

be sufficient to carry out its duties. The organizational level of the internal *Sharee'ah* auditing shall not be less than the level of the internal auditing department.

3. *Sharee'ah* auditors shall be enabled to review documents and papers required by the auditing activity.

4. *Sharee'ah*-based auditing criteria shall be adopted to oblige the institution abide by them and to be approved by the *Sharee'ah* compliance commission in a manner that guarantees compliance with the procedural policies of the *Sharee'ah* auditor activity. The format should draw on the latest results of modern human sciences in the field

of financial auditing.

5. *Sharee'ah* auditing reports should be activated taking into consideration proper disclosure and impartiality. They should be prepared in accordance with the acceptable technical format and should cover all activities carried out by the institution.

6. Staff of financial institutions should be trained and educated in *Sharee'ah* based concepts and controls as well as the morals that the Muslim should abide by in his dealings. Moreover, they should be enabled to exercise self-control by fearing Allah and respecting their trusts in the proper *Sharee'ah* complying way.

## Bad Consequences of Injustice

**Dr. Naayif bin Ahmad Al-Hamad**

### Abstract

This paper discusses an important subject, namely the bad consequences of injustice.

First of all, the author defines injustice as placing something in the wrong place, deviation from fairness and going beyond limits.

This ruling on injustice: It is prohibited according to the Holy Qur'an, Prophet's *Sunnah*, consensus of scholars, analogy and intellectual reasoning.

Types of injustice include: doing injustice to oneself by setting deities beside Allah, doing injustice to oneself in one's relation with Allah and doing injustice to other people.

Forms of injustice include verbal injustice like calling others names, abusing others, backbiting, gossiping and the like and physical injustice like killing, beating, stealing, eating usury, adultery and the like.

Injustice to a disbeliever and the one given a pledge of security is prohibited according to the hadeeth narrated by Anas (may Allah be pleased with him) that the Prophet (peace and blessings be upon him) said, "Fear the invocation of a wrong person even if he is a disbeliever for there is no barriers between it and Allah."

It is prohibited to help the unjust person be-

cause it is a kind of helping others in inequity and aggression.

The invocation by a wrong person is very effective against the unjust person.

Allah punishes the unjust person in the following ways: 1. He shall have no friend or an intercessor, 2. Allah may postpone his punishment but will never let him go, 3. Allah will be his opponent on the Day of Judgment, 4. Allah will unveil his secrets on the Day of Judgment, 5. Allah threatens him to dwell in hellfire and 6. Allah will treat him equally on the Day of Judgment.

What should one do for the unjust: 1. He should be counseled, deterred and the wrong person helped against him and 2. If he is left unpunished, the whole community may sustain punishment for his sin.

How to repent from injustice: Repentance is open if its conditions are met. These are as follows:

1. One should give up the sin he has been doing.
2. One should insist not to repeat the sin.
3. One should feel shame for the past sins and wrongs.
4. One should repent before the time of dying or the rise of the sun from the west.
5. If the sin is a right to another person, he should return it to the said person and ask him to pardon him.

# Sharee'ah Compliance Controls over Banks

**Dr. Yusuf bin Abdullah Ash-Shubailee**

## **Abstract**

This paper discuss the ways and means to keep banks under the control of the provisions of the Islamic *Sharee'ah*. The most important proposals to active control over banks to comply with the rules of the *Sharee'ah* include the following:

I. With regard to Regulating *Sharee'ah*-compliance Controls over Banks:

1. Enact a law (dubbed as *Sharee'ah* Control over Financial Services) that regulates controls and establishes suitable mechanisms to control *Sharee'ah* compliance commissions.

2. Form a higher commission for *Sharee'ah* compliance control over financial institutions at the state level with full independence and binding decisions over *Sharee'ah* compliance commissions in financial institutions. This commission should include a group of *Sharee'ah* scholars specialized in financial transactions and supported by a general secretariat provided with all necessary administrative and financial resources as well as with experts in the files of *Sharee'ah*, legal, banking, economic and financial fields.

However, the higher commissions is not to undertake study of contracts concluded by financial institutions or to approve their products, rather it should have the following authorities:

a. Develop *Sharee'ah* complying criteria and controls of financial transactions. The compliance commissions may exercise intellectual reasoning (*ijtihaad*) with regard to any matters in a manner that does not contradict these criteria.

b. Develop executive criteria regulating *Sharee'ah* compliance commissions including mechanisms for the appointment of members, their numbers and the like.

c. Develop *Sharee'ah*-based auditing and checking criteria (internal audit).

d. Supervise on processes to change traditional financial institutions to Islamic ones.

e. Issue *Sharee'ah*-based decisions on financial subjects referred to it from various agencies.

3. The statute of any financial institution should state that it should comply with the *Sharee'ah*-based rules and the decisions of the *Sharee'ah* compliance commissions.

II. With regard to Appointing Members of *Sharee'ah* Compliance Commission

1. The member should be qualified in *Sharee'ah* sciences, capable in analysis and expert in contemporary financial issues;

2. The member should be occupationally independent from the financial institution; and

3. The member should be appointed by the highest authority in the financial institution, namely the general assembly of shareholders, with the approval of the Higher *Sharee'ah* Compliance Commission, if any.

III. With regard to Appointing Internal *Sharee'ah* Auditor

1. He should have the academic qualifications and suitable experience necessary for holding such a post; and

2. He should be appointed or dismissed with the approval of the *Sharee'ah* compliance commission to avoid any pressures that may adversely affect his auditing work.

IV. With regard to *Fataawaas* Issued by *Sharee'ah* Compliance Commissions

1. These *fataawaas* should comply with the decisions and criteria issued by collective *ijtihaad* commissions, especially International Islamic *Fiqh* Academy and Accounting and Auditing Commissions of Islamic Financial Institutions.

2. The commission should avoid adopting deviating opinions that contradict explicit provisions of the Holy Qur'an, the Prophet's *Sunnah* or consensus of scholars. Moreover, the commission should not adopt an unprecedented opinion. It is better to present novel problematic cases to *fiqh* academies before deciding on them.

3. All contracts of the financial institution should be passed by the *Sharee'ah* compliance commission in their final form and not only the general structure of the contract.

V. With regard to Internal Auditing Activities

1. An internal *Sharee'ah* compliance auditing department should be established and provided with a sufficient number of suitably qualified auditors. It is not sufficient to assign *Sharee'ah* control to internal audit or external audit carried out by the fatwaa commission.

2. The position of the internal *Sharee'ah* auditing department in the organizational structure shall

opinion

7. Social solidarity
8. Protection of lives, property and honour
9. The right of work, earning one's living and ownership
10. Travel within the lands of Islam except Hijaaz (Makkah and Madeenah)
11. The right of the poor to be supported
  - Special Rights of Non-Muslims
1. Their right to marriage according to their religions

2. the implications of marriages being established and respected
3. their contracts and transactions are to be considered sound
4. Their right to comply with their religions in marriage, divorce, inheritance and the like.
5. They should not be punished for things they consider permissible in their religions if they do them in private like drinking wine and eating swine meat.

## Emphatic Oath and Effect of Abstention on Judicial Judgments

**Dr. Khaalid bin Abdullah As-Sulaimaan**

### Abstract

This paper discusses the ways of emphasizing the oath and the effect of abstention on judicial judgments. Here are the most important conclusions derived from this study:

1. Emphasizing the oath can be made by adding some words to it, by repeating it, by taking it at a certain sacred place or by taking it at a certain time.
2. Emphasizing the oath by adding some words to it is made by adding names or attributes of Allah to the form of oath.
3. It is the preponderant opinion of scholars that it is advisable to emphasize the oath if this is seen proper by the judge.
4. It is also the preponderant opinion of scholars that emphasizing the oath by taking it on a copy of the Qur'an is not lawful or legitimate because it was not done by the Prophet (peace and blessings be upon him) or any of his companions.
5. Emphasizing the oath by taking it at a certain time, e.g. after prayer or any other time considered sacred like Friday, the time between the adhaan and the start of prayer or any other sacred time.

6. Emphasizing the oath by taking it at a certain place, e.g. at the holy mosque, the pulpit of the Prophet or any other sacred place.

7. It is advisable to emphasize the oath by taking it at a certain place or time if the judge deems it proper according to the preponderant opinion of scholars.

8. Abstention can be exercised by the one who is required under the law to take it at the court of trial, be he the claimant or the defendant.

9. If the party to a case abstains from emphasizing the oath, it is considered a full abstention that carries all the effects of abstention according to the preponderant opinion of scholars.

10. In analogy, abstaining from emphasizing the oath is also an abstention that carries all the effects of abstention.

11. No judgment may be issued by mere abstention from taking the oath; rather the right to take the oath is given to claimant if the defendant abstains from taking it. If the claimant takes the oath, the judge may issue the judgment in his favour. However, if he abstains from taking the oath, his right to the claim he filed is dropped.

# Protection of the Rights of Non-Muslims in the Islamic Sharee'ah

Dr. Muhammad bin Abdul Aziz Al-Muhaizi'

## Abstract

This paper discusses the rights of non-Muslims living in Muslim countries in the Islamic Sharee'ah. These are the people of *dhimmah*. They are the sane, free, male non-Muslims who can fight and who accepted to live in the land of Islam and whose lives and property are protected by Muslims and whose religious rites are respected for a sum of money called *jizyah*.

- The *dhimmah* contract is legitimate under the Holy Qur'an, the Prophet's *Sunnah* and the consensus of Muslim scholars.

- The *dhimmah* contract aims at freeing people from the worship of creatures and binding them to worship Allah.

- The obligations of the *dhimmah* contract include 1. Payment of the *jizyah*, 2. contribution and loyalty to the building of the Islamic state, 3. compliance with the provisions of Islam in financial transactions and 4. The parties to the contract with the Islamic state should be the followers of a real divine religion like Christians and Jews.

- The *dhimmah* contract terminates by the occurrence of one of the following four things: 1. The *dhimmi* converting to Islam, 2. The *dhimmi* joining the land of the enemy, 3. the *dhimmis* control an area of the Muslim land and they are fought against and 4. refusal to comply with the terms of the contract.

- The persons given the pledge of security are those who enter Muslim lands without staying for a long time. The pledge of security is permissible to give for all those who ask for it whatever their religion is and whatever his country of origin is and for all those who enter Muslim countries for a legitimate purpose.

- The pledge of security is legitimate according to the Holy Qur'an and the Prophet's *Sunnah*.

- The obligations of secured persons include the following:

1. Persons given the pledge of security should comply with the rules of Islam in their commercial and financial transactions.

2. They should avoid any acts that degrade the status of Muslims or their religion.

3. They should not do any prohibited acts in public.

4. They should not harm Muslims and Dhimmis in their lives, honour or properties.

5. Abide by the terms and conditions of contracts concluded with them with regard to financial duties and period of stay.

- The pledge of security contract terminates by the occurrence of one of the following:

1. Lapse of the period of stay,

2. The person given the pledge of security converts to Islam,

3. The person given the pledge of security is given the capacity of a *dhimmi*,

4. The person given the pledge of security breaches the contract or any of its conditions, or

5. the person given the pledge of security commits the crime of rebellion against the state authorities, fighting against Muslims or joining the lands of the enemy.

- General Rights of Non-Muslims:

1. Their human dignity should be respected by the following:

a. Their feelings should be respected and they should be treated nicely,

b. Their beliefs should not be degraded,

c. Their funerals should be respected.

2. Freedom of belief

3. Justice and equality

4. The right of protection against aggression

5. Good treatment

6. Education, meeting and giving one's

- Authentic and explicit texts state that every Muslim should keep united with the Muslim community and not deviate or revolt against it in any way whatsoever.

- Authentic and explicit texts have condemned deviants and agree that they are mischievous.

- The majority of jurists opt that deviants are the same as rebels with regard to interpretation of texts although they agree that their interpretations are invalid.

- According to jurists, rebellion has three meanings: 1) rebels who have justifiable reasons, like the reasons given by the companions of the Prophet who took part in the battles of The Camel and Siffeen, 2) the rebels who present no justifiable reasons for rebelling against the Muslim ruler and 3) the deviants. According to jurists, the basic meaning of rebels is the first one. The second and third meanings are attached to the original meaning as regard ruling although they agree that there is a difference between the three categories with regard to some rulings.

- Jurists agree that rebels and deviants share some qualities like rebellion, deviation, justified rebellion, armed fighting and refusing the orders of the ruler.

- Rebels have two special qualities; 1) they claim for a right and the reason for rebellion is worldly.

- Deviants have some special qualities: 1) They are devout worshippers, 2) they are extremists, 3) they are juveniles, 4) they are unreasonable, 5) they permit for themselves the lives and property of Muslims, 6) they regenerate, 7) they label others as disbelievers, 8) they deviate against religion and 10) they incite others to deviate.

- Common conditions for both rebels and deviants which should be met to permit fighting them include the following: 1) they rebel within the land of Islam, 2) they are powerful either in number or force. However, the Maalikites opine that there is no difference between many and few. According to the majority of jurists, the lack of this condition make them as warriors and this is the preponderant opinion, 3) they are uncontrolled by the ruler. Some of the Shaafi'ites believe that they should resort

to a town that demonstrates power. However, the majority of jurists believe that the power can be achieved without resorting to a town, 4) they have some reasons for rebelling against the ruler. Jurists differ as to discourse with rebels before fighting them. The majority of jurists believe that this is a condition. If they are called to return to obedience and they refuse, they can be fought.

- The deviants should meet two conditions which rebels are not required to meet. These are: 1) They believe in the deviant ideology which labels others as disbelievers for the mere commitment of a sin publicly and 2) they consider the lives and property of Muslims as permissible for them. However, they differ as to calling them to return to the right path before fighting them. The preponderant opinion is that it is not a condition and that they can be fought initially.

- Jurists agree that they can be fought if they begin it or if they are no longer controlled by the ruler.

- The majority of jurists believe that deviants are not disbelievers and this is the preponderant opinion.

- Jurists agree that rebels should return the property they usurp and that their adversaries are not required to do so or even required to pay for any lives or property they have damaged. The preponderant opinion is that rebels may not be held liable for anything they damaged during the war.

- The preponderant opinion is that deviants are held liable for anything they have damaged.

- Terrorist cells and armed groups are two types: The first type are the ones who advocate deviation and rebellion and indirectly support it. These are the sitting deviants and they should be deterred as is the case with rebellion. The second type are the ones who fight Muslims, kill some people and damage property. These are similar to deviants as regards their qualities but they are rebels as regards fighting because the condition of power is not met according to the majority of jurists.

- Public demonstrations and sit-ins are acts of rebellion both linguistically and technically. These acts are not supported by any *Sharee'ah* rules. They rely on very weak reasoning proofs.

## Zakat of Debt

Sheikh Abdullah bin Sulaimaan Al-Manee'

### Abstract

This paper discusses the zakat of debt and the impermissibility to use debt to pay zakat.

- Zakatable properties include currencies like gold, silver and paper currencies, be they kept in cash, in current accounts, in deposits with others or debts due from others.

- If these currencies are kept by the owner in cash and they reach a zakatable amount or more, zakat should be paid for them if the specified period lapses.

- If these currencies are debts, they are either deferred or current ones. If these debts are due from a financially capable and trustworthy person, zakat should be paid for them in general, be they deferred or current. If they are deferred, they are often debts for profit estimated through the agreement of both parties for the whole period of deferral. This means that this deferred debt has grown with the profit during the deferral period. Therefore, it cannot be said that it is unjust to impose zakat on a deferred debt.

- However, if the deferred debt is a loan for no profit, the reward for lending it is due from Allah

and is not equal to the profit acquired during the deferral period.

- Sheikh Ibn Baaz issued a fatwa solely and collectively with the members of the Permanent Committee of Iftaa that the zakat of debt is due from the creditor if the debt is due from a financially capable and trustworthy debtor.

- If the debt is deferred, it is the creditor's choice to defer it. More often than not that the creditor has received a good profit for the term of deferral.

- However, if the debt is due from a financially capable but procrastinating debtor or an insolvent debtor or due from a person whose property is in the hands of a thief, a usurper or denier or due from a person who has no stable property, in this case no zakat is due on the debt.

- No zakat may be paid from the debt according to the majority of scholars. The debt is deducted from money owned by person who is required to pay the zakat whether the debt is current or deferred. This opinion is dictated by justice and fairness.

## The Difference between Rebels and Deviants and its Implications

Dr. Khaalid bin Muflih Al-Haamid

### Abstract

The present paper tackles a very intricate subject related to the difference between two types of people who take a stand against community: deviants (*khawaarij*) and rebels.

- The majority of jurists differentiate between rebels and deviants as concerns the technical meaning, as concerns valid and invalid interpretation of the term and as concerns acceptance of statements or the other way round. However, they consider them equal as to rulings.

It should be noted that equality between these two categories of people with regard to rulings is contrary to the doctrine held by *Ahl As-Sunnah wal Jamaa'ah* because they differentiate between fighting the one and not fighting the other. It is also contrary to the actual practice with regard to the issues subject of difference. Many jurists differentiate between the two categories in rulings in a number of issues. Moreover, they differentiate between the two categories as regards qualities and conditions.