacy during this period of time was not confined to the lands under the *Buwayhids* control. In outlying regions of the Islamic lands some powerful dynasties had come into being whose rulers professed constant loyalties to the Caliph but at the same time wanted to exercise their authority in an independent way. Assuming control without prior consent of the Caliph was an act of usurpation and doing away with a procedural requirements of the appointment. Recourse to the ideally best method of punishing the usurper was impossible due to the more powerful status of such a usurper. The best solution, therefore, according to al-Māwardī, was to force him into establishing the right order based on religion and justice as well as to undertake the procedural requirements in a strictly legal manner. In doing so al-Māwardī legitimized the rebel, without condoning the aggression which continued to be an illegitimate act under the principle of obedience to the Caliph. Legitimization of the dynast was directly related to the fulfillment of the above-mentioned conditions and his act of aggression, although still condemned, was allowed to go unpunished due to the overwhelming status of the dynast. Although it could not be a substitute for the ideally best form, it was still the best one under the constraints of the circumstances. Relaxations in respect of these arrangements were conceded under the law of necessity and public interest.

al-Māwardī required the persons holding the key posts in the administration to possess qualifications similar to those of the Caliph. It reflects his devotion to the continuation of the order, based on religion and justice, through different persons for which the Caliph was just one functionary. He did not insist on the exercise of all the powers that he attributed to the Caliph by the Caliph himself but in the changed circumstances he was quite content with the exercise of nominal control by him. Through the principle of delegation he saw no impediment in the way of the constitutional position of the Caliph if his Amīr exercised those powers on his behalf. Similarly al-Māwardī was quite content with the independent exercise of power by the provincial dynast if he too possessed the qualifications similar to those of the Caliph. In this case legitimacy too depended on the enforcement and observance of the right order based on religion and justice.

al-Māwardī's recognition of the monarch as playing an important role for assisting the Caliph in the discharge of his functions made him a legitimate figure throughout the Muslim lands in exercising power in an effective manner. The necessity of the Caliphate at this time symbolized the need of the preservation of unity among the Muslims as well as indicated, as Rosenthal observes, the religio-political unity of all the functions of the government, which had to be ultimately carried out through the lawful occupant of authority. Though divested of his erstwhile authority, the Caliph had still to exercise supervision over the monarchs and the then existing Sultans to confirm whether they were exercising their authority properly. The business of the Caliph was supervision and it was the responsibility of the Monarch through delegation to exercise authority attributed to the Caliph. The functions exercised by the monarch were to be carried out in the name of the Caliph, hence called by al-Māwardī the Caliphal functions. al-Māwardī's insistence on the

delegation of authority to the Amīr by the Caliph indicates the importance of the Amīr in the administration of public affairs.

Moreover dealing with the question of legitimacy al-Māwardī in the context of his time not only sought the basis of legitimacy for the Caliph but also of his Amīr who had assumed the effective control. How was he required to manage the public affairs? What should be the limits of his authority? al-Māwardī dealt with these questions at great lengths in his books.

We have seen that *Imān*'s legitimacy of authority largely depended upon enforcement of the right order based on religion and justice. If he carried out his responsibility in a right manner, he was entitled to command the loyalties of the subjects. But what was to be done if the ruler ceased to carry out his responsibilities in a proper manner? Under what circumstances did al-Māwardī allow the subjects to strive for change? Were all the individuals responsible in the same manner to bring about the reform in the society? Or did their roles differ depending upon their place in the society? Did the '*Ulamā*' have some special role and functions to perform? The proper answers to these issues will form the subject matter of our next chapter.

## Chapter Six

### al-Māwardī's Concept of Political Change

#### Ruler and his Responsibilities

We have seen in our previous study that al-Māwardī did not consider the *Imām* merely an executor of law. He considered him a religious leader who was responsible for the establishment of religious obligations. He had to defend the faith, lead the Muslims in prayer, establish *Zakā*, the fasting and facilitate *Hajj* obligation. He was also a moral reformer and was required to be equipped with thorough religious understanding and knowledge.<sup>1</sup> Throughout his writings there was a constant emphasis on the point that instead of directly imposing religious commandments on the deviants, the ruler was required to bring them back to the right path through discussion and persuasion. He had to bring about harmony among members of society through mediation and exhortation. He had to protect the rights of widows, look after the slaves, and prevent unjust treatment of the masters towards their animals.<sup>2</sup> The ruler was at once a religious leader, a social reformer, and a head of state. To effect reform in the society he had initially to act in the capacity of a religious and a social reformer and was justified to use force as a last resort or where it was absolutely indispensable. To save the subject from the rigours of the law he had to find excuses on their behalf, avoid unnecessary probing into their affairs, and was required to remain careful not to violate any human rights in the process of implementing the laws.<sup>3</sup> He had to patrol the streets, remove the sufferings of a needy person, and guide the deviant to

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<sup>1</sup> al-Māwardī, *A.S.*, P.11.

<sup>2</sup> *Ibid*, P.346.

<sup>3</sup> *Ibid*, P.347.

the right path in the light of his religious knowledge. In short he was responsible to bring reform at the level of individual, society, and state. He had to utilise all the means with the right method and through different stages in order to accomplish the reform in a desired manner.

From above analyses it is obvious that al-Māwardī considered the ruler the most effective person for bringing about religious, social and political reform. He was responsible for carrying out this obligation on behalf of all the Muslims in the community. al-Māwardī regards the obligation of reform as incumbent on all Muslims as a *farḍ Kifāya*.<sup>4</sup> Some people performing it on the behalf of all the Muslims would absolve all the Muslims from its performance. This was against the extreme views of the *Khārijīs* and the *Zaydīs* who considered the performance of this obligation to be necessary on all occasions.<sup>5</sup> The famous *Shafi'i* jurist, Imām al-Ghazālī, shared al-Māwardī's view and maintained it to be a *farḍ Kifāya*.<sup>6</sup> Both drew their conclusions from the same *Qur'ānic* verse in which Allah says: "let there be a party among you who would call towards good and prohibit evil and they will be successful."<sup>7</sup>

### **Reasons for the Ruler's Responsibility to undertake the Obligation**

In the light of the above verse both were agreed that it should be the ruler of the Islamic government in the first instance who should undertake this responsibility in order to absolve the rest of *Umma* from this duty. Although al-Māwardī did not exclude the private citizen from performing this function,<sup>8</sup> he considered it one of the basic responsibilities of the

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<sup>4</sup> Ibid, P.337.

<sup>5</sup> Lambton, *State and Government in Medieval Islam*, P.310.

<sup>6</sup> Ghazālī, *Ihyā' 'Ulūm*, vol. 2, P.404.

<sup>7</sup> *al-Qur'ān*, 3:104.

<sup>8</sup> Ibid, P.337.

government on account of several reasons. The following is a brief account of those reasons:

**Resources:**

The people doing wrong to others are generally susceptible to the authority of the government. The subjects, therefore, naturally look towards this institution to redress the wrongs. It is an agency which restores their rights and protects them from injustices. It can force the culprits to obedience by use of force. Although government acts through other institutions like the judiciary and the *Mazālim* to restore the rights of people, it is only through *Muhtasib* that it is legally entitled to take preventive measures to do away with evil. Commenting upon the relative strength of the *hisba* over the judiciary al-Māwardī says: “the *Muhtasib* may investigate those matters in which he is commanding concerning the good or forbidding evil, even if the litigant seeking his help is not present - whereas the *Qāḍī* may not involve himself like this unless the litigant is present from whom he may then hear his claim; if, however, the *Qāḍī* does involve himself, then he excludes himself from the post to which he has been appointed, and infringes the basis of his authority; second, the *Muhtasib* has to exercise the sovereignty of a government official, and so he may have recourse to the haughtiness and arrogance of the forces of order when dealing with reprehensible matters, whereas the judiciary may not: *hisba* involves enforcement and any excessive behaviour on behalf of the *Muhtasib* when exercising his sovereignty and severity is not regarded as an injustice or undue harshness; the *Qāḍī*, however, is there to establish justice and should rather act with gentleness and gravity - and so any departure from this, such that he assumes the imperviousness of the *hisba*, represents an outrage and an excess...”<sup>9</sup> Similarly its realm is different from that of the *mazālim*. He listens to those cases because of incapacity of the

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<sup>9</sup> Ibid, P.340.

*Qāḍī*, whereas the *Muḥtasib* deals with those cases where the *Qāḍī* has been prevented from interfering. In short the department of *Iḥtisāb* is endowed with the resources that entitles it to achieve the obligation in a better way than its realisation through other means. al-Ghazālī also shows his preference to assign the job to those people who are strong and powerful. In case they are not equipped with these resources, they should be content with merely treating it as bad. A Government endowed with the power and strength qualifies to be the fittest organ for achieving this objective.<sup>10</sup>

### Financial Reasons

Private persons committed to do this obligation on their own are also involved in daily earnings. They can not, therefore, do it in an equally good and effective manner like a man officially designated for doing this job. Being paid by the authorities for this task, the officially designated person would be free from financial worries and is more able to concentrate on his work with singular attention and devotion. Hence in the course of Islamic history whenever the *Muḥtasib* was given an effective role, he received a handsome salary.<sup>11</sup>

### Religious Knowledge

The job by its nature was a difficult one and needed people with thorough knowledge and a comprehensive understanding of religion. Only qualified people thoroughly learned in religious affairs could perform it properly.<sup>12</sup> al-Māwardī stressed the requirement that had always been thought necessary for the *Muḥtasib*. Pointing to this necessary qualification of the *Muḥtasib* the Encyclopaedia of Islam says: “ the *Muḥtasib* had to be a man known for his moral integrity and for his competence in the matters concerning the law; he was

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<sup>10</sup> al-Ghazālī, *Iḥyā' 'Ulūm*, vol. 2, P.188.

<sup>11</sup> Basme'e Ansārī, art, “Ḥisba”, *Encyclopaedia*, vol. III, P. 492, quotes an example of Indian Sub-continent where under the rule of Sulṭān Tughlaq, the *Muḥtasib* was an officer of great dignity and drew the monthly salary of 8,000 *tankas*.

therefore, usually a *faqīh*---.”<sup>13</sup> Privately quite a few people were equipped with such a vast learning. Consequently they were unable to undertake this job effectively, no matter how committed they might be in carrying it out. Stressing this aspect of the obligation Ghazālī went on to say that without religious knowledge, one could not distinguish between good and wrong.<sup>14</sup> The task could therefore be properly transferred to government authorities to choose the men with proper experience and the required religious knowledge.

### **Wider Recognition**

An isolated person has a limited circle of acquaintance and is relatively less identified among the people. People were therefore quite naturally expected to turn towards the man officially appointed for this job for redressing the wrong. The famous *Ḥanblī* scholar, Ibn Taymiyya, highlighting the same fact, attributed the performance of this obligation to the official authorities. He said: “men in authority have more ability to perform it compared to others. Hence the obligation is incumbent on them more than anybody else. The basis of obligation is ability. It is therefore obligatory on the man to the extent of his ability.”<sup>15</sup> In the case of an official appointment, it was naturally expected that people would look towards him for solving their problems in the light of his religious knowledge.

On account of the above reasons the most qualified persons for carrying out this task were those appointed by the governmental authorities. They were endowed with the resources, knowledge, and power that other citizens could hardly possess in their private capacity. If they performed this responsibility in a right manner, other citizens would be absolved of it. The subjects could indeed share this responsibility with the government but could not play an effective role similar to theirs.

<sup>12</sup> al-Māwardī, *A.S.*, P.362.

<sup>13</sup> CL.Cahen and M.Talbī, art. ‘Ḥisba’, *Encyclopaedia of Islam*, vol. 3, P.490.

<sup>14</sup> Ghazālī, *Iḥyā’ ‘Ulūm*, vol. 2, P.421.

<sup>15</sup> Ibn Taymiyya, *al-Ḥisbā fi al-Islam*, P.37.



### **Nature of the Task**

Contrary to general assumptions, the task entrusted to the governmental authorities was much more complicated. At first impression it looks quite simple that the government could implement injunctions in an official capacity and curb evil by force. But a close examination of al-Māwardī's writing on the subject reveals that the task was to be carried out with great care through various stages and with great precision if the Islamic injunctions were not to be violated. There were inviolable human rights which prevented the *Muhtasib* from arbitrary exercise of the power and direct enforcement of all the commandments. The Muslim population was also to be conceived as consisting of various religious schools and there was a greater scope for the difference of opinion for each one of them.<sup>16</sup> Consequently the government was not allowed to impose injunctions pertaining to any creed under official tutelage. Similarly, in forcing the citizens to observe religious obligations the *Muhtasib* had to proceed very cautiously. He had to employ various means and tact; he had to bring the subjects to the right path through moral persuasion and threats of the hereafter and if all other means failed, the use of force was justified.<sup>17</sup> He had to perform his task in a way that neither any individual was allowed to endanger the integrity of religion and the Muslim society, nor was the society to be allowed to disregard the individuality of a person. By examining the responsibilities of the *Muhtasib* with regard to performance of this task we can carefully examine what it involved and how it was to be carried out.

### **Dual Responsibility**

It was a responsibility of the *Muhtasib* which was to be performed both at the level of an individual person and at the level of a group of persons. With regard to the fulfilment of

<sup>16</sup> al-Māwardī, *A.S.*, P.338.

<sup>17</sup> *Ibid*, P.349.

Allah's obligations, the subjects were to be identified as belonging to different categories. Thus if a man in association with other men gave up the prayer, the establishment of which was, according to al-Māwardī, the highest good (*marūf*), he was to be treated as a member of a group and the ruling applicable upon him were to be the same as over the rest of the people belonging to the same group. If as a group, the people of a given locality gave up congregational prayers, the *Muhtasib* had a right to force them with regard to its establishment.<sup>18</sup> In the case of the individual person, great latitude was to be given and care was to be taken regarding his punctuality. Personal excuses exonerated him from recommended obligations. But a man in the habit of missing the prayers was to be reprimanded so as to save society from the evil effects of his habits. In short, a distinction was to be made between the habitual and the ordinary persons and due regard was to be given to individual constraints.<sup>19</sup>

### **Respectful Attitude towards Different Schools**

This condition was incumbent on the *Muhtasib* both in the case of establishing the limits of Allah and the rights of individual over another. No man could be forced to act upon teachings which were contrary to his own school of jurisprudence. For instance, regarding the duty of the *Muhtasib* to establish prayer, al-Māwardī says: “no objection is to be made against someone who delays it, but is still within the time, as there is a difference of opinion amongst the *fuqahā'* as to the benefit in delaying it.”<sup>20</sup>

Realising the importance of the same principle with regard to mutual affairs of the people, al-Māwardī reiterates the same responsibility of the ruler. He says: “As for those transactions about which the *fuqahā'* differ, as to whether they are prohibited or not, then the *Muhtasib* should not get involved unless the arguments against their being prohibited

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<sup>18</sup> Ibid, P.342.

<sup>19</sup> Ibid. P.343.

are weak, and are only employed as a means to something which all are agreed is prohibited....”<sup>21</sup> *Imām* al-Ghazālī was also of the same opinion in this regard. According to him, for an evil to be regarded as evil, there must be a broad consensus.<sup>22</sup>

### Respect for Individuality

The *Muhtasib* involved in this task was required to give full regard to the individuality of a person.

It was incumbent upon him to find an excuse on behalf of the person responsible for the omission of an obligation. He was to be trusted for what he said and bringing him to task merely on the basis of suspicion was sheer ignorance. al-Māwardī cites an example: “ it is narrated that a *Muhtasib* asked a man going into a mosque wearing his sandals whether he also used them when he went to the lavatory; when the man denied this, the *Muhtasib* wanted him to swear on oath: this ignorance on his part, and an overstepping of the realm of *Ḥisba*- his bad opinion of the other had got the better of him.”<sup>23</sup>

From this it clearly followed how much a man was to be treated as trustworthy within the realm of his actions. Every man’s statement was to be trusted and his excuses accepted and the *Muhtasib* was bound to act accordingly. Unjust interference in his affairs and holding him accountable on the basis of mere suspicion adversely affected his circumstances. Here al-Māwardī’s viewpoint seems to be based on the following tradition of the Holy Prophet: “ it is narrated from Miqdam b. Ma’dīkarb and Abū-Imāma that the Holy Prophet (P.B.U.H) said that when an *Amīr* seeks excuses for the faults of the people he corrupts them.”<sup>24</sup>

<sup>20</sup> Ibid.

<sup>21</sup> Ibid, P.354.

<sup>22</sup> al-Ghazālī, *Ihyā’ ‘Ulūm*, vol. 2, P.419.

<sup>23</sup> al-Māwardī, *A.S.*, P.347.

<sup>24</sup> Allama Abī Tayyib, ‘Bāb fi al-Nahī ‘An Tajassus’., *‘Awn al-Ma’būd fi Sharah Sunan Abī Dāūd*, vol. 7.

## Right to Private Property

It was considered among the duties of the *Muhtasib* to take care of the needy and the travelers, restore the irrigation system, and reconstruct the mosques from the funds of the public ex-chequer.<sup>25</sup> These responsibilities were generally associated with his office throughout the course of Islamic history. According to the Encyclopaedia of Islam: “ he was responsible for the cleansing of the streets and, if necessary, for the repair of the city walls, for ensuring the supply and regular distribution of water, etc...”<sup>26</sup> But al-Māwardī considered it necessary subject to availability of funds and provided that their expenditure did not bring any burden upon the Muslims.<sup>27</sup> As al-Māwardī proceeds with the argument it followed that private property was considered the most sacred right of the individual, which even under the most critical conditions could not be jeopardised. If people of an area were caught in a critical situation due to shortage of funds, the people with sufficient means were responsible for rectifying this situation. But their responsibility was moral and not a legal one. The *Muhtasib* could not force them to contribute to the well being of the poor. He could, however, persuade the rich people to temporarily contribute if the large-scale migration of the masses encouraged the enemy to attack the city. It was then the responsibility of the Sultān to make permanent arrangements for bringing the city out of this critical situation. In the absence of the enemy’s attack, the residents of the area were to be given the choice either to migrate somewhere else or spend on the area to make it worthy of habitation.<sup>28</sup> It is then quite obvious that under most difficult circumstances the help of the poor as well as the restoration of the city was considered to be the responsibility of the government, which was not entitled to transfer the wealth from one class to another class.

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<sup>25</sup> al-Māwardī, *A.S.*, P.344.

<sup>26</sup> CL. Cahen and M. Talbi, art, *Hisba*, *Encyclopaedia of Islam*, vol. 3, P.488.

<sup>27</sup> al-Māwardī, *A.S.*, P.344.

<sup>28</sup> *Ibid*, P.345.

### Principle of Enforcement through Degrees and Stages

In enjoining virtue and preventing evil the *Muhtasib* was required to distinguish between habitual criminals who committed it openly and intentionally and those who committed crimes secretly and unintentionally. In the former case, he was required to promptly stop the criminals lest they should become a threat to religion and society. In the latter case he was required to proceed very carefully and was required to avoid applying legal means as much as possible. His attitude towards them was to be based on sympathy. He was required to threaten them with Divine wrath. He was also required to convince them through moral preaching. Unless the offence of the culprit was not made public, the *Muhtasib* was required to continue with the same strategy. al-Māwardī says: “Likewise, if he thinks that a man is omitting to do a *ghusl*, after being in a state of major impurity, or that a man is not doing the prayer or fasting, then he should not punish him on the basis of suspicion, nor subject him to reprimand; he may, however, on the basis of suspicion, admonish him and warn him of the torment of Allah for those who do not fulfil His rights.”<sup>29</sup> The *Muhtasib* was required to bear with people and restrict himself to moral preaching unless they were found guilty of open violation or became a threat to the foundations of religion and society. Similar attitude was recommended regarding the beggar who was apparently rich. The *Muhtasib* could merely exhort him because he could be a poor man. But if a strong man was found begging, the *Muhtasib* was responsible to stop and order him to work. Here al-Māwardī shows an added concern to cure the greed and idleness of this person and justifies the interference of the authorities in his case. If he did not desist from begging his wealth was to be forcibly spent on him. If he was short of money but was strong enough to earn, then he was to be forced to work and his money was to be spent on him.<sup>30</sup>

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<sup>29</sup> Ibid, P.347.

<sup>30</sup> Ibid, P.348.

### **Restoration of the Rights of the Weak**

Three things were considered necessary for the *Muhtasib* which included both the rights of people and the rights of Allah.

### **Protection of Widows**

This was rather a moral duty and made the *Muhtasib* bound to morally exhort the patrons of the widows. The patrons on their part were free to accept or reject his advice. The *Muhtasib* was not entitled to admonish them in case of their non-compliance.<sup>31</sup>

### **The protection of the rights of Slaves**

The *Muhtasib* was legally entitled to restore the rights of the slaves. If a master behaved unjustly towards his slave, the *Muhtasib* could hold the master accountable and prevent him from putting an additional burden on the latter.<sup>32</sup>

### **The protection of the Rights of Animals**

Likewise he was entitled to restore the rights of animals. If the owner of animals did not feed them properly or burdened them beyond their capacity, the *Muhtasib* could interfere and prevent the owner from doing so.<sup>33</sup>

### **Preventing Abuse of the Right to Privacy**

We have examined previously how sensitive al-Māwardī was in his suggestions with regard to the reform of the evildoers. He recommends different measures to guarantee the right to privacy and the sanctity of the individuality of a person. Probing into the affairs of a person was considered strictly forbidden. In the case of the evils being committed privately, al-Māwardī prescribed the scope of the *Muhtasib's* responsibilities in the light of

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<sup>31</sup> Ibid, P.346.

<sup>32</sup> Ibid, P.360.

<sup>33</sup> Ibid, P.360.

a prophetic tradition. The text of the tradition goes: “Whoever commits an ugly act, then let him veil himself with Allah’s veil; whoever divulges such an action openly, then we impose the *Hadd*-punishment of Allah on him.”<sup>34</sup> It is quite evident that the tradition takes into account the evil effects of sin on society if it is being committed openly and aims at doing away with it through such commandment. As for evil being committed privately, it was to be taken as a matter between Allah and man. But this concession regarding the privacy of a person was not to be considered to provide an unlimited excuse to habitual wrongdoers for practising various kinds of concealed evils. al-Māwardī formulated this principle from the behaviour of Caliph ‘Umar. Hence the *Muhtasib* was empowered to prevent major evils like fornication or killing of somebody which could not be rectified later on. In the time of Caliph ‘Umar a few people spied and prevented such evil and the Caliph did not disapprove of their action.<sup>35</sup> From this precedent al-Māwardī drew two principles: (1) a person could be officially appointed to conduct a probe like that; (2) an individual person in a private capacity was legally justified to do away with evil. However, this kind of probing was limited to extreme cases. If the evil was not of a serious nature, spying was unlawful. The rule was derived from the precedent of Caliph ‘Umar. al-Māwardī says: “it is narrated that ‘Umar, may Allah be pleased with him, went in amongst a group of people sitting together drinking wine in a place specially lit for the purpose, and said: “I have forbidden you to drink wine, and you sit and drink; I have forbidden you to light up these places, and you light them up;” to which they replied, “O Amīr of the believers, Allah has forbidden you to spy, and you have spied; and He has forbidden you to enter a house without first asking permission, and you have entered;” then ‘Umar, may Allah be pleased with him, said, “These two( reproaches of yours)for those two( of mine),” and he went away without

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<sup>34</sup> Ibid, P.353.

<sup>35</sup> Ibid, P.353.

getting involved any further.” On the basis of this incident al-Māwardī drew the conclusion thus: “ Thus anyone who hears the sound of forbidden instruments coming from a house, and the people are making their music clearly heard, then he should denounce them from outside the house: but he is not to impose himself upon them by entering, since what counts as abhorrent is what is manifest, and he is not to deliberately reveal anything else of this kind which is concealed.”<sup>36</sup>

### **Function of Mediation**

The *Muhtasib* had a right to mediate between two persons provided both of them agreed upon the person for the settlement of an issue. The *Muhtasib's* interference was unjustified unless both parties willingly brought the case before him. In order to be qualified to settle the case it was considered necessary for both parties to agree over their mutual rights. He was then empowered to restore the right of the wronged party and could admonish the offender. But in the case of denial of mutual rights the case was to be referred to the ruler or the judge.<sup>37</sup>

### **Some other Responsibilities**

The *Muhtasib* could settle the mutual injustices of the labourer and employer provided the points of dispute were agreed otherwise the matter was to be referred to the judge.<sup>38</sup> In the matters pertaining to health and education, his interference was justified. Levy on the authority of Maqrīzī referred to this function of the *Muhtasib* that schools had to be visited by him for making sure that the pupils were not punished severely.<sup>39</sup> Maqrīzī indicated just one aspect to be all-inclusive whereas al-Māwardī considered this responsibility of the *Muhtasib* to cover three things:

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<sup>36</sup> Ibid, PP.353-354.

<sup>37</sup> al-Māwardī, A.S., P.357.

<sup>38</sup> Ibid, P.358.



1. To inspect the methods which they employ to bring up children.
2. To ensure that their methods of teaching were good.
3. To ensure that they possessed sufficient knowledge.<sup>40</sup>

This was because in the case of negligence in health affairs life was endangered, whereas negligence on the part of teachers could corrupt the morals of the subjects.<sup>41</sup>

The overall control of different persons in the market with various professions fell within the realm of his responsibilities. For example, different professions involving honesty or dishonesty like colormaker or goldsmith, as well as checking the weights and measurements, required the supervision of the *Muhtasib*.<sup>42</sup> Referring to his responsibilities in this context, the Encyclopaedia of Islam says: “ more generally he had to watch for and combat all the types of shortcomings and dishonesty which could arise both in the manufacture and in the sale of commodities....”<sup>43</sup> He could hold the craftsman responsible to pay a fine in the case of the loss of things.<sup>44</sup> Such a ruling was again precedent-guided. Abū Zahra states this principle under the concept of *Maṣāliḥ Mursala* and traces its origins to the Caliph ‘Alī. He held the craftsmen responsible for the payment of money in case of the loss of a commodity out of negligence. To save the people from this loss there was no way short of curing the negligence of the craftsmen except to hold them responsible for making a payment for the loss.<sup>45</sup>

In short, he was responsible for contributing to every good and for promoting it as well as to suppressing all evils. He had to patrol streets and prevent people from peeping into

<sup>39</sup> Levy, *The Social Structure of Islam*, P.336; Maqrīzī, *Khiṭaṭ*, 1, P. 464.

<sup>40</sup> al-Māwardī, *A.S.*, P.358.

<sup>41</sup> al-Māwardī, *A.S.*, P.358.

<sup>42</sup> *Ibid*, P.358.

<sup>43</sup> CL.Cahen and M.Talbi, art. ‘Ḥisba”, *Encyclopaedia of Islam*, vol. 3, P.487.

<sup>44</sup> al-Māwardī, *A.S.*, P.358.

<sup>45</sup> Abū Zahra *Imām Mālik*, P.235.

other's houses.<sup>46</sup> If an *Imām* prolonged the prayer, he was to be prevented from putting an extra burden on the people praying behind among whom there were weak and old people.<sup>47</sup> He could reprimand the officials if they were slow in their work.<sup>48</sup> His duties also included the supervision of public morality. al-Māwardī regarded the expounding of the *Sharī'a* to be exclusively the work of a *faqīh* or a man qualified in religious learning. Consequently he suggested imposing a ban on unqualified people so as to save the people from their misleading interpretations. The principle was derived from the precedent of the Caliph 'Alī. (d.40/661) al-Māwardī says: " 'Alī b. Abī Tālib on one occasion passed Ḥasan al-Baṣrī while he was talking to the people and he put him to a test, saying, " what is the pillar of the *deen*?" to which he replied, " scrupulousness." Then he asked, " And what is it which blights it?" to which he replied, " Greed". 'Alī then responded, " Now you may talk to the people if you wish."<sup>49</sup>

Both professional sportsmanship as well as foretelling was proposed to be strictly banned.<sup>50</sup> This seems to be al-Māwardī's reaction to the existing *Buwayhid* practices. Ibn Kathīr states that under the patronage of Mu'izz al-Dawla professional sportsmanship was highly encouraged. In order to win awards people could run thirty miles in a day. In the same period the people also began to show interest in wrestling, boxing and swimming.<sup>51</sup>

If the ideal pattern mentioned above did not exist and the ruler did not carry out his job properly, some of his responsibilities were to be performed by the subjects which were not beyond their capacity. As for the responsibilities which could be fulfilled only through the government, al-Māwardī made the subjects responsible to explain and remind the ruler

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<sup>46</sup> al-Māwardī, *A.S.*, P.359.

<sup>47</sup> *Ibid*, P.359.

<sup>48</sup> *Ibid*, P.360.

<sup>49</sup> *Ibid*, P.349, Ḥasan al-Baṣrī (21/642-110/728) must have attained proficiency in religious sciences at an early age because if the above event took place shortly before the martyrdom of the Caliph 'Alī, the former would be nineteen years old.

<sup>50</sup> *Ibid*, P.362.

about his duties. If he did not show compliance and adhered to a course of action contrary to the demands of religion and justice, what then did al-Māwardī recommend for the subjects? This we shall examine in the next section of our study.

### Deposition of the Ruler and Revolt against Authority

Highlighting the purpose of the Caliphate, al-Māwardī says: “ *Imāmate* is prescribed to succeed Prophethood as a means of protecting the religion and of managing the affairs of this world.”<sup>52</sup> The Caliph, the most central figure of this arrangement, was naturally required to direct his efforts to the achievement of this goal both through his acts and policies. al-Māwardī was, therefore, quite naturally led to the conclusion that if “ he commits forbidden acts, pursues evil, is ruled by his lust and is subject to his passions; this counts as a moral deviation which excludes him from taking up the *Imāmate* or from carrying on with it. Thus if such behaviour befalls someone who has become the *Imām*, he is disqualified.”<sup>53</sup>

al-Māwardī followed *Imām* al-Shāfi’ī’s viewpoint who justified it on the ground that ‘a person unable to act upon the rulings of *Sharī’a* could not force others to act upon them.’ Consequently both a sinful (*fāsiq*) *Qāḍī* and a sinful (*fāsiq*) ruler could neither aspire for the office nor could continue in the office. Later Shafi’ī jurists, Nawawī, Qurṭubī, and Taftāzānī (d.792/1389) retained this condition for the *Qāḍī* but allowed the ruler to continue his rule if he turned sinful (*fāsiq*) after his installation. They maintained that although the ruler was worthy of deposition after he turned sinful, he was not to be removed if he was fully established in his rule. The fact that al-Māwardī did not ignore this viewpoint either is clear when a little further in the same text al-Māwardī brings under discussion the prospects of

<sup>51</sup> Ibn Kathīr, *al-Bidāya*, vol. 11, P.179.

<sup>52</sup> al-Māwardī, *A.S.*, P.10.

<sup>53</sup> *Ibid*, P.30.

repentance on the part of the ruler and the renewal of his pledge. al-Māwardī says: “ if he recovers his decency he may not return to the *Imāmate* except by way of a new contract; some of the *Mutakallimūn*, however, have said that he may return to the *Imāmate* on his return to probity- without a renewal of his contract and without the oath of allegiance- because of his overall authority in governance and the difficulty involved in renewing his oath of allegiance.”<sup>54</sup> In other words, it is clearly an acknowledgement that in principle his disqualification was right but practically this was related to the ability of subjects under existing circumstances. This points to al-Māwardī’s realistic estimate of the actual situation that in case he was powerful enough to continue his rule, it was more likely that under such circumstances he would not be willing to part with his authority. In that case his authority would, therefore, be legitimate under the law of necessity.

Under such circumstances, it can be deduced from the text of al-Māwardī that the right of popular revolt was clearly disapproved. al-Māwardī implied that in recognition of his strength the right of a sinful (*fāsiq*) to continue his rule was to be approved as legitimate under the law of necessity. al-Māwardī’s text in the al-Aḥkām clearly lacked any indication for popular revolt. Nor was there any suggestion given to immediately install a new Caliph after the disqualification of a sinful (*fāsiq*) from the Caliphate. On the other hand, both these possibilities were ruled out when al-Māwardī took into consideration the alternative opinion according to which the same person was required to turn repentant and renew his oath of allegiance. The fact that al-Māwardī aims at consolidation of the rule of the same person subject to mending of his ways is confirmed when he is willing to weigh the second opinion that acknowledges him as a legitimate ruler even without the renewal of an oath of allegiance if circumstances so dictate.<sup>55</sup> It was quite obvious that till such a time when he

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<sup>54</sup> Ibid, P.30.

<sup>55</sup> Ibid, P.30.

turned repentant, the people were asked to bear with his rule. This question raised a considerable debate among the writers on al-Māwardī. H.A.R.Gibb assesses al-Māwardī's overall stand on this issue to be "intermediate between the positive *Khārijīe* doctrine of the duty of insurrection and the negative *Sunnī* doctrine of the duty of submission."<sup>56</sup> Can we then exactly determine, in the light of these remarks by Gibb, al-Māwardī's stand on this issue and his suggestions to subjects if they faced such a situation? Gibb responds to this by saying that al-Māwardī is "prudently content to leave this too with these rather vague indications."<sup>57</sup>

Qamaruddīn khan, however, differs from Gibb in interpreting al-Māwardī's stance on this point. He quotes al-Māwardī as clearly advocating revolt "when the *Imām* either falls an open prey to sensual passions or becomes sceptic of the basic creed of Islam."<sup>58</sup>

Qamaruddīn khan certainly simplified al-Māwardī's position without providing evidence from his text because nowhere in al-Māwardī's formulation do we come to know his alluding to such a course of action. Qamaruddīn khan might have referred to al-Māwardī's viewpoint in his own writing where he quotes al-Māwardī as saying that he authorised the subjects to refuse to obey the *Imām* in case he orders something wrong.<sup>59</sup> But we cannot assume from this that it in any sense amounts to an appeal to the masses to rise in revolt. On the contrary two traditions quoted by him in two different places adhere to the mainstream of *Sunnī* political thought. At the outset of the al-Aḥkām he quoted the tradition on the authority of Abū-Hurayra which inculcates reverence and submission to the ruler even if he is bad. The tradition goes thus: "after me the governors will rule over you and those who are upright will rule you with their uprightness and those who are corrupt will rule you by their corruptness: listen to them and obey them in everything which is compatible with

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<sup>56</sup> H.A.R.Gibb, "al-Māwardī's theory of the Caliphate"; Studies on Islamic Civilisation, P.161.

<sup>57</sup> Ibid, P.161.

<sup>58</sup> Qamaruddīn Khan, Māwardī's Theory of State, P.47.

truth- if they are correct in their dealings then it will be your benefit and theirs, and if they act incorrectly then that will be still to your benefit but will be held against them.”<sup>60</sup>

The above tradition clearly states two principles:

1. people are asked to obey the ruler only when he orders right things;
2. Without violating the above principle, they have not to rise in revolt against him even if he is bad.

In his exegeses the same viewpoint of al-Māwardī is confirmed where he quotes the tradition from Nāfi‘ b. ‘Abd Allah with the similar import: “ obedience to the ruler is obligatory regardless of individual likes and dislikes with the only exception when orders are contrary to the *sharī‘a*. In such case obedience is not binding.”<sup>61</sup>

The criterion for the obedience was clearly laid down. While Muslims were urged not to obey any rule of the authority in disobedience to Allah and his Prophet (P.B.U.H), they were at the same time urged to bear with the bad authorities. They were required to obey the rulers without following their reprehensible practices.

Two things are quite obvious up to this point:

- (1) al-Māwardī disqualifies the *Imān* from *Imāmate* if he falls prey to sensual pleasures, commits prohibited acts, or pursues evil or does something of an innovative nature in matters of religion.
- (2) He expounds the viewpoint that people were required to continue to obey the ruler even if he was corrupt without following his reprehensible acts. There could be no obedience to the ruler in disobedience of Allah and his Prophet (P.B.U.H).

Apparently both viewpoints seem to be mutually inconsistent. On the one hand disqualification of ruler due to his involvement in evil and immoral practices is obvious and

<sup>59</sup> Ibid, P.48.

<sup>60</sup> al-Māwardī, *A.S.*, P.11, Ṭabarī, 8-502.

<sup>61</sup> al-Māwardī, *Tafsīr*, vol. 1, 4-59; “Kitāb al-Imāra” *Ṣaḥīḥ Muslim*.

clearly stated by al-Māwardī. On the other hand, in the light of *Ḥadīth* literature, there is a constant emphasis on obedience to the ruler even if he is bad. Further analyses and study of al-Māwardī's viewpoint may clarify this contradiction.

Although in first instance, he disqualified the corrupt Caliph from the Caliphate, a careful study of the text makes it clear that this disqualification was not to be necessarily followed by deposition in all circumstances. In principle, the dissolute (*fāsiq*) did not qualify to be a legitimate Caliph under normal circumstances, but could nevertheless be recognised as legitimate under the law of necessity in case he was established in authority. This is clear from his own text where al-Māwardī did not exclude the possibility that in case such a man returned to the correct behaviour he would again be restored as a legitimate Caliph after renewal of his oath of allegiance or even without it if the circumstances so dictated.<sup>62</sup>

The lack of approval to rise in revolt was, however, related to the lack of ability on the part of the governed to do so in a successful and organised manner. The emphasis on the obedience to a bad ruler was a concession to the frailties of the subjects. If the means and resources were available, it was considered as a collective responsibility of the *Umma* to replace the rule of the sinful (*fāsiq*) with the rightful one. The Qur'ān puts emphasis on returning the trust to their rightful owners.<sup>63</sup> Interpreting this verse of Qur'ān, al-Māwardī clearly means by returning the trust to their right owners as returning the government to those rightfully deserving it.<sup>64</sup> Consequently the subjects were made responsible for returning the trust or authority to its most deserving person provided they were able to do so. Hence in the al-Aḥkām, al-Māwardī outrightly says that "people of power and influence cannot depose the ruler unless his state changes."<sup>65</sup> In other words he authorises them to

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<sup>62</sup>al-Māwardī, A.S., P.30.

<sup>63</sup> al-Māwardī, Tafsīr, 4-58.

<sup>64</sup> al-Qur'an, 4-58.

<sup>65</sup>al-Māwardī, A.S., P.20.

depose him if he turned from the state of good behaviour to the state of sin (*fisq*). But as we have seen the principle was not absolutely binding and was linked to the ability of the subjects. In case, the subjects who were morally upright, but were governed by a bad ruler, Māwardī did not exclude the possibility of revolt. al-Māwardī takes this possibility into account in *Tashīl al-Nazar* and did not disapprove such a course of action. But here too he approves reform rather than revolt as a preferred course. However, in case constant exhortation failed to induce him to a desired reform, forcible deposition was justified as a last measure.<sup>66</sup> Changed circumstances needed changed rulings.

Imām al-Juwaynī who agreed with al-Māwardī on many points openly sanctioned revolt if the situation was likely to change for better and seemed to pose fewer problems than the existing one. Like al-Māwardī and other *shafi'ī* jurists, he strongly disapproved the installation of a sinful (*fāsiq*) ruler because he considered sin (*fisq*) and the Caliphate to be naturally incompatible with each other. However, since the Caliph was not infallible, his temporary sins were to be condoned owing to his involvement in the wide variety of his official tasks. But a deviant ruler who persisted in major sins and despite exhortation and reform did not mend his ways was to be deposed by the people of power and influence. If it was impossible due to overwhelming position of the ruler, then careful calculations were to be made by the subjects. If direct revolt against the ruler was likely to lead to a worse situation than the existing one, the subjects were required to remain patient with the rule of sinful (*fāsiq*) ruler. But revolt was justified if it was likely to change the existing situation for the better one.<sup>67</sup> al-Māwardī relied upon some alternative revolutionary means for bringing political change but justified revolt under favourable conditions when the ruler was weak. But he did not sanction taking risks under a strong ruler, as did al-Juwaynī.

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<sup>66</sup> al-Māwardī, *Tashīl*, P.253.

<sup>67</sup> al-Juwaynī, *al-Ghiyāthī*, PP.52-55.



In the following study we shall attempt to prove that al-Māwardī approved both peaceful and revolutionary means provided they were applied with all necessary preconditions and wisdom. He was strictly opposed to revolutionary means if they caused the outbreak of anarchy (*fitna*) without bringing in a good alternative leadership and if there was a danger of some greater evil. If conditions were favourable, he was quite willing to accept every means to effect a change at political level, provided it could be applied effectively.

(1) During the *Buwayhid* period when both the Caliph and his Amīr exercised authority within their respective spheres, al-Māwardī put repeated emphasis on the effective enforcement of the system based on religion and justice. In case the Amīr was guilty of the omission of this enforcement, he made the Caliph responsible to liberate the Caliphate from the bondage of the unscrupulous ruler.<sup>68</sup> This was a revolutionary suggestion involving prospects of direct confrontation between the provincial dynast and the ruler in Central Provinces. At the same time it was a very risky step for the Caliph because before the actual take-over by the provincial dynast, the Amīr could depose and execute the Caliph. On the other hand, if some military General or the masses had come to the Caliph's rescue, it would have precipitated a civil war. al-Māwardī himself remained stuck to these principles and did not approve what he considered a deviation on the part of Amīr. In spite of having good relationship with the *Buwayhid* Amīr Jalāl al-Dawla, he refused to endorse the title of *Mālik al-Mulūk* which the latter submitted for the approval of *fuqahā'*. Ibn Kathīr(d.774/1373) quotes al-Māwardī, as saying that it was impossible to grant such a title. Ibn Kathīr says that he had done all this in the light of *Ḥadīth* injunctions. The theme of the *Ḥadīth* is that whosoever assumed the title of king of kings, Allah would humiliate him on the day of judgement.<sup>69</sup>

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<sup>68</sup> al-Māwardī, *A.S.*, P.34.

<sup>69</sup> Ibn Kathīr, *al-Bidāya*, vol. 12, P.39; Ibn Athīr, *al-Kāmil*, vol.9, P.459 Ibn Athīr says that unlike most of contemporary jurists Māwardī gave *fatwā* against this title.

(2) He persuaded the Caliph to effectively utilise the weapon of legitimacy and force the provincial dynast to properly enforce a system based on religion and justice. If they failed to effect change in the areas under their control, legitimacy was to be withheld from them.<sup>70</sup>

This would have adversely affected their moral status both in the Islamic world and in the eyes of their subjects.<sup>71</sup>

(3) He required provincial dynasts to use their power as a tool of enforcing the right order based on religion and justice in the areas under their control. Acquisition of legitimacy after fulfilment of certain conditions would link them as part of the Islamic world without at the same time compromising their authority.<sup>72</sup>

(4) If the ruler neglects his duties and there develops in consequence a party of evildoers whom the ruler fails or neglects to punish, al-Māwardī then recognises the existence of forming an organised group as legitimate to deal with such group. Assumption of this principle was precedent-guided.<sup>73</sup>

(5) At an individual level, he also accepted the carrying out of this responsibility and did not regard it as a parallel exercise of governmental authority by him. Indeed under exceptional circumstances he went as far as to allow him to proceed to examine and denounce the evil.<sup>74</sup> But while allowing to deal with evil both at individual and collective level quite independent of government, his motives were religious and not political.

From the above study it is clear that al-Māwardī sanctioned revolutionary means only to ensure the enforcement of the right order based on religion and justice under the supervision of the Caliph. If the ruler pursued this object, al-Māwardī legitimised and supported his rule even if he was not necessarily the best. He also persuaded all the classes to lend full support

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<sup>70</sup> al-Māwardī, A.S., P.

<sup>71</sup> al-Māwardī, A.S., P.54-55.

<sup>72</sup> Ibid.

<sup>73</sup> al-Māwardī, Adab, P.103.

<sup>74</sup> al-Māwardī, A.S., P.353.

to such a ruler. The purpose was obviously to put an end to the power struggle and minimise the tension between different sects and religious schools of the community. Under the same considerations the '*Ulamā*' were required not to aspire to the political leadership but to restrict themselves to advice and reform. According to al-Māwardī, the '*ulamā*' were a permanent source of advice and guidance. All the sections of society had to seek their guidance because of their thorough acquaintance with religion and their responsibilities for conveying it properly to every one. The rulers were no exception and special emphasis was laid on the need to seek their advice regarding political affairs. Hence apart from knowing religion through religious books the rulers were required to see the '*ulamā*' on a permanent basis.<sup>75</sup> The '*ulamā*' on their part were required to be very honest and free from any greed or fear. Their responsibilities included reform of all sections of society.

An '*Ālim*' was required to acquaint all the members of society with the demands of religion. He had to clarify how everybody was religiously responsible for performing his duties.<sup>76</sup> Consequently al-Māwardī considered it a right job for those people who were averse to the luxuries of life and did not have any lust for material reward.<sup>77</sup> The '*ulamā*' were required to produce *Mujtahids* who could apply religious injunctions to newly arising situations. They were required to train the judges with full competence for running the judicial system in a satisfactory manner.<sup>78</sup> They had to advise the rulers about the best course for them.<sup>79</sup> They had to criticise the rulers for their omissions. They had to expound the religion in full. They had to answer different queries of people regarding the daily

<sup>75</sup> al-Māwardī, *Naṣīhat*, P.223.

<sup>76</sup> al-Māwardī, *Adab*, P.87.

<sup>77</sup> al-Māwardī, *Adab*, P.92.

<sup>78</sup> al-Māwardī, *A.S.*, P. 100. The tough criterion for becoming a qualified person for judicial post obviously required him to study *Sharʿa* under the tutelage of an '*Ālim*'.

<sup>79</sup> al-Māwardī, *Adab*, P.91.

problems of life in the light of their religious knowledge.<sup>80</sup> Not once throughout his writings is there a clue to a politically ambitious career for them. The rulers and the '*ulamā*' were required to work in unison towards the achievement of a single goal but both of them were assigned different spheres of action and responsibilities.

### **Mode of Behaviour towards Corrupt Authorities**

As we have mentioned earlier, all the revolutionary means suggested for bringing about a change depended on the available means and conditions. But if such conditions were lacking, what was then a proper course of action for the people? For instance, if a sinful ruler was fully established in authority, what was to be done by his subjects? Here al-Māwardī seems to have based his views on the pattern and the methods of the *Salaf*. We have enough evidence to support this viewpoint in the light of his following statements.

1. He gave advice to the rulers 'to protect the religion as it was established in the original form and about which the first generations of *umma* are agreed'.<sup>81</sup>
2. He regarded the *Ijmā'* (consensus) of the Companions of the Prophet (P.B.U.H) as a final authority and binding on the subsequent generations.<sup>82</sup>
3. He maintained it as one of the pre-requisites of the *Mujtahid* to know how the first generation interpreted and acted upon the *Qur'ān*. This condition naturally exerted influence on his views regarding the proper attitude of people towards corrupt authorities.<sup>83</sup>
4. He maintained the pious '*ulamā*' of every period as one of the authentic sources in matters of religion<sup>84</sup>

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<sup>80</sup> Ibid, P.87.

<sup>81</sup> al-Māwardī, *A.S.*, P.27-28.

<sup>82</sup> Ibid, P.12; P.101.

<sup>83</sup> Ibid, P.100.

<sup>84</sup> Ibid, P.24.

What was the viewpoint of the above mentioned authorities with regard to the right behaviour of the subjects towards the authorities and the limits of their obedience and disobedience towards them?

The companions whom Māwardī believed to have understood and acted upon the religion better than anybody else had lived to see the early *Umayyad* period.

Abū-Hurayra used to call for the prayer in *Masjid Nabvī*. He used to pray behind Marwān and criticised him for not allowing him enough time at the end of *sūra fāthā* (the opening *surah* of the Qur'ān) to say *Āmīn*. However, despite this criticism he continued to pray behind him.<sup>85</sup>

During the reign of 'Abd al-Mālik, (d.86/705) *Hajj* was performed according to the instructions of 'Abd Allah b. 'Umar but under the leadership of Hajjāj. 'Abd Allah b. 'Umar recognised his *Imārat*.<sup>86</sup>

The succeeding generations of *sunnī 'ulamā'* based their course of conduct on their pattern regarding this aspect. Their course of action was based on the following points:

Dissolute (*Fāsiq*), who is able to maintain his rule by force, was to be recognised under the law of necessity. His deposition was justified and risks could be taken only when prospects of success were high as well as better alternative leadership was available. al-Māwardī conformed to this viewpoint as we have seen in the previous analysis. Regarding the deposition of the ruler under favourable conditions we need to turn towards *Tashīl al-Nazar* where he maintains that either the subjects would reform him with strength and determination or replace him with someone else in case the unjust ruler is ruling the just population.<sup>87</sup>

Within the limits of their obedience the ruler was to be followed only in right actions.

<sup>85</sup> Abū al-Kalām, *Masla Khilāfat*, P.95.

<sup>86</sup> Imām Mālik, *Muwatta*, PP.320-321.

<sup>87</sup> al-Māwardī, *Tashīl*, P.253.

(1) The rulers were not to be obeyed in wrong matters. al-Māwardī clearly laid down the principle that obedience to the ruler was necessary only in right matters and they were to be disobeyed if they ordered something wrong. In the same way, he prevented the ‘*ulamā*’ from following the ruler in that what was inconsistent with religion and what was contradictory with the truth.<sup>88</sup> It was through accumulated pressure of this kind that ruler was ultimately to be forced to reform himself. In Tashīl al-Māwardī clearly lays down that upright subjects, by their strength and resolution, would continue to reform the unjust ruler until he mends his way.<sup>89</sup> Subjects and ‘*ulamā*’ were not made responsible for bringing about any sudden change in an abrupt manner but they were required to stick to disobedience and non-co-operation over unjust policies.

In the Adab, al-Māwardī clearly stated that the ruler not fulfilling his responsibilities properly was to be punished and held accountable by the people.<sup>90</sup> The subjects, however, were not required to immediately react but had to wait for the opportunities until the ruler became weak due to his unjust policies.<sup>91</sup> He firmly believed that unjust policies of the ruler over a period of time would render him weak and he was ultimately bound to be caught in calamities. That would be a proper time for the subjects to express their hatred by deposing him and installing a new ruler in his place.<sup>92</sup> Prior to reaching such a stage the subjects were asked to remain patient. This can be verified by two traditions which he quotes in the *Adab*: “it is narrated from the Holy Prophet (P.B.U.H) : “the unjust Imām is better than *fitna* (anarchy) and in both there is no good and in some tyranny there is a preference.”<sup>93</sup>

‘Abd Allah b. Masūd said: “although the king spreads *fasād* and whatever Allah reforms by him is better. If he behaves justly then for him is the reward and upon you is

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<sup>88</sup> al-Māwardī, Adab, P.91.

<sup>89</sup> al-Māwardī, Tashīl, P.253.

<sup>90</sup> Ibid, P.139.

<sup>91</sup> Ibid.

<sup>92</sup> Ibid.

thanksgiving. And if he behaves unjustly, then upon him is the burden and upon you is the patience,”<sup>94</sup>

According to al-Māwardī, the rulers were to be criticised for their unjust policies. Although al-Māwardī allowed avoiding criticism if it involved dangers, he nevertheless considered it a better course of action for the person who was qualified to undertake it with all necessary conditions.<sup>95</sup>

### **Legitimacy of Government Service**

Here an interesting question arises which sheds light on the issue of a legitimate government and the extent of co-operation which al-Māwardī was willing to allow to individual under it: whether or not he maintained the government service as justified under such rule. We can know al-Māwardī’s viewpoint quite clearly from his text.

al-Māwardī expounds his viewpoint which at once accommodated the legitimacy of accepting the government office with some conditions as well as accepting the unjust ruler under whom public affairs could be regulated lawfully under the law of necessity. Unlike the *khārijites* he did not make the legitimacy of government service conditional upon the soundness of the whole system or upon sound character of the ruler. On the contrary, the legitimacy of accepting the government office depended upon the nature of legitimate or illegitimate commands of the ruler. he considered two requirements to be pre-requisites for the legitimacy of the government service. (1) The office itself should be of the right nature. He strictly disallowed a person from carrying out the wrong policies of the ruler like killing somebody, usurping wealth, imprisoning, or inflicting unjust punishment on someone. However, as for example, killing of the ruler. On the contrary, the legitimacy of accepting the government office depended upon the nature of the legitimate or illegitimate commands

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<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

of the ruler. He considered two requirements to be pre-requisites for the legitimacy of government service. (1) The office itself should be of a right nature. He strictly disallowed a person from carrying out the wrong policies of the ruler like killing somebody, usurping wealth, imprisoning, or inflicting unjust punishment on someone. However, Judicial posts, *ḥisba*, mathematics and *algebra* were considered right.<sup>96</sup>

(2) Such posts were considered legitimate as long as the ruler did not order something unjust. In the case of unjust commands, it was necessary to disobey the unjust commandments. It reinforced the conclusion that instead of taking rash actions, which were beyond one's capacity, the unjust ruler was to be resisted through non-compliance with unjust commandments.<sup>97</sup>

al-Māwardī also mentioned the opposite viewpoint according to which it was altogether illegitimate to accept the public office. Power, according to them, was a trust and the Qur'ān explicitly denies the Divine pledge to the unjust. How could it be legitimate then to assist and accompany such unjust rulers?<sup>98</sup>

In answer to this, al-Māwardī sticks to his viewpoint and says that man could accept government service on his own terms and conditions. It was right to accept the office if the ruler did not order wrong actions but instead ordered to carry out the recommended (*Mubāḥ*). However it was recommended to accept the service if it could be a means of preventing the wrong and injustice.<sup>99</sup>

In support of his viewpoint al-Māwardī cited the example of the Prophet Joseph who despite being a Prophet accepted the employment of a non-Muslim king. It is therefore legitimate and if reform and improvement were expected through such a course then it was

<sup>95</sup> Ibid, P.102.

<sup>96</sup> al-Māwardī, *Naṣīḥat*, P.528.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.



obligatory. al-Māwardī considered it a highly preferred course if the person adopted ways to effect reform through it. He quotes the tradition of the Holy Prophet ( P.B.U.H): “No *wazīr* is more deserving of reward than one who enjoins virtue upon the king with reference to Allah.”<sup>100</sup>

Finally al-Māwardī repeated two necessary conditions for the acceptance of the public office under an unjust ruler. The first condition was that the person undertaking the responsibility was justified if he had right intentions. Secondly, he was justified if he carried out only just commandments.<sup>101</sup>

In the *Adab* al-Māwardī stated an incident which not only clarifies his own viewpoint about government service but also highlights the attitude of the ‘*Ulamā*’ of the *Ummayyad* and the ‘*Abbāsīd*’ period about this issue.

Māwardī says: “ it is narrated from Abū-Fardah that Ṭārīq was the commander over the military troops of Khālīd ‘Abd Allah b. Qasrī. The troops passed by Ibn Shubrama Ṭārīq was along with the troops. Ibn Shubramā read the verse: “ I see her, but even if she demands admiration, she is like a summer cloud that quickly disappears.”(Ibn Shabramah continued): “O Allah, for me, my religion and for them is their world.” After this incident Ibn Shubrama was appointed as a judge. Abū-Bakr, his son asked him: “ do you remember what you said on that day when Ṭārīq with his retinue passed by you.” To this he replied: “ O my son, they seek a man like your father and your father does not seek the people like them. Indeed your father ate from their delicacies and was consequently abased in their caprices.”

al-Māwardī throws his own reflections on this incident in these words: “ do not you see how this honourable exponent of religion is punished by self-reproach and repaid by censuring, from one closest to him and perhaps the most pious of his sons. What then shall

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<sup>100</sup> Ibid, P.529.

<sup>101</sup> Ibid.

our outcome be, and yet compared to him, when the eyes of the critics look upon us or the tongues of the antagonists make mention of us, we are most susceptible to losing control of the reins and we have more troubled hearts. Do we have anything other than the aid of Allah as our protection and His perfection as our refuge?<sup>102</sup>

Here al-Māwardī acknowledges both his own weaknesses and at the same time the high demands of religion. Despite these two factors he sees the way with extra-ordinary care (capacity bestowed upon by Allah) to undertake the official responsibility in a legitimate manner.

If the government was tyrannous and the means of organised revolt were lacking, the rebellion was not a legitimate course of action. al-Māwardī suggested compromise on many points. For instance, he maintained it legitimate to give up saying the congregational prayer under the rule of dissolute (*Fāsiq*).<sup>103</sup> He also regarded the officially appointed *Imān* as legitimate even if they were not necessarily the best qualified.<sup>104</sup>

But he also suggested some measures that could lead to the accumulated public hatred against authorities if they were corrupt and unjust. For instance, he made it incumbent upon the citizens to pay the *zakā* twice if the person concerned was unjust in distribution.<sup>105</sup> He did not specifically suggest anything revolutionary, but the consequences of double payment by the well-to-do class over a period of time can be well imagined.

In our study thus far, we have examined that al-Māwardī accommodated both viewpoints regarding the deposition of the sinful (*fāsiq*) ruler. Although he considered such a ruler worthy of deposition, his actual deposition was related to the ability of the subjects to undertake this responsibility in a successful manner. If the tyrant was fully established in his

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<sup>102</sup> al-Māwardī, *Adab*, P.40.

<sup>103</sup> al-Māwardī, *A.S.*, P.159.

<sup>104</sup> *Ibid*, P.150.

<sup>105</sup> *Ibid*, P.179.

rule, people were asked to bear and co-operate with him. al-Māwardī linked the performance of every obligation with the ability of the believers. Under the tyrannical rule of a tyrant, the subjects were considered to lack the ability and were therefore absolved of the responsibility of bringing about the change in an abrupt manner. al-Māwardī not only recommended patience with their unjust policies but also persuaded the subjects to co-operate with the authorities and fully participate in public affairs notwithstanding certain restrictions.

From the above recommendation one is tempted to conclude that under the despotic rule of a tyrant, al-Māwardī did not favour any idea of political change and demanded a complete submission on the part of the subjects. In fact al-Māwardī did not teach a complete submission to the despotic rule but proposed to bring about a gradual change through religious transformation of society.

In al-Māwardī's opinion the unjust rulers were imposed on the unjust subjects as a Divine punishment. He interprets a verse in the *An'ām*, on the authority of Ibn 'Abbās, that punishment of Allah from above is unjust rulers.<sup>106</sup> Although the subjects were not considered responsible for their immediate removal if they lacked ability, they were made responsible not to comply with their unjust commandments without confronting them.

But a mere non co-operation over the unjust policies of the authorities was not enough and did not guarantee the whole change, including political change. At best such measures could provide checks and limitations on the unjust behaviour of the ruler. To change the unjust rulers with just rulers, al-Māwardī wanted a complete religious transformation of society. Good rulers are the products of a good society; hence any desired political change could begin with over all religious change throughout society. This change will not occur only through political means but al-Māwardī anticipates it, in the light of Prophetic tradition,

when every man takes up his responsibilities in a responsible manner. In the words of the tradition quoted by him in the al-Aḥkām: “ every one of you is a shepherd and is responsible for his flock.”<sup>107</sup>

So it was a concern of every man for every man that over all religious change could occur which could then be a prelude to a real political change. Good rulers can be installed and continue their rule in a good society. al-Māwardī says: “ there is no survival of one of them without the other.”<sup>108</sup> Stressing the mutual necessity of one for the other al-Māwardī continues: “ the need of a ruler for the subjects is no less than the need of the subjects towards the ruler.”<sup>109</sup> Highlighting the reform of the masses as prior to the reform of the ruler al-Māwardī remarks: “indeed if the subjects died, the shepherd would die too. When masses go corrupt, the ruler also goes corrupt. Whenever a defect appear in the subjects, in their wealth and their blood, it is bound to effect the ruler.”<sup>110</sup>

His reliance upon the *Ḥadīth* literature also confirmed his viewpoint over these principles. The earlier jurists who also suggested and adopted reform as a right course of action also influenced his viewpoint. The real prospects of change, therefore, lay in religious transformation of society that will be a prelude to any real political change. To achieve the goal in a desired manner, al-Māwardī stressed the importance of enjoining virtue and preventing evil to be established in a right manner. According to al-Māwardī, it was in fact the lack of proper observance of this obligation which paved the way for the rule of unjust rulers. He quotes a Prophetic tradition in this regard. In the words of tradition: “You would enjoin virtue and prevent evil, or Allah will impose on you the mischievous

<sup>106</sup>al-Māwardī, Tafsīr, 6-165.

<sup>107</sup> al-Māwardī, A.S., P.29.

<sup>108</sup>al-Māwardī, Naṣīḥat, P.356.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid, P. 356-357.

among you...”<sup>111</sup> The real and permanent solution to the problem of ridding of unjust rulers could come through genuine restoration of this obligation. al-Māwardī, therefore, dealt with the method of performing it at length and described it in the following way.

### Enjoining Good and Preventing Evil

Although al-Māwardī thinks the obligation of enjoining good to be an obligatory one, it is considered obligatory only for the compulsory commandments. Similarly preventing from evil is obligatory only if the unlawful (*ḥarām*) is being committed.<sup>112</sup> It can easily be deduced from this that a man was not considered responsible to enjoin the recommended acts or to prevent *Makrūh*. The famous *Ḥanafīe* scholar, Mulla ‘Alī Qārī (d.1014/1606), shares the similar viewpoint. In his words: “ if the *Munkar* is unlawful, its prevention is obligatory but if it is *Makrūh*, its prevention is recommended. Similarly the enjoining of good would be obligatory if the religious injunctions are obligatory.”<sup>113</sup>

### Necessity of the Obligation

al-Māwardī believed it to be a source of strength for the religion of Allah. Faith and good deeds, the foundations of a good society, could be acquired and strengthened through mutual exhortation of friends and the intimates as well as through mutual prevention of evil. Youthful passions and sensual desires, however, come as hurdles in the way of achieving these objectives. The best way to remove these hurdles is the mutual exhortation of intimates and relatives and their mutual prevention from evil. These methods are most effective to prevent evil.<sup>114</sup>

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<sup>111</sup> al-Māwardī, *Nasīhat*, PP.335-336.

<sup>112</sup> al-Māwardī, *Adāb*, P.101.

<sup>113</sup> Jalāl al-Dīn ‘Umri, *Ma‘rūf Wā Munkar*, P.350; Mullā ‘Alī Qārī, *al-Mubīn al-Moeen li fahm al-Arba‘een*, P.189.

<sup>114</sup> al-Māwardī, *Adāb*, P.101.

### Method of Performing the Obligation

Great care is required to perform the method properly. al-Māwardī classified the evildoers into two categories: (1) in their individual capacity; (2) in the capacity of organised groups.<sup>115</sup>

al-Māwardī, in first instance, lays down the procedure to deal with the evildoers in their individual capacity. The proper way of dealing with them depends upon the personal ability of the man performing the job. Here the word ability, as the subsequent analyses show and as the *fuqahā'* of that period have maintained, has not been confined to mere physical strength. It rather implies that knowledge and understanding is necessary to qualify any person to undertake the job properly.

### Rationale of the Obligation

According to al-Māwardī, the best way of parting with evil was to prevent others from doing it. al-Māwardī's treatment of this problem clearly showed that every bad act had inevitable social consequences. Hence it was not enough to avoid evil at a personal level. Effort was required to combat evils at social level to escape its consequences in the society. To vindicate his viewpoint, al-Māwardī quoted the following tradition from the Holy Prophet (P.B.U.H) on the authority of 'Abd Allah b. Mubārak: " a group of people boarded the boat. By drawing lots each one of them occupied his place. One of them began to make a hole in the boat within his allotted place with an axe. People asked him: " what are you doing". He replied: " This is my place. I will do what I want." Then they did not grasp his hand and both he as well as they perished."<sup>116</sup>

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<sup>115</sup> Ibid.

<sup>116</sup> Ibid.

### Exponents of Reason Vs *Sharī'a*

al-Māwardī quoted the arguments of the exponents of both schools who despite agreeing on the necessity of this obligation justified it by their own arguments. al-Māwardī first alluded towards the viewpoint of the exponents of reason who thought it possible to fully comprehend and explain this obligation on rational grounds. This seemed to be a typical *Mu'tazilite* stance who used to trust reason in explaining various obligations of religion. The exponents of *sharī'a*, however, maintained that *Sharī'a* encompassed all what reason regarded necessary and included more than what was beyond the comprehension of reason. al-Māwardī agreed with the *Mu'tazilites* that the necessity of the obligation could be proved by reason but preferred to rely upon the viewpoint of the exponents of *Sharī'a*. His argument was that whereas the reason demanded compensation for every loss, the *Sharī'a* fully accommodated this viewpoint but went further in allowing to suffer the loss for exalting the religion of Allah. The Reason was, therefore, limited in comprehending the scope of this obligation. It was religion which fully comprehended this obligation.<sup>117</sup>

### Fear of Loss

al-Māwardī held a middle position between two extreme viewpoints regarding this issue. He did not follow the viewpoint of *Ahl Ḥadīth wa al Athār* who thought that an individual was only responsible for saving himself and his family members from evil. Nor did he favour the delaying of this obligation to the advent of Mahdī. But he did not consider either performance of this obligation to be absolutely binding on every individual in all circumstances. He linked the necessity of performing this obligation with certain conditions and circumstances. Its performance was considered indispensable for eradicating corruption but it could be suspended if there was some fear of loss, in which case a man was absolved

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<sup>117</sup> Ibid, P.102.

of the necessity of performing the obligation.<sup>118</sup> The famous *Shafi'i* jurist, Imām al-Ghazālī stressed a similar viewpoint thus: “ this obligation is not exhausted with mere incompetence. If there were a danger of harm to the man performing it, this too would be regarded as incompetence.”<sup>119</sup>

Up to this point we can find al-Māwardī's emphasis on showing harmony between reason and *sharī'a*. Whereas reason prevents from undertaking any action which has no compensation, religion also allows escaping evil consequences of any action and performing it to the extent of one's ability. In support of his viewpoint, al-Māwardī quoted the following *Ḥadīth* of Holy Prophet on the authority of Abū Saeed Khudhrī: “ prevent evil by hand, if you are unable to do so, then prevent it by your tongue, and if you lack the ability to do it as well, then treat it bad from your heart. And this is the lowest degree of the faith.”<sup>120</sup>

The above tradition covers a wide range of responsibilities and specifies the role assigned to every person according to his capacity and place in a society. What al-Māwardī meant by lack of ability was an as anticipated loss. The anticipated danger furnishes legitimate basis to stop performing the obligation.<sup>121</sup> Although it was government which was made responsible for exercising this right as a sovereign body, there were exceptional circumstances when an individual person was allowed to perform it by hand. Some scholars interpreted the *Ḥadīth* as demanding different things from different people according to their rank, position, and ability to undertake this obligation. The famous jurist, 'Allāma al-Qurtubī has summarised the views of the '*Ulamā'* regarding this *Ḥadīth* in this way: “

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<sup>118</sup> Ibid.

<sup>119</sup> al-Ghazālī, *Ihyā' 'Ulūm*, vol. 2, P.417.

<sup>120</sup> al-Māwardī, *Adab*, P.103; “*Kitāb al-Imān*”, *Sahīh Muslim*.

<sup>121</sup> Ibid.



enjoining good by hand belonged to the authorities, by tongue belonged to scholars and by heart is a responsibility of the people.”<sup>122</sup>

Having thus proved the complete concord of reason and *sharī'a*, al-Māwardī goes on to prove the superiority of religion over the reason. Although religion permitted giving up preaching for fear of loss, the obligation could still be performed in anticipation of good results for the religion. There was an agreement between religion and reason that there should be a clear compensation for every loss but religion went beyond that point in allowing the religious cause to be advanced at the great peril of suffering personal loss. Allowing to give up preaching in anticipation of loss was an exemption to an individual and stated the minimum requirements of religion. al-Māwardī quoted a *Ḥadīth* to support this viewpoint. According to the text of *Ḥadīth*: “ the best *jihād* is to speak the word of truth before a tyrant king.” But even for such a man al-Māwardī laid down two conditions. Firstly, that a man should be well acquainted with when and how to prevent from evil. Secondly, he should be sure that his sacrifice would exalt the religion of Allah.<sup>123</sup>

### Lesser Evil and Greater Evil

Great care and precision was required to perform this obligation. al-Māwardī observes that a man performing an obligation should take care and judge well that the intended evil he was going to suppress would not beget a greater evil. Otherwise, it was considered better to withhold oneself from committing any action.<sup>124</sup> *Imān* al-Ghazālī's viewpoint on this issue was the same. According to him it is not right for a man to suppress evil in such a way

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<sup>122</sup> 'Allāmā Qurṭubī, *al-Jāmi' li Ahkām al-Qur'ān*, vol. 4, P.49; Jalāl al-Dīn 'Umri, *Ma'rūf wa Munkar*, P.326

<sup>123</sup> al-Māwardī, *Adab*, P.103.

<sup>124</sup> Ibid.

that another evil comes into being...if a man determined to eradicate an evil brings another evil into being, he can differentiate between both and can take the step accordingly.<sup>125</sup>

### Psychological Factor

In common with the other jurists al-Māwardī highlighted another factor of fundamental importance: to what extent the person being invited to restrain from evil is prepared to listen to advice. Some people are averse to advice, and exhortation only increases their stubbornness.<sup>126</sup> In that case it was not necessary to continue with this responsibility. But some jurists maintained a different approach, if not quite opposite. For instance ‘Allāma Taftāzānī (d.792/1389), in *Sharḥ Maqāṣid* says: “ one of the conditions to order *Ma‘rūf* and prevent evil whose eradication is intended is that it should not give birth to an equal and greater evil. But this is true of its obligatory character and does not affect the sound status of this obligation. ‘*Ulamā*’ have gone to the extent that a man performing the job, thinks that he will be slain without influencing the evildoer, would be justified although he was permitted to keep silent.”<sup>127</sup>

al-Māwardī held it as a job (in the matters requiring *ijtihād*) belonging to those few experts who are endowed with wisdom and knowledge. Mere devotion and enthusiasm were not considered to be enough. Persons endowed with such qualities but lacking necessary qualifications were required to desist from performing this job. Their involvement instead of bringing any benefit to religion or to themselves could bring harm to the cause of religion.<sup>128</sup> al-Ghazālī puts it in a slightly different way. He restricts the ordinary man to performing those matters which are obvious and well known.<sup>129</sup> In the matters requiring *Ijtihād* he clarifies their position in these words: “ it is no secret that a helpless man is

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<sup>125</sup> al-Ghazālī, *Ihyā’ ‘Ulūm*, vol. 2, P.421.

<sup>126</sup> al-Māwardī, *Adab*, P.103.

<sup>127</sup> Jalāl al-Dīn ‘Umri, *Ma‘rūf wa Munkar*, P.291; Taftāzānī, *Sharḥ Maqāṣid*, vol. 2, P.180

<sup>128</sup> al-Māwardī, *Adāb*, P.103.

responsible to consider it bad.” It is a task that is commensurate with people of knowledge, with all its conditions. The ordinary man should perform it according to his capacity and knowledge.<sup>130</sup> Highlighting the same aspect *Imān* al-Juwāynī remarks that responsibility should equally be shared by both the learned and those without learning, but if the injunction by its very nature was such that it could be known through *Ijtihād*, then only a *Mujtahid* was qualified to prevent evil.”<sup>131</sup>

Having discussed the matter at great length al-Māwardī turned towards another aspect of the matter and took into consideration many point of views. This problem could arise when an organised group in the community committed an evil. What were the responsibilities of Muslims? Were they allowed to form groups to resist the group of the evildoers? Dealing with the question al-Māwardī first of all quotes the opinion of *Ahl-Ḥadīth Wa al-Athār*. Their viewpoint was that it was enough for a man to merely prevent himself and his family members from doing evil and there was no further obligation on the man. They favoured absolute submission and undertaking no activities beyond one’s own limited family circle.<sup>132</sup> Their attitude towards the corrupt authorities was the same. *Imān* al-Ash‘arī says: “ they hold revolt to be absolutely false even if their children and wives are enslaved and the masses are killed. Whether an *Imān* is just or unjust, none should be anxious towards his deposition.”<sup>133</sup>

Second approach was that of *Imāniyya* who defer this question until the advent of *Mahdī* under whose assistance they would fight the group of rebels.<sup>134</sup>

Thirdly, al-Māwardī quotes Athām who considered it essential to have a Just *Imān* with whom believers should join hands to curb the evildoers.<sup>135</sup>

<sup>129</sup> al-Ghazālī, *Ihyā’ ‘Ulūm*, vol. 2, P.426.

<sup>130</sup> Ibid, P.425.

<sup>131</sup> Jalāl al-Dīn ‘Umri, *Ma’rūf wa Munkar*; Taftāzānī, *Sharḥ Maqāsid*, vol. 2, P.281.

<sup>132</sup> al-Māwardī, *Adab*, P.102.

<sup>133</sup> al-Ash‘arī, *Maqālāt Islāmiyyīn*, vol. 2, P.125.

Finally al-Māwardī quotes the opinion of the majority of the '*ulamā*' regarding this issue. According to them it was essential to prevent evil but with all the conditions and requirements necessary for performing this obligation. Again he insisted that until a group was formed for performing this obligation, an individual person was required to desist from rash action.<sup>136</sup>

Several things are clear from these approaches:

The first approach teaches a quietist attitude in an unqualified manner and does not recommend the idea of forming any group at a collective level to deal with the party of evil doers or for the restoration of their rights if they are usurped.

The second approach defers this action to the advent of Mahdī. In other words they prefer to remain politically uncommitted.

The third approach justified to deal with such a group under the leadership of a just *Imān*. In other words, they did not allow an individual person to perform this job, nor allowed the formation of a group to deal with the group of evildoers. Finally al-Māwardī quoted the fourth approach and favoured it which indicated that he belonged to the majority group of *ahl-Sunna*. Indicating their approach in this case, he favoured the idea of forming a group but sanctioned an action with all-necessary conditions and qualifications. Formation of a group was considered legitimate to deal with the group of evildoer if government fell short of its responsibility.

*Imān* al-Ghazālī says that preventing an evil is mostly an individual affair but under necessity man can form a party and fight the evildoers to eradicate the evil. Such an

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<sup>134</sup> al-Māwardī, *Adab*, P.103.

<sup>135</sup> *Ibid*.

<sup>136</sup> *Ibid*, PP.103-104.

exceptional situation exists when “ man is unable to change the evil and needs the armed assistance of his supporters.”<sup>137</sup>

### Summary & Conclusion

The right of enjoining the good and preventing evil was in the first instance the most basic responsibility of the Islamic government. If it carried out its job properly, the rest of the people in society were to be absolved of this responsibility. In view of the delicate nature of the job it was not merely the application of force that enabled the government to exercise this function in a proper way. Being the most effective and resourceful organisation it had to skilfully manage this responsibility by making use of force as a last measure or where its application was indispensable. The *Muhtasib*, appointed especially for undertaking the job, had to use a variety of means such as persuasion, mediation, patrolling, and any other means available to him to abolish evil and remove strained relationship among the members of the community. He had to find excuses on behalf of individuals and save them from the rigours of the law. There were inviolable human rights which could not be infringed at any cost, a fact that the *Muhtasib* had to keep in mind. But in case the government failed to perform its responsibility in a desired way, al-Māwardī suggested that apart from becoming responsible for performing the job, the subjects would be responsible to bring about political change to the extent of their ability. Without ruling out the possibility of direct deposition, the subjects were asked to bear with the ruler if they lacked ability for his removal. The only justified ground for rebellion was the commitment of open *kufr* by the authorities. Before such a stage was reached people were required to remain patient and be content with criticism and reform. Such an attitude was based on the pattern of the Companions, the *Tābi‘īn*, and those ‘*ulamā*’ who were pious. The ‘*Ulamā*’ had an

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<sup>137</sup> al-Ghazālī, *Iḥyā’ ‘Ulūm*, vol. 2, P.425.

assigned task of explaining religion to every section of society including the rulers. al-Māwardī's open sanction to take the government office under an unjust ruler validated legitimacy of his rule in a clear-cut manner. But it was to be taken with the motives of promoting justice as well as exhorting the ruler to reform.

Other recommendations of al-Māwardī with regard to an unjust ruler confirmed the same viewpoint. Not only unjust rule was to be tolerated but also co-operation in right affairs was considered desirable.

To bring about a permanent change on the political level, complete religious transformation of society was required through the obligation of enjoining virtue and preventing evil. It was the moral character of society as a whole which was a true measurement of the character of ruler. In order to bring about change mutual reform was the best course which was to be performed skillfully. Both internal and external reforms of individuals were considered necessary to bring a permanent change in a society. Internal reform was possible by purifying the individual from within through the threats of the hereafter. External reform depended upon maintaining the establishment of the commandments of Allah. Although it was possible to comprehend this obligation by reason, it was *sharī'a* which covered the wide range of this responsibility. Fear of loss justified the suspension of the obligation but a person determined to perform it in the face of an anticipated loss was also entitled to perform it provided he was a qualified man for this job and there were enough prospects for the exaltation of Allah's religion. This obligation was to be performed with care so that an evil which is meant to be suppressed, should not beget a greater evil and the person to whom the message was being given was ready to listen to the message. The formation of a group to deal with the group of evildoers was subjected to different interpretations. Some people regarded it unnecessary and confined it to a mere domestic level, while others deferred it to the advent of *Mahdī*, others still preferred to

perform it under a just *Imān*. But al-Māwardī himself stood with the majority of the scholars. He sanctioned the formation of a group to deal with the group of evil doers, but with all the necessary conditions and requirements. It was only through formation of such group that a man was advised to undertake this obligation. An individual person was advised to desist because he had very little prospects of success.

## CONCLUSION

The term Caliphate, as Māwardī interpreted it in a broader context, referred to every individual with a distinct place in society.<sup>1</sup> al-Māwardī applied the term to an *Umma* succeeding the previous *Umma*, to humanity because of its succession to the previous creation, and to all the Prophets including the sovereign Prophets. The succession was a common theme implicit in a variety of its usage. The term was, therefore, applied to a head of the Islamic community because of his succession to the Prophet (P.B.U.H) in all the matters of religion including political affairs. However, in its political context, al-Māwardī did not rely upon the word Caliph as only the word for a sovereign ruler of the Islamic community but used it interchangeably with the words *Imām* or the *Amīr al-Mu'minīn*.<sup>2</sup>

Apart from studying the meanings of the Caliphate in a broad context, we have arrived at an understanding that al-Māwardī considered the existence of Islamic society as a pre-requisite to the establishment of an Islamic government. Such a society was established after the believers passed through stages during which the establishment of every collective obligation was linked to the collective ability of the believers. At no stage during the process of this gradual reform the followers of the Prophet (P.B.U.H) were required to hurry the process of reform through the establishment of a government. Consequently al-Māwardī's emphases on the revival of the Caliphate is to be considered relevant with regard to a specific period in the history of Islam. The Muslims of that period in fact inherited this institution and agreed in principle about the necessity of continued enforcement of the Islamic injunctions under the supervision of the Caliph.

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<sup>1</sup> The reference is to Māwardī's interpretation of the Qur'ānic verse 6-165



In absence of the ability for enforcing the injunctions of Islam at a collective level, the Muslims of any community were not held responsible for bringing about change through the establishment of the Caliphate. At the same time, al-Māwardī insisted on the necessity of political organization and considered any kind of authority preferable to its complete non-existence. The subjects were therefore required not only to bear with the existing authorities but also to co-operate with them, provided this cooperation was not inconsistent with the requirements of religion. However, co-operation was considered necessary and was highly commendable if it could become a means of reform.

Similarly, from the study of his interpretations of the Qur'ān, *Aḥādīth*, and material in other books, we made an attempt to arrive at an improved understanding of his concept of political change in a broad context. Within a Muslim society, if the subjects lacked the ability to bring about political change, they were required to bear with the authorities and co-operate with them. al-Māwardī linked political change with the ability of the subjects, which is bestowed upon them by Allah in consequence of following the method of the Prophet (P.B.U.H). The process of political change, among other things, involved exhortation and reform of the ruler and if he refused to mend his ways, he could justifiably be deposed in the last resort. But forcible deposition was not incumbent on the subjects because al-Māwardī justified abstaining from any action which involved loss. From these principles, one is tempted to conclude that al-Māwardī supported despotism and was opposed to any political change in the community. Upon closer analyses it would be obvious that this was not in fact a reconciliation with despotism but he made the subjects responsible to cooperate with the authorities over the just matters and not to cooperate with them over unjust matters. From his interpretation of Qur'ān and *Sunna*, he was also led to the conclusion that bad rulers are the products of

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<sup>2</sup> In fact, it is the word Imam which has been used more frequently throughout the *Aḥkam*

bad society and are imposed on the subjects as a Divine punishment. To bring about a permanent change on political level the reform of the subjects was therefore considered indispensable which largely depended upon properly carrying out the obligation of enjoining good and preventing evil. In consequence of carrying out this obligation, the reformed subjects would naturally deserve better authorities as a Divine favour.

The religious transformation of society was thus considered as a most effective way of bringing about political change. In this process, al-Māwardī acknowledged the Divine involvement, and also determined very clearly what role and responsibilities were to be assigned to the subjects.

The detailed examination of ruler's various responsibilities enabled us to study them in a particular manner. From the order of his religious, moral, and administrative responsibilities it is obvious that the ruler was primarily a religious figure, then a moral reformer, and finally as an executor of law. The religious and moral reforms were thus considered prior to the enforcement of law at every stage of establishing religion.

In establishing the religion, the ruler was considered responsible to acknowledge the priority of some acts over the others. After the defence of faith, the ruler was considered responsible to establish religious obligations and the prayer was considered as most necessary. Its establishment gave the ruler the right to govern the Muslim community and entitled the subjects to the membership of the community. After the fulfillment of religious obligations, the ruler was responsible for carrying out the social and moral reform. And finally he could act in the capacity of executor of law. Before enforcement of laws and penalties he was required to reform society according to religious and moral principles where these laws could justifiably be enforced.

As a guardian of the faith and religion, the ruler could punish any deviation from its fundamental principles but he was bound to acknowledge the existence of various

religious schools with their rights of interpreting details (*furū'*) of religion according to the requirements of their jurisprudence. The ruler could force the adherents of various schools to keep their differences within limits and to renounce them where they threatened unity. But he was bound not to develop any prejudice against any religious school and not to promote the viewpoint of any single school under official patronage. al-Māwardī thus considered it not only as a ruler's right but also his duty to rely freely upon the viewpoint of any school. In the light of such a background, it is easy to understand al-Mawardi's quoting of two or more opinions in the al-Aḥkām and leaving it to the ruler's discretion to adopt anyone of the opinions according to the requirements of the situation.

In order to perform his religious, moral, and political responsibilities, the ruler was required not only to possess certain qualifications but he was also required to acquire the authority in a legitimate manner.

In the absence of proposed fixed principles regarding the acquisition of authority all the methods were considered legitimate as long as they did not violate the basic principles of *sharī'a*. The methods adopted during the *Rāshidūn* period acquired the status of standard precedents. However, the methods carried out by the *Umayyads* and the *'Abbāsids* were not considered either contradicting the principles of *Sharī'a* or the precedents of the *Rāshidūn* Caliphs. The Caliphate established within a single family was considered as meeting the requirements of legitimacy. However, it was thought necessary to meet other legal requirements in a particular order, like approval by *Ḥall wa al-'Aqd* followed by the taking of an oath of allegiance by the subjects.

But a ruler who was able to impose his rule in violation of these requirements was to be recognized as legitimate under the law of necessity if it was impossible to punish him for his act of disobedience towards the Caliph. To turn the irregular situation into a

regular one, such a ruler was to be forced to enforce the right order as well as to submit to the legal requirements of acquiring authority. If he submitted to the above two conditions he was to be recognized as a legitimate ruler even if he was a less preferred (*Mafḍūl*) man. In that case, the claims of any person with better qualifications could not be accepted and the former was to be confirmed in authority. The 'Abbāsids, therefore, finding no place for their claims to the Caliphate within such a framework claimed the office of the Caliphate on the bases of their relationship to the Holy Prophet (P.B.U.H). al-Māwardī recognized their rule as legitimate because in actual practice, they reverted to the traditional Sunnī theory of the Caliphate and adhered to the *Umayyad* practice of accession to the Caliphate by submitting to the legal requirements.

Submitting to the legal requirements for their accession to authority was the first requirement of governing the Muslim subjects in a legitimate manner. More important for the legitimacy of a ruler was to govern the Muslim subjects according to requirements of a right order based on religion and justice.

The 'Abbāsids fell short of upholding the right order in its ideal form, yet they met the required standards of legitimacy by regulating Islam at public level. They established religious obligations, enforced Islamic law, maintained a strong judicial system, and left the '*ulamā*' free in the codification of law. Hence they were recognized as legitimate rulers of the Muslim community. Moreover, al-Māwardī was conscious of an acute shortage of such persons who could combine the quality of piety with good administration. Another difficulty, following the upheavals in the post *Rāshidūn* period was securing the agreement of subjects over the leadership of the best person. al-Māwardī, therefore, recognized the less preferred (*Mafḍūl*) as legitimate if he possessed the basic qualifications for the Caliphate. He could be chosen even in the presence of a better-qualified person and once his rule was established claims from even the best

person to the office could not be legitimate. The legitimacy of the 'Abbāsīd rule was also based on various other juristic principles derived from the teachings of the Qur'ān and the *Sunna*, like the necessity of a political order, preference of tyranny over anarchy, the law of necessity, the need of unity among the Muslims, and the preferring of the lesser of two evils, etc. In the absence of an ideal system due to the changed circumstances, the utility and application of these principles was vindicated through the *Ḥadīth* literature.

With the passage of time when the Caliph became weak and began to rely on the Amīr for the exercise of his authority, his legitimacy was challenged on the ground that he ceased to enforce the *sharī'a* by himself and relied on the *Amīr* for this responsibility. The Caliph no longer enforced the commandments of the right order to which his office owed legitimacy. 'Abd al-Raḥmān III of Spain and the rulers of North Africa therefore claimed the transference of the office to them. The weak Caliph of the *Buwayhid's* age was considered legitimate on the ground that he still had a recognized role in performing the religious, legal and judicial responsibilities. Both his accessions to the throne as well as that of the *Amīr* were carried out in a legal manner. Moreover, like the less preferred (*mafḍūl*) Caliph, the weak Caliph was also to be recognized legitimate if the system of the Caliphate was carried out through different persons under his supervision.

In executing various commandments, he relied on the Amīr and was deprived of taking the initiative; nevertheless al-Māwardī proposed that under such circumstances he could be authorized to exercise supervision over the Amīr. If the latter was found wanting in conducting the business of state in a right manner, the Caliph could summon the provincial dynast to replace the Amīr's rule with his own rule. It could become a practical possibility because of the simultaneous existence of powerful dynasties

throughout the *Buwayhid* era whose rulers needed the legitimacy from the Caliph for the legal validity of their authority. Moreover the Caliph continued to be the religious head of the community and as such was recognized as a legitimate ruler of the Muslims.

Like the Caliph, the *Buwayhids* were also faced with the problem of legitimacy. It was an unprecedented situation in the history of Islam. The *Buwayhid* performed their responsibilities under the *Sunnī* Caliph who could not be a legitimate Caliph according to their religious requirements. The Caliph also had to rely upon the *Buwayhids* for the enforcement of the right order even though they could not be most suitable persons for this purpose. al-Māwardī, like other *Sunnī* jurists recognized them as legitimate because they did not abolish the Caliphate, nor did they alter the enforcement of the right order at public level. The judicial and religious system continued to be performed under the patronage of the Caliph. The '*ulamā*' were not deprived of playing their traditional role in the society. The *Shī'ite* '*ulamā*' considered the *defacto* Sunni Caliph as tolerable if he tolerated the *Shiites* because after the disappearance of the twelfth *Imān*, they could inherit only the religious functions of the *Imān*. Mutual cooperation of the authorities and the jurists made it possible both for the Caliph and the *Buwayhids* to co-exist for more than a century.

The exercise of authority by the rebel provincial governors could be considered legitimate only if after the violation of law they submitted to the legal requirements, acknowledged the existence of the Caliph and ensured the enforcement of right order based on religion and justice. Their legitimacy was now directly related to the enforcement of *Sharī'a*. they were also required to make submission to the Caliph as well as fulfil the various legal requirements. They were required to pay *Kharāj* to the Caliph, take his name in the Friday Prayer, put the name of the Caliph on the coins and renew the pledge on the installation and the deposition or death of every Caliph and the

Amīr. Even after completing all these legal requirements they were to be recognised legitimate under the law of necessity and the situation was still regarded as irregular. Through such arrangements Māwardī sought to put an end to the misuse of the power in the future. His object was to reiterate the importance of the central authority under the Caliphate as well as the enforcement of right order based on religion and justice throughout the Islamic world. It gave the *Buwayhids* the right to annex any province even when the provincial dynast was carrying out his rule in a right manner. But the *Buwayhids* were also made responsible to enforce the right order for continuation of their rule. After fulfilling this responsibility they could continue to exercise authority on behalf of the Caliph. In the case of permanent deviation on their part the Caliph was entitled to summon the provincial dynast to replace them and enforce the right order based on religion and justice. Hence despite his weakness, the Caliph was still considered a legitimate and necessary figure of governmental authority who was to be entrusted with the responsibility of ensuring the right order based on religion and justice.

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