

The Way to Appoint a Khaleefah

When the Shari'ah made it obligatory upon the Ummah to appoint a Khaleefah, it defined also the method by which the Khaleefah is appointed. This method is proven by the Qur'an, the Sunnah and the Ijma'a of the Sahabah, which is the bay'ah. So the appointment of the Khaleefah is carried out by the bay'ah to him. Proof that this method is the bay'ah, is confirmed from the bay'ah of the Muslims to the Prophet (saw) and from the order of the Prophet (saw) for us to give bay'ah to the Imam. The bay'ah of the Muslims to the Prophet (saw) was not on his Prophethood, rather it was on ruling, since it was a bay'ah over action and not a bay'ah on belief. So the Prophet (saw) was given the bay'ah in his capacity as a ruler and not as a Prophet and a Messenger. Because the acknowledgement of the Prophethood and the Message is a matter of belief and not a bay'ah, so the bay'ah could only have been for him in his capacity as the head of the State. The bay'ah was mentioned in the Qur'an and the ahadith. Allah (swt) said:

يا ايها النبي اذا جاءك المؤمنت يبايعنك على ان لا يشركن
بالله شيئا ولا يسرقن ولا يزنين ولا يقتلن اولادهن ولا ياتين
ببهتان يفترينه بين ايديهن وارجلهن ولا يعصينك في معروف
فبايعهن واستغفرهن الله ان الله غفور رحيم
﴿المتحنة: ١٢﴾

"O Prophet, if the believing women come to give you a bay'ah that they will not associate anything as partners to Allah, not to steal, not to commit adultery, not to kill their children, not to produce any lie that they have devised between their hands and feet, nor disobey you in what is right then accept their bay'ah" [TMQ 60:12]

Allah (swt) also said:

ان الذين يبايعونك انما يبايعون الله يد الله فوق ايديهم
﴿الفتح: ١٠﴾

"Lo! Those who give bay'ah to you (Muhammad) they give bay'ah only to Allah. The hand of Allah is above their hands" [TMQ 48:10]

Al-Bukhari reported about 'Ubada ibn as-Samit, who said: "We pledged ourselves to the Messenger of Allah to listen and obey in whatever pleases and displeases us, and that we should not dispute the authority of those who had been entrusted with it, and to stand for or say the truth wherever we are, fearing no blame of anybody for the sake of Allah." Al-Bukhari reported about 'Abdullah ibn Hisham, who witnessed the Prophet (saw), that his mother Zaynab, daughter of Hameed, took him to the Messenger of Allah (saw) and said: "O Messenger of Allah, take his pledge." The Prophet (saw) said: "He is young" and rubbed (wiped) his head and said du'a for him. Al-Bakhra narrated about Abu Hurairah, who said that the Messenger of Allah (saw) said: "Three persons to whom Allah will not talk on the Resurrection Day, nor purify them, and they have severe punishment are: A person who has an excess of water on the road and prevents the wayfarer of it; and a person who gives bay'ah to an Imam for his worldly affairs only, so if the Imam gave him that which he wants he fulfilled (the bay'ah) to him, otherwise he would not; and a person trading a commodity to another in the late afternoon and he swore by Allah that he was offered so and so for it, although he was not, and the person believed him and bought it." From these three ahadith it is obvious that the bay'ah is the method of appointing the Khaleefah. The hadith narrated by 'Ubada states that he gave bay'ah to the Prophet to listen and obey and this is a bay'ah to a ruler. The hadith about 'Abdullah ibn Hisham states that the Prophet (saw) rejected his bay'ah because he was not mature which indicates that it is a bay'ah on ruling. From the hadith reported by Abu Hurairah it is evident that it is a bay'ah to the Imam. The word 'Imam' in the hadith is undefined i.e. any Imam (of the time). There are other ahadith which refer to the bay'ah and the Imam.

It is reported in Muslim that the Prophet (saw) said: "Whoever gave bay'ah to an Imam giving him his handshake(clasp)...". And in Muslim, Abu Said al-Khudri said that the Prophet (saw) said: "If a bay'ah is given to two Khaleefahs kill the latter of them." And Muslim narrated that Abu Hazim said: "I accompanied Abu Hurairah for five years and heard him narrate that the Prophet (saw) said: The Prophets ruled over the children of Israel, whenever a prophet died another prophet succeeded him, but there will be no prophet after me. There will be Khulafa'a and they will number many. They asked: What then do you order us?. He said: Fulfill the bay'ah to them one after the other and give them their due. Surely Allah will ask them about what He entrusted them with."

So the texts from the Book and the Sunnah are clear that the method of appointing the Khaleefah is the bay'ah. All the Sahabah understood this and followed it. So Abu Bakr was given a special bay'ah in the courtyard of Bani Sa'ida, and a public bay'ah in the mosque, then who did not give him the bay'ah in the mosque gave it later on, like 'Ali ibn Abu Talib. 'Umar was given a bay'ah from the Muslims. 'Uthman also was given bay'ah from the Muslims. 'Ali was given a bay'ah from the Muslims as well. So the bay'ah is the only method to appoint a Khaleefah for the Muslims.

With regard to the practical details to conduct the bay'ah, they are evident in the appointment of the four Khulafa'a who came directly after the death of the Prophet (saw), who are Abu Bakr, 'Umar, 'Uthman and 'Ali. And all of the Sahabah accepted this and confirmed it. If it was against the Shari'ah, they would definitely have denied it because it is related to the most important thing upon which the well-being of Muslims and maintaining the Islamic rule depend. Whoever follows what happened in the appointment of these Khulafa'a will find that some Muslims had debated in the courtyard of Bani Sa'ida; the nominees were Sa'd, Abu 'Ubayda, 'Umar and Abu Bakr only, and as a result of the debate Abu Bakr was given the bay'ah. On the next day Muslims were called to the mosque and they gave him their bay'ah. As a result of this bay'ah, Abu Bakr became a Khaleefah for the Muslims. When Abu Bakr felt that his illness was fatal he called upon the Muslims to consult them about who would become the next Khaleefah. The opinion in these consultations focused on 'Ali and 'Umar only. He continued in these consultations for three months. When he completed them and knew the majority of the Muslims opinion he announced to them that 'Umar would be the Khaleefah after him. Immediately after his death Muslims came to the mosque and gave the bay'ah of Khilafah to 'Umar so he became Khaleefah by this bay'ah from the Muslims and not

by the consultations nor by the announcement by Abu Bakr of the results. When 'Umar was stabbed, the Muslims asked him to appoint a successor for him but he refused. They insisted, so he mentioned six of the Sahabah. Then after his death, the nominees appointed one of them as a representative who was 'Abdul Rahman ibn 'Auf. He referred to the opinion of the Muslims and consulted them. Then he declared the bay'ah to 'Uthman. The Muslims stood up and gave their pledge to 'Uthman, and thereby he became a Khaleefah by the pledge of the Muslims and not by the announcement of 'Abdul Rahman. Later on 'Uthman was killed and the majority of Muslims in Medina and Kufa gave their bay'ah to 'Ali ibn Abu Talib, so he too became a Khaleefah by the bay'ah of Muslims

From this it appears that the practical details to conduct the pledge of Khilafah is the debate among Muslims about who is suitable for the Khilafah. Once the opinion settles upon a list of people, their names will be publicised to the Muslims. For the one they choose from amongst them, they are asked to give him their pledge, and the rest of the nominees are also asked to give him their bay'ah as well. So in the courtyard of Bani Sa'ida the debate was about Sa'd, Abu 'Ubayda, 'Umar and Abu Bakr, then Abu Bakr was given the bay'ah which was equivalent to their selection. But this selection was not binding for Muslims until his bay'ah was given by the Muslim populace. Abu Bakr discussed with the Muslims about 'Ali and 'Umar then he declared the name of 'Umar, who was then given the bay'ah. 'Umar suggested the Khaleefah to be from among the six people. After referring to the Muslims 'Abdul Rahman ibn 'Auf declared the name of 'Uthman who was then given the bay'ah. And 'Ali was given the bay'ah immediately, as the situation was one of riot, and it was known that no nominee was equivalent to him in the opinion of Muslims when 'Uthman was killed. Thus the matter of bay'ah proceeds after debate to establish suitable candidates, then one of them is elected as a Khaleefah, then the bay'ah is taken for him from the people. Although this matter was evident in the consultations made for Abu Bakr, it is very clear in the case of the bay'ah given to 'Uthman. Al-Bukhari narrated on the authority of al-Zuhari that Hameed ibn 'Abdul Rahman had informed him that al-Meswar ibn Mahrama told him that the group appointed by 'Umar had met and consulted. " 'Abdul Rahman ibn 'Auf had said to them: I am not the one who competes with you for this matter but if you wish I could choose for you one from among you. So they assigned this to 'Abdul Rahman. When they charged 'Abdul Rahman with this matter, people turned to him to the extent that I did not see any one who followed this group or stepped behind them. The people turned to 'Abdul Rahman consulting him in those nights until the night of which we woke up in the morning and gave our pledge to 'Uthman." Al-Meswar said: " 'Abdul Rahman knocked at my door, after part of the night had passed, until I woke up. He said: I see you sleeping, by Allah, my eyes did not find much sleep tonight. Set forth and call al-Zubair and Sa'd. I invited them to him. He consulted with them. Then he called me and said: Call 'Ali for me, so I called him. He carried on a whispered conversation with him until the night faded away. Then 'Ali left him with some expectations, and 'Abdul Rahman was afraid about something from 'Ali. Then he said call 'Uthman for me, so I called him. He carried on whispered conversation with him until they departed as the muazin called for fajr prayer. After he lead the people in the fajr prayer, and the group of six persons met near the minbar (pulpit), he sent for all the Muhajirs and Ansar who were present (in Medina) and sent for the leaders of the army who delivered the pilgrimage that year with 'Umar. When they met, 'Abdul Rahman recited the shahadateen and said: O 'Ali! I viewed the matter of the people and did not see them equalling anyone to 'Uthman, so do not let anything disturb yourself. And he said (to 'Uthman): I give you the bay'ah upon the way of Allah, His Messenger and the two Khulafa'a who came after him. So 'Abdul Rahman, the Muhajirs, the Ansar, the leaders of the army and rest of the Muslims gave him the bay'ah."

So the nominees for the Khilafah were limited to the group named by 'Umar after the Muslims had asked him to do so. 'Abdul Rahman ibn 'Auf, after he withdrew himself from the nomination to the Khilafah, took the opinion of the Muslims about who would be the Khaleefah. He then announced the name of the person who the Muslims wanted after consulting with them. After he announced the name of the person who the people wanted, the bay'ah was given to him and he became Khaleefah by this bay'ah. Therefore the hukm shari'i concerning the appointment of the Khaleefah is to limit the nominees for the Khilafah by those who represent the opinion of the majority of Muslims. Then their names are displayed to the Muslims and they are asked to select one of the nominees to be Khaleefah for all. Then it is

determined whom the majority of the Muslims have chosen, and the bay'ah from all Muslims is taken for him, whether each person had specifically chosen him or not. This is the method because of the Ijma'a of the Sahabah about 'Umar limiting the nominees for the Khilafah to six specific persons, and the consensus of the Sahabah that 'Abdul Rahman takes the opinion of all the Muslims about who will be Khaleefah for them, and consensus to give the bay'ah to the one who 'Abdul Rahman announced as the person elected by Muslims as a Khaleefah is clear when he said: "I viewed the matter of the people and did not see them compare anyone with 'Uthman." All of these points clarify the hukm shari'i concerning the appointment of the Khaleefah.

Two issues remain to be examined, one of them is who are the Muslims who appoint the Khaleefah? Are they the influential people or a certain specific number of Muslims? Or do all of the Muslims appoint the Khaleefah? The second issue concerns the actions occurring this century in elections, such as secret ballots, polling boxes and counting votes. Are these matters consistent with Islam, and does Islam allow them or not?

As for the first issue, Allah (swt), has given the authority to the Ummah and made the appointment of the Khaleefah a right and duty for all Muslims; and He did not make it a right of one particular group excluding another, nor for a jama'ah leaving another jama'ah aside, since the bay'ah is a duty upon all the Muslims. The Prophet (saw) said: "Whoever dies without having a pledge upon his neck would die the death of jahilliyah", and this is general command for every Muslim. Therefore, the influential people do not possess the exclusive right to appoint the Khaleefah and cannot ignore the rest of the Muslims. Nor do specific persons have the exclusive right. Rather, this right is for all the Muslims with no exception, it even includes the fajirs (wicked people) and munafiqeen (hypocrites), providing they are mature Muslims because the Shari'ah text came in a general form in this instance and nothing came to limit it (make it specific to certain people) except the refusal of the pledge from the young who have not yet reached the age of puberty. So the text has to be taken generally.

However, it is not a condition that all Muslims practice this right. Whilst it is a duty, because the bay'ah is fard, it is fard kifayah (collective duty) and not fard ain (individual duty). Thus, if some of the Muslims fulfill it, the duty drops from the rest of the Muslims. But all Muslims must be enabled to practice their right in electing the Khaleefah, regardless of whether they use their right or not. In other words, every Muslim must be able to participate in selecting the Khaleefah. So the issue is to enable the Muslims to carry out the duty of establishing the Khaleefah which Allah (swt) prescribed upon them, in such a way that the sin of not fulfilling this duty is removed from their shoulders. The issue is not the actual participation of all the Muslims in conducting this duty. This is because the duty which Allah (swt) prescribed is to establish the Khaleefah for Muslims by their consent, and it is not a requirement for all Muslims to perform it. Two matters result from this issue. One of them is that the consent of all Muslims in establishment of the Khaleefah is achieved, or secondly, the consent of all the Muslims about the appointment is not achieved, however, in both cases, the Muslims are able to participate in the appointment.

With regard to the first matter no condition is set concerning a specific number required to appoint the Khaleefah, rather any number of Muslims can give their bay'ah to the Khaleefah and in this bay'ah the consent of rest of the Muslims is attained by their silence, or by proceeding to obey him, or by anything which implies their consent, then the appointed Khaleefah becomes a Khaleefah for all the Muslims, and he will be legally the Khaleefah even if only three people appointed him, because collectivity is achieved by carrying out the appointment of the Khaleefah. The consent is achieved by their silence and through obedience or anything similar, on condition that this is accomplished by absolute choice and enabling the expression of opinions fully. However, if the consent of all the Muslims was not achieved, then the appointment of the Khaleefah would not be accomplished unless it was performed by a group that represents the consent of the majority of the Muslims, regardless of the number in this group. From here some jurists concluded that the appointment of the Khaleefah is established by the pledge given to him by the people of influence, because they consider the influential people as the group which achieves the consent of the Muslims through the pledge they give to any man who fulfils the contractual conditions of the Khilafah. Therefore, it is not the pledge of the influential people which establishes the Khaleefah, nor is their pledge a condition for the legality of the appointment of the Khaleefah, rather the pledge of the influential people is an evidence indicating that the consent of the Muslims to the pledge has been achieved, because the influential people are considered as representative of the Muslims. And every evidence which indicates that the consent of the Muslims with the pledge to a Khaleefah is fulfilled completes the appointment of the Khaleefah, and the appointment of the Khaleefah by this pledge would be legal.

Accordingly the divine rule is to establish the Khaleefah by any gathering whose appointment of the Khaleefah achieves the consent of the Muslims by any indication that proves this consent, whether this indication is the pledge of the majority of the influential people, the majority of the representative Muslims, the silent acceptance of the Muslims regarding the group that gave the pledge, their hurry to show obedience as a result of the pledge or by any similar means, as long as they were provided with the full facility to freely express their opinions. It is not a divine rule that this gathering must be of only the influential people nor that they are four or four hundred or more, or that they must be the residents of the capital or the regions. Rather the divine law is that their pledge fulfils the consent of the majority of Muslims by any indication together with enabling them to freely express their opinion fully.

What is meant by all Muslims is those Muslims who live in lands controlled by the Islamic State, i.e. those who are subjects of the former Khaleefah, if the Khilafah exists, or those by whom the Islamic State would be established and the Khilafah contracted, in case the Islamic State was not established. As for the other Muslims, their pledge and consent are not an essential condition, because they are believers disassociated from the Islamic authority or they live in dar al-kufr (land of kufr) and they can not join dar al-Islam, so they have no right in the contracting pledge, but they must give the pledge of obedience because legally those who rebel from the Islamic authority are treated as rebels. And those who live in dar al-kufr, the establishment of the Islamic authority is not achieved by them unless they establish it in reality or they enter into its domain. Therefore, the Muslims who have the right in the pledge of contracting and their consent is considered a condition to ensure the legal appointment of the Khaleefah are those Muslims by whom the authority of Islam is established in reality. It is not true to say that this is a rational study, or to say it has no divine evidence. The reason for this is that it is a study about the subject upon which the divine law applies and not on the law itself, therefore it does not need a divine law but rather must explain its reality. For example, the eating of dead meat is prohibited in the divine law. Verification of what is the dead meat is the subject of the law, it is a subject which is related to the law. So appointing the Khaleefah by Muslims is the divine law, and that this appointment should be by consent and selection is also the divine law. It is these provisions which need the divine evidence. But who are the Muslims by whom the appointment is completed? And what is the matter by which the consent and selection are fulfilled? These are referred to as the manatt (subject) of the law, i.e. the subject upon which the law came to treat. The application of the divine law upon the subject is the achievement of the law. Therefore, it is needed to study the manatt which the divine law came to treat by explaining its reality.

It is incorrect to say that the manatt of the law is the illah (reason) of the law so it would necessarily need a divine evidence. It is incorrect to say that, because the subject of the law is different than the reason of the law. And there is a great difference between illah and manatt (the reason and the subject). Illah is the incentive for the law, i.e. the thing which indicates the intention (aim) of the law giver (Allah) for this law, and this must have a divine evidence which indicates such, so as to understand the aim of the law giver (Allah). Whereas the manatt of the law is the subject for which the law came i.e. the question upon which the law applies, and not its evidence nor its illah. What is meant by its being the subject with which the law is commissioned or entrusted, is that it is the subject with which the law suspends or hangs, i.e. the law was brought to solve it. It does not mean that the law was legalised because of it so as to be called the illah of the law. So the manatt of the law is that which is other than the traditional aspect of the divine law. Its verification is different from the verification of the illah. The verification of the illah is referred to as the comprehension of the text which came justified with the argument, and this is an understanding to the tradition and it is not the manatt. But the manatt is other than the traditions, it is meant to be the reality upon which the divine law is to be applied.

For example, alcohol is haram, the divine law is the prohibition of alcohol. The investigation that a certain drink is alcohol or not, so as to judge it as haram or not is a investigation of the manatt. So it is necessary to study whether the drink is alcohol or not in order to state that it is haram. The investigation of the reality of the alcohol is a verification of the manatt. And if you said that the water allowed to use for wudu is the mutlaq (absolute, unrestricted) water then the divine law is that the mutlaq water is the one which is allowed for wudu. So the investigation that the water is unrestricted or restricted in order to judge upon it as allowed for wudu, is a verification of the manatt. Therefore, it is necessary to study the water to determine if it is free or restricted. This study of the reality of the water is the verification of the manatt. And if you said the person who made hadath (discharged something from back or front) has to make wudu for the prayer, then the verification that the person is mohdath or not mohdath is a verification of the manatt, and so on. Shatebi said in the book Al-Muafaqat: "These subjects and the like which we necessitated to define the manatt must take the evidence about it according to the reality of every incident." And he further states: "Ijtihad could be connected with the verification of the manatt, and thus it does not require the knowledge of the aims of the law giver (Allah), nor does it require the knowledge of the Arabic language, because the aim of this ijti had is knowing the subject as it is. So it requires the knowledge of what this subject can't be recognised without. Therefore the mujtahid has to be knowledgeable and mujtahid from this aspect in order to apply the divine law according to the specific requirement."

The investigation of the illah is referred to the understanding of the text which came justified (provided with reasoning). And this is an understanding of the traditions, and it is not the manatt, rather the manatt is other than the tradition. And it is meant to be the reality upon which the divine law applies. As an example we observe that alcohol is haram, however, the verification of whether a liquid is alcohol or not is the verification of the manatt. And if you said the mutlaq water is that with which wudu can be performed, then the verification that the water is free or not free is the verification of the manatt. And if you said that the mohdath has to make wudu, then the verification that the person is mohdath or not is the verification of the manatt. Thus the verification of the manatt is the investigation of the thing that is the subject of the law. Accordingly, it is not a condition that the one who verifies the manatt be a mujtahid or a Muslim, but it is enough that he/she be knowledgeable of the matter. So the study of who are the Muslims and whose pledge is evidence of the acceptance or consent for the Khaleefah, is a study about the verification of the manatt.

This is in regard to the first question. As for the second issue, regarding what occurs nowadays in conducting elections by secret ballot, using polling boxes, the count of votes and the like, all these are styles to perform the selection by consent. Therefore, they do not enter under the divine law, nor in the question of manatt of the divine law which is the subject that the divine law came to treat, because this matter is not concerned with direct Muslim deeds or the subject upon which the divine law applies; rather they are the means of the human action to which the divine law came, i.e. the action which the speech of the law-giver (Allah) is related with, which in this instance, is the establishment of the Khaleefah by consent, provided that there is a complete facilitation to enable the expression of opinion for this question. Therefore, these styles and means are not part of what the divine laws are sought for. And they are treated as matters which the general text has permitted, and there is no special evidence to forbid them, so they are mubah. So Muslims have the right to select these or other styles. Any style which leads to enabling the Muslims to carry out the fard of appointing the Khaleefah by consent and selection, Muslims are allowed to use, unless there is a divine evidence which prohibits it.

It is incorrect to say that this style is a human act and should not be conducted except according to the divine law, with an evidence to indicate its rule. It is incorrect to say so, because the human action which must be conducted according to the divine law and which must have an evidence that indicates its law, is only the action which is considered as an origin, or it is a branch of an origin action whose evidence is special, not general. An example for this is the prayer, whose evidence is only related to establishing it, and it does not include every action included in the prayer. Therefore there must be an evidence upon every action in it. But the action which is a branch for an action that a general evidence applies to its origin, then the general evidence applies on all its branches. The prohibition of an action (which is a branch) requires an evidence to prohibit it, and get it out of the rule of its origin and thus give it a new rule, and so are all the styles. In the question of elections, the original action is the appointment of the Khaleefah by consent and selection. But the actions which branch out from that such as polling, using the polling boxes and counting of the votes and the like, they all enter under the rule of the origin, and do not require another evidence. To exclude any of them from the rule of the origin, i.e. to prohibit it, is a matter which requires an evidence. This is the case for all the styles which are human actions. Concerning the means which are tools like the box in which the voting papers are put, these take the rule of things and not the rule for actions, upon which applies the principle "Originally things are permitted unless there exists an evidence of prohibition."

The difference between method and style is that method is an action which is considered by itself as an origin, or a branch to an action that does not have a general evidence for its origin, rather, its evidence is special. The style is an action which is a branch to an action upon which there is no general evidence. Thence, the method must depend upon a divine evidence because it is a divine rule, therefore it must be adhered to, observed, and closely followed. And Muslims have no choice concerning it unless its rule is *ibaha* (permissible). This is different from the style which does not depend on a divine evidence, rather it is included in the rule of its origin. Therefore, it is not obligatory to follow a particular style even if the Prophet (saw) did so. Rather a Muslim is allowed to use any style as long as it leads to the performance of the action, and thus it becomes a branch to the action. Therefore, it is said that the style is defined by the kind of action.