

الكفر البواح، ومنايذة الحكام

*Kufr Bowwaḥ Wa Munābidtha
al-Ḥukām*

(Disputing with the Rulers when Public Kufr is made
Apparent).

Based on the writings by *Shaykh*

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Introduction by the author

Most of those who rely on these sayings, especially in our times, are those who want to fortify the thrones of the *‘Umara al-Waqt* (present day rulers) who are ruling with other than that which *Allāh* has revealed, and by relying on these *Shub’hāt* they are attempting to relieve their masters (rulers) from the circle of *Kufr* and *Riddah* (apostasy), and they use this *Bātil* kalam to stabilize the illegitimate positions held by those who do not rule by that which *Allāh* has revealed by making them appear to be legitimate and trying to close the door on anyone trying to remove them from power, and this is their main motivation. They think that if they take these rulers out of the accusation of *Kufr* then nothing can be done to them and they are therefore off-limits, but this is where they are mistaken because even if there is *Kufr Dūna Kufr* it does not help them in the least.

Indeed, there are scholars who are sincere and who are upon the truth but are afraid to pronounce *Takfeer* without certitude. But these are few, and truth is that the majority of those who argue on behalf of the *Tawagheet* in these times are from among the treasonous government scholars, and if this is so, and we are convinced it is, then we bring them the good news that this will not help them in any way, because the authority of their masters has fallen aside, and fighting to remove them is still permissible, even if their case is one of *Kufr Dūna Kufr*, *Kufr al-Akbar* or *Kufr al-Asghar*, or whether they personally deserve the titles of *Fāsiq* or *Dhālim* as these titles do not work in their defense, because *Allāh ta‘ala* has released us from this swamp of complicated issues when he guided His Messenger صلى الله عليه وسلم to explain clearly when it is permissible to fight and remove the rulers, where the Messenger of *Allāh* صلى الله عليه وسلم said “...unless you see public *Kufr* for which you have evidence from *Allāh*” or “...unless the disobedience to *Allāh* is permitted publically” or “...unless they order you to do a sin publically” or “...unless you have clear evidence from the book”, and these are the various formulations in which the *A’hadīth* have come to us.

***A’hadīth* pertaining to the limitations in obedience to the rulers**

The first one is in *al-Jāmi’ as-Sahīh al-Bukhārī*, and that can be found in other books of *A’hadīth* all with strong *Sanadan*:

[حدثنا إسماعيل حدثنا بن وهب عن عمرو عن بكير عن بسر بن سعيد عن جنادة بن أبي أمية قال: دخلنا على عبادة بن الصامت وهو مريض قلنا: (أصلحك الله: حدث بحديث ينفعك الله به سمعته من النبي صلى الله عليه وسلم!)، قال دعانا النبي، صلى الله عليه وسلم، فبايعناه فقال فيما أخذ علينا أن بايعنا: «على السمع والطاعة، في منشطنا ومكرهنا، وعسرنا ويسرنا، وأثرة علينا، وأن لا ننازع الأمر أهله: إلا أن تروا كفرا بواحا عندكم من الله فيه برهان»].

Told us Isma’eel, told us Ibn Waḥb, from ‘Amr, from Bukayr, from Busrun Ibn Sa’eed, from Junāda Ibn Abi Umayyah who said, “We entered upon ‘Ubāda bin As-Samit while he was sick. We said, “May *Allāh* make you healthy. Will you tell us a *Hadīth* you heard from the Messenger and by which *Allāh* may make you benefit?” He said, “The Messenger called us and we gave him the Pledge of allegiance for *Islām*, and among the conditions on which he took the Pledge from us, was that we were to listen and obey (the orders) both at the time when we were active and at the time when we were tired, and at our difficult time and at our ease and to be obedient to the ruler and give him his right even if he did not give us our right, **and not to fight against him unless we noticed him having Kufr Bowwah (open Kufr) for which we would have a proof with us from Allāh**”.¹

In other authentic narrations the wording states “...unless the *Ma’siyah* (disobedience) to *Allāh* is public” the meaning of which is unless their **commands** consists of *Ma’siyah*, the emphasis here is the ruler **commanding Ma’siyah (disobedience) or Ithm (sin)**, we are not talking about the individual himself and what he does behind close doors like *Zina* or consumption of *Khamr*, or even if these actions are committed publically, we are discussing the one whose **commands are issued publically**, or “...unless they command you with an *Ithm* (sin) publically” or “...unless they command you with an *Ithm* (sin) publically for which you have evidence from the book” this is the same narration as the one previous one except with the addition “...evidence from the book” so it must be a sin which is clear from *Qur’ān* or *Sunnah*. All these narrations are sufficiently strong to be authoritative in and of them selves. It has been narrated in *Sahīh* Ibn Hibbān,

¹ *Sahīh al-Bukhārī*, Vol. 9, Book 88, *Hadīth* 174

[أخبرنا الصوفي ببغداد قال حدثنا الهيثم بن خارجة قال حدثنا مدرك بن سعد الفزاري، أبو سعيد، عن حيان أبي النضر سمع جنادة بن أبي أمية سمع عبادة بن الصامت يقول قال رسول الله صلى الله عليه وسلم: «يا عبادة!»، قلت: (لبيك!)، قال: «اسمع وأطع في عسرك ويسرك، ومكرهك، وأثرة عليك، وإن أكلوا مالك، وضربوا ظهرك، إلا أن تكون معصية لله بواحا»]

As-Sufi told us in Baghdād, from Haytham Al-Khārijah, from Mudriq Ibn Sa’ad Fizāri (Abu Sa’eed), from Hayyan Ibn Abi Nadr, from Junāda Ibn Abi ‘Umayyah who heard ‘Ubaydah Ibn ‘Osāma saying, “The Messenger of Allāh صلى الله عليه وسلم told me, “O’ Ubaydah” who replied “*Labbayk* (I am respondent) *Yā Rasūlullāh*” who said “Listen and obey, in ease and in hardship, even if you dislike it and even if they give (others) preference over you, even if they take you money and beat your back, **except if it is disobedience to Allāh in public**”.²

Shaykh Shuhayb al-Arna’ūt said the *Is.nād* of this *Hadīth* is *Hasan*, we say the *Shaykh* was too conservative, the *Is.nād* here is actually *Hasan Saḥīḥ* and not just *Hasan*, and it is an authority by itself because all the men in the *Is.nād* are *Thiqāt* and they are also the men of Bukhārī and Muslim, and the sentence “...except if it is disobedience to Allāh in public” refers to their **Commands** which are ordered in public and **Not** what they do in private, so as the narration says it is their commands which are in disobedience to Allāh and not their own actions, because the Messenger said صلى الله عليه وسلم “...*Asma’ Wat-Tā’a* (hear and obey)” which is not related to what they (the rulers) may be doing such as eating or drinking, this is irrelevant because *Asma’ Wat-Tā’a* in this narration concerns commands in disobedience to Allāh in public, and it is known from the context and the grammar of this narration that the Messenger of Allāh صلى الله عليه وسلم was not referring to the *Mub’tedi* (innovator) but was speaking exclusively of those whose commands are in disobedience to Allāh in public.

Similar to the words of this *Hadīth* can also be found in the *Musnad* of Ahmed bin Hanbal with the same wording as that found in al-Bukhārī with various additional channels (i.e. different chains of transmission):

[حدثنا الوليد قال حدثني ابن ثوبان (لعله عبد الرحمن بن ثابت بن ثوبان) عن عمير بن هانئ حدثه عن جنادة بن أبي أمية عن عبادة بن الصامت عن رسول الله صلى الله عليه وسلم مثل ذلك، قال: «ما لم يأمرؤك بإثم بواحا»]

Told us al-Walīd, told us Ibn Thowbān, from ‘Umayr Ibnul Hāni’, from Junāda Ibn Abi ‘Umayyah, from ‘Ubāda bin As-Samit, and *Imām* Ahmed said “That the

Messenger of Allāh said similarly and added in addition “...unless they command you with a *Ithm* (sin) publically”. We say, this *Hadīth* is *Hasan Jayyid* by itself, and it is *Sahīh* due to the other *A’hadīth* in al-Bukhārī and Ibn Hibbān.

In the *Musnad* of Ash-Shāmi’een of *Imām* Tabarānī there is third *Hadīth* in which there are important additions: Tabarānī says,

[حدثنا محمد بن أبي زرعة الدمشقي حدثنا هشام بن عمار (ح) وحدثنا بن دحيم حدثنا أبي قال: حدثنا الوليد بن مسلم حدثنا بن ثوبان حدثني عمير بن هاني عن جنادة بن أبي أمية عن عبادة بن الصامت قال قال رسول الله، صلى الله عليه وسلم: «عليك بالسمع والطاعة: في عسرك ويسرك، ومنشطك ومكرهك، وأثرة عليك، ولا تنازع الأمر أهله، وإن رأيت أنه لك»، قال عمير: فحدثني خضير أو خضير السلمي أنه سمع من عبادة بن الصامت عن النبي، صلى الله عليه وسلم، وزاد: «إلا أن يأمر بك بإثم بواحا عندك تأويله من الكتاب»، قال خضير أو خضير قلت لعبادة: (فإن أنا أطعته؟!)، قال: (يؤخذ بقوائمك فتلقى في النار، وليجئ هو فلينقذك!)]

“Told us Muhammad Ibn Zahrah al-Dimashqi, told me Hishām Ibn Ammār, with another chain, told me the Ibn Duhaym, told me my father (i.e. Duhaym) with both of them saying (meaning Hishām Ibn Ammār and Duhaym), told us Ibn Muslim, told us Ibn Thowbān, told me ‘Umayr Ibn Hānī’, from Junāda Ibn Abi ‘Umayyah, from ‘Ubāda bin As-Samit who said “The Messenger of *Allāh* صلى الله عليه وسلم said, “Stick to *Asma’ Wat-Tā’a* (hearing and obeying), in hardness and ease, when you are strong and when you are weak, even if they make ‘*Athara* (preferences) over you, and don’t dispute with the people of power over their positions even if you believe you are more worthy of their positions” Then ‘Umayyah said he met another *Tābi’ī* (Khudayr) who said ‘Ubāda added “**Unless they command you with an *Ithm* (sin) publically for which you have evidence for from the book**” Khudayr said, “I asked ‘Ubāda, “If I obey him then what would happen (to me)?” ‘Ubāda said, “**Then you will be taken by your hands and legs and thrown into the fire, then let him (the one who commanded the sin) save you**”.³

We say, this *Is.nād* is *Hasan Lī-Dthātiḥī* (good in and of its self), and is again *Sahīh* by the witness of other *A’hadīth* like al- Bukhārī, Muslim and the *Musnad*

of Ibn Hibbān and others, and Khudayr As-Salamī from the *Qāt* of Ibn Hibbān, he narrates from ‘Ubāda Ibn As-Samit and Ka’ab Ibn Aḥbar, and there is a *Tarjuma* of him in the *Tarīkh* by al-Bukhārī where he referred to him as Ḥudayr with the letter ح instead of خ to spell Khudayr.

This *Hadīth* of ‘Ubāda has come from the infallible Messenger of *Allāh* صلى الله عليه وسلم who is most eloquent and comprehensive in his speech, and whose transmission of the divine message has been protected by the Lord of all the worlds. The Messenger of *Allāh* صلى الله عليه وسلم did not say “unless the ruler commits *Kufr*” or “unless the ruler commits *Riddah* (apostasy)” he did not use these wordings and by doing so relieved us of the duty of studying whether the ruler is a *Kāfir* or a *Murtadd* as this is irrelevant. Therefore this indicates that fighting the rulers to remove them is for reasons other than just *Kufr* and *Riddah*, as this is not what is stated in the narration, this then makes it difficult for the government scholars to defend their masters, because while they will argue night and day as to whether the ruler has left the fold of *Islām* which is their attempt at blocking any and all means that may lead to the rulers being removed from office, this narration is clear that their removal has nothing to do with *Kufr* and *‘Imān*, this then leaves their defenders wavering left and right.

The Messenger of *Allāh* صلى الله عليه وسلم permitted us to only dispute with the one in the position of power, with the sword if necessary under the prescribed conditions that have been clarified in other *A’hadīth* and only if we see public *Kufr* for which we have evidence from *Allāh*, or in another formulation which is unless the disobedience to *Allāh* is public, or unless they command us to do a sin publically however this sin must be from the book of *Allāh* and is not a matter of *I’tihād* or dispute.

Analyzing the statements of the Messenger صلى الله عليه وسلم from the above narrations.

To consider and develop the correct understanding further, we will analyze the statements of the Messenger of *Allāh* صلى الله عليه وسلم point-by-point:

1. **أنرى - An-Nara** (unless you see) - This means that the *Kufr* is there with certitude as if one is seeing it. It is so clear and well established that there is no dispute as to its reality, and *Kufr* is not something material that can be felt like wood or stone, meaning it is more of an intellectual phenomena rather than something tangible that can be felt or tasted, so it must be to a level of clarity that it cannot

be disputed as to its existence, for example, when the Messenger صلى الله عليه وسلم was informed by *Allāh ta 'ala* concerning the people of the elephant,



“See not how your Lord dealt with the companions of the Elephant?”⁴

The Messenger صلى الله عليه وسلم had not seen the incident as he was born in the very same year, but because it is a report from *Allāh ta 'ala* the Messenger صلى الله عليه وسلم knew with certitude that it had happened as if he had seen it with his own eyes. And this seeing has to be public, not an event which happens in private, not if there is an allegation that some of the rulers have insulted *Islām* in private, which is *Kufr*, or one of them has deliberately stamped on the *Mushaf* which is also *Kufr*, it must however be something which can be seen in public.

Examples of publically displaying open *Kufr* would be government orders, and these are usually official papers that are distributed to the nation's courts and made public to the general masses, and they recorded and kept in books which contain the governments laws and rulings and are stored in the central libraries for public usage, and it is therefore impossible to hide or deny its context, and this is what would be checked to see if it contains *Kufr Bowwah*, or public speeches that contain open *Kufr* which would be broadcasted on national television, and there these and other examples where seeing the public *Kufr* can be observed. Another example is to give permission to Usury banks, giving permission to brothels, night clubs or nude beaches etc.

2. **بواحاً** - *Kufr* should be ***Bowwah*** - *Bowwah* is that which is open, apparent, visible and nothing is hidden, from the Arabic word *Bahha Ya Buhhu*, as the Arabs would say “*Bahha Bi Sarri*” meaning “He told you his secret” so the connotation here is one of exposing a secret to someone, and this usually connected to one being able to see it, because if you can see it then it must be public, if it is amongst the public affairs then it cannot be hidden. What can be hidden are their personal actions, but the laws and commands cannot be hidden because they are directed at people, they are public and there is no way to hide them. This is the meaning of *Bowwah*, and as can be seen *Bowwah* and *An-Nara* are closely linked and connected with one another.

⁴ *Sūrat Feel*: 1.

If a ruler says in private “The *Qur’ān* is under my feet” or “What is this filth called *Islām*” then statements like these are definitely *Kufr*, however they are not *Bowwah* (not in public) as they were not mentioned in any public environment where the average citizen may observe it, examples like these cannot be argued it can be disputed as to whether or not it actually happened.

But laws that are written in the official government magazines, statements made by government officials broadcast via the television or radio and are not denied or rejected, open existence of usury banking, nightclubs, licensed brothels, and nude beaches. The membership of international institutions which have clear *Kufr* as a part of its *Mithāq* (covenant), such as: The United Nations, The League of Arab States, The Gulf Cooperation Council, the World Bank, and the International Monetary Fund, and others. Or participation in military alliances and treaties with *Kuffār* to fight against Muslims, such as NATO. Or renting military bases to the *Kuffār* and being silent when they are used against fellow Muslims. All these are public and known, we see it with our own eyes and are established beyond doubt as it is narrated directly by masses of people and it is therefore impossible to have a mass conspiracy fabricating such facts.

3. The act (الفاعل) that we are studying here must be *Harām* at all levels, meaning it has to be established beyond doubt that it is *Harām* and it cannot be a matter of argument or a point of disagreement. For example, if a ruler establishes taxes on smoking, now the prohibition of tobacco its self is not agreed upon by all scholars therefore it is not *Qata’ī*, it is rather a matter of *I’jtihād*. But if he permits the selling alcohol to Muslims then this is considered as *Kufr Bowwah* as its prohibition is *Qata’ī* and there is no dispute amongst the scholars over this, it must be established from *Qur’ān* and *Sunnah* with certitude, and with *Ijma’* of the Muslims. This is then the meaning of the words of the *Hadīth* of al-Bukhārī “...you have the evidence from *Allāh*” meaning there has to be certitude in the narration (*Qata’ī Dalālah*) and certitude in the meaning (*Qata’ī Thabūt*) and there is no room at all for *Ta’weel*, and the Messenger صلى الله عليه وسلم said “...you have...” meaning that one must be convinced themselves by seeing the evidence and not just relying on secondary reports from either scholars or anyone else.
4. كُفْرًا - *Kufrān* - In the Arabic language the word *Kufrān* is a نكرة *Nakara* (an indefinite article), it does not refer to a *Kufr* but rather any *Kufr* in a sentence which is conditional, like “’Ila An’tarow (unless you see *Kufrān*)”. In Arabic as well as other languages an indefinite article in a conditional sentence covers all types of this *Nakara*, to illustrate, “unless you find a man doing that” the word

“That” is the *Nakara* in this example. So the statement “...unless you see *Kufr*” applies to all types of *Kufr*, whether they are *Kufr al-Akbar* that takes one outside the *Millah* or *Kufr al-Asghar* that does not, which means by *Dtharūrah* (necessity) that this statement includes the following:

a) Whatever fully contradicts *Islām* - So it is *Kufr* in and of itself, independent of whether it is from the private actions of the ruler or the public actions, we may not know the private actions but if we were to become aware of these actions it would then be public. It can be from his statements or his beliefs even if it does not have an affect from the state affairs, independent whether the ruler commanded it or not because it is *Kufr* and thus it is *Nakhara Fi-Siyām* so it applies to beliefs and beliefs are not commands, an example of which would be disrespecting the *Qur’ān*, or insulting the Prophets, or believing in *Tanāsūkh* (reincarnation) like the Druze, and it could be a rejection of other beliefs of *Islām*. These are obviously not commands, however it is *Kufr Bowwah* and it is enough to remove him from authority.

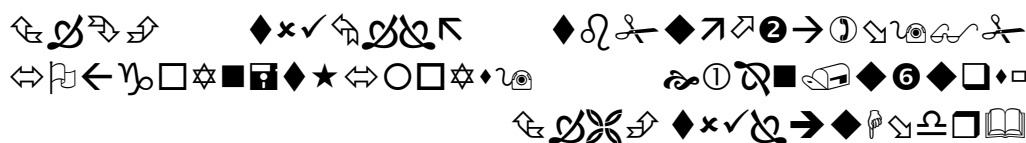
b) If the Ruler Commands any *Ithm* (sin) which is known with certitude to be *Harām* - It cannot be a matter of *I’tihād* or something over which there is difference of opinion; it must be something which is *Qata’ī* over which there is no *Khilāf* (dispute). We are not discussing whether he performs an action which is prohibited according to the *Shari’ah*, what is relevant is that the prohibited action is being **Commanded** by the ruler rather than the same prohibited action is performed due to a desire, for example if the ruler consumes alcohol, and this by its self is *Harām* but it has nothing to do with the state affairs, but if the same ruler **Commands** that the alcohol must be consumed by others then that would constitute *Kufr Bowwah*, we are not studying whether the person committing a sin is doing so because out of making that prohibited act *Halāl* (*Istihlāl*), or that he is rejecting a *Ḥukm Shar’ī*, or an action is considered *Wājib* according to *Shari’ah* and he has commanded that the act should not be carried out, neither are we discussing if the act itself is an act of *Kufr*, we are studying if the action is well known to be a *Harām* and he is thus commanding that it be performed. We are not studying the situation of the one who is doing act, neither the one who has been commanded to perform the act, or if the one who commanded the act to be performed is excused due to various reasons, we are attempting to ascertaining whether the commandment is *Kufr Bowwah* or not, if there is a valid excuse then this is separate to our discussion, the main point is asserting whether the act is itself *Kufr Bowwah*, the fact that there may be excuses preventing *Takfeer Mu’ayyin* (specific *Takfeer*) on the one guilty of this *Kufr* is an issue to be studied after the asserting it being *Kufr Bowwah* or not, like the case of Hātib

Ibn Abi Balta'ah⁵ (r.a) who sent a message to Qur'aysh so that his family might be safe, when Hātib's was confronted by the Messenger of *Allāh* صلى الله عليه وسلم to assert what Hātib had done, Hātib very quickly says, **"I did not do it out of *Kufr*!"** so Hātib recognized that his actions were *Kufr* but he was excused by the Messenger صلى الله عليه وسلم due to reasons that prevented him being treated as a *Kāfir Harbī*, but this does not take away the fact that Hātib's actions were *Kufr*, rather they were described as being *Kufr* even though Hātib himself had been excused due to a *Ta'weel* that he had performed, and the fact that the Messenger of *Allāh* صلى الله عليه وسلم excused him also because he was a Badrī⁶, even though Hātib is seen as having a *Ta'weel* it nevertheless still retains its description as *Kufr* and this can never change in our *Shari'ah*. Whether or not the one who carries out these actions is a *Kāfir* is completely irrelevant, because this is intermingling to sciences together, one being the *Qawā'id* (rules) of *Takfeer* and the investigation that must be performed there, and asserting an act to be *Kufr*, and this is how some people argue in defense of *Kufri* regimes in general that are claimed to be Islamic and *Shari'ah* based.

Notice that we are being cautious here as we did not only take the sentence “...unless the disobedience to *Allāh* is in public” we insisted that this disobedience to *Allāh* in public must be Commanded, we have not taken his personal disobediences to *Allāh* that are performed in public even though he may become a *Fāsiq*, but this nonetheless does constitute *Kufr Bowwah*, we have been strict in mentioning his disobediences to *Allāh* that are Commanded! The reason for this is the wording of the other narrations that say “...unless they command you with a sin publically” so the word used here is “...unless they command you...” which is a restriction that indicates not every public sin but the public sins that are commanded, this way all the various *A’hadith* with their various wordings are taken into consideration at much as possible, unlike the treasonous government scholars who are *Mukh’tusimeen* by taking from the revelation which suits them and rejecting that which displeases them, as *Allāh ta’ala* says,



⁶ Those who fought in the battle of *Badr*, as *Allāh ta 'ala* had excused in the *Qur'ān* all those who had fought as *Badr*.



“As we sent down on those who divided (the scripture into arbitrary parts), who have made the *Qur’ān* into parts (i.e. believed in one part and disbelieved in the other). So by your Lord, we will of a surety call them to account”⁷

The categories defining what constitutes an open *Kufr*.

So the topic of study is the appearance of *Kufr* in public for which we have evidence from the *Qur’ān* and *Sunnah*, or a command that is issued by an authority (which could either be a *Sultān* or a *Hākim*) to commit a sin, but this *Ithm* (sin) must be established beyond doubt. So either the *Kufr* is public or the ruler commands *Harām* or prohibits a *Wājib* in public. This can be established by the following cases:

First Category

1. That the *Hākim* (ruler) commits clear apostasy with a deed, action or statement, such as **a)** changing his religion i.e. becoming a Jew, Christian or Hindu and broadcasting it publically , or **b)** by rejecting *Islām* by saying he is free from all religions in public .
2. That the *Hākim* commits an act of clear apostasy even if he claims to be a Muslim, i.e. he performs *Salāt*, fasts in *Ramadhān* and eats from our meat. Example of which is **a)** that he rejects the *Sunnah* of the Messenger صلى الله عليه و سلم in principle, or **b)** by wearing the cross of the Christians, or **c)** he fights under the flag and command of the *Kuffār* against Muslims, or **d)** respecting and attending the places of idol worship publically.

In cases such as these he has committed *Riddah* (apostasy) and this has its own treatment according to the *Shari’ah*, but leaving him in power while he has publically displayed *Kufr Bowwah* is impermissible and he must therefore be

removed because leaving him in authority is its self *Kufr Bowwah* which is not to be tolerated, or to say it differently, a *Kāfir* cannot be in authority over Muslims by definite evidence from *Qur'ān* and *Sunnah* and with the *Ijma'* (consensus) of all scholars, even if he claims to be ruling by the *Shari'ah* to the letter or it is advised that he stay in power to protect the public is not enough for him to hold on to his position because the first prerequisite of attaining a position of authority in *Islām* is he must be Muslim⁸, otherwise his mere ascension to power is *Kufr Bowwah* in and of its self, and this is what the government scholars use because as we mentioned as soon as a *Hākim* becomes a *Kāfir* he must leave his position of authority.

So two things apply to the apostate ruler:

- a) All the rulings regarding the *Murtaddeen* (apostates) will be applicable.
- b) If he stays in power in spite of committing apostasy, then the ruling regarding this will be the approval of the appearance of *Kufr Bowwah*, which is a violation of an essential tenant of *Islām* and is again *Kufr Bowwah*.

Second category

If the ruler orders a command in public in a disobedience to *Allāh*, whether it is to a specific person or generally applicable to the whole society by either commanding the abandonment of a *Wājib* (duty) or commanding the performance of a something *Harām*, such as a general regulation that anyone joining the army shave his beard otherwise he will be punished, then this contradicts something which is known in *Islām* to be at least *Mustahāb* (desirable), and this is then making the *Halāl* into *Harām* and undesirable which is evident *Kufr Bowwah*. But in any case there is no difference between an order made to the general public which would be applicable to millions of people and orders given to single persons, we would agree that on the outside general commands seem worse than specific cases; however the out come of the statements are identical as they both command that which contradicts *Islām*. The issue here is that he is commanding as a *Sultān* (ruler) and thereby enforcing his commands using the state authority whether they are police or military personal,

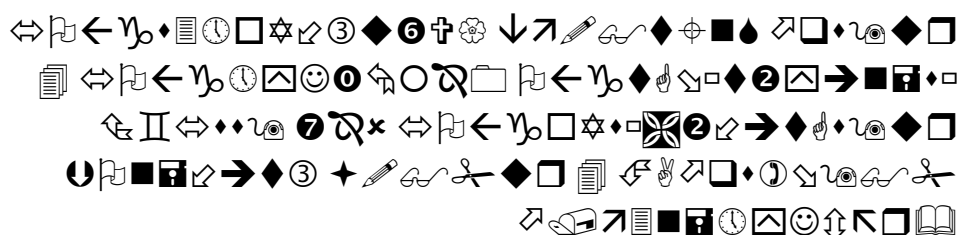
and according to the other wordings of the *Hadīth* of ‘Ubāda Ibn As-Samit (r.a) is *Kufr Bowwah* with evidence from *Allāh*.

We are not even focusing on whether or not the ruler makes *Istihlāl* because it is sufficient that he commands it, neither are we focusing on whether he recognizes that he is making *Istihlāl*, and neither are we focusing on whether the people who are commanded obey or disobey his orders, because if they obey then they are sinful (and in some cases maybe even *Kāfir*), even and they refuse to obey it still does not change the fact that it is *Kufr Bowwah*, and this is all irrelevant. What is relevant however is the command has been issued by the public authority as an ‘*Amr* (command), and commanding sin to be performed or preventing a *Wājib* to be performed is ruling by other than that which *Allāh* has revealed and is thus an act of public *Kufr*, independent of all other factors as we have mentioned.

Examples of the *Sultān* commanding the prohibited and prohibiting the *Wājib* are as follows:

- a) Issuing of public order/law/by-law/ etc, which contains rulings which contradict *Islām* in areas which are not open to *Ijtihād* (i.e. they are *Qata’*). This is not restricted actions only, it could be in ‘*Aqeeda* related areas or even in etiquettes, for example he may issue a ruling that in certain meetings only the left hand should be used while eating, this is enough to constitute *Kufr Bowwah* because it is known from the *Sunnah* that the right hand should be used for eating. The command could also be in contradiction to Islamic *Khuluq* (manners), like commanding that public officials are not permitted to show mercy to orphans, this is also enough to be *Kufr Bowwah* because Muslims are required to be merciful to orphans and not oppress them. Other commands that fall into this category would be the permission of usury banking, giving brothels licenses to be run legally, or permitting access to nude beaches.
- b) Enactment of laws which include, administrative regulations, which have not been derived from *Shari’ah*. This is stated expressly in the law itself or the official proceedings surrounding the introduction of the law (e.g. Hansard records in the UK), and has either been derived out of the idea of pure *Maslahah* (benefit) without an iota of it being from *Qur’an* and *Sunnah* but rather its deduction was from an analysis that was carried out on the French constitution of dealing with punishments that are implemented against thieves, or it has been taken from international laws and organizations in regards to banking which are taken from the *Kuffār* books of Jurisprudence without any reference to *Qur’an* and *Sunnah*. Laws such as these examples which have been developed in any of

the methods mentioned would constitute a law of *Kufr* because they were not referred back to *Allāh* and His Messenger صلى الله عليه وسلم, and this is neglecting and turning away from the *Shari'ah* in ruling which is a clear act of *Kufr*. Even if the content of the law derived in the manner we have given examples of seems to be in synchronization with the *Shari'ah*, like a law which decides to hold the parents of children under the age of ten to responsible for their crimes, this obviously corresponds with the *Shari'ah*, however if it has been derived from the *Qur'ān* and *Sunnah* then this is *Īmān*, but if it is derived from other than the *Shari'ah* of Muhammad صلى الله عليه وسلم than this is *Kufr*, the law is identical but the difference here is where the law has been derived from. In practice it can be very difficult to prove that a ruler referred to other than the *Shari'ah*, because some rulers are skilled in their *Nifāq* and are masters at receiving *Fatwah's* to justify their deeds. Rarely will one find an explicit statement revealing that they did not refer to *Allāh* and His Messenger صلى الله عليه وسلم, except when they occasionally lapse because the nature of *Nifāq* is that the *Kufr* which is in their hearts will be exposed for all to observe, as *Allāh ta 'ala* tells us in the *Qur'ān*,



“Had We so wiled, We could have shown them to you, and you should have known them by their marks: but surely you will know them by the tone of their speech! And *Allāh* knows (all) your deeds”.⁹

However in some cases certain governments are at pain to stress that their laws are not from the *Shari'ah*, because they have arrogantly given full sovereignty in ruling to their own whims and desires by governing by an extreme form of secularism, and fight against *Islām* and its people, so the mere reference to *Allāh* and His Messenger صلى الله عليه وسلم can be punishable.

From what we have mentioned thus far of laws that either **a)** contradict *Islām* or **b)** laws that are not derived from *Shari'ah*, these must all be considered as *Kufr Bowwah*, independent of the beliefs of the one who enacts them, whether they

⁹ *Sūrat Muhammad*: 30

agree the law enacted to be complainant with the *Shari'ah* or not. The truth still remains that these laws constitute *Kufr Bowwah* for which there is evidence from *Allāh*, even if the ruler himself is excused of this *Kufr* due to being *Jahil* (ignorance), possessing a *Ta'weel* from making *Ijtihād*, or being in a state of *'Ikrah*, because the issue that we are concentrating on is looking at the regulations and commands themselves, not the rulers and what excuses they may possess.

The reality is the ruler will be confronted with his command of *Kufr*, if he has been using the excuse of ignorance then his ignorance may be removed after a long discussion in the public domain, or he may be confronted with evidence which proves that his *Ta'weel* is faulty and that a difference of opinion in this matter is non-existent which necessitates that he immediately retracts his statement, or his excuse of being coerced into implementing a law(s) of *Kufr*, in this case it is either a local judge who has a higher authority that is above him therefore it must be taken up with them, or the ruler of the state and the coercion is coming from an external Islamic authority which will have to be approached, or the external entity is a *Kāfir* state and in this case all sovereignty has been replaced by *Kufr* and is therefore *Kufr Bowwah* by its self.

So ignorance can be cleared up with education and public discussion until the matter is made clear and there is no dispute, *Ta'weel* can be cleared up by scholarly discussion and showing that the evidence in the *Ta'weel* is weak and based on a lapse of mind rather than a strong argument, and coercion can be examined as to its source, and if that happens to be a foreign *Kāfir* authority then it means that Islamic sovereignty no longer exists and has instead passed to *Kuffār*, and in such a case its title of *Dār al-Islām* to becoming *Dār al-Kufr*, and that fact that sovereignty has passed from the Muslim hands into the *Kāfir Ḥarbi'een* is the worse type of *Kufr Bowwah*, and in such a situation *Jihād* becomes *Fardth-'Ayn* upon all citizens until the *Kāfir Ḥarbi* is expelled completely from the land.

Now if the treatment for *Kufr Bowwah* is performed in the method we have illustrated above, albeit in a skeleton form, then all the excuses of *Jahil*, *Ta'weel* and *'Ikrah* that have been discussed above will have been dealt with sufficiently.

If the ruler persists in applying *Kufr Bowwah* then this is a clear evidence that he has committed apostasy with out any no excuse as all excuses have been dealt with, and this type of apostasy is more evil then the first category of the one who changes his religion, because the latter is enforcing the *Kufr* on others, and by

this he becomes those who are resist and fight against the Shari'ah and ends up being a *Kāfir Ḥarbi*.

During this time period the ruler is still publically known to be a Muslim and is obeyed in all other areas where it is in accordance with the *Shari'ah*, however the system is still a system of *Kufr* and those who are working to remove the *Kufr* from the law have not yet reached the stage of *Munabbidah* (armed insurrection against the rulers), because the process of correction is still on-going, it may take months and even years to establish that his ignorance, *Ta'weel* and foreign occupation is removed, during that time the law in question still has to be removed.

Third Category

The ruler does not apply what is obligatory upon him to apply from the Islamic law. This is known around the world as negative decisions, or more correctly the law of negligence, so it is not non-application of what ought to be applied, and we will reiterate again that we are discussing those laws which are not derived via *Ijtihād* but are rather laws which are *Qata'ī* and unquestionably either *Harām* or *Halāl* which recourse to scholarly endeavor of deduction. It is not necessary to see official written permission for the negative decision as silence is sufficient and would constitute a tacit approval; for example, the prevention of prostitution in the public domain should be actively pursued by the ruler, if the ruler is not seen to be carrying this prevention then this would be sufficient to constitute *Kufr Bowwah*, the prostitution does need to be officially legalized by the state for it to fall under public *Kufr* it is enough that it is ignored. Another example is the treatment of those who drink *Khamr* according to the *Shari'ah* which is flogging, if instead a different method conducted whereby instead of flogging the drunk are imprisoned until they sober and are then released, if such a method is continuously carried out and the *Hadd* punishment for drinking *Khamr* is fully neglected then this also constitutes *Kufr Bowwah*, because the duty of the ruler is to be active in the implementation of the *Shari'ah*. Examples of where incidents can occur in our day are the following:

- a) Failure to punishing those who mock and insult *Allāh* and His Messenger ﷺ, like creating caricatures of the Messenger ﷺ or publishing articles that insults his honor.

- b) Failure to implement the *Hadd* punishments on those who have earned them, with excuses that the *Hadd* punishments are too brutal to be applied in our era of technology and civility, like in the case of *Zina* or consumption of *Khamr*.
- c) Failure to prevent sales and commercial transactions which are prohibited. Such as the use of usury with no difference between public traders to large corporate institutions who more times than none operate their sales through the use of usury. If the *Sultān* does not intervene and prevent such contracts, and fails to administer the prescribed punishments according to *Shari'ah*, he is then by de facto giving legitimacy to their actions, and it would be similar if he had given them actual permission. It is not the case of the *Sultān* rejecting the *Ĥukm* on usury being prohibited, neither is it the case that he has mocked at the *Ĥukm*, neither is it the case that he has publically expressed that the usage of usury is permissible, neither is it a case of the common public practicing usury due to greed or that they are involved in usury because they are cynical about the *Ĥukm* of *Allāh ta 'ala* thereby becoming *Kāfir*, neither is it a case related to certain excuses like *Jahil*, *Ta'weel* or *'Ikrah* which may constitute a legitimate excuse, but none of these examples is the case here.

But the issue is exclusively: The non-application of the laws of the *Shari'ah*, which is in fact not ruling by that which *Allāh* has revealed and is thus a *Kufr Bowwah* which we have evidence from *Allāh*. And the other *Riwāyah* (narration) which says, “...unless it is a disobedience to *Allāh* in public” this then fits with this situation. So one type of *Kufr Bowwah* is disobedience to *Allāh* in public while preventing disobedience to *Allāh* is an obligation to the rule, so if the ruler is silent concerning usury banking in the Islamic domain then this would be considered a negative decision, if however there was a permission already granted making such transactions permissible then this would fall under our second category that we have mentioned and is termed as a positive decision, if this were the case then there would be no need for investigative work into whether or not the disobedience to *Allāh* was being prevented. So even if the law has in its mandate that usury transactions are prohibited, but due to the rulers negligence in actively preventing such activities, then this is considered as a negative decision and is a *Kufr Bowwah* which is evidence from *Allāh*. In most cases, this category is more insidious and dangerous than the previous ones, because the rulers claim to be Muslims and pronounce the *Shahādatayn*, while in reality they are *Zinādiqah* and *Kāfir*, and they instruct their cronies to commit public evident violations of *Shari'ah* and inform them not to be anxious, and at the early stages of introducing these violations they may administer a symbolic

punishment which will not include having their necks cut but they may be imprisoned. So their intention is to publically denounce these acts but slowly they will ease on the punishments and reprimanding until the masses become slowly desensitized from these *Munkarāt*, and once this happens they will not hesitate in publically displaying their *Kufr Bowwah* which they had been concealing previously.

Forth Category

Accession to international organizations, or international treaties, or a military alliances and the ratification of the charter, which contains statements of *Kufr*, which are in contradiction to all provisions harvested by *Islām*. As is the case of the United Nations, the League of Arab States, and all the treaties and alliances under the leadership of the Americans, British or French, which all contain blasphemous texts, as well as the major sin and hideous crime of being allied with the *Kuffār*, and succumbing to being under their leadership, which will jump to an act of *Kufr* if they are ordered to fight against Muslims.

And this also, from its position, is *Kufr Bowwah* which we have evidence from *Allāh*, regardless of the belief of the signatories to the covenants and conventions and the viability of implementing them, this is still a type of *Kufr*, regardless if they are knowledgeable concerning it or ignorant, or whether they are satisfied or dissatisfied, or if they contracted it by choice or by coercion. All of these points may affect the legal description on their persons in terms of excuses and therefore having barring any notion of *Takfeer*, and it may determine their position in the '*Ākhirah*', but in no way does it affect the fact that the Charters and Treaties are *Kufr* in them selves, as they are a set of words and sentences which is apparent to the eye, so no what the excuses are it does not affect the fact that there *Kufr Bowwah*.

An advice concerning the above categories.

If one examines this situation correctly, then the problem will enlighten ones mind and will be as though one is touching it with their hand and all confusion will dissipate. And this is clarified by the other narration where it says, “**...unless they order you with a disobedience to *Allāh* in public**” this is also a *Kufr Bowwah* as explained above, and the type of *Kufr Bowwah* which is not ordered by the ruler but is instead given permission is also a public disobedience to *Allāh*.

And the third wording of the narration, “...unless they command you with a *Ma’siyah* (disobedience) in public” this the same as the second and third case that we have mentioned, because this is commanding a disobedience directly, and this also relates to the first case because if the ruler commits apostasy and insists on staying in power then he is commanding that his mandate be obeyed, because he should be removed from his position and the fact that he is refusing to step down is an indirect command that he should be obeyed by leaving him in office, so permitting the apostate to stay in power is commanding a *Ma’siyah* in public because he has commanded that he stay in power. And even in the fourth case where the ruler is neglecting the *Munkarāt*, for example leaving the activity of prostitution which has been an on going norm in the society, he is actually commanding that no one should prevent them from carrying out their prostitution, because if the ruler himself is not preventing it and one were to step in attempting to remove the *Munkar* then that would be disrupting the public order because it is for him to mandate to be active in preventing all such activities by the legal means dictated by the *Shari’ah*, and although on the surface this seems trivial as he may not be informed as to such *Munkar*, but his ignorance can only last so long before he is informed as to these crimes against the *Shari’ah*.

The statement of *Imām* an-Nawawi (r.h) concerning the meaning of the word “Disobedience”.

The statement of *Imām* an-Nawawi (r.h) where he said, “The meaning here of *Kufr* is disobedience, and the meaning of the *Hadīth* that says do not dispute with the rulers, and do not object to them until you see *Munkar*, if you see anything of this sort then reject it and say the truth where ever you are”. *Imām* an-Nawawi hit the centre of the truth where he said, “The meaning of *Kufr* is disobedience...” but the *Imām* did not further this point in detail as we have done (May *Allāh ta ‘ala* shower His blessings and Mercy upon), and he was not successful in the rest of his assertion where he said, “...if you see anything of this sort then reject it and say the truth where ever you are”, because the intent of the *Hadīth* of rejecting *Munkar* and speaking the truth in the face of it is not restricted in its application to rulers but is rather applicable to all walks of life whether they be the *Munkarāt* of the rulers, day-to-day persons, organizations etc, and here the issue is disputing with the authority of the ruler, it is not merely telling him the truth it is rather removing him from authority. Even if the actions of the ruler is not to the level where his removal becomes necessary one is still obliged to tell him the truth. So the second part of *Imām* an-Nawawi’s statement is not accurate, because the *Hadīth* specifically says disputing with the rulers authority, when one does not see *Kufr Bowwah* then one should dispute over their authority but when *Kufr Bowwah* has become apparent then one should dispute over their authority.

The proper *Taqdīr as-Sahīh* (evaluation) of the *Hadīth* of ‘Udāda Ibn As-Samit (r.a) is “Command good and forbid evil, saying the truth where ever one is located, without fearing anyone except *Allāh*, and perform it in all circumstances and times, but do not transgress the level of saying it with the tongue so that the ruler is disputed with over his authority, or by usage of the sword, no matter how one feels about their authority or whether one feels that they are more worthy of their governance as none of these are a justification, except if one observes *Kufr Bowwah* with evidence from *Allāh*, or if they command a *Ma’siyah* which is supported by irrefutable evidence from the Book of *Allāh*”.

Indeed, it is true that some may have difficulty in recognizing that some of the categories that we have mentioned above are types of *Kufr Bowwah*, but the reality is that the mere enactment of such laws that run counter to *Islām* are *Kufr Bowwah* without any ambiguity, because what ever contradicts *Islām* is the opposite of *‘Imān* and anything opposite to *‘Imān* is *Kufr* by its very nature, and to stress again that we are not discussing the position of those who perform these enactments whether they are apostates outside the *Millah* of *Islām*, or whether they have a barring condition due to a number of excuses that relieves them from exiting the fold of *Islām*.

Evidences related to the treatment of the *Kāfir Harbi*

The treatment of such a ruler who enacts laws that contradict *Islām* is like a *Murtadd al-Harbi* which is one of the various types of *Kāfir al-Harbi* because he is using the state power and is refusing to implement the *Ḥukm* of *Allāh ta’ala* as he is obliged to perform.

This is shown clearly by the treatment carried out by the Messenger of *Allāh* صلى الله عليه وسلم for the one who married the wife of his father which was the tradition of the Arabs of *Jāhiliyyah*, and it is well established that the Messenger of *Allāh* صلى الله عليه وسلم ordered after the prohibition of this act that anyone who performs such a contract will have their neck struck by the sword, and that their wealth will be confiscated as *Ghanīmah* (war booty) to be placed in the public treasury, and those who were ordered by the Messenger صلى الله عليه وسلم to implement this treatment were discharged with a *Raiya* (banner) signifying a declaration of war which was the common practice of the Muslims on every *Ghazwat* (battle), and this is evidenced by the following *Hadīth*:

عن معاوية بن قرة عن أبيه، رضي الله عنه، قال: (بعثني رسول الله، صلى الله عليه وعلى آله وسلم، إلى رجل تزوج امرأة أبيه أن أضرب عنقه، وأصفى ماله)

From Mu'āwiyah Ibn Qurra, from his father (r.a) who said, **“The Messenger of Allāh صلى الله عليه وسلم sent me to a man who married the wife of his father, and that I strike his neck and As-Saffi Mālahah (confiscate his wealth)”**. This narrated by Ibn Māja with an *Is.nādan Jayyidan*, and by Daraqutni.

In this *Hadīth* there is no mention of a discussion of accountability, or interrogation as to motives, which are the usual methods adopted, but nothing in the text even eludes to such methods and therefore we cannot attribute to this *Hadīth* otherwise because it would be a suggestion that the *Dthikr*¹⁰ is not protected by *Allāh ta 'ala*, so what is evident and explicit from the text is what was ordered by the Messenger صلى الله عليه وسلم to approach the perpetrator, strike his neck and take his wealth with no questions asked. The ratification of this narration is reported else where giving us more information:

عن البراء بن عازب، رضي الله عنه، قال: (إني لأطوف على إبل لي ضلت، فأنا أجول في أبيات، فإذا أنا براكب وفوارس، فجعل أهل الماء يلودون بمنزلي. وأطافوا (أي الفوارس) بفنائي واستخرجوا منه رجلاً، فما سألوه ولا كلموه حتى ضربوا عنقه! فلما ذهبوا سألت عنه فقالوا: عرّس بامرأة أبيه!)

Narrated Barā'a Ibn 'Āzib (r.a) who said, **“I was looking for some camels who had been lost, and was going from an encampment when I saw a man *Rāqib* (mounting) a horse with some men with him, so a group came to my tent seeking protection because they knew that I am the companion of the Messenger صلى الله عليه وسلم. The riders started checking the various tents until they found a man and disinterred him; *Famā Sa'alū* (they did not speak to him) but stretched him out and struck his neck and left. The people inquired as to what had transpired; it was said that the man had *Arras Ibn 'Ath'abi* (married his father's wife)”**. This can be found in *Mustudrak* al-Hākim, and also Ahmed and Abu Dawūd narrated similarly with a *Sahīh Is.nād* which is an authority.

And in a separate incident it is narrated,

عن البراء بن عازب، رضي الله عنه، قال: (لقيت خالي أبا بردة (وهو أبو بردة بن نيار، شهد بدرًا) ومعه الراية، فقلت له: أين تريد؟! قال: بعثني النبي، صلى الله عليه وعلى آله وسلم، إلى رجل نكح امرأة أبيه، فأمرني أن أضرب عنقه، وأخذ ماله!)

“I (Barā’a Ibn ‘Āzib) met my uncle Abu Badra Ibn Nayyar as he was carrying a Raiya (banner), I asked, “Where are you going?” he said, “The Messenger of Allāh صلى الله عليه وسلم sent me to a man who married his fathers wife, and he ordered me to strike his neck and confiscate his wealth”. This *Hadīth* is *Hasan* and is *Sahīth* with the other corroborating evidence which is also an authority, and it complies with the condition of Muslim as mentioned by al-Hākīm which adth-Dthahabi concurred with, and Ahmed narrated it from various channels with one of them being *Sahīth*, and al-Hāfidh said in *al-Fathh* that there is another corroborating evidence by Mu’āwiyah Ibn Qurra from his father (as narrated above).

It apparent from the previous two narrations of Barā’a Ibn ‘Āzib (r.a) that they are two separate incidents, it may be surprising to read that it is most likely that the tradition of marrying the wife of the father was a common practice among Barā’a’s tribe in *Jāhiliyyah*, this then resulting in the recurrence of the heinous crime even after the advent of its prohibition. And this is definitely not the same incident that was narrated by Mu’āwiyah Ibn Qurra because Mu’āwiyah is not Abu Badra Ibn Abu Nayyar and neither is Mu’āwiyah from the same tribe as Barā’a. So we have three separate incidents or at least two where this took place in the time of the Messenger of Allāh صلى الله عليه وسلم.

The issue here is then: The man contracted a marriage with one of the *Muhārim* which he is not supposed to marry, he therefore committed an act of *Istihlāl ‘Amali* (making the *Harām* into *Halāl* by actions) by contracting the marriage, he did not have to declare his action to be *Halāl* which would constitute *Istihlāl Lisāni*, the mere enactment of it is the same as declaring is permissible, and in any case it was a public rebellion against the *Shari’ah*. And this was incident(s) relates to a simple citizen of the state, so for the ruler or somebody from *Ahlul-Halāl Wal-‘Aqd* who have greater responsibility than *Min Bāb ‘Owla* (a fortiori) the treatment should be the same or even worse.

To clarify an issue: This incident is not just related to somebody committing *Zina* with his *Mahram* (i.e. incest) as some scholars concluded, which is another category all to together and is not our issue here because we are not discussing *Zina* with a *Muhārim*, so the intermingling by some *Fuqahah* with our issue which is *‘Aqd al-Nikah* (contract of marriage) with a *Mahram* which is *Istihlāl ‘Amali*, and confusing *Zina* with a *Muhārim* which is a sin is grave error, and if it is not faced immediately with criticism and correction than concepts will be turned on their head and there will be no difference between *Kufr* and *Fisq* and *Islām* will be demolished from its foundation, because evidently there is a fundamental difference between somebody publically making *Istihlāl* by his deeds (not necessarily by his words) that this is *Halāl* by marrying a *Mahram* and by somebody committing fornication (*Zina*) with the wife of his father

behind close doors knowing that he is performing *Harām*, and if this fundamental principle is not understood than *Islām* will be destroyed and we will all become *Khawārij*, for example if somebody just pinches a woman then he will become a *Kāfir* for committing *Harām*, or on the opposite we will become like the *Jahmiyyah* and anyone committing *Kufr* can never become a *Kāfir*, so in either example if this fundamental principle is not corrected then we will either become extreme *Khāriji* or extreme *Jahmi*, and may *Allāh ta 'ala* protect us from such misguidance!

There is no doubt that *Zina* is an ugly *Kabīrah* and *Zina* with a *Mahram* (i.e. incest) is even worse, nevertheless they do not reach the level of *Riddah* (apostasy) except if it is accompanied with *Istihlāl*, *Jahūd* (rejection) or *Istihzā* (mockery) of the *Shari'ah*, or anything that leads to *Kufr* may *Allāh ta 'ala* protect us!

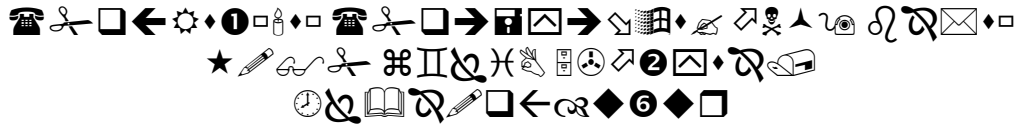
And the treatment of the perpetrator of this crime, the crime of contracting a marriage with a *Mahram*, is the same as a *Murtadd Harbi*, or the *Murtadd* who joins *Dār al-Harb* and is unrepentant before he is apprehended¹¹ which is evident from the '*Āyah*¹², and even if he is without sword he is still classified as a *Harbi Ĥukman* (one waging war against the *Shari'ah*), and his treatment was very severe, there was no *Astitābah* (questioning) of accountability or motives, or searching for any possible excuse, it was immediately striking of the neck and the liquidation of all funds that was carried to the *Bayt al-Māl* (Islamic treasury) without consideration of heirs because all relations of kin were cut. And this is not the treatment administered to an ordinary adulterer.

And this treatment is to be administered also on someone who performs an open *Nikah* with a male, or who performs an open *Nikah* with an animal such as a dog or a donkey, or those who openly conclude contracts of *Riba*, and this applies especially to *Riba* because *Allāh ta 'ala* says in the *Qur'ān*,

¹¹ Ibn Taymiyyah said, "It is differentiated between the *Murtadd* who rejects (*Islām*) peacefully because he is killed unless he makes *Tawbah* (repentance) and (on the other hand) the aggressive rejection because he is killed without any time for *Tawbah* (repentance)". *Majmū' al-Fatāwa*", Vol. 20/103

¹²

"The punishment of those who wage war against *Allāh* and His Messenger, and strive with might and main for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace In This world, and a heavy punishment is theirs In the Hereafter; Except for those who repent before They fall into your power: In that case, know that *Allāh* is Oft-forgiving, Most Merciful!" *Surat al-Ma'idah*: 33-34



“If you do it not (give up *Riba*), take notice of war from *Allāh* and His Messenger”¹³.

And these examples are belligerent towards *Allāh* and His Messenger ﷺ which is clear from the *Qur'ān*, so they must be treated as *Harbi Hukman*.

What are the implications of the previous *Hadīth* to our current day?

If this was the treatment of someone who married the wife of his father in a single case, how would it then apply to someone who enacts a general law which applies to millions of unknown cases, making it permissible for every one in cases such as usury, prostitution, homosexuality, marriages with siblings, same gender marriages, or other such taboo's?! Is it not a fortiori that this type deserves a harsher punishment?

Firstly, he, *Min Bāb ‘Owla* (a fortiori) should be given the title of *Kufr* and *Riddah*, but this is not our issue here.

Secondly, and this is the crux of the matter that concerns us here, that he is more worthy of the rigorous treatment against the first case, which is the declaration of war, striking of the neck, the liquidation of funds to be placed in the treasury, and there is no discussion to take place of accountability or enquiring into motives, or investigative work into any probable excuses. The first offender may have had a motivation of love which he was unable to control but nevertheless it was a rebellion against the *Shari'ah*, where as the second offenders would not be entitled for the same motivation.

The one who committed *Zina* with the wife of his father without marrying her, if it was performed in private away from the society and he acknowledged that he had committed a heinous crime then this would not amount to apostasy. But

¹³ *Sūrat al-Baqarah*: 279

concluding a marital contract of this type publically is *Fisq al-Akbar*; it is the act of leaving the *Millah* of *Islām* and is a declaration of war against the Islamic state even if he is without a sword, and in the case of the ruler, then if he resists then he would be doubling his crime and would be fought as a *Murtadd Harbi* mercilessly and unrelentingly.

To add clarity to the above: Commanding someone to execute a disobedience is a category of ruling, because the ruler is essentially saying that his command is overriding or his command is to carry out such-and-such, there is a fundamental difference between performing a *Ma'siyah*, so commanding a *Ma'siyah* and performing a *Ma'siyah* are not identical.

There is a colossal difference between someone who commits *Zina* while he is fully aware of its inviolability, and even though he has committed such a crime he is nonetheless ruling that what he has performed is *Harām* which is in fact ruling by that which *Allāh* has revealed, and this is infinitely different to the ruler who does not rule by that which *Allāh* has revealed by authorising adultery and issuing licences for prostitution, and it might be even the case that the ruler has never committed *Zina* himself or he may even recognise that it is forbidden, but he has permitted adultery and this is a casting aside the *Shari'ah* of *Allāh ta 'ala*.

And there is also another huge difference between a man, who consumes *Khamr* and flees from fear of battery and pain of the *Hadd* punishment that would be administered by the state, but all the while he recognises that he ought to be flogged. But this is different from the *Sultān* who does not carry out the necessary punishment, and this could be due to the following reasons:

- a) Because of bribery or favouritism, and this type of judge or ruler may believe in the depths of their heart that they are committing a sin by refraining from administering punishment to the one guilty of the crime, but they are overpowered by either affection towards their loved ones or it is due to greed and desire. And this is the least in terms of severity against the *Shari'ah*, and this is also where the scholars have differed, whether it is *Kufr Dūna Kufr* and so on.
- b) He regards flogging as barbaric and something that should remain in the middle ages and with such a statement or belief, this in turn releases him from the responsibilities as a Muslim as he would have left the fold of *Islām* and receive the title of *Kāfir Murtadd*.
- c) He applies law which clearly contradicts *Islām*, and this is the most outrageous and obscene because he has enacted a completely new law and do did refer back

to *Allāh* for his decision, thus making it equal to the laws of *Allāh ta ‘ala*. And in this category there is also a major difference between:

- i) Someone who eats *Mayta* (dead meat) knowing it to be *Harām*, but his lust for meat was after a prolonged period of poverty and feeling deprived, but he still feels guilty of the sin knowing that he has performed *Harām*, this is different from those who:
- ii) Obey those who make dead carrion meat *Halāl*, if they obey them in their *Istihlāl* and their *Tahreem* then this is *Kufr al-Akbar*. Notice that we are talking about obeying and not commanding here, so if one obeys something which has been transformed from being *Harām* into *Halāl*, as the *Qur’aysh* argued with the Muslims by saying, “Why do you eat what you kill, while what *Allāh* kills you do not (eat)”, *Allāh ta ‘ala* responds to them in the *Qur’ān* by saying,

“The Devils inspire their allies, so that they can argue with you, and if you obey them you will become *Mushrikeen* (pagans)”¹⁴

And this is a *Meccan ‘Āyah* where the word *Shirk* only applies to *Shirk al-Akbar* as all references to *Shirk al-Asghar* and *Riyā’* etc came latter in Medina. So from this evidence it is clear that obedience to *Istihlāl* or *Tahreem* where *Allāh* has prohibited something, and baring in mind that obedience in this case must be related to *Tashrī’* (legislation) is *Kufr al-Akbar* and will expel all those from the fold of *Islām*. Even the argument of the *Mushrikeen* in the *‘Āyah* is *Kufr* because it is *Allāh* who allows the animal to die by your hands and if it is not by *His ta ‘ala*’s permission then it will not die no matter how attempt to slaughter it. So ultimate authority is with *Allāh ta ‘ala* and he decides the final injunctions, but this is not our discussing and the reasoning of the *Mushrikeen* is already faulty. The important issue is that, if one obeys them in making *Tahreem* and *Tahleel* then one would become *Kāfir* and *Mushrik* like them because it is admitting someone else to be sovereign besides *Allāh ta ‘ala*, and this is a form of *Shirk al-Akbar*.

We know that *Shirk al-Akbar* is to associate another deity along side *Allāh*, this is according to the *Qur’ān*, and also the statement of Abu Bakr as-Siddīq (r.a) who was informed by the Messenger ﷺ, “***Shirk is more hidden than a black ant creeping on a black stone in the middle of a moonless night***” Abu Bakr (r.a) replied, “Is not *Shirk* associating another deity

along side *Allāh*?!¹⁵ So if one obeys in *Tahreem* and *Tahleel* in legislation, believing someone else to have a right in legislation and that it is ones duty to obey him, then this is associating a partner with *Allāh*. And those who are obeyed in legislation have been raised as Lords besides and have been made a direction of worship by becoming *Ma'būd* (that which is worshipped), and they are no different then Fir'aun where he said,



“I am your Lord most high”

What is the meaning of the *Hadīth*, **“Should we not fight them?”**
The Messenger of *Allāh* صلى الله عليه وسلم said, “No, as long as they pray”.

It has been reported in the *Sunan* of Abu Dawūd;

[حدثنا سليمان بن داود قال: حدثنا حماد بن زيد عن هشام عن حسان عن الحسن عن ضبة بن محصن عن أم سلمة زوج النبي صلى الله عليه وسلم، قالت: قال رسول الله صلى الله عليه وسلم: «ستكون عليكم أئمة: تعرفون منهم وتكفون فمن أنكر بلسانه، فقد برئ، ومن كره بقلبه، فقد سلم، ولكن من رضي وتابع!»، فقيل: (يا رسول الله: أفلا نقاتلهم؟!)، قال: «لا ما صلوا»]

Told us Sulaymān Abu Dawūd, told us Hammad Ibn Zayd, from Hishām, from Hasan, from Adubbat Ibn Muḥ’sin, from ‘Umm Salamah the wife of the Messenger of Allāh صلى الله عليه وسلم, she (r.a) said **“There will be above you *Imāms*, some things (from them) you will accept and other things you will reject; whoever rejects with his tongue will be innocent, and whoever hates with his heart he will at least have escaped, but whoever follows and accepts!”** It was said, **“Should we not fight them?”** The Messenger of *Allāh* صلى الله عليه وسلم said, **“No, as long as they pray”.**

This is the most balanced of the various *Riwayāt* of this narration, both in transmission and in wording, and this *Hadīth* is *Sahīh* and can be located in the *Sahīh* of Muslim and *Musnad* Ahmed, and also in the *Sunan* of both Abu Dawud at-Tayalisi and Abu Ya’la and *Shaykh* Hussein ‘Asad commented by saying

Is.nādan Saḥīḥ, and it is also in the *Mu'jam* of Tabarāni through many channels, and it can also be found in the *Musnad* of Abu 'Uyayna, also in the *Masāliḥ* of Ibn Abi Shaybah and in the *Musnad* of Ishāq Ibn Rāḥaway, it can also be found in the *Tamḥeed* of Ibn Abdul-Barr¹⁶ in a number of ways.

The *Hadīth* is definite in meaning and is an evidence of the legality of fighting which is usually accompanied with the sword and also bloodshed with the intention to depose those 'Umara (rulers) you have at least abandoned the *Salāh*, it may at times even be necessary to remove them by force, so the minimum meaning of this *Hadīth* is if the ruler leaves the pray.

This *Hadīth* obviously has to be interpreted against the other *Hadīth* of 'Ubāda Ibn as-Sāmit (r.a) and others. Another interpretation of the term "**Lā Mā Sallū**" (If they pray) could be "As long as they establish the *Deen*" because *Salāh* is 'Ābudd-*Deen* (The pillar of the *Deen*), which would mean if they abandon the *Salāh* then they have voided the *Deen*, but if they establish the *Salāh* then the *Deen* is at least established, and they may have shortcomings but the fundamentals concerning *Islām* are still unyielding in terms of their implementation, but if they refrain from establishing the *Deen* then they cannot be referred to as *Musalleen* (Those who establish the *Deen*). It therefore seems that the usage of the wording "**Lā Mā Sallū**" i.e. if they pray, is more likely to be a *Kināyah* or a *Majāz* (Metaphor/allegory). What gives strength and respect to this point view is clarified by the *Hadīth* of 'Ubāda Ibn as-Sāmit (r.a) that speaks about the evident *Kufr*, it does not mention whether or not *Salāh* is established, and because the two narrations have to be understood together without creating any artificial contradictions, then it cannot be the case that the ruler who prays but violates the *Deen* in such a way that their is a *Kufr Bowwah* cannot be a candidate for the *Hadīth* of 'Ubāda Ibn as-Sāmit because the who performs the *Kufr Bowwah* his prays are not accepted so the *Hadīth* of 'Ubāda would be legally applicable.

So what should be taken from the above example? That the wording "**Lā Mā Sallū**" (If they pray) means as long as they establish the *Deen* in the public arena, what ever they carry out in their private affairs is not relevant here. Therefore the strongest point of view for the meaning of "**Lā Mā Sallū**" is a metaphorical for establishing the *Deen*, and the evidence is the *Hadīth* of 'Ubāda Ibn as-Sāmit (*Radthī 'allāhu 'anhū*), if for argument sake, if this *Hadīth* had been reported without the *Hadīth* of 'Ubāda, it could be argued as long as they pray even if they never paid *Zakāt* or fasted, but the *Hadīth* of 'Ubāda clarifies all of this. So

¹⁶ Vol.24, Pg 312

there should be no argument that “*Lā Mā Sallū*” is a metaphor, and saying that they are to remain in office if they pray even if they rule by *Kufr* is a completely erroneous belief, and such a conclusion merely enforces our opinion to be correct, so the statement “If they pray” must be a *Kināyah*, for example, the *Hadīth* of the Messenger of *Allāh* صلى الله عليه وسلم where he said, “**And I have been ordered not to kill the Musalleen (those who establish Salāh)**”¹⁷ the wording “...not to kill the *Musalleen*” means someone of the *Deen* who is not worthy of killing, but if a *Musalli* kills someone unjustly then he would be punished by the death penalty, so being a *Musalli* does prevent him from facing the death penalty, therefore the real meaning of the statement of the Messenger صلى الله عليه وسلم is he who has nothing against him worthy of being killed, hence it can be seen here that having the attribute of *Musalli* is not restricted, it has a much broader interpretation.

This is therefore the meaning we approve of and believe that it must be interpreted this way, because any other interpretation that it is purely *Salāh* alone and not related to the *Deen* cannot be valid because it renders the *A’hadīth* of ‘Ubāda Ibn as-Sāmit and Auf Ibn Mālik, we will narrate shortly, as invalid which is *Harām*.

This is what we sincerely believe to be the correct interpretation in front of *Allāh ta ‘ala*, that the saying “*Lā Mā Sallū*” means as long as they do not leave the *Deen* as it is a *Kināyah*, and from the *Hadīth* of Auf Ibn Mālik (r.a) this exact interpretation can be applicable although the wording is different as it does not say “If they pray” rather this *Hadīth* says “*Lā Mā ‘Aqāma Fīkom as-Salāh*” (As long as they establish the call for you to pray), but this also has the same interpretation as that of our last one, because although they may be calling for one to pray, but at the same moment they are not collecting the *Zakāt*, and this is a clear *Kufr Bowwah*, so therefore it must therefore adhere to the meaning “As long as they establish the *Deen* in the public affairs” so all three narrations synchronise with the same meaning as each other.

The truth of the matter is both meanings are correct; if he does not pray then he has to be removed according the explicit meaning, and also if he does not establish the *Deen* then he has to be removed according to the *Hadīth* of ‘Ubāda (r.a), so leaving the *Salāh* in both its general and specific meanings are grounds enough for the ruler to be removed. But it is more than likely that no intelligent *‘Amīr* will abandon the *Salāh* publically, because their burning desire to maintain

their power will empower them to pray in public, but the difficult thing will be to establish the Deen due to their want of fulfilling their desires.

What is the meaning of the *Hadīth*, “**Should we not then fight them with the sword?**” He صلى الله عليه وسلم said, “No, as long as they establish the call for you to pray”

This is the third *Hadīth* in our study with a similar meaning as the previous one; it has been reported in the *Sahīh* of *Imām* Muslim,

[حدثنا إسحاق بن إبراهيم الحنظلي أخبرنا عيسى بن يونس حدثنا الأوزاعي عن يزيد بن يزيد بن جابر عن رزيق بن حيان عن مسلم بن قرظة عن عوف بن مالك عن رسول الله صلى الله عليه وسلم قال: «خيار أئمتكم الذين تحبونهم ويحبونكم، ويصلون عليكم وتصلون عليهم، وشرار أئمتكم الذين تبغضونهم، ويبغضونكم وتلعنونهم ويلعنونكم»، قيل: (يا رسول الله: أفلا نناذبهم بالسيف؟!)، فقال: «لا ما أقاموا فيكم الصلاة: وإذا رأيتم من ولائكم شيئا تكرهونه: فاكروهوا عمله، ولا تنزعوا يدا من طاعة!»]

Told us Ishāq Ibn Ibrā’heem al-Hambali, informed us ‘Īsa Ibn Yūnis, told us al-‘Awzā’i, from Yazīd Ibn Yazīd Ibn Jābir, from Ruzayq Ibn Ḥayyān, from Muslim Ibn Qarda, from Auf Ibn Mālik who said, “The Messenger of *Allāh* صلى الله عليه وسلم said, “**The best of your leaders are those whom you love and they love you, and for whom you pray and they pray for you; and the worse of your leaders are those whom you hate and they hate you, and you curse and they curse you**” Someone asked, “**Should we not then fight them with the sword?**” He صلى الله عليه وسلم said, “No, as long as they establish the call for you to pray” and he صلى الله عليه وسلم continued, “And if you observe something dislikeable from the *‘Amīr*, then dislike it but do not release your hand from obedience”.

And this *Hadīth* is of the upmost reliability, although there is a plenitude of saying *‘An* (from) in the *Is.nād* this is something the compiler decided to perform as this is an abbreviation of the *Hadīth*. For example the *Hadīth* from *Sahīh* Muslim:

[حدثنا داود بن رشيد حدثنا الوليد يعني بن مسلم حدثنا عبد الرحمن بن يزيد بن جابر أخبرني مولى بني فزارة وهو رزيق بن حيان أنه سمع مسلم بن قرظة بن عم عوف بن مالك الأشجعي يقول سمعت عوف بن مالك الأشجعي يقول سمعت رسول الله صلى الله عليه وسلم يقول]

Told us Dawūd Ibn Rasheed, told us Waleed Ibn Muslim, told us Abdur-raḥmān Ibn Yazīd Ibn Jābir, reported to us Mullah Ibn Fazarah and Ruzayq Ibn Ḥayyān that he heard Muslim Ibn Qarda from Auf Ibn Mālik who said he heard it from the Messenger of *Allāh* صلى الله عليه وسلم; Ibn Jābir asked, “**By *Allāh* ‘O Abul-Muqdam, did you hear this *Hadīth* from Muslim Ibn Qarda who he heard it from Auf Ibn Mālik who heard it from the Messenger of *Allāh* صلى الله عليه وسلم? He said while turning towards the *Qiblah*, “By *Allāh* I heard Ibn Qarda saying that he heard it from Auf Ibn Mālik who heard it from the Messenger of *Allāh* صلى الله عليه وسلم”.**

And it has been narrated several times in *Saḥīḥ* Muslim via others channels, also in *Sunan* ad-Dārami, and in the *Musnad* of Ahmed also via various channels, and in the *Saḥīḥ* of Ibn Hibbān, and also the *Sunan al-Kubra* of al-Bayhaqī, and in the *Mu’jam al-Kabīr*, and the *Musnad* ash-Shāma’ī, and the *Musnad* of Abu ‘Uyānah.

And the *Hadīth* is *Qata’ī Thabūt* (definite in the meaning) as an evidence for fighting with the rulers who do not establish the prayer on us.

Hence the minimum meaning of the saying “**...establish the call for you to pray**” which refers to the community as a whole is: that the people are allowed to pray with no interference or closure of the *Masājīd*, like in some countries that do not permit admittance to the *Masjid* until one signs his name and establish that this will be his local *Masjid* and then prohibit admittance to any other *Masjid*, this is not only disabling the establishment of *Salāh* but it is also discouraging it which is an evident *Kufr Bowwah* which has already been discussed alongside the *Hadīth* of ‘Ubāda Ibn as-Sāmit.

So establishing the pray must mean establishing the *Deen* on the community, and no one can really be prevented from establishing the prayer in ones private life, therefore it must relate to public affairs and hence its meaning is to be interpreted as a euphemism and refers to establishing the *Deen* per se, as opposed to it being restricted in meaning to pray which is then clarified by the *Hadīth* of ‘Ubāda Ibn as-Sāmit (r.a).

The two *A’hadīth* of the mother of the believers ‘Umm Salamah and Auf Ibn Mālik clarifies for us some points, however there nothing extra that we can obtain from them which is not mentioned in the *Hadīth* ‘Ubāda Ibn as-Sāmit, because **a)** it has been narrated in al-Bukhāri while the other two have not been given the same honour, and **b)** because the meaning is general making it more comprehensive, where as the other two narrations only talk of prayer which may be confusing because it could be interpreted in its literal sense of establishing the

prayer or its metaphorical meaning of establishing the *Deen*, but the *Hadīth* of ‘Ubāda is clear leaving no doubts because it explicitly speaks of establishing the *Deen* which if not performed is described as *Kufr Bowwah* where as the other two can be interpreted in either of its meanings, which are nonetheless both valid interpretations and are still applicable to the *Hadīth* of ‘Ubāda. And if the meaning of the *A’hadīth* of ‘Umm Salamah and Auf Ibn Mālik are still doubtful and it is said that the ruler still prays, we will respond by asking do they mean the actual pray or the *Deen*? And if they admit the uncertainty of both possible meanings we would guide them to the *Muḥkam* (unambiguous) which is the *Hadīth* of ‘Ubāda that speaks of the *Kufr Bowwah* which is applicable to all cases like those who permit usury banking, forbidding the *Wājibāt*, giving licence to prostitution etc even if the ruler prays *Taḥajjud* (night pray) every night and is always in the front *Saff* (line) of the *Salāt al-Jamā’a* (congregational prayer), all this would not assist him in least or resolve the situation because if it did then the *Hadīth* of ‘Ubāda would be apply to him and would be therefore made obsolete.

After all of this, the treasonous scholars and their blind followers whose shallowness has left their minds distorted, it is common place that they will always refer to the *A’hadīth* of ‘Umm Salamah and Auf Ibn Mālik, and under no circumstances will they cite the *Hadīth* of ‘Ubāda Ibn as-Sāmit but rather they flee from it as if they were being chased by a lion, because this *Hadīth* breaks their backs and squeezes them and their masters who have displayed *Kufr Bowwah*!

The items mentioned above are not sufficient to limit all types of *Kufr Bowwah*, but we have no doubt that it included the major categories, but the *Tāghūt* is highly skilled in concealing its self in a variety of outward appearances, while the light is one and cannot be distorted.

And he who sincerely searches for the truth will not be at a loss in recognizing every new *Tāghūt* when it appears, and detect every *Kufr Bowwah* when it is newly invented, one by one, but with the condition that he follows the light sent to the Messenger Muhammad Ibn Abdullah صلى الله عليه وسلم, and this light is the *Dthikr Maḥ’fūdth* (protected revelation) which is the *Qur’ān* and infallible *Sunnah*, and this *Dthikr Maḥ’fūdth* is like the vessel of Nuḥ (a.s), whomever boards it will be successful and whomever does not will perish!

So once the sincere seeker of truth follows this light sent to the Messenger of Allāh صلى الله عليه وسلم, and learns it, when he teaches and propagates it to others and endures the persecution that is attached to it, and performs this purely

seeking the face of *Allāh ta ‘ala* then He *ta ‘ala* will open his heart and send him the divine gifts of having insight to detect every *Kufr Bowwah* no matter what form it comes in, *Allāh ta ‘ala* says, “**Whoever stays upon the guidance, He will increase him in guidance and give them *Taqwah*!**”.

The Qur’anic text of *Sūrat Ma’idah* 44, 45 and 47 called those who do not rule by that which *Allāh* has revealed as *Kāfirūn*, *Fāsiqūn* or *Dthālimūn*, and these terms have been used else where in the *Qur’ān* in various contexts, an example of which is where *Allāh ta ‘ala* says, “***Allāh* will not permit the *Kāfireen* to have authority of the *Muslimeen***” and this text is definite that the *Kāfir* is not permitted to assume authority over Muslims, and the meaning of this is either in reality or according to the *Shari’ah*, and we know that in reality there are *Kuffār* who are in authority over Muslims by oppressing them, and *Allāh ta ‘ala* does not contradict himself so the meaning must therefore be in terms of *Shari’ah*, this proves that it is definite that a *Kāfir* cannot have *Wilā’yah* (dominion) over a Muslim and even a *Kāfir* father cannot have authority over his Muslim daughter; and this is *Ijma’ Mutayaqqid* (definite consensus) of all scholars throughout history until the present age which includes the *Sahābah*, *Tābi’een* and *Tābu Tābi’een*. And the word ***Kāfireen*** that is used in the previous *Āyah* is the same word that is used in the *Āyah*, “**Whosoever does not rule by that which *Allāh* has revealed they are al-Kāfirūn**”.

In another example *Allāh ta ‘ala* says, “**My covenant does not extend to the Dthālimeen**”¹⁸ and the word *Dthālimeen* is the same word that is used in the

¹⁸ *Sūrat al-Baqarah*: 124

Imām al-Jassās refers to this *Āyah*, amazingly the whole of his quote is quite enlightening as he says, “It is not lawful that a cruel or corrupt person should be a prophet or his successor (*Khalīfah*) or a judge or hold any office by virtue of which he should be in a position to impose his will on the people in matters relating to religion: he cannot, for example, be a Mufti or a witness or a reporter of the Prophet’s traditions. The Qur’anic verse: “**My covenant does not extend to the Dthālimeen**” (*Sūrat al-Baqarah*, 124) shows that all those people who come to the helm of affairs in matters connected with religion must be just and virtuous. This verse categorically proves that the Caliphate of the corrupt is unlawful. No person of wicked reputation can be a Caliph. If any of that character should install himself in that office, the people are under no obligation to follow or obey him. The same was meant by the Prophet of *Allāh* صلى الله عليه و سلم when he said that none among the created was entitled to command obedience in defiance of the Creator. The verse is also conclusive that no corrupt person can become a judge, a governor, or a magistrate; and if he becomes one, his orders will not be valid. Nor can his evidence be acceptable, nor his transmission of a report from the Prophet of *Allāh*, or the verdict (*Fatwa*) of which he is the pronouncer.” *al-Jassās*, Vol.1, Pg 80.

Ad-Dthahabi (r.h) also mentions what *Abu Hanīfah* (r.h) held as to the *Khaleef* who was unjust, he said, “**The *Khaleef* who misused public money or gave unjust orders was not entitled to remain *Khaleef* and his orders were not valid**”. *Ad-Dthahabi*, Pg 17.

‘Āyah, “**Whosoever does not rule by that which *Allāh* has revealed they are *al-Dthālimūn***” and it is the agreement of most scholars that a *Fāsiq* cannot be an *Imām* over the Muslims, and must be removed but not necessarily by force, and this has been discussed in a full in a book entitled “*Obedience to the rulers, its borders and constraints*” but to summarise it here:

If the *Imām* becomes a *Fāsiq* which is established by a court ruling, it is for the people to then ask him to step down from his position, if he refuses to step down he would be resisting and rebelling against the *Shari’ah* by force and would have transferred from being a *Fāsiq* into a *Kāfir*, what would have safe guarded his *Takfeer* and being fought is if he had stepped down without any objections, but his refusal is his unbecoming of a Muslim and shifting from ‘*Imān* into *Kufr* and becoming a *Kāfir Ĥarbi*.

So the strongest point of view is that the *Fāsiq*, who is also a *Dthālim*, cannot hold the position of *Imām*, *Khaleefah* or *Nabī* because all of them have a covenant with *Allāh ta ‘ala*, and he who does not rule by that which *Allāh* has revealed is either a *Kāfir*, *Fāsiq* or a *Dthālim*, and this is a *Qata’ī* evidence seeing as though it is narrated via the *Qur’ān*, and whether or not it is referred to as *Kufr Dūna Kufr*, *Fisq Dūna Fisq* or *Dthulm Dūna Dthulm* is all irrelevant, so the government scholars who defend these rulers should not be happy because they (the rulers) should leave their positions of authority seeing as though they do not fit the perquisite of holding a position of authority over Muslims, so these treasonous scholars must repent before death approaches them, but if they refrain from repentance then that will lead to their own destruction in the afterlife, and what a miserable end!

Warnings and caveats

What we have mentioned so far as to the various theoretical premises, cannot necessarily be applied by the common Muslim, especially those involved in *Jihād* and the carriers of *Da’wah* who enjoin good and forbid evil, particularly as this area is related to *Takfeer* and its branches, which is extremely dangerous

And in a chapter of enjoining good and forbidding evil *Imām* al-Juwayni (r.h) states that if the ruler of the day (*Walī al-Waqt*) was an oppressor and his injustice and evil actions were manifest and he could not be turned from his evil ways by words, it was for the *Ahlul-Hali Wal-Aqd* (decision makers) to agree to deter him, if necessary by force and war. (*Kitāb al-Irshād* by *Imām al-Haramayn*, Pg 211

and in which a mistake could be catastrophic, we are therefore obliged to draw attention to certain articles of the upmost importance:

First Pitfall: In the case where there is an Islamic state, which at the time of this writing is non-existent and the entire *Dunyah* is an abode of *Kufr*, so in the case that *Dar al-Islām* exists there must either be a grievance court (محكمة المظالم) or a supreme *Shari'ah* court (المحكمة الشرعية العليا) or a supreme constitutional court (المحكمة الدستورية العليا), which have all been given full powers of attorney. If they are not in existence then this is a serious shortcoming and therefore it is imperative that all efforts are geared towards creating their existence, and if it happens to be in existence but its powers are more fictitious than reality then likewise all efforts are to be made until its powers are given full efficiency, since this court is that which governs the state affairs by analysing regulations and laws and giving them legitimacy, and it is also responsible for the removal of a ruler who has been found to be a *Fāsiq* or *Dhālim*, and the removal will be carried out in such a way that there will be no disputes or bloodshed, and (من باب أولى) by a fortiori¹⁹ it will also announce the appearance of *Kufr Bowwah* by its own ruling. This court is also primarily responsible for the implementation of the Qur'anic 'Āyah,



“If you differ in anything among yourselves, refer it to *Allāh* and His Messenger”²⁰

And referring to *Allāh* and His Messenger صلى الله عليه وسلم means referring to *Qur'ān* and *Sunnah*, but the *Qur'ān* and in fallible *Sunnah* do not speak by themselves but are rather interpreted by the 'Ulema, now there are many scholars however they do not have any authority, but if their interpretations are given authority then this is ultimately the meaning of a court as it gives a *Shar'ī* opinion in a method which is binding, which is unlike a *Fatwah* which can be either rejected or adopted depending on whether one is convinced as to its validity but it cannot be enforced, so the difference between the *Mufti* who issues a *Fatwah* and the *Qādhī* who issues a court ruling is the *Mufti* cannot enforce his opinion whereas the *Qādhī* has sufficient power to enforce his ruling, and this

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²⁰ *Sūrat an-Nisā'*: 59

emphasizes that referring to *Allāh* and His Messenger صلى الله عليه وسلم must be enforceable by an authority, and the only place which can settle disputes in this fashion would be a *Shari'ah* court who would have the most qualified *Mujtihad* at the time who would settle any dispute by referring to *Allāh* and His Messenger صلى الله عليه وسلم, hence the last port of call would be reference to the court which will issue a verdict which would be binding. And this has been dealt with in detail in our book “*Obedience to the Ruler: Its limitations and restrictions*”.

These are very important points although they are essentially theoretical until such time as an Islamic state is established, then *Dar al-Kufr* will be transformed into *Dar al-Islām* and not just by name and the false claims which have been asserted, then our discussions will become practical as opposed to mere theory, so we ask *Allāh ta 'ala* to accelerate the easement of the 'Ummah by the establishment of a *Khilāfah Rāshidah* upon the path of the Prophet hood and sooner rather than later, *Ameen Ameen Ameen!*

Second Pitfall: The appearance of *Kufr Bowwah* by the public authority is an objective matter which is evident and not a matter of speculation or in need of a verdict, which is either:

- a) That the ruler commits clear apostasy by either statements, actions or declarations, with difference between him publically becoming a Jew, Christian, Hindu or a Buddhist, or he declares publically that he does not adhere to any religion, or statements like “The *Qur'ān* is under my feet” or the disrespecting of the *Qur'ān* by throwing it in places which are known to be impure like toilets or spitting on it etc, and his *Riddah* cannot be an issue of *Ikhtilāf* as it must be known from *Qur'ān* and *Sunnah* by necessity that they constitute clear acts of *Kufr*, and even if the apostate claims that they have love of *Islām* or they perform the Islamic rituals of *Hajj* and *Salāt* it matters not.
- b) That he gives a command in either a general regulation or a specific case directed at an individual which is a definite *Ma'siyah*, either to leave a *Wājib* or to perform *Harām*.
- c) That he enacts a law, whether it be a regulation, by law, administrative injunction etc, that has not been derived from *Qur'ān* and *Sunnah* in the correct manner, i.e. there is not reference to *Allāh* and His Messenger صلى الله عليه وسلم.

- d) That he fails in the application of that which he is obligated to apply of the provisions set by the *Shari'ah* although they are written within the law, this is referred to as a negative decision (قرارات سلبية) *Qirārāt Salbīyyah*, therefore any failure in the implementation of such laws would it self constitute an implicit license (ترخيص) for its non-application even though there may not be a written license, so in reality it is a *Dumnī* (tacit) approval.

Everything we have mentioned above of the four categories is *Kufr Bowwah* which are an evidence from *Allāh ta 'ala*, regardless the belief of the legislators, and those who execute the laws from judges and their executive branches, regardless of their *Kufr* whether it be major or minor, or whether they know that it is *Kufr Bowwah* or not, or whether they are satisfied or dissatisfied or they applied these laws by choice or by coercion. Because it is not a necessary condition for there to be *Kufr Bowwah* that the individual who has displayed the *Kufr* is him self a *Kāfir*, this is due to the well known preventions of *Takfeer* that may be applicable in his case, like ignorance, allegory, coercion or even lying in war which is permissible as a stratagem to deceive the enemy, and so on. So the legislators, judges and executive branches may or may not be *Kuffār*, but this does not however change the reality that *Kufr Bowwah* is present, just because there may be a justifiable excuse as to those who have introduced the *Kufr Bowwah* it is nevertheless *Kufr Bowwah* which its self must be removed.

Then the issue here is exclusively: either ruling by other than that which *Allāh* has revealed, or non-application of that which *Allāh* has revealed, and so the *Āyah* “**Whoever does not rule by that which *Allāh* has revealed, those are *al-Kāfirūn***” would apply.

Now the government scholars, with some of them being very insidious and cunning, are masters of the art of diverting ones attention from accounting the rulers, and this is carried out by studying their personalities where by they doubt ones ruling of his *Kufr* and apostasy and divert this by drawing attention to his good deeds like the construction of *Masājīd*, printing of Qur'āns, attending Islamic events, funding Islamic organizations for the propagation of *Islām*, then these scholars will start weeping about the injustice of ones *Takfeer* and not having taken all things into consideration and focusing purely on the negatives and neglecting anything positive.

If they fail in their campaign, they would then admit to their masters being *Fāsiq*, corrupt and that they have deviated, they will then enter into a long winded maze revolving around the baring conditions of *Takfeer* (موانع التكفير), particularly the fine points related to the excuse of ignorance (العذر بالجهل), and then the excuse of coercion (الإكراه المعتبر) and what are its limitation, for example is it the threat of a *Kāfir* state invading the country sufficient as an excuse of coercion? Or must they have put up a sea blockade, and other such questions as to its reasons, and these excuses for the rulers are endless and are like a hurricane that attempts to sweep one off his feet, and even conferences are organized in an attempt to discuss these issues which will ultimately lead no where.

And all of these shenanigans are purely mischievous attempts by the enemies of *Allāh* i.e. the government scholars, and their writers, journalists, and media institutions, and with all their falsehood they are followed by their followers like a donkey follows his owner.

And most of this is due to the sincere carriers of *Da'wah*, because they did not adhere strictly to the text of the *Shari'ah* (in interpretation), and this is because the Messenger of *Allāh* (May my mother father be sacrificed for him) صلى الله عليه وسلم never said, (إلا إذا كفر) “**Unless the ruler commits *Kufr***” or (إلا إذا ارتد) “**Unless the ruler commits apostasy**” or (إلا إذا فسق) “**Unless the ruler commits *Fisq***” and if the Messenger صلى الله عليه وسلم wanted to say this then he could as he is the most eloquent of Arabs in speech, but what he did say was (إلا أن تروا كفرا بواحا) “**...unless we notice from him open *Kufr***” and not only is the Messenger of *Allāh* صلى الله عليه وسلم the most eloquent of Arabs he صلى الله عليه وسلم is also the infallible Messenger صلى الله عليه وسلم who is the final Messenger and who has been given comprehensive speech which is short and full of meaning.

Therefore the Messenger of *Allāh* صلى الله عليه وسلم relieved us from the duty of researching into whether the ruler is a *Kāfir*, *Murtadd* or even *Fāsiq*. What has been made a duty on us is verifying whether there is a public *Kufr* for which we have evidence from *Allāh ta 'ala*, or if we are commanded publically with a disobedience to *Allāh*, this is our primary concern and we have been relieved of all else concerning this issue.

And then he permitted us when we are ascertain the existence of a *Kufr Bowwah*, then we may dispute with the ruler over their power, in necessary with the sword which will be carried out under the conditions and regulations

set by the *Shari'ah* which will be taken from other evidences, and not performed based on ones desires and not based on ones opinion of (المصالح والمفاسد) benefits and harms.

One of the conditions prior to disputing: Public declaration of the reasons as to why there is a dispute in order to dispel any inaccurate interpretations and *Ta'weel*, however the excuse of those in power of being under duress is null and void, and this excuse is not the responsibility of those disputing, so it is for the rulers to inform publically as to the level of their coercion and its details, and this is different if he is ignorant because he can be enlightened as to where he is ignorant but his claim of coercion is different because he may be deceiving others, therefore he must bring case forward and prove his situation.

Those who argue in defense of the rulers by giving excuses such as ignorance, allegorical interpretation and coercion are not permitted to talk about these excuses until they admit that *Kufr Bowwah* with evidence from Allah is actually present, once they have recognized and have admitted to this then they are permitted to bring the relevant excuses in defense of the rulers, so this initial stage will expose their arguments from the off set. Now in the case of ignorance then this is not usually valid because the arguments surrounding ignorance could last for decades for any legitimate conclusion is reached fairly, and there have been publications and conferences that have covered this issue. Then all that remains will be the excuse of *Ta'weel*, but the scholars would have admitted that it is *Kufr Bowwah* before hand therefore invalidating any recourse to *Ta'weel*, because the mere admittance of there being public *Kufr* is enough to prove that there can in no way be *Ta'weel* as the *Kufr* that has been made apparent is *Qata'i* (definite).

Therefore the discussion should be: What is the reality of the authority and what is they have displayed publically, and then what of the *Qur'an* and *Sunnah* is applicable, and not about imaginary hypotheses about coercion, willful ignorance, conditions of the heart and intentions as they are known only by *Allāh ta'ala*.

Third Pitfall: After all these initial stages have come to fruition and the conflict of dispute is inaugurated, and the ruler is adamant in continuing his displaying *Kufr Bowwah* with evidence from *Allāh*, then the ruler and the apparatus of the state which includes the ministers, cabinet members in the cabinet of ministers, governors, regional governors (excluding those who are

in an administrative position), also within this camp are the armed forces such as the state security forces, emergency services, anti-riot forces, national guard who are all employed to protect the system, and also those within this camp are those who support this regime by a *Fatwah*, or intellectuals who rationally give their support, and the media with their journalists, and fund raisers who have lent financial support, and those who support the regime by selling them arms to enforce their rulership.

All of these categories and sub categories are one block which are described as a fighting resisting group (الطوائف الممتعة) “*at-Ta’ifah al-Mumtani’ah*” as they are against the *Shari’ah* by putting up a resistance to protect the *Kufr Bowwah*, and they are given this description as they are a well organized group with an internal structure, and because they are against the implantation of the *Shari’ah* they are also a *Kufr at-Ta’ifah al-Mumtani’ah*, and such groups with this description will be fought like any other group of *Kufr* who are antagonistic towards the *Shari’ah* and its implementation.

This type of group will be fought the same as those groups who are described as a group of apostates “*at-Ta’ifah al-Riddah*”, and there should be no disagreement concerning this point, and neither should there be a differentiation made between their leaders or followers, or those who are informed about their status or those who are ignorant, or those who have a *Ta’weel* and those who are under so-called duress. They will all be resurrected on the Day of Judgment and dealt with according to their intentions, but in the *Dunyah* they are part of a resisting group and will be dealt with accordingly.

Who is not a part of the resisting group, or who was formally a member but separated from its ranks and retired him self from the conflict and hence abstained from supporting them through the sword, hand, tongue or pen he is either a Muslim or a *Dthimmi*²¹ who has the protection dictated by the *Shari’ah*, even if those who publically claim *Islām* but are internally *Munāfiq* as this does not concern us here, so putting them under scrutiny and so as to test their *Islām* should not be performed as long as they have left the battlefield, in contrast to the mercenary extreme *Khawārij* like the *Najdiyyah*, *Sufriyyah* and *Azāriqah* who declared *Takfeer* on those who performed minor sins and who were in the habit of putting Muslims to the test as the *‘Imān*, and similar to them of the current era like those in Algeria

and Pakistan who all displayed the characteristics of the *Khawārij* who claimed to be fighting resisting groups but were in fact attacking and killing innocent Muslims.

Fourth Pitfall: The individual Muslims, with the exception of the rulers and those attached to the resisting group, might in fact be *Kāfir Murtadd*, or may have pronounced statements of *Kufr*, or may even be internally *Munāfiq* but they are displaying outwardly *Islām*, all of these are of little relevance to the public domain and are to be left undisturbed until the Islamic state is established where all these persons will be treated according to the dictates of the *Shari'ah*.

Warning the Muslims from accepting the laws of *Kufr* is one the utmost duties, because whoever accepts the ruling of *Kufr* knowingly without the excuses of ignorance or *Ta'weel* is a *Kāfir Murtadd*! And this is of the utmost importance that cannot be neglected.

However warning the Muslims of the issues of *Kufr*, *Fusūq* and *As'yān* (disobedience) in the areas related to *I'tiqād* and abstract statements and actions is one issue, but getting involved in *Takfeer* of specific individuals is a completely different subject which in most cases will consume ones time and divert ones attention from the main issue. The situation will become even worse if the government scholars get one encircled into this issue by go around the excuses of ignorance and *Ta'weel*.

It is enough for the carrier of *Da'wah* to know that whoever commits an act or statement of *Kufr* that he is a *Kāfir* unless there is a *Mā'nī' Murtabar* (preventive condition to declare *Takfeer*), and *Allāh ta'ala* knows these conditions and will account them accordingly, but to the role of the carrier of *Da'wah* then as *Allāh ta'ala* says, **“So remind them as you are only one who reminds”**²²

And it is enough for the *Dā'ī* to know that whoever faces our *Qiblah* and eats from our *Nabīḥah* is a Muslim, he will have the same duties as any Muslim (who is *Mukallaf* i.e. responsible) even if he is a *Munāfiq* and whose final destination will be the bottom of the hellfire, and this is irrelevant and is not to be pondered over even if one has exclusive evidence that someone is a *Munāfiq* as it is enough to apply the ruling of the *Munāfiqeen* in this situation,

²² *Sūrat al-Ghāshiyah*: 21

for example not observing the *Janāzah* prayer over them, and there is no obligation in publicizing his *Nifāq* and *Kufr* only if it is in the interest of other Muslims like the case of *Nikah* or he is offered a post that will reveal the weaknesses of the Muslim army, or a third example would be in cases of business transactions with other trustworthy Muslims.

The Prophetic policy of dealing with the *Munāfiqeen*

This policy that we have mentioned concerning common Muslims whose *Islām* is one of doubt and who are living in *Dar al-Islām*, is the Prophetic policy which there can be no doubt, and this was applied by the eminent *Sahābi* Hudthayfah Ibn Yamān (r.a) when dealing with the *Munāfiqeen*, and he was the Messengers صلى الله عليه وسلم private secretary who was given all the names of the *Munāfiqeen* by the Messenger صلى الله عليه وسلم, and Hudthayfah never made their names public but only avoided praying their *Janāzah*, and this was even while the Islamic state was at its utmost power and was spreading like wildfire and he still never found a justifiable excuse to share this information with the *Khaleef* at the time who was ‘Umar Ibn al-Khattāb (r.a), so ‘Umar would observe those whom Hudthayfah would pray over and avoid those who he avoided. Therefore by a fortiori this is to be applied even more stringently in *Dar al-Kufr* where there is no such Islamic dominion.

Description of those who claim to be upon the truth

And this Prophetic policy is the only correct one, which deals with this dilemma appropriately and leads to success in this world and felicity in the next, so we should not be fooled by the mistakes of scholars regardless of their status and respectability and the fact that they may have a large following, and neither should we be intimidated by the banner “**Whoever does not declare the *Kāfir* to be a *Kāfir* is a *Kāfir* himself!**” and then produces a chain of declaring this person a *Kāfir* then this person a *Kāfir* until the there is no one on the face of the earth who is not considered to be a *Kāfir* except the one who launched this chain then he may even begin to start doubting his own *Islām* on whether he is a *Mu’min* or a *Kāfir*.

The loudest voices that are known to shout the slogan “**Whoever does not declare the *Kāfir* to be a *Kāfir* is a *Kāfir* himself!**” and other such statements whose content are usually empty and impractical, because to

practically to apply such a statement one must have certitude of the ruling with the consideration of the removal of all the preventative conditions which most times than not makes it impractical for the average Muslim. And the advocates of this slogan are usually those who claim to be *Salafī* who can be defined in the following three categories:

- i) Treasonous government scholars who are living from the gifts of their rebellious masters and who eat from the crumbs of their tables.
- ii) A collection of so called scholars who living in an atmosphere of the past, and clinging to the books of the era of decline, they are *Hashawī* (i.e. they have a commentary on a commentary, then have an abridgment of the commentary and then a *Sharḥ* of the commentary as the abridgement is no longer understandable), and they abhor any criticism or theory, and avoid any sense of mediation or reflection.
- iii) Those who have willfully put their minds into retirement and given over their thinking to the previous two categories, and are like donkeys that follow what ever commands they are given.

So the *Du'āt* should be upon those who are striving in the cause of *Allāh ta'ala*, and they should not be fooled by those who claim that they are the only ones upon the truth, and that they are the people upon the correct '*Aqeedah* (أصحاب العقيدة الصحيحة), and every one else is either a *Kāfir* or at the least the people of *Bid'ah* and desires, and only they are to be classed as the victories party (الفرقة الناجية المنصورة) and the saved sect (الفرقة الناجية)!

So beware of them 'O Muslims, and to expose them all one need do is ask them about the *Hadīth* of 'Ubāda Ibn as-Samit (r.a) and one will observe their arrogance diminish and they will flee from addressing it!