

# THE PARAMETERS OF AL-IJTIHÓD IN ZAKÓT: THE PAST AND THE PRESENT

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## Abstract

Throughout the centuries the Muslim *Ummah* and their scholars in particular have faced questions and challenges about *zakÉt*. However, there is a vast difference between raising questions for the sake of seeking knowledge and allegations based on mere assumption rather than on *ijtihÉd*. *ZakÉt* is a third pillar of Islam and it should therefore be realized that all the rulings and norms related to *zakÉt* are fixed by *SharÉÑah* texts which can't be changed because of change of time and space. To some people certain aspects of *zakÉt* seem irrelevant to our contemporary time and therefore they suggest revising the whole concept of *zakÉt* and applying it according to our modern era. However, anyone who dares to challenge the established norms of *zakÉt* must at least be well versed in the major sources of *SharÉÑah* such as *Qur'Én*, *Sunnah*, *IjmÉÑ*, *QiyÉs* as well as in Islamic Jurisprudence and the Arabic language. Otherwise what they pose are baseless claims rather than intellectual questions. The authors of this paper focus mainly on three aspects: concept and scope of *ijtihÉd*, discussion and responses to various allegations raised by Volker Nienhaus and textual evidences for the proper understanding of *zakÉt*. The paper has adopted historical and descriptive methods of analysis.

**Keywords:** *zakÉt*, *al-ijtihÉd*, *mujtahid*, *Qur'an*, *Sunnah*, *al-×awl*, *al-NaÍÍ*, *nuÍÉÍ*, income tax, wealth, redistribution, rate.

## Introduction

Indeed, whoever observes the very nature of *SharÉÑah* will conclude that nothing has been left without explanation. The *Qur'Én* says (*interpretation of the meaning*): And We have appointed the night and the day as two *ÓyÉt* (signs etc.). Then, We have obliterated the sign of the night (with darkness) while We have made the sign of the day illuminating, that you may seek bounty from your Lord, and that you may know the number of the years and the reckoning. And We have explained everything (in detail) with full explanation"<sup>1</sup>. He says in another place (*interpretation of the meaning*): "And Allah will never lead a people astray after He has guided them until He makes clear to them as to what they should avoid. Verily, Allah is All-Knower of everything"<sup>2</sup>. Al-NuÑmÉn ibn BashÉr narrated that the Messenger of Allah (*Íal-AllÉhu 'alayhi wa sallam*) said: "The lawful is clear and the unlawful is clear, and between them are matters that are doubtful (not clear); many of the people do not know whether they are lawful or unlawful. So whoever leaves the doubtful has definitely protected his religion and his honor, and whoever falls into something from the doubtful, then he soon will have fallen into the unlawful. Just like a shepherd who

<sup>1</sup> SÉrah al-IsrÉ' Éyah: 12. Al-HilÉlÉ, MuÍammad Taqi-ud-DÉn & MuÍammad KhÉn. *The Noble Qur'Én, English Translation of the meaning and commentary*. Saudi Arabia: King Fahd complex for the printing of the Holy *Qur'Én*.

<sup>2</sup> SÉrah al-Taubah Éyah: 115. *The Noble Qur'Én*

grazes (his animals) around a sanctuary, he will soon end up in it (with his animals). Indeed for every king is a sanctuary (pasture), and indeed Allah's sanctuary is what He made unlawful."<sup>3</sup>

Therefore it is a general principle in Islam that *SharĒÑah* is a comprehensive body of law designating a ruling for everything. Henceforth, a careful study of the *SharĒÑah* by a student of knowledge depicts that the *SharĒÑah* did not address everything specifically or directly. Rather, in many instances it has guided the *ummah* through inferences or general rulings. These grey areas which the *nuĒĒĪ* (texts) of *SharĒÑah* did not discuss directly are the scope of *ijtihĒd* in *al-Fiqh al-IslamĒ* (Islamic jurisprudence). The *mujtahidĒn*<sup>4</sup> will make an effort to extract the legal ruling on those issues from the established general principles. One of the main conditions of *ijtihĒd* is that *ijtihĒd* can only be practiced when there is no clear text from the *Qur'Ēn* and *Sunnah* to address the issue. When dealing with the issue of *ibĒdĒt* the scope of *ijtihĒd* is very narrow. *ZakĒh* is not just an act of worship in Islam, rather it is the third pillar of Islam, thus the practice of *ijtihĒd* in it is very sensitive even though it has the nature of *muÑĒmalah* in it. In this paper the focus is on the possibility of observing *ijtihĒd* and the limitations that restrict the *mujtahid* who seeks to extract rulings of certain ambiguous issues. This will be formulated through discussion of the following elements: definition, conditions, scope and limitations of *ijtihĒd*, the current situation of the *ummah* concerning *ijtihĒd*, critical issues regarding *ijtihĒd* in *zakĒt*, a recommendation and conclusion.

### **Definition of IjtiĒd**

According to Arabic dictionaries the word *ijtihĒd* is originally derived either from the root word *juhd* which means exhausting an effort, or it is derived from the root word *jahd* which means tolerating a hardship. Thus, the linguistic meaning of *ijtihĒd* is exhausting one's efforts and ability to make an achievement in handling a difficult task that can be physical (such as walking and working) or spiritual (such as critical thinking in deducting a ruling from a text)<sup>5</sup>. It can also be literally defined as striving or self-exertion in any activity which entails a measure of hardship<sup>6</sup>. As for the technical meaning of *ijtihĒd*, it is defined by the scholars of *UsĒl* as a total expenditure of effort made by a jurist in order to infer, with a degree of probability, the rule of *SharĒÑah* from their detailed evidences in the sources.<sup>7</sup> Thus *ijtihĒd* is the process of making efforts by the *mujtahid* in order to reach the correct ruling of *SharĒÑah* for a specific issue.

### **Who is qualified to exercise ijtihĒd?**

The reality about *ijtihĒd* is that it is an undertaking by the *mujtahid* to represent The Law Giver (Allah). This makes it a very sensitive issue in Islam and a heavy responsibility that carries the attention of the scholars. They affirm that *ijtihĒd* is not to be practiced by anybody except those who are qualified and fulfill the following main conditions:

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<sup>3</sup> Al-TirmidhĒ, MuĒammad ibn Ōsa ibn Sawra, *Sunan al-TirmidhĒ*. (Beirut: DĒr Ihya'i al-TurĒth). *ĀadĒth* No: 1126

<sup>4</sup> The word is the plural of *mujtahid* which means a person who qualified to perform *ijtihĒd*.

<sup>5</sup> MuĒammad ibn Mukrim ibn ManĒĒr, *LisĒn al-ÑArab*, (Beirut: DĒr ŌĒdir), 3:133. See also, AĒmad ibn MuĒammad ibn ÑAliyyu al-FayyumĒ, *al-MilĒĒh al-MunĒr fĒ GharĒb al-SharĒ al-KabĒr*, (Beirut: al-Maktabah al-Ñilmiyyah), 1: 112.

<sup>6</sup> Mohammad Hashim KamalĒ, *Principles of Islamic Jurisprudence* (Malaysia: Petaling Jaya, ÑIlmiyah Publishers, 1999), 367

<sup>7</sup> Ibid

- 1- The *mujtahid* must be trustworthy (*Al-ŃAdl*). This is a person who stays away from the major sins and mostly avoids the minor sins as well<sup>8</sup>.
- 2- He has to be well versed in the following Sciences:
  - a. *Qur'Ēn* and its sciences
  - b. *Sunnah* and its sciences
  - c. *IjmĒŃ* and its application
  - d. *QiyĒs* and its application
  - e. *Fiqh* and its principles
  - f. ŃArabic Language and its sciences (in particular *al-NaŃw*, *al-BalĒghah*, *al-Adab* and *al-Lughah*)<sup>9</sup>

### Scope and Importance of IjtihĒd

Under the science of *UsĒl al-Fiqh* there are two types of *ijtihĒd* which are: *ijtihĒd* to understand the *nuĒĒ* and *ijtihĒd* to deduct a ruling for an issue that *SharĒŃah* does not provide specific evidence to address it directly. The first type is broadly inclusive and has a few restrictions whereas the second type is highly restricted and cannot be done in *ibĒdĒt*. This is because the scholars mentioned that the issue of *ibĒdah* is based on *tawaqquf* which means to wait until you are told to perform an act. The Prophet (*Āl-AllĒhu 'alayhi wa sallam*) said in the following *ĀdĒth* narrated by ŃŌishah (May Allah be pleased with her), she reported that the Messenger of Allah (*Āl-AllĒhu 'alayhi wa sallam*) said, "Whoever introduces in this affair of ours something that does not belong to it, it is to be rejected"<sup>10</sup>. In another version narrated by Muslim the Prophet (*Āl-AllĒhu 'alayhi wa sallam*) said: "Whoever performs an action which has no command for it in this religion of ours, it is to be rejected"<sup>11</sup>. Ibn MĒjĒshĒn said I heard *ImĒm MĒlik* saying: whoever introduces an innovation in *IslĒm* which he sees to be good, he indeed claimed that MuĀammad (*Āl-AllĒhu 'alayhi wa sallam*) has cheated in conveying the message he was entrusted with by Allah. This is because Allah says: [*This day, I have perfected your religion for you, and completed My Favor upon you, and have chosen for you IslĒm as your religion*] therefore, whatever was not part of the *dĒn* in those days, will never be part of the *dĒn* today"<sup>12</sup>. The most sensitive type of *ijtihĒd* is the *ijtihĒd* in deducting a ruling. This is where all of the conditions stipulated by the scholars apply. This paper's focus is to determine whether or not this type of *ijtihĒd* has an application in *zakĒh*. However, the general ruling is against and not in favor of this type of *ijtihĒd* in *ŃibĒdĒt* as mentioned above.

The importance of *ijtihĒd* cannot be overemphasized due to its facilitative role in *SharĒŃah*. It is a bridge between the *nuĒĒ* and contemporary issues. *SharĒŃah* did not discuss or directly state the rulings on every matter. There are some issues which do not have a direct ruling and instead *SharĒŃah* has provided general rulings

<sup>8</sup> Al-AmĒn al-ShanqĒĒ, *Mudhakkarah fĒ UsĒl al-fiqh*, (Al-MadĒnah al-Munawwarah: Maktabah al-ŃUIĒm wa al-ĳikam, 2001), 135.

<sup>9</sup> Ibn QudĒmah, ŃAbd Allah ibn Aĳmad, *Rawdat al-NĒdir wa junnat al-MunĒdir* (Makkah Al-Mukarramah: Al-Maktabah al-Makkiyah, 2002), 2:334-337. See also MuĀammad al-KhudarĒ Bak, *UsĒl al-Fiqh*, (Al-Maktabah al-RiyĒĒ al-ĀdĒthah), 367-369. See also Al-ShawkĒnĒ, MuĀammad ibn ŃAliyyu ibn MuĀammad, *irshĒd al-fuhĒl ilĒ talqĒq al-Āaqq min Ńilm al-UsĒl*, (Beirut: DĒr al-kutub al-ŃIlmiyyah, 1994), 370-374.

<sup>10</sup> Al-BukhĒrĒ, MuĀammad ibn IsmĒŃĒl, *ŌaĒĒl al-BukhĒrĒ with Fat'Ī*, (Riyadh: DĒr al-SalĒm, 2000) *ĳadĒth* No. 2499. Muslim ibn al-ĳajjĒj, "*ŌaĒĒl Muslim*", (Riyadh: DĒr al-SalĒm, 2000) *ĳadĒth* No. 3242.

<sup>11</sup> Muslim *ĳadĒth* No. 3243

<sup>12</sup> Al-ShĒlibĒ, Ibrahim ibn MĒsĒ ibn MuĀammad, *Al-IŃtiĒm* (Al-QĒhirah: DĒr Al-ĳadĒth, 2003), 37.

and principles which would be a basis of *ijtihÉd* in extracting their rulings. This shows the prestigious position that *SharÉÑah* has given to the *ijtihÉd* that is based on *QiyÉs* and similar sources. *IjtiÉd* has enabled scholars to deduce multiple rulings which would otherwise remain unknown to the vast majority of people. Moreover, life on earth is going through a constant process of transformation. New situations, innovations and events will continue to arise until the Last Day. This is why there is a need for a system that enables scholars to derive rulings for contemporary issues. When encountered with a new issue the scholars of Islam use the available principles and legal maxims to extract its ruling. This is how the legal ruling of every new issue is worked out.

### **The Status quo of the Ummah in Relation to IjtiÉd**

Whoever observes the current status of the *umma* will not have a single doubt that the *umma* is going in the wrong direction in the area of *ijtihÉd* and understanding, specifically those who are posing as *mujtahidÉn* when they are not. In this era almost everyone who speaks or holds a microphone is a *mujtahid* and many of whom do not have the qualifications to do *ijtihÉd*. This makes people doubtful of fatwas from the true scholars. Many people are confused due to the great contradiction they see in the fatwas<sup>13</sup> given by true scholars and the people who have been branded scholars by their audience even though they are not. One of the major contributors to this disease is nothing but a violation of the conditions that have been laid down by the early scholars to govern and lead the scholars toward a successful *ijtihÉd*. These conditions are designed in order to preserve the *SharÉÑah* from the intervention of intruders, who forgot, ignore or are unaware of the saying of Allah (*interpretation of the meaning*):

“And follow not (O man, i.e., say not or do not or witness not) that of which you have no knowledge. Verily, the hearing, and the sight, and the heart of each of those ones will be questioned (by Allah)”.<sup>14</sup>

This is the reason why ImÉm ibn Al-Qayyim said that whoever decides to accept the responsibility of representing Allah in His creation has to ensure that they are ready for it because that accountability is extremely hard<sup>15</sup>. Fatwas based on *ijtihÉd* without having proper knowledge on that issue is talking about Allah without His permission, Allah says (*interpretation of the meaning*):

“Say (O Muhammad [*sal-Allahu 'alayhi wa sallam*]): "(But) the things that my Lord has indeed forbidden are *Al-FawÉhish* (great evil sins and every kind of unlawful sexual intercourse) whether committed openly or secretly, sins (of all kinds), unrighteous oppression, joining partners (in worship) with Allah for which He has given no authority, and saying things about Allah of which you have no knowledge.”<sup>16</sup>

### **The Case of ZakÉt**

<sup>13</sup> A juristic decision by a Muslim scholar.

<sup>14</sup> SÉrah al-IsrÉ' Éyah, 36. *The Noble Qur'Én*

<sup>15</sup> Ibn Al-Qayyim, MuÉammad ibn AbÉ Bakr, *INilÉm al-MuwaqqiÑÉn an Rabb Al-ÓlamÉn*, (Beirut: DÉR al-JÉl, 1973) 1:11.

<sup>16</sup> SÉrah al-AÑrÉf, Éyah, 33. *The Noble Qur'Én*

*ZakĒt* literally, means growth and purification. Technically, *zakĒt* is an obligatory right on the wealth of a Muslim that reaches *niĒĒb* which is to be given to specific types of people at a specific period of time” or “the purification of wealth by giving a prescribed amount of it to the poor or any of the categories mentioned by the *Qur’Ēn*<sup>17</sup>. Concerning the case of *zakĒt*, the people who talk about this issue can be divided into several categories, Muslims and non-Muslims, qualified and unqualified people. A review of articles written by some frequent deliberators on *zakĒt* confirms that faith plays an important role. The word faith is used in this regard because it is the only factor that necessitates submission to what is designed by the Divine Will of the Creator. This will help a person to first blame his/her comprehension instead of criticizing *SharĒĒnah*. In most instances a person’s faith is an obstacle that prevents justice and honesty when commenting on others and their values or legal principles. This injustice in criticizing *zakĒt* is seen from those whose faith completely differs from that brought by the Prophet (*Ĵal-AllĒhu ‘alayhi wa sallam*) and this unjust criticism exists even among some Muslims who do have faith but unfortunately are distorted by confusion and doubt. This difference in faith is one of the main contributors to the misplacement of information concerning *zakĒt*. Furthermore, it is crucial that before anyone makes an analysis or criticism of an issue he/she should have knowledge and be well versed on the system that governs that issue. This prerequisite exists whether the resulting comment is positive or negative. Otherwise the comment will not reflect the system, the scholars have always mentioned that being accurate in a judgment is based on having a clear picture of the judged issue<sup>18</sup>. This is extremely important because if a system is not properly understood, the possibility of making a wrong conclusion is very high. For this ĒAliyyu ibn al-MadĒnĒ was reported to have said: “for a judgement to be accurate and errors to be detected, whatever is said about that issue must be combined”<sup>19</sup>. These are the common principles that should be observed in order to attain a successful judgment. In this paper the focus will be mainly on examples quoted from an article written by Professor Volker Nienhaus with the title: *ZakĒt, taxes, and public finance in Islam*. In his writing, the topics that catch our attention concerning *zakĒt* are: Case law instead of general principle? Is *zakĒt* a wealth or in income tax? Is *zakĒt* on productive or unproductive wealth? The problem with one full year of ownership, Immutable rates? *ZakĒt* and redistribution.<sup>20</sup>

### **Why Case Law is Inapplicable in ZakĒt**

It is observed that some of the main principles that are needed to facilitate a fair judgment are missing in the work of Mr. Nienhaus. The author respectably suggests that Islam should use case law instead of general principles<sup>21</sup>. It should be understood that *SharĒĒnah* and Case law are not from the same source. Case law is a manmade law whereas *SharĒĒnah* is from Allah The Most High. With regard to the issue of having a case law instead of general principles, in Islam the *zakĒt* system is based on the general principles not cases. These principles are so powerful in their generality to

<sup>17</sup> For more details see Al-QaraĒwĒ, *Fiqh al-ZakĒt*, (Beirut: Mu’assasat al-RisĒlah, 1973), 37- 42.

<sup>18</sup> Ibn al-ĒUthaimĒn, MuĒammad ibn ØĒliĒ ibn MuĒammad, *al-UsĒl min Ēilm al-UsĒl*, (Al-QĒhirah: DĒr ibn Al-JawzĒ, 1426), 83.

<sup>19</sup> Al-ĒirĒqĒ, ĒAbd Al-RaĒĒm ibn al-Ēusain, *al-TaqyĒd wa al-Ēlh sharĒ muqaddimah ibn al-ØalĒĒ* (Al-MadĒnah Al-Munwwarah: Al-Maktabat al-Salafiyah, 1969), 117.

<sup>20</sup> Volker Nienhaus, *ZakĒt, Taxes and Public Finance in Islam*, (London and New York: Islam and the everyday World: Public policy dilemmas. Routledge, 2006)

<sup>21</sup> Ibid

govern any arising case in the present as well as the future. They were the same principles used since the time of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) until our contemporary era. As a matter of fact there are a few authentically narrated cases that were the reason for revelation of some laws and even with those the Prophet would mention a general ruling to address that issue and other issues that may come in the future. Examples such as the sayings of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*), “Whoever comes to the masjid while the imam is making *khuĪbah*, he should not sit until he prays two *rakĪĒt*”<sup>22</sup>, and in another narration “Whoever leaves his religion kill him,”<sup>23</sup> and the Prophet’s (*Īal-AllĒhu 'alayhi wa sallam*) saying to his wife ŅŌishah, “Buy her, for the *walĒ*’ is for the one who manumits (the slave)”<sup>24</sup>, and many others. All of these instructions have a cause behind them but the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) gave a general principle to govern any arising issues in the future. This is the reason why the scholars of *UĪĒl al-fiqh* mention that the recognition is based on the generality of the text and it is not restricted to the case for which the law was revealed<sup>25</sup>.

Concerning the case of *zakĒt*, it is clearly known to everyone that *zakĒt* is the third pillar of Islam. Hence, *zakĒt* is without doubt an act of *ibĒdah*. *ZakĒt* being an act of *ŅibĒdah* makes the area for *ijtihĒd* limited to *ijtihĒd* in understanding the text only. In *ŅibĒdĒt* everything has been prepared for us and we just have to take it and apply it without making any *ijtihĒd* in deriving a ruling, and that is why innovation in *ŅibĒdĒt* is totally rejected. The *ĪadĒth* of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) said, “Whoever innovates in this affair of ours it will be rejected.”<sup>26</sup> In later parts of the work the writer will mention the *nuĪĒĪ* of *SharĒŅah* on *zakĒt* which will confirm their comprehensiveness to include everything. When the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) died the *dĒn* had already been completed and he did not leave anything that needed to be added. The Caliphs also did not add anything contrary to the claim that, “The early caliphs have amended the *zakĒt* regulations of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*). They did not only include items into the *zakĒt* base which were not included by the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) but they also excluded an item which was included by the Prophet (*Īal-AllĒhu 'alayhi wa sallam*), and they changed the rate in one case. For none of these modifications are the reasons explicitly mentioned.”<sup>27</sup> The proponent of this claim did not provide proof to substantiate his claim that the Caliphs amended the system of *zakĒt* as laid down by the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) and he also did not mention what they charged *zakĒt* for which the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) did not, and he also did not mention what he claims they excluded from *zakĒt*. There is no truth to this claim because the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) did not leave any vacuum in issues of *ŅibĒdĒt* except that he filled it before his death. This is because Allah says, “And We have explained everything (in detail) with full explanation”<sup>28</sup>.

<sup>22</sup> Al-BukhĒrĒ *× adĒth* No. 1097

<sup>23</sup> AbĒ DĒwĒd, SulaimĒn ibn al-AshŅath “*Sunan AbĒ DĒwĒd*” (Beirut: DĒr ibn ×azm, 1997) *× adĒth* No. 3787

<sup>24</sup> Al-BukharĒ *× adĒth* No. 2530

<sup>25</sup> Al-ZarakshĒ, MuĪammad ibn BahĒdir, *al-BaĪru al-muĪĒĪu fĒ UĪĒl al-fiqh* (Beirut: DĒr al-kutub al-Ņilmiyyah, 2000), 2:352

<sup>26</sup> Muslim *× adĒth* No. 3242

<sup>27</sup> Volker Nienhaus, *ZakĒt, Taxes and Public Finance in Islam*, (London and New York: Islam and the everyday World: Public policy dilemmas. Routledge, 2006)

<sup>28</sup> SĒrah al-IsrĒ’ *Ēyah*: 12. *The Noble Qur’Ēn*.

Explanation is carried out in two ways, either directly or indirectly through the authentic *Sunnah* of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) which is the second part of the divine revelation as it is mentioned in the following *ĪadĒth*:

Narrated Al-MiqdĒm ibn MaŇdĒkarib (May Allah be pleased with him): The Prophet (*Īal-AllĒhu 'alayhi wa sallam*) said: Beware! I have been given the *Qur'Ēn* and something like it, yet the time is coming when a man replete on his couch will say: Keep to the *Qur'Ēn*; what you find in it to be permissible treat as permissible, and what you find in it to be prohibited treat as prohibited. Beware! The domestic donkey, beasts of prey with fangs, a find belonging to a confederate, unless its owner does not want it, are not permissible to you. If anyone comes to some people, they must entertain him, but if they do not, he has a right to mulct them to an amount equivalent to his entertainment.<sup>29</sup>

Therefore it is all about knowledge and not just basing judgment or conclusions on one's personal view. When analyzing an issue there are principles or criteria that should be presented as the benchmark that will act as a basis of judgment. The system of *zakĒt* should be judged based on its own merits and not on how people may have misapplied it, or in comparison to other systems. The scholars of Islam who are well versed in the system would never hesitate to have a dialogue with economists or social scientists. As previously stated it is a matter of faith and submission to the Will of the Creator. Economic theories do not suffice, trying to make them fit into Islam or trying to make Islam fit into them is a futile cause. Economic theories are only ideas and man-made principles that are not proven fact, which is why in the field of economics there are many alternative theories. In recent years some economists have proposed the re-engineering of economics. The general dissatisfaction with the status quo of mainstream economics and its practitioners was aggravated by the disciplines inability to see the eventuality of the global financial crises of 2008<sup>30</sup>. Thus this fact alone renders the argument that Islamic economics needs to have theories null and void. The *nuĒĒĪ*, revelation from Allah, are perfect and their truth is undebatable because they are from the All-Knower Who hears and sees everything. Therefore every *Ēyah* and authentic *ĪadĒth* is a fact and it is unbecoming to evaluate what the All-Knowing has decreed with products of human intellect which is limited in its nature. Rather the merit of a theory should be based on its conformity to the divine revelation.

### **Is ZakĒt a Wealth or an Income Tax?<sup>31</sup>**

With regard to the question posed by some researchers "Is *zakĒt* a wealth or an income tax?" According to Islamic Jurisprudence there is a great difference between *zakĒh* and tax, even the words carry different meanings. In Arabic the equivalent word for tax is *maks* or *ĪarĒbah* not *zakĒt*, and thus *zakĒt* cannot be translated to mean tax'. In Islam everything is created by Allah and thus owned by Him. The *Qur'Ēn* says (*interpretation of the meaning*):

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<sup>29</sup> AbĒ DĒwĒd *×alĒth* No. 3988

<sup>30</sup> Steve Keen, *Debunking Economics: The Naked Emperor Dethroned?* (London and New York: Zed Books, 2011), XI.

<sup>31</sup> Volker Nienhaus, *ZakĒt, Taxes and Public Finance in Islam*, (London and New York: Islam and the everyday World: Public policy dilemmas. Routledge, 2006)

“[And to Allah belongs the dominion of the heavens and the earth, and Allah has power over all things.]”<sup>32</sup>

This shows that the ultimate owner of everything is the All-Mighty Allah. Humans are authorized by Allah to act towards wealth as Caliphs whose job is to preserve the wealth by putting it in its proper position. The *Qur'Ēn* says (*interpretation of the meaning*):

[Believe in Allah and His Messenger (Muhammad [*sal-Allahu 'alayhi wa sallam*]), and spend of that whereof *He has made you trustees*. And such of you as believe and spend (in Allah's way), theirs will be a great reward.]<sup>33</sup>

The reality of *zakĒt* is that Allah the Owner of the wealth is authorizing whomever He gave the prescribed amount to take a certain fixed portion of that wealth and give it to any of the eight categories mentioned by the *Qur'Ēn*. Thus the question of whether or not *zakĒt* is an income tax does not arise. The main objectives of both are different, *zakĒt* is a means of soul and wealth purification, the *Qur'Ēn* says (*interpretation of the meaning*):

Take *Øadaqah* (alms) from their wealth in order to purify them and sanctify them with it, and invoke Allah for them. Verily, your invocations are a source of security for them; and Allah is All-Hearer, All-Knower.”<sup>34</sup>

The spiritual aspect is an intrinsic component of *zakĒt*. *ZakĒt* is also a means of increase in wealth, AbĒ Hurairah reported that Allah's Messenger (*Īal-AllĒhu 'alayhi wa sallam*) said:

Charity does not in any way decrease the wealth and the servant who forgives, Allah adds to his respect, and the one who shows humility, Allah elevates him in the estimation (of the people).<sup>35</sup>

All of these spiritual values are not found in the imposed taxes.

There are significant differences between tax and *zakĒt*. *ZakĒt* is a continuous act of worship which Allah, the owner of the wealth, has imposed upon His slaves. It will continue for as long as human beings exist. On the contrary, tax is imposed by the government, which does not own the wealth, for specific needs and can even be prohibited when it is based on injustice or where conditions laid down by *SharĒĤnah* have not been met. Additionally, tax is always based on a need provided that the government is financially incapable of fulfilling that need. Thus tax only remains if the need remains and it must be lifted completely when the need is gone. This is unlike *zakĒt* which will always be obligatory even if there was no need for charity. Furthermore, *zakĒt* is imposed by the Owner of the wealth upon those whom He assigned the responsibility of taking care of it, whereas tax is imposed by the government who are not the owners of the wealth. An important point to note is that *zakĒt* is collected only from the rich and its distribution is confined to those eight categories prescribed by the *Qur'Ēn*. On the contrary, tax is collected from the people

<sup>32</sup> SĒrah 'Ōl ĤImrĒn Ēyah: 189, *The Noble Qur'Ēn*.

<sup>33</sup> SĒrah al-×adĒd Ēyah: 7, *The Noble Qur'Ēn*.

<sup>34</sup> SĒrah al-Tawbah Ēyah: 103, *The Noble Qur'Ēn*.

<sup>35</sup> Muslim ×adĒth No: 4689



of concern regardless of their financial status. It is also different from *zakĒt* in terms of distribution, taxes are imposed for the benefit of the whole community, including the rich, all the citizens of the community enjoy the taxes.<sup>36</sup>

These differences and many others that have not been mentioned are sufficient enough to indicate that the two systems are not alike. Similarly, it is not necessary that the reason or wisdom of revelation should be known, the legal ruling alone is sufficient. This is because Allah does not do anything except that is based on divine wisdom, the *Qur'Ēn* says "Is not Allah the Best of judges?"<sup>37</sup> What matters in the issue of *zakĒt* is that it is a *rukĒn* (pillar) of Islam and it is obligatory. All that a person needs is to understand and comprehend the system in order to know how to deal with it. Whether or not the wisdom is clear to him. The issue of *ĀibĒdĒt* in Islam is that they are all a test from Allah, in order to test the level of a slave's submission to the His will even if the wisdom is not clear to us.

### **Is *ZakĒt* on Productive or Unproductive Wealth<sup>38</sup>?**

The question posed by some researchers suggests a shortage in research resources they referred to for information and knowledge. An academic research or analysis requires and necessitates a thorough understanding of the analyzed concept, and regretfully this is missing from his work. Had this principle been utilized this question would have never been raised. In this section he claims that *zakĒt* is not paid on jewelry while it is paid on agricultural land. Any research on *zakĒt*, being a pillar of Islam, requires a thorough understanding of its primary sources and the work by classical scholars especially where differences of opinion exist. Needless to say a research based primarily on information from contemporary English sources, regardless of the good intention or thoroughness, might not provide the depth of knowledge required to make adequate and well-informed analysis or judgments. The most comprehensive Islamic knowledge is still in the classical books which are in Arabic and then the attempts at their translation. Lack of proper reliance upon these classical Arabic books explains why some researchers missed the differences of opinion on whether or not *zakĒt* is paid on jewelry neither did he highlight why the controversy should puzzle him given that there is a *ĀadĒth* on it. In the same article Mr Nienhaus<sup>39</sup> says that *zakĒt* is not due on jewelry and he bases his judgment of the system of *zakĒt* on this opinion even though it is not the only opinion in this issue. Nonetheless if, for hypothetical purposes, it was to be accepted that *zakĒt* is not due on jewelry and this had no other opinion conflicting it, Muslims would accept this because Islam is about submission to the will of Allah whether or not a person understands the justification and wisdom behind it. This is why when Allah told the angels He was going to create human beings, they could not understand why and they had their own rationalization but they accepted and submitted to His will completely without any inhibitions because of the perfection of their faith, they believe that He knows what they do not know. *Qur'Ēn* says (*interpretation of the meaning*):

(And (remember) when your Lord said to the angels: "Verily, I am going to place (mankind) generations after generations on earth." They said: "Will You

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<sup>36</sup> For more details about the differences between *zakĒt* and tax see Al-GhufailĒ ĀAbd Allah ibn ManĀĒr, *NawĒzil al-ZakĒh* (Riyadh: DĒr al-Maiman, 2009), 334.

<sup>37</sup> SĒrah al-TĒn Ēyah: 8, *The Noble Qur'Ēn*.

<sup>38</sup> Volker Nienhaus, *ZakĒt, Taxes and Public Finance in Islam*, (London and New York: Islam and the everyday World: Public policy dilemmas. Routledge, 2006)

<sup>39</sup> *Ibid*

place therein those who will make mischief therein and shed blood, - while we glorify You with praises and thanks and sanctify You." He (Allah) said: "I know that which you do not know."<sup>40</sup>

Similar to angels, human beings have also been blessed with the intellect to comprehend, reason and rationalize albeit with limitations. Because of these limitations the intellect has to be used in accordance with the guidance of the *Qur'Ēn* and *Sunnah* or else it can cause one to fall into error which might lead to destruction. Thus in issues of the unknown future the only solution is to put trust in Allah The All Powerful for He is the All-Knowing and All-Wise. Concerning the issue of *zakĒt* on jewelry, the best opinion based on evidence from *Qur'Ēn* and *Sunnah* is that *zakĒt* should be paid as long as the jewelry reaches the *niĒEb*. The *Qur'Ēn* says (*interpretation of the meaning*):

And those who hoard up gold and silver (*Al-Kanz*: the money, the *zakĒt* (obligatory charity) of which has not been paid) and spend them not in the way of Allah, announce to them a painful torment. "On the Day when that (*Al-Kanz*: money, gold and silver, the *zakĒt* of which has not been paid) will be heated in the fire of Hell and with it will be branded their foreheads, their flanks, and their backs, (and it will be said to them:) "This is the treasure which you hoarded for yourselves. Now taste of what you used to hoard."<sup>41</sup>

The companion Abd Allah ibn ŃUmar (May Allah be pleased with him) gave the proper interpretation of this *Ēyah* which confirmed the deduction made from it. KhĒlid ibn Aslam Narrated that: We went out with ŃAbd Allah ibn ŃUmar and a Bedouin said (to ŃAbd Allah), "Tell me about Allah's saying: "And those who hoard up gold and silver (*Al-Kanz* - money, gold, silver etc., the *zakĒt* of which has not been paid) and spend it not in the Way of Allah (V.9:34)." Ibn ŃUmar said, "Whoever hoarded them and did not pay the *zakĒt* thereof, then woe to him. But these Verses were revealed before the Verses of *zakĒt*. So when the Verses of *zakĒt* were revealed, Allah made *zakĒt* a purifier of the property."<sup>42</sup> The *ĪadĒth* of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*):

It was narrated from ŃAmr ibn ShuŃNaib, from his father, from his grandfather, that: a woman from among the people of Yemen came to the Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*) with a daughter of hers, and on the daughter's hand were two thick bangles of gold. He said: "Do you pay *zakĒt* on these? She said: "No." He said: "Would it please you if Allah were to put two bangles of fire on you on the Day of Resurrection?" So she took them off and gave them to the Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*) and said: "They are for Allah and His Messenger."<sup>43</sup>

Another narration is the *ĪadĒth* of Umm Salamah (May Allah be pleased with her):

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<sup>40</sup> SĒrah Al-Baqarah *Ēyah* 30, *The Noble Qur'Ēn*.

<sup>41</sup> SĒrah at-Tawbah *Óyah*, 34 and 35, Al-HilĒlĒ, MuĒammad Taqi-ud-DĒn & MuĒammad KhĒn. *The Noble Qur'Ēn, English Translation of the meaning and commentary*. Saudi Arabia: King Fahd complex for the printing of the Holy *Qur'Ēn*.

<sup>42</sup> Al-BukharĒ *×adĒth* No

<sup>43</sup> Ibn *×ajar*, AlĒmad ibn ŃAliyyu, "*BulĒgh al-MarĒm*" (Riyadh: DĒr us-SalĒm), *×adĒth* No. 499.

Narrated by Umm Salamah, Ummul Mu'minĒn (May Allah be pleased with her): I used to wear gold ornaments. I asked: Is that a treasure (*kanz*), Messenger of Allah? He replied: whatever reaches a quantity on which *zakĒt* is payable is not a treasure (*kanz*) when the *zakĒt* is paid<sup>44</sup>.

Another *ĪadĒth*: Narrated ĀAbd Allah ibn ShaddĒd ibn Al HĒd:

We entered upon ĀŌishah, wife of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*). She said The Apostle of Allah (*Īal-AllĒhu 'alayhi wa sallam*) entered upon me and saw two silver rings in my hand. He asked, "What is this, ĀŌishah?" I said, "I have made two ornaments myself for you, Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*)". He asked, "Do you pay *zakĒt* on them?" I said, "No" or I said, "Whatever Allah willed." He said, "This is sufficient for you (to take you) to the Hell fire."<sup>45</sup>

Thus, this is the closest opinion to the truth based on this specific evidence that cannot be contradicted with other evidences that are inauthentic. There is no authentic *ĪadĒth* attributed to the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) saying that *zakĒt* is not *wĒjib* upon jewelry. However this argument is discussed in detail in our subsequent article concerning critical controversies in *zakĒt*<sup>46</sup>.

This section is another example of the author's disregard for the primary sources of Islamic Law, the *Qur'Ēn* and *Sunnah*. He does not make any attempt to state what the *Qur'Ēn* says or what the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) said. Instead, he states that there is a broad consensus that there is productive wealth and unproductive wealth and that in a developed market economy the distinction does not make much sense.<sup>47</sup> The proponent of this claim has not stated his reference for this broad consensus and what he means by productive and unproductive wealth. For the sake of argument assuming it is accepted that this broad consensus exists, this differentiation between productive and unproductive wealth should not be a problem. Even in the secular 'developed' market economy there is a distinction between productive and unproductive wealth which is why they have different types of taxes for different categories<sup>48</sup>. This distinction is still relevant and still makes sense even though it is possible for a person to convert his wealth from one type to another, from a taxable form of wealth to a non-taxable form of wealth. In addition to that, the possibility of a person converting wealth from one form to another does not mean it will be done. The scholars of Islam have devised a system of administration based on Islamic legal maxims derived from the *Qur'Ēn* and *Sunnah* on how to detect those people who are trying to abscond on paying *zakĒt*. If a person is discovered to have tried to avoid paying *zakĒt* it will still be taken from him. The problem is not the

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<sup>44</sup> Ibid, *adĒth* No. 500.

<sup>45</sup> Al-BaihaqĒ, ĀĪmad ibn Al-Husain ibn ĀAli ibn MĒsĒ, *MaĀrifatu al-Sunan wa al-ĒthĒr* (Beirut: DĒr Qutaibah, 1991),6:143.

<sup>46</sup> The article titled: *An effective method to be adopted in resolving controversies in zakĒt (An analysis based on an intensive combination of the Divine Texts)*, is an extension of this article. They are complementary to each other as they discuss two different aspects.

<sup>47</sup> Volker Nienhaus, *ZakĒt, Taxes and Public Finance in Islam*, (London and New York: Islam and the everyday World: Public policy dilemmas. Routledge, 2006)

<sup>48</sup> Australian Government, Australian Taxation Office, *individual income tax rates* <<https://www.ato.gov.au/rates/individual-income-tax-rates/>> (accessed on 5<sup>th</sup> December 2015). See also GOV.UK, *income Tax rates and Personal Allowances* <<https://www.gov.uk/income-tax-rates/current-rates-and-allowances>> (accessed on 5<sup>th</sup> December 2015)

system of *zakĒt* but poor administration and mismanagement where government leaves paying *zakĒt* to be optional which is contrary to what was done by the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) and the rightly guided Caliphs. A key factor that Volker misses is that paying *zakĒt* is not about whether or not the person can put a wool over the eyes of those in authority, paying *zakĒt* is a personal *ÑibĒdah, farĪ Ñain* which if someone fails to pay they have to face grave consequences in the hereafter if Allah does not forgive them. It is regrettable that he makes no attempt to highlight at least the beliefs of the Muslims themselves with regard to *zakĒt*. Furthermore, 1.5 billion people believe in the system of *zakĒt* as it has been revealed by Allah The Most High and it is not within the jurisdiction of a human being to dictate or judge the system that has been prescribed by Allah.

The author said: Suppose persons A and B both own jewelry worth 100 000 dinar. As long as they kept their wealth in this form it is unproductive and exempt from *zakĒt*. If person A sells his jewelry and buys agricultural land, his new wealth will be subject to *zakĒt*. Person B keeps his jewelry and obtains a bank credit backed by the jewelry as collateral to purchase agricultural land he will not pay *zakĒt* because the debt can be subtracted from the value of the purchased land so that his productive net wealth is zero. The result is very unsatisfactory, two people with the same wealth do not pay the same *zakĒt*<sup>49</sup>.

First of all, the given example is absolutely out of context, no body among the scholars ever said that all types of silver or golden jewelry are exempted from *zakĒh*. The only argument or controversy among the scholars is whether or not *zakĒh* is due on jewelry that a woman uses for beautification. Not many Muslim women have golden jewelry that reaches 85gm which is the *niĪĒb* of gold, thus logically those who would have to pay *zakĒt* are usually a very insignificant amount. In an honest analysis the analyst does not create a hypothetical situation and then judge or hold others accountable for the failures perceived in his proposed situation. Secondly, concerning the issue of *zakĒt* on jewelry owned by a woman for the purpose of beautification, there is no consensus among the scholars that it is not subject to *zakĒt*. In fact as previously mentioned the issue is controversial and the closest view is that *zakĒt* is due on them. Mr Nienhaus is supposed to at least point out the controversy and then make a choice. But regrettably, this is not found in his work at all. Thirdly, with regard to the jewelry being used by the owner as collateral to purchase agricultural land; according to him the purchased agricultural land is not subject to *zakĒt*. The question about the source of this ruling arises again. Where is it mentioned in the way he proposes and what are the evidences to support that ruling? Unfortunately the author's work does not provide the answer to these questions, thus it is no wonder that the concluding result is unsatisfactory to him. Whenever matters are not placed in their proper position the result will always be unsatisfactory.

### **One Full year of Ownership (al-*xawl*)**

Some researchers in trying to support their position that there is a problem in the condition of one full year of ownership say, "If the principle of one full year of ownership is applied for each asset separately, it becomes very easy to avoid compulsory *zakĒt* payments: the respective asset is sold before the full year of ownership is complete (i.e. transformed into a different type of wealth such as cash), and it is purchased after a short while."<sup>50</sup> The author's statement implies that a full

<sup>49</sup> Volker Nienhaus, *ZakĒt, Taxes and Public Finance in Islam*, (London and New York: Islam and the everyday World: Public policy dilemmas. Routledge, 2006)

<sup>50</sup> Ibid

year of ownership results in miscalculation of what a person should pay of *zakĒt* which is not true. The existence of those people he speaks about who try to abscond on paying the *zakĒt* by using unscrupulous means is no new knowledge to Islamic scholars. The scholars have never attributed this problem to the condition of ownership of one year, to them and the rest of the Muslims it has been unscrupulous people doing an unscrupulous deed where they are not cheating or oppressing anyone except themselves. In the previous section the writers of this paper have elaborated on how the scholars have dealt with people who are trying to abscond on paying *zakĒt* and Volker's concern is addressed therein. Unlike in the taxation system where the benefit goes to everyone else, *zakĒt* benefits the one who is paying it before everyone else. In fact the one paying *zakĒt* gets more benefit than the one who is receiving the *zakĒt* and the one who absconds on paying *zakĒt* is harming only himself.

He goes on further to offer his pragmatic solution to this supposed problem, "A pragmatic solution would be to aggregate all types of assets (at least those assets for which no specific *zakĒt* had been fixed) and to calculate the net wealth a person has owned for one year."<sup>51</sup> This supposed 'solution' arises due to the detachment from Islamic Theology that some researchers have committed themselves to in their articles, it is a futile endeavor to speak about any aspect of Islam without including theology. In their work they have completely divorced theology from the topic of *zakĒt*. Once theology is neglected in discussing issues of *ŃibĒdah* and in particular *zakĒt*, it will not be a surprise that a person keeps critiquing *zakĒt* from a secular position. It is observed that to them *zakĒt* is nothing but merely an economic topic and they treat the issue from a single aspect when a multifaceted approach would have been more appropriate.

With regard to the supposedly pragmatic solution suggested by Mr Nienhaus to 'the problem of one year of ownership' it is essential to note and highlight that all the *zakawĒ* items, items from which *zakĒt* should be taken, have a fixed rate.<sup>52</sup> The article does not mention the source of this misleading information. Islam has a system on how to calculate the *zakĒt* due upon a person and it is not simply about aggregating all types of assets and calculating the net wealth. The system of *zakĒt* is based on the *nuĒĒ* (given by the Creator Who is the most accurate in whatever He does) which makes it without deficiency and thus has no problems to fix. The scholars of Islam unanimously agree that *ijtihĒd* is not applicable upon the existence of authentic *al-NaĒĒ*. ŃAbd Allah ibn ŃUmar narrated that: the Messenger of Allah (*Āl-AllĒhu 'alayhi wa sallam*) said:

"Whoever acquired wealth, then there is no *zakĒt* on it until the *al-Āawl*<sup>53</sup> has passed while it is in his possession."<sup>54</sup>

The *ĀdĒth* is very comprehensive to include every *mĒl zakawĒ* except those excluded by another text such as the agricultural yield. This necessitates a total

<sup>51</sup> Volker Nienhaus, *ZakĒt, Taxes and Public Finance in Islam*, (London and New York: Islam and the everyday World: Public policy dilemmas. Routledge, 2006)

<sup>52</sup> Contrary to Mr, Volker's claim, Islam has set a fixed rate for every *zakawĒ* item and any item which does not have a rate of *zakĒt* will never have *zakĒt* taken from it because Allah did not make it a *zakawĒ* item.

<sup>53</sup> *Al-Āawl* is the passage of a year.

<sup>54</sup> Al-BaihaqĒ, AĒmad ibn Al-Husain ibn ŃAliyyu, *Al-Sunan al-KubrĒ*, (Beruit: DĒr al-Kutub al-ŃIlmiyyah, 2003), 4:174. See also Al-DĒraqūĒĒ, ŃAliyu ibn ŃUmar, *Sunan al-DaraqūĒĒ*, (Beruit: DĒr al-MaĒfah, 1966), 2: 90. See also Al-TirmidhĒ, MuĒammad ibn ŃIsĒ ibn Sawra, *Sunan Al-TirmidhĒ*, (MiĒr: Maktabat MuĒĒafah al-BĒbĒ al-ĀalabĒ, 1975), 3:16

submission and adherence to whatever the text imposed. Our intellect is deficient, it might see something to be good which is actually not. The *Qur'Ēn* says (*interpretation of the meaning*):

“*JihĒd* (fighting in Allah's Cause) is ordained for you (Muslims) though you dislike it, and it may be that you dislike a thing which is good for you and that you like a thing which is bad for you. Allah knows but you do not know”.<sup>55</sup>

Henceforth the intellect alone cannot be relied on to choose what is best on its own without guidance. ÑAliyyu ibn AbĒ ŪĒlib (May Allah be pleased with him) was reported to have said:

If the religion were based on opinion, it would be more proper to wipe the under parts of the leather socks than the upper, but I have seen Allah's Messenger (*Īal-AllĒhu 'alayhi wa sallam*) wiping over the upper parts of his leather socks”<sup>56</sup>.

The treaty of *al-ūdaibiyyah* is the best example to be used here in support of this concept. History shows that most of the components of the treaty were not in conformity with the intellect of many companions of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*), some even questioned the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) about the acceptance of those components. But eventually it all ended up benefiting the believers<sup>57</sup>. This clearly shows that submission is the main key to success when dealing with issues of *ÑibĒdah*, the *Qur'Ēn* says: “Allah knows but you do not know.”<sup>58</sup> Allah the Creator is the Knower of the future and the final result or outcome of everything in this life, that's why He told the Angels when they objected over the creation of Ōdam (*interpretation of the meaning*):

“And (remember) when your Lord said to the angels: "Verily, I am going to place (mankind) generations after generations on earth." They said: "Will You place therein those who will make mischief therein and shed blood, – while we glorify You with praises and thanks and sanctify You." He (Allah) said: "I know that which you do not know.”<sup>59</sup>

It is common knowledge that nobody knows the creation better than the One Who created them, *Qur'Ēn* says (*interpretation of the meaning*):

“Should not He Who has created know? And He is the Most Kind and Courteous (to His slaves), the Well-Acquainted (with everything).<sup>60</sup> In another place Allah says “...And none can inform you (O Muhammad [sal-Allahu 'alayhi wa sallam]) like Him Who is Well-Acquainted (with everything).<sup>61</sup>

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<sup>55</sup> SĒrah Al-Baqarah Ōyah 216, *The Noble Qur'Ēn*.

<sup>56</sup> Al-BaihaqĒ, ĀĪmad ibn Al-Husain ibn ÑAliyyu, *Al-Sunan al-SughrĒ*, (Al-Madinah al-Munawwarah: Maktabat al-DĒr, 1989), 1:108. See also, AbĒ DĒwĒd, SulaimĒn ibn al-AshÑath, *Sunan AbĒ DawĒd* (Beruit: DĒr al-KitĒb al-ÑArabĒ), 1:63.

<sup>57</sup> Muslim *×adĒth* No: 4729, 4733

<sup>58</sup> SĒrah Al-Baqarah Ēyah 232, *The Noble Qur'Ēn*.

<sup>59</sup> SĒrah Al-Baqarah Ēyah 30, *The Noble Qur'Ēn*.

<sup>60</sup> SĒrah al-Mulk Ēyah 14, *The Noble Qur'Ēn*.

<sup>61</sup> SĒrah FĒĪir Ēyah 14, *The Noble Qur'Ēn*.

Hence, it is all about conviction and trust in the Divine Will of the Creator the All-Wise. The alleged problem by the author concerning the one year policy, has never been a problem in the past nor in the present. The system must be preserved and remain intact at all times. What is required from a Muslim who owns *niĪĒb* is to give the portion commanded by the *SharĒĀnah* after the passage of a year of that particular *niĪĒb*. Concerning the issue of those whose income is a salary or dividends from shares in the stock market and their profit is always on the increase we do not go for the value, the prescribed amount in quantity is maintained. But to make it easy for business people as well as salary paid employees, the scholars say that it is also permissible for such a person to maintain the first *Īawl* as the fixed time for his *zakĒĒt* calculation. This has been the practice across the ages and it does not affect the system at all. It is all about giving that which is required and more for the sake of Allah which usually ends up benefiting the poor<sup>62</sup>.

Moreover, the suggested proposal of valuing the assets at the beginning and end of the year to determine the value of the net wealth and then calculating the amount of *zakĒĒt* that should be taken is an extension of his previous suggestion that an aggregate value of all the assets should be calculated and then *zakĒĒt* should be paid from that. This suggested methodology proves that its proponent is not well-versed in the make-up and inner workings of the system of *zakĒĒt*. What he suggests is in effect changing the very nature and fundamentals of *zakĒĒt*. Just as it is inaccurate to combine different assets i.e. those with different *zakĒĒt* rates and even those from which *zakĒĒt* is not due, is not part of the system of *zakĒĒt*, it is also foreign to the system of *zakĒĒt* to calculate the net wealth at the end of the year and beginning of the year as a way to ascertain the amount of *zakĒĒt* to be paid. An example to illustrate this point is that a man might have the following assets: a car he uses for his personal needs, two vehicles he uses to transport dairy produce from his farm, two hundred dairy cattle that he provides feeds for, a plot of land where he produces corn by irrigation, a factory that produces pens and a personal collection of sets of golden jewelry which his family uses for beautification. Calculating his *zakĒĒt* entails a detailed methodology, for example, he does not need to pay *zakĒĒt* on the cattle or the corn, nor does he need to pay *zakĒĒt* on the land where his factory is built, he would instead pay *zakĒĒt* on the cash earned from their sales. He would not pay *zakĒĒt* on the car he uses for his personal needs nor the cars he uses to transport the dairy produce to the market. With regard to the golden jewelry, according to the best opinion he would pay *zakĒĒt* if it reaches the *niĪĒb* of gold. What he suggests would mean valuing all of these assets and taking *zakĒĒt* from the aggregate amount. This breaks almost all the rules of *zakĒĒt*, and leads to taking people's wealth unjustly. And wisdom means putting things in their proper positions.

### **ZakĒĒt Rates are Immutable**

Mr Nienhaus confirmed that the rates of *zakĒĒt* were fixed by the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) (which is absolutely correct). Subsequently he states and believes that this is the reason why many of the authors maintain those prescribed rates by the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) (which is also correct). Unfortunately, he sees the strength of the *ummah* in preserving the *Qur'Ēn* and *Sunnah*, as they were revealed, as a weakness. He claims that the only time the scholars discuss a change is when new items of wealth or income are to be included in the *zakĒĒt* base while the *zakĒĒt* rate remains unchanged. The article does not state the names of the scholars he

<sup>62</sup> Wahbah al-ZuhailĒ, *Al-Fiqh al-IslĒmĒ wa AdillatuhĒ*, (Dimashq: DĒr al-Fikr), 10:545

is referring to. Similarly, with regard to the issue of the analogy, which *Ñillah* (cause) to be used remains a matter of question. An accepted analogy can only come into application in the absence of a clear text to govern a newly emerged issue. Whoever has studied the *Sunnah* of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) will definitely confirm that nothing concerning *zakĒt* has been left without explanation. The scholars were right when they maintained those rates prescribed by the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) without any form of modification. They always see them as unchangeable rates designed by the Creator. Unfortunately their correct stance is described by some researchers as a restrictive stance. In his article he also poses that the rates were divinely sanctioned but were not of divine origin. According to him they were nothing but the best possible rates for achieving the aims and objectives of *zakĒt* at the time of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*), an example of this is the statement he made “but this does not mean that they are the best rates for all time under all conceivable circumstances.”<sup>63</sup> Issues of *ÑibĒdah* are fixed and unchangeable. As previously mentioned they are all acts that are based on conviction and submission to the divine Will of the Creator. Our intellect might see something as success but it might turn to be a failure. The only solution to the problem the author has concerning the divinely given system of *zakĒt* is to trust the divine decree and give the system room to function without interference. The *Qur'Ēn* says (*interpretation of the meaning*):

But no, by your Lord, they can have no Faith, until they make you (O Muhammad (*Īal-AllĒhu 'alayhi wa sallam*)) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept (them) with full submission.”<sup>64</sup>

And to support necessity of such submission the *Qur'Ēn* also says (*interpretation of the meaning*):

Say (O Muhammad (*Īal-AllĒhu 'alayhi wa sallam*)) to mankind: "If you (really) love Allah, then follow me (i.e. accept Islamic Monotheism, follow the *Qur'Ēn* and the *Sunnah*), Allah will love you and forgive you your sins. And Allah is Oft-Forgiving, Most Merciful.”<sup>65</sup>

In another place Allah says (*interpretation of the meaning*):

What Allah gave as booty (*Fai'*) to His Messenger (Muhammad (*Īal-AllĒhu 'alayhi wa sallam*)) from the people of the townships – it is for Allah, His Messenger (Muhammad (*Īal-AllĒhu 'alayhi wa sallam*)), the kindred (of the Messenger Muhammad (*Īal-AllĒhu 'alayhi wa sallam*)), the orphans, *Al-MasĒkĒn* (the needy), and the wayfarer, in order that it may not become a fortune used by the rich among you. And whatsoever the Messenger (Muhammad (*Īal-AllĒhu 'alayhi wa sallam*)) gives you, take it; and whatsoever he forbids you, abstain (from it). And fear Allah; verily, Allah is Severe in punishment.”<sup>66</sup>

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<sup>63</sup> Volker Nienhaus, *ZakĒt, Taxes and Public Finance in Islam*, (London and New York: Islam and the everyday World: Public policy dilemmas. Routledge, 2006)

<sup>64</sup> SĒrah Al-NisĒ' Ōyah: 65, *The Noble Qur'Ēn*.

<sup>65</sup> SĒrah Ōl ŒImrĒn Ōyah: 31, *The Noble Qur'Ēn*.

<sup>66</sup> SĒrah 59 Ōyah: 7, *The Noble Qur'Ēn*.



The claim that the rates are not of divine origin is without basis and suggests an insufficient knowledge about the nature of *SharĒñah* by the author. Since he is judging an issue of *SharĒñah* he should be aware of the saying of Allah about Muhammad when he speaks about religious matters:

“Nor does he speak of (his own) desire. It is only a Revelation revealed.”<sup>67</sup>

The job of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) is to convey the message of Allah as the *Qur'Ēn* says:

The duty of the Messenger [i.e. Our Messenger Muhammad (*Īal-AllĒhu 'alayhi wa sallam*) whom We have sent to you, (O mankind)] is nothing but to convey (the Message). And Allah knows all that you reveal and all that you conceal. <sup>68</sup>

The Prophet (*Īal-AllĒhu 'alayhi wa sallam*) was once talking about the nature of the divine revelation and he mentioned the following “Allah has given me *Qur'Ēn* and something similar to it”<sup>69</sup> this clearly shows that the *Sunnah* of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) is part of the divine revelation that must be accepted without any modification. Mr Nienhaus insists that the rates were a pragmatic approach to legislation by the Prophet (*Īal-AllĒhu 'alayhi wa sallam*). In Islam it is common knowledge that whatever is applicable on the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) is also applicable on the *ummah*, whoever claims that a ruling is restricted to the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) has to provide evidence to qualify his statement. This requirement is even stronger when it comes to a *rukḥ* (pillar) of Islam, where everything is firmly established and fixed. He should be aware of the principle and it is his responsibility to provide evidence in support of his claim. He also claims that the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) did not set any principles that could be used in later cases or in analogical deduction to derive new rulings. The conclusive way the author addresses this issue suggests comprehensive knowledge when in fact the statement itself signals a very limited knowledge of the *Sunnah* of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*). If details were supposed to be mentioned in full for every issue then *Qur'Ēn* would have been revealed in endless volumes. That is why Islam does not have a case law, instead there are only legal maxims and principles to govern new arising cases. AbĒ Hurairah (May Allah be pleased with him) reported that the Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*) said:

I have been given superiority over the other prophets in six respects: *I have been given words which are concise but comprehensive in meaning*; I have been helped by terror (in the hearts of enemies): spoils have been made lawful to me: the earth has been made for me clean and a place of worship; I have been sent to all mankind and the line of prophets is closed with me.<sup>70</sup>

In Islamic jurisprudence, an *Ēyah* or *ĪadĒth* is never looked at on its own independent of all the other *nuĒĒl*. They are looked at holistically as mutually inclusive and they

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<sup>67</sup> SĒrah Al-Najm Ōyah 3, *The Noble Qur'Ēn*.

<sup>68</sup> SĒrah Al-MĒ'idah Ōyah: 99, *The Noble Qur'Ēn*.

<sup>69</sup> AĪmad ×adĒth No: 17174

<sup>70</sup> Muslim ×adĒth No: 812

are not mutually exclusive to each other. The last part under this topic which needs a comment is the place where Mr Nienhaus states rather conclusively that “it is implausible to assume that the rates set by the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) are appropriate for all times and under all conceivable socioeconomic circumstances, *zakĒt* rates should be reconsidered today. Methodologically, the modification of *zakĒt* rates is not different from a modification of the *zakĒt* base. Both are based on the *ijtihĒd* of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) and are economically interchangeable”<sup>71</sup> It is rather unfortunate that the author chose to use the word implausible. It confirms what has been mentioned that faith and submission are necessary in this issue. In Islam the two primary sources are an absolute preference over the intellect of humankind. You cannot judge a system based on what you think it should be. An honest judgement is that which is based on how the system should be according to the plan or the will of its designer, and in the case of *zakĒt*, the designer of the system is Allah the All-Wise and All-Knowing. In his article he seems to equate the modification of the *zakĒt* base with the modification of rates in *zakĒt*. First of all, a building cannot take place without a foundation as the proverb says ‘establish the base and then write on it’. It will really be appreciable if he could establish the claim about the *zakĒt* base being modified before making any form of analogy. Secondly, his claim that the modification of the base and rates are both *ijtihĒd* of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*). In studying fiqh in Islam the first step towards succeeding in this noble science is to master the discipline of *UĒl al-Fiqh* and this mastery is absent from his work. Thus no wonder we find errors such as this taking place in his approach concerning the *ijtihĒd* of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*). As a matter of fact, there are two types of affairs in Islam, religious and worldly affairs. In religious affairs, in particular the *ŅibĒdĒt*, the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) never performed *ijtihĒd*. There was no need for the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) to perform *ijtihĒd* as the *Qur'Ēn* says (*interpretation of the meaning*):

“Nor does he speak of (his own) desire. It is only a Revelation revealed.”<sup>72</sup>

ŅAbd Allah ibn ŅAmr ibn al-ŅŌĪ said (May Allah be pleased with them):

I used to write everything which I heard from the Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*). I intended (by it) to memorize it. The Quraysh prohibited me saying: Do you write everything that you hear from him while the Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*) is a human being: he speaks in anger and pleasure? So I stopped writing, and mentioned it to the Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*). He signaled with his finger to his mouth and said: *Write, by Him in Whose hand my soul lies, only right comes out from it.*<sup>73</sup>

In addition to that it would be illogical for there to be a need for the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) to make *ijtihĒd* concerning *ŅibĒdĒt* while divine revelation was still on-going. Allah sent him to teach the people how to perform *ŅibĒdĒt* so Allah would give him all the knowledge needed for this mission to be

<sup>71</sup> Volker Nienhaus, *ZakĒt, Taxes and Public Finance in Islam*, (London and New York: Islam and the everyday World: Public policy dilemmas. Routledge, 2006)

<sup>72</sup> SĒrah An-Najm Ēyah 3, *The Noble Qur'Ēn*.

<sup>73</sup> AbĒ DĒwĒd *×adĒth* No: 3646

accomplished. An Angel used to come to him in less than the blink of an eye to convey the message. It does not exist, not even in one place did the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) ever make *ijtihĒd* in *ÑibĒdah*. What is true is in fact the opposite of his claim. When the saying of Allah was revealed:

Allah sends His *ØalĒh* (Graces, Honours, Blessings, Mercy) on the Prophet (Muhammad (*Īal-AllĒhu 'alayhi wa sallam*)), and also His angels (ask Allah to bless and forgive him). O you who believe! Send your *ØalĒh* on (ask Allah to bless) him (Muhammad (*Īal-AllĒhu 'alayhi wa sallam*)), and (you should) greet (salute) him with the Islamic way of greeting (salutation, i.e. *As-Salamu 'Alaikum*)<sup>74</sup>

The companions of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) went to him to learn how to fulfil the commandment. ÑAbd Allah ibn Zaid -he who was shown the call (for prayer in a dream) narrated it on the authority of AbĒ MasÑĒd al-AnĒĒrĒ (May Allah be pleased with him) who said:

We were sitting in the company of SaÑĒd ibn ÑUbaidah when the Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*) came to us. BashĒr ibn SÑad said: Allah has commanded us to bless you. Messenger of Allah! But how should we bless you? He (the narrator) said: The Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*) kept quiet (and we were so much perturbed over his silence) that we wished we had not asked him. The Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*) then said: (For blessing me) say:" O Allah, bless Muhammad and the members of his household as Thou didst bless the members of Ibrahim's household. Grant favors to Muhammad and the members of his household as Thou didst grant favors to the members of the household of Ibrahim in the world. Thou art indeed Praiseworthy and Glorious"<sup>75</sup> ; and salutation as you know.

In another narration AbĒ Hurairah (May Allah be pleased with him) reported that: Allah's Messenger (*Īal-AllĒhu 'alayhi wa sallam*) said:

"Neither do I give you (anything) nor withhold (anything) from you, but I am just a distributor (i.e. *QĒsim*), and I give as I am ordered."<sup>76</sup>

For this reason he informed the believers that they have to refer to him in all religious matters. The only possible place where some scholars view an act from the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) as *ijtihĒd* is only in worldly affairs. The event narrated in the following *ĪadĒth* is proof of this: Anas (May Allah be pleased with him) reported that Allah's Messenger (*Īal-AllĒhu 'alayhi wa sallam*) happened to pass by the people who had been busy in grafting the trees. Thereupon he said:

If you were not to do it, it might be good for you. (So they abandoned this practice) and there was a decline in the yield. He (the Prophet *Īal-AllĒhu 'alayhi wa sallam*) happened to pass by them (and said): What has gone wrong

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<sup>74</sup> SĒrah Al-'AĒzĒb Ēyah 56, *The Noble Qur'Ēn*.

<sup>75</sup> Muslim *×adĒth* No: 405,

<sup>76</sup> Al-BukhĒrĒ *×adĒth* No: 3117

with your trees? They said: You said so and so. Thereupon he said: You have better knowledge (of a technical skill) in the affairs of the world.’<sup>77</sup>

Thus it is implausible for the author to judge a system that he does not believe in using all sorts of unsubstantiated evidence. This is not to say that nobody is allowed to talk about Islam except Muslims, but at least a person should thoroughly study the system first to ensure a fair and honest judgement.

### **The Issue of Zakât and Redistribution**

Mr Nienhaus in his work hypothesizes that if a broad *zakât* base was designed inclusive of all types of income, this would increase the total *zakât* collected. In his criticism of the *zakât* base he states that it is unjust for a subsistence farmer to be obliged to pay *zakât* while a rich rubber or tea plantation farmer does not have to pay *zakât*. He claims that *zakât* is redistribution from the poor to the poorer in society and this increases the gap between the rich and the poor. It is regrettable to note that the author has focused on criticizing the Islamic system of *zakât* for the deficiencies that are actually caused by human failure such as maladministration and people absconding on paying *zakât*. He also failed to consider (if he is aware of it) the effectiveness of ÑUmar ibn ÑAbd Al-ÑAzÊz (may Allah have mercy on him) in the economic reforms he made which *zakât* was an important part of. ÑUmar did not change the rates or include items that are not supposed to be included. All that he did was to keep the system functional in the way it should. The most important part of his administrative reforms was the strong supervisory role he fulfilled to ensure that the collection and distribution of *zakât* was done properly. As for the issue of *zakât* not being taken from rubber, this is simply because *SharÊÑah* does not command the owner to give *zakât* out of it. Additionally, the production and trade of rubber supports the community in general and in some cases a whole country. *Zakât* is not the only form of economic support that Islam recognizes, *SharÊÑah* also encourages business and trade which provide jobs, beneficial products, an income, etc. *Zakât* is only a system that ensures that the poor, as one group from among the eight groups of *zakât* recipients, are not left behind or neglected as an economy develops. He has failed to realize the economic value of those items that are not *zakatable*. The details on this are to be stated later. He misses a small yet important fact that the *niÊb* being measured by gold and silver means that it does not remain stagnant in value. And although he talks about how the *zakât* collected is insufficient to meet the needs of the poor, he fails to provide proof for this. Academically he was supposed to provide substantial evidence of a place where the *zakât* system was properly applied, as it has been designed by *SharÊÑah*, and it was not effective. What is seen in his article is a mere claim without proof. The problem is that the author has is that he always judges *zakât* from one perspective which is: how he wants the system to function. That is why he fails to mention the non-monetary *zakât* payments such as camels, cows, and sheep. These are very valuable in the contemporary era and he should have considered their monetary value to the new owner who receives them as a *zakât* beneficiary. Volker does not mention the fact that as much as *SharÊÑah* has fixed how much should be taken from a person, *SharÊÑah* never stipulated the limit a person can receive of *zakât*.

Al-AlbÊnÊ, explains that people tend to have a very myopic point of view when studying the laws of Allah. He says they need to expand their thinking. For

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<sup>77</sup> Muslim *×adÊth* No: 2363

example, the tea and rubber plantation farmers the author complains about employ members of the community and thus prevents them from becoming poor and needy or helping them out of their poverty. Through their entrepreneurship activities they provide goods that can be traded in the economy and which can go through the value chain to increase their value. *ZakÉt* has been revealed by Allah who has perfect knowledge of the unseen, He knows what was, what is and what will be. The system of *zakÉt* like every act of *ÑibÉdah* cannot be changed and improvised to fit the so called current economic circumstances. Unlike secular legal and economic systems the *SharÉÑah* is complete, perfect, static and universal. *ZakÉt* is not like the welfare programs that a government may develop to meet the needs of the people. They may come across new problems which would require new laws to meet the new needs and situations. This is unlike the system of *zakÉt* which will not change until the Last Day. It is imperative in fair judgment and observation that for a system to be proven to be a failure, it should have been given a chance to function with all the necessary resources and without interference. Thereupon if it fails then a critic can freely criticize what is confirmed to be a failure if that is possible. Some further clarification shall be given in the subsequent sections. May Allah fix the affairs of the *ummah*.

### **No IjtihÉd upon the Existence of al-NaÎ**<sup>78</sup>

One of the most common principles to be observed by the *mujtahid* that serves as a legal maxim concerning *ijtihÉd* is the phrase: There is no *ijtihÉd* where the divine text is available<sup>79</sup>. He has to observe it before doing his *ijtihÉd*. This means that there is no *ijtihÉd* in the existence of a clear text from the (*Qur'Én* or the *Sunnah*). The *ijtihÉd* that is negated here is that which is practiced in the presence of a crystal clear text in its meaning. In a case where the text is unclear or it carries more than a single meaning, the room for *ijtihÉd* is open albeit with restrictions. The qualified *mujtahid* is restricted to exercise his *ijtihÉd* within the possible meanings carried by that specific word. Thus, the scope of this *ijtihÉd* is any *SharÉÑah* ruling that has no evidence or has an unclear evidence. This singles out the issues upon which *ijtihÉd* cannot be applied. This is due to the consensus of the scholars upon the clarity of their evidences, such as the obligation of the five daily prayers and *zakÉt* and their likeness<sup>80</sup>.

### **IjtihÉd in ZakÉt**

Generally speaking, every principle that is needed for the deduction of a ruling concerning *zakÉt*, has been given to the *ummah* through the *Qur'Én* and the *Sunnah* of the Prophet (*Íal-AllÉhu 'alayhi wa sallam*). These rules are either directly stated in the *Qur'Én* and *Sunnah* or extracted through the means of inferences in cases where the *nuËË* addressed them indirectly. The following are some of the authentic *nuËË* mentioned by the *Qur'Én* and *Sunnah* addressing the *zakÉt* items. There is no confusion at all as it has been claimed by some writers. The early generations did not encounter any of the alleged confusion. This is due to the fact that rulings are made clear by the *SharÉÑah* as seen in the section below.

<sup>78</sup> *Al-NaÎ* is a clear *Qur'Énic* or Prophetic text or *ijmÉÑ* that is based on any of the two primary sources.

<sup>79</sup> AzmÉn IsmÉÑËl & Md ×abÉbur RaÍmÉn, *Islamic legal maxims: essentials and applications*, (Malaysia: IBFIM, 2013), 127

<sup>80</sup> MuÍammad al-KhudrÉ, *UsËl al-Fiqh*, (Riyadh: Maktabat al-RiyÉl al-×adÉthah.), 369-370.

## **Al-NuĤĤĤ on ZakĤĤ**

This section is designed to show the reader that statements of the *SharĤĤnah* are sufficient to address any issue in *zakĤĤ*. The issue is not about the quantity of those texts, it is about how we understand those injunctions which will lead to a proper application. The Qur'anic statements will be mentioned first followed by the *Sunnah* of the Prophet: The *Qur'ĤĤn* (*interpretation of the meaning*)

**Text 1:** And perform *As-SalĤĤ* (the prayers), and give *zakĤĤ* (obligatory charity), and bow down (or submit yourselves with obedience to Allah) along with *Ar-RĤĤki'ĤĤn*.<sup>81</sup>

**Text two:** And it is He Who produces gardens trellised and un-trellised, and date palms, and crops of different shape and taste (their fruits and their seeds) and olives, and pomegranates, similar (in kind) and different (in taste). Eat of their fruit when they ripen, but pay the due thereof (its *zakĤĤ*, according to Allah's Orders, 1/10th or 1/20th) on the day of its harvest, and waste not by extravagance. Verily, He likes not *Al-MusrifĤĤn* (those who waste by extravagance)<sup>82</sup>,

**Text three:** "Eight pairs: of the sheep two (male and female), and of the goats two (male and female). Say: "Has He forbidden the two males or the two females, or (the young) which the wombs of the two females enclose? Inform me with knowledge if you are truthful." "And of the camels two (male and female), and of oxen two (male and female). Say: "Has He forbidden the two males or the two females or (the young) which the wombs of the two females enclose? Or were you present when Allah ordered you such a thing? Then who does more wrong than one who invents a lie against Allah, to lead mankind astray without knowledge. Certainly Allah guides not the people who are *ŪĤĤlimĤĤn* (polytheists and wrong doers)."<sup>83</sup>

**Text four:** "*As-ŪadaqĤĤ* (here it means *zakĤĤ* — obligatory charity) are only for the *FuqarĤĤ* (needy), and *Al-MasĤĤkĤĤn* (the poor) and those employed to collect (the funds); and to attract the hearts of those who have been inclined (towards Islam); and to free the captives; and for those in debt; and for Allah's Cause (i.e. for *MujĤĤhidĤĤn* — those fighting in a holy battle), and for the wayfarer (a traveller who is cut off from everything); a duty imposed by Allah. And Allah is All-Knower, All-Wise<sup>84</sup>.

**Text five:** "O you who believe! Verily, there are many of the (Jewish) rabbis and the (Christian) monks who devour the wealth of mankind in falsehood, and hinder (them) from the way of Allah (i.e. Allah's religion of Islamic Monotheism). And those who hoard up gold and silver (*Al-Kanz*: the money, the *zakĤĤ* (obligatory charity) of which has not been paid) and spend them not in the way of Allah, announce to them a painful torment. "On the Day when that (*Al-Kanz*: money, gold and silver, the *zakĤĤ* of which has not been paid) will be heated in the fire of Hell and with it will be branded their foreheads, their flanks, and their backs, (and it will be said to them) "This is the treasure which you hoarded for yourselves. Now taste of what you used to hoard."<sup>85</sup>

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<sup>81</sup> SĤĤrah al-Baqarah, *Ĥyah*: 43, *The Noble Qur'ĤĤn*.

<sup>82</sup> SĤĤrah al-AnĤĤĤm, *Ĥyah*: 141, *The Noble Qur'ĤĤn*.

<sup>83</sup> SĤĤrah al-ĤĤm, *Ĥyah*: 143-144, *The Noble Qur'ĤĤn*.

<sup>84</sup> SĤĤrah al-Tawbah, *Ĥyah*: 60, *The Noble Qur'ĤĤn*.

<sup>85</sup> SĤĤrah al-Tawbah, *Ĥyah*: 34-35, *The Noble Qur'ĤĤn*.

### **The Sunnah**

**Text six:** Anas narrated that AbĒ Bakr As-SiddĒq (May Allah be pleased with them) wrote him this letter, “This is the obligatory *zakĒt*, which the Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*) made obligatory for every Muslim, and which Allah, the Almighty had commanded him to observe. ‘For each twenty-four camels, or less, their *zakĒt* is to be paid as sheep; for every live camels, their *zakĒt* is one sheep. When the amount of camels is between twenty -five to thirty- five, the due *zakĒt* is one she-camel ‘*bint makhĒĪ*’ (a camel which is one year old and just starting the second year) or a male camel ‘*ibn labĒn*’(a young male camel which is two years old and already starting the third year). However, when the amount of camels reaches thirty-six, the due *zakĒt* is a young she-camel ‘*bint labĒn*’ (a young female camel, which is two years old and already starting the third year). When they reach forty six to sixty camels, their due *zakĒt* is a she camel ‘*Īiqqah*’ (which is three years old and starting the fourth). When they reach sixty-one to seventy-five, one ‘*JadhĒnah*’ (a four year old camel already starting its fifth year). When their number is between seventy-six to ninety camels, their due *zakĒt* is two young she camels ‘*bint labĒn*’. When they are in the range between ninety-one to one hundred and twenty camels, the *zakĒt* is two young she camels ‘*Īiqqah*’. If they are over a hundred and twenty camels, on every forty camels, one ‘*bint labĒn*’ is due. And for every fifty camels (over one hundred and twenty) a young she-camel ‘*Īiqqah*’ is due. And anyone, who has got only four camels, does not have to pay *zakĒt* unless he (the owner of the camels) wants to give something voluntarily. Regarding the *zakĒt* of grazing sheep, if they are between forty and one hundred and twenty, one sheep is due as *zakĒt*. If they are between 120 and 200, two sheep are due. If they are between 200 and 300, three sheep are due. If they exceed three hundred sheep, then one sheep is due for every extra hundred grazing heads. If the grazing sheep are less than forty, (even if they are 39) then no *zakĒt* is due on them, unless he (the owner of the camels) wants to give something voluntarily. One should not combine (i.e. gather young animals together) or separate them for fear of paying *zakĒt*. When there is a mixture of cattle shared between two partners, and *zakĒt* is paid jointly between them, then they have to calculate it equally among them (depending on the share of each). Neither an old or a defective animal nor a male goat (a ram used for breeding) may be taken as *zakĒt*, unless the *zakĒt* collector wishes to do so. Concerning silver, the *zakĒt* paid is a quarter of a tenth for each 200 *Dirhams*. If the amount of silver is less than two hundred *dirhams* (even if it is 190) then no *zakĒt* is to be paid for it, unless the owner wishes to do so. If the number of camels reaches the number on which a *jadhĒnah* (a four year old camel already starting its fifth year) is due as *zakĒt*, but he only has a ‘*Īiqqah*’ (a she camel which is three years old and starting the fourth), it should be accepted from him along with two sheep if they were available (to compensate for the difference) or twenty *dirhams*. If on the other hand he has to offer a ‘*Īiqqah*’ as *zakĒt*, but he only has a *jadhĒnah*, it is accepted from him, and the *zakĒt* collector will then pay him the difference, which is twenty *dirhams* or two female sheep.”<sup>86</sup>

**Text seven:** It was narrated that MuĒĒdh (May Allah be pleased with him) said: When the Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*) sent him to Yemen, he commanded him to take from every thirty cattle a male or female *TabĒĒun* (two-

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<sup>86</sup> Al-BukhĒrĒ, *×adĒth* No. 1362.

year-old), and from every forty, a *Musinnah* (three-year-old), and from every person who had reached the age of puberty a *dĒnĒr* or its equivalent in *MaÑĒfir*.<sup>87</sup>

**Text eight:** AbĒ Hurairah (May Allah be pleased with him) reported Allah's Messenger (*Īal-AllĒhu 'alayhi wa sallam*) as saying: No *Īadaqah* is due from a Muslim on his slave or horse<sup>88</sup>.

**Text nine:** Bahz ibn ×akĒm narrated from his father that his grandfather said: "I heard the Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*) say: 'With regard to grazing camels, for every forty a *Bint LabĒn*. No differentiation is to be made between camels when calculating them. Whoever gives it seeking reward will be rewarded for it. Whoever refuses, we will take it and half of his camels, as one of the rights of our Lord. And it is not permissible for the family of MuĪammad to have any of them."<sup>89</sup>

**Text ten:** Narrated ÑAli ibn AbĒ ŪĒlib (May Allah be pleased with him): The Prophet (*Īal-AllĒhu 'alayhi wa sallam*) said: "When you possess two hundred *dirhams* and one year passes on them, five *dirhams* are payable. Nothing is incumbent on you, that is, on gold, till it reaches twenty dinars. When you possess twenty *dĒnĒrs* and one year passes on them, half a dinar is payable. Whatever exceeds, that will be reckoned properly." (The narrator said: I do not remember whether the words "that will be reckoned properly" were uttered by ÑAli himself or he attributed them to the Prophet (*Īal-AllĒhu 'alayhi wa sallam*). No *zakĒt* is payable on property till a year passes on it. But JarĒr said: Ibn Wahb (sub-narrator) added to this tradition from the Prophet (*Īal-AllĒhu 'alayhi wa sallam*): "No *zakĒt* is payable on property until a year passes away on it."<sup>90</sup>

**Text eleven:** Ibn ÑUmar (May Allah be pleased with him) narrated that: the Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*) said: "Whoever acquired wealth, then there is no *zakĒt* on it until the *Īawl* has passed while it is in his possession."<sup>91</sup>

**Text twelve:** ÑAbd Allah ibn ÑUmar (may Allah be pleased with him) narrated that the Prophet (*Īal-AllĒhu 'alayhi wa sallam*) said: "The tenth is due on whatsoever is watered from the sky (i.e rain) and springs, and half the tenth on what is irrigated by carried water."<sup>92</sup>

**Text thirteen:** Narrated by AbĒ SaÑĒd (May Allah be pleased with him): Allah's Apostle (*Īal-AllĒhu 'alayhi wa sallam*) said, "No *zakĒt* is due on property mounting to less than five *AwĒqin* (of silver), and no *zakĒt* is due on less than five camels, and there is no *zakĒt* on less than five *Awsuq*."<sup>93</sup>

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<sup>87</sup> Al-NasĒ'Ē, AĪmad ibn ShuÑaib, *Al-Sunan al-KubrĒ*, (Beruit: DĒr al-Kutub al-Ñilmiyyah, 1991), 2:11

<sup>88</sup> Al-BukhĒrĒ, ×*adĒth* No. 1370.

<sup>89</sup> Al-NasĒ'Ē, AĪmad ibn ShuÑaib: 2:8

<sup>90</sup> Al-BaihaqĒ, AĪmad ibn al-×ussain ibn ÑAliyyu ibn MĒsĒ, *Sunan al-BaihaqĒ al-KubrĒ*, (Makkah: Maktabat DĒr al-BĒz, 1994), 4:137

<sup>91</sup> Al-TirmidhĒ, MuĪammad ibn ÑĒsĒ ibn SawrĒ, *Sunan Al-TirmidhĒ*, (MiĪr: Maktabat MuĪĪafah al-BĒbĒ al-×alabĒ, 1975), 3:16

<sup>92</sup> Al-MubĒrak ForĒ, MuĪammad ÑAbd Al-RaĪmĒn, "*TuĪfat al-AĪwadhĒ bi SharĪi JĒmiÑ al-TirmidhĒ*" (Beirut: DĒr al-Fikr), ×*adĒth* No. 634.

<sup>93</sup> Al-BukhĒrĒ, ×*adĒth* No. 1425.



**Text fourteen:** Anas ibn MĒlik (may Allah be pleased with him) narrated that the Prophet said: “There is no *zakĒt* on vegetables.”<sup>94</sup>

**Text fifteen:** AbĒ MĒsĒ Al-AshŃarĒ and MuŃĒdh (May Allah be pleased with him) narrated that The Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*) said to them, “Do not take any *zakĒt* except on these four crops: barley, wheat, raisins and dates.”<sup>95</sup>

**Text sixteen:** It was narrated from ŃAmr ibn ShuŃaib (May Allah be pleased with him), from his father, from his grandfather, that: a woman from among the people of Yemen came to the Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*) with a daughter of hers, and on the daughter's hand were two thick bangles of gold. He said: “Do you pay *zakĒt* on these? She said: “No.” He said: “Would it please you if Allah were to put two bangles of fire on you on the Day of Resurrection?” So she took them off and gave them to the Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*) and said: “They are for Allah and His Messenger.”<sup>96</sup>

**Text seventeen:** Narrated by Umm Salamah, *Ummul Mu'minĒn* (May Allah be pleased with her): I used to wear gold ornaments. I asked: Is that a treasure (*kanz*), Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*)? He replied: whatever reaches a quantity on which *zakĒt* is payable is not a treasure (*kanz*) when the *zakĒt* is paid”<sup>97</sup>.

**Text eighteen:** AbĒ Hurairah (May Allah be pleased with him) reported Allah's Messenger (*Īal-AllĒhu 'alayhi wa sallam*) as saying: If any owner of gold or silver does not pay what is due on him, when the Day of Resurrection comes, plates of fire would be beaten out for him; these would then be heated in the fire of Hell and his sides, his forehead and his back would be cauterized with them. Whenever these cool down, (the process is) repeated during a day the extent of which would be fifty thousand years, until judgment is pronounced among servants, and he sees whether his path is to take him to Paradise or to Hell. It was said: Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*), what about the camel? He (the Prophet (*Īal-AllĒhu 'alayhi wa sallam*)) said: If any owner of the camel does not pay what is due on him, and of his due in that (camel) is (also) to milk it on the day when it comes down to drink water. When the Day of Resurrection comes a soft sandy plain will be set for him, as extensive as possible, (he will find) that not a single young one is missing, and they will trample him with their hoofs and bite him with their mouths. As often as the first of them passes him, the last of them will be made to return during a day the extent of which would be fifty thousand years, until judgment is pronounced among servants and he sees whether his path is to take him to Paradise or to Hell. It was (again) said: Messenger of Allah (*Īal-AllĒhu 'alayhi wa sallam*), what about cows (cattle) and sheep? He said: If any owner of the cattle and sheep does not pay what is due on them, when the Day of Resurrection comes a soft sandy plain will be spread for them, he will find none of them missing, with twisted horns, without horns or with a broken horn, and they will gore him with their horns and trample him with their hoofs. As

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<sup>94</sup> Al-AlbĒnĒ, MuĀammad NāĒr al-DĒn, “*ŌalĒĒ al-JĒmiŃ al-ŌaghĒr*”, (Beirut: al-Maktab al-IslĒmĒ, 1988), *×adĒth* No. 5411.

<sup>95</sup> Al-ShathrĒ, SaŃd ibn NĒĪir ibn ŃAbd Al-ŃAzĒz, *SharĪ BulĒgh al-MarĒm*, (Riyadh: DĒr KunĒz IshbĒliyyah, 2014), 2:87

<sup>96</sup> Ibn ×ajar, AlĀmad ibn ŃAliyyu, “*BulĒgh al-MarĒm*” (Riyadh: DĒr us-SalĒm), *×adĒth* No. 499.

<sup>97</sup> Ibid, *×adĒth* No. 500.

often as the first of them passes him the last of them will be made to return to him during a day the extent of which will be fifty thousand years, until judgment will be pronounced among the servants. And he will be shown his path either to Paradise or to Hell.<sup>98</sup>

**Text nineteen:** “It was narrated that AbË Hurairah (May Allah be pleased with him) said: “The Messenger of Allah (*Îal-AllËhu 'alayhi wa sallam*) said: ‘It is not permissible to give charity to a rich man (or one who is independent of means) or to one who is strong and healthy.’”<sup>99</sup>

**Text twenty:** Narrated by ÑAIË’ ibn YasËr: The Prophet (*Îal-AllËhu 'alayhi wa sallam*) said: *Ïadaqah* may not be given to a rich man, with the exception of five classes: One who fights in Allah's path, or who collects it, or a debtor, or a man who buys it with his money, or a man who has a poor neighbor who has been given *Îadaqah* and gives a present to the rich man.<sup>100</sup>

As it can be seen from the above quotations the system of *zakËt* is very comprehensive and it leaves nothing out of the general ruling. The first *ÎadËth* is highly comprehensive in its nature and thus an example of the comprehensiveness of the system. It includes everything about the *zakËt* on gold, silver and livestock except for the cows. ImËm MuËammad ibn IsmËÑËl al-AmËr al-ÏanÑËnË said that this lack of mention is due to the fact that cows were not available in MadËnah. Therefore the need to know their ruling was not that pressing or relevant to them. However when the Prophet (*Îal-AllËhu 'alayhi wa sallam*) sent MuÑËdh to Yemen he commanded him to take *zakËt* from the cows as well since they had cattle there<sup>101</sup>. This is what the subsequent *ÎadËth* makes emphasis of. Text seven also emphasizes on the *zakËt* of cows, and for this reason the consensus of the scholars on the *zakËt* of cows is established as mentioned by ibn al-Mundhir.<sup>102</sup> The vast majority of these *nuËËË* did not leave room for any possible confusion that can occur neither in the past nor in the future. An honest observation will conclude that the *nuËËË* are comprehensive to the extent that leaves no room for critical *ijtihËd*. Everything that is supposed to be included in the system has been included. Whoever has the basic background in *Fiqh* and its discipline knows that most of these *nuËËË* are general rulings given by the *SharËÑah*. Then how is it possible for an academician to claim that the Prophet did not provide general ruling concerning the issue of *zakËt*. This has no explanation except a great shortage of information that someone is troubled with but he does not want to confess it. Thus the main objective of this section is to cut off any excuses that can be used by those who negatively criticize *SharËÑah* claiming that *nuËËË* of *SharËÑah* are incapable of fulfilling the needs of humankind. This is not true, the *nuËËË* are beyond the needs and everything is explained in detail as the *Qur'Ën* says: “And We have explained everything (in detail) with full explanation”.<sup>103</sup> As mentioned earlier there is a subsequent article dealing with some critical issues on *zakËt* where controversy is still unresolved.

<sup>98</sup> Muslim ibn al-×ajjËj, ×*adËth* No. 2292.

<sup>99</sup> Al-AlbËnË, ×*adËth* No. 7251.

<sup>100</sup> Ibid, ×*adËth* No. 7250.

<sup>101</sup> MuËammad ibn IsmËÑËl al-AmËr al-ÏanÑËnË, *Subul al-SalËm al-MËËilat IIË BulËgh al-MarËm*, (DËr ibn al-JawzË, 1423), 4:

<sup>102</sup> Ibn al-Mundhir, MuËammad ibn Ibrahim, *al-IjmËÑ* (Dar al-Muslim, 2004), 44.

<sup>103</sup> SËrah al-IsrË’, *Ëyah 12, The Noble Qur'Ën*.

## Conclusion and Recommendation

The system of *zakĒt* has been criticized from different angles by some people to be ineffective and outdated. However, an honest analysis would confirm that the problem is not with the system. The problem is all about how the system is managed. The focus should be on the management instead of criticizing the system. It is those who are in authority and responsible for the collection and distribution of *zakĒt* who are failing its recipients. Mismanagement and maladministration are the causes of the failures of implementing this divinely revealed system. This is proven by that during the time of the Prophet (*Īal-AllĒhu 'alayhi wa sallam*), the rightly guided caliphs and ŃUmar ibn ŃAbd Al ŃAzĒz (may Allah have mercy on him) *zakĒt* was appropriately collected and effectively distributed. Governments of Muslim lands should ensure that they identify people and businesses, know how much money they have and ensure that *zakĒt* is collected from them. Appropriate collection should be carried out with efficient and effective distribution to those groups *Qur'Ēn* has given them a right over it.

Furthermore it is observed that when it comes to the pillars of Islam *zakĒt* is the only one that people are playing with. No one is criticizing the *shahadah*, the five daily prayers, *siyĒm* in RamaĒn or *ġajj*. When it comes to *zakĒt* people want to give their own opinion even though just like *shahĒdatayn*, *ĪalĒh*, *ĪiyĒm* and *ġajj*, *zakĒt* is also divinely revealed. Adherence and submission are the most important keys to success in dealing with pillars of Islam. The *Qur'Ēn* says (*interpretation of the meaning*):

But no, by your Lord, they can have no Faith, until they make you (O Muhammad (*Īal-AllĒhu 'alayhi wa sallam*)) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept (them) with full submission.”<sup>104</sup>

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<sup>104</sup> SĒrah Al-NisĒ' Őyah: 65, *The Noble Qur'Ēn*.