

Capability (الاستطاعة al-istita'ah) and Its Impact on the Shariah Obligation to Declare the Islamic State and Establish the Shariah: From Preventive Inability to Making Excuses for the Neglected Ability

(Translated)

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A study in political fiqh (Shariah jurisprudence) on the transitional phase of the Syrian revolution into a state, between the justifications of inability and the requirements of the Shariah obligation.

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Capability, meaning power and possibility, is one of the central concepts in Islamic Shariah Law, as Shariah obligation and its application depend upon it. Allah (swt) has decreed that He does not burden a soul beyond its capacity, as He says, **لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا وُسْعَهَا** **“Allah does not burden a soul beyond its capacity”** [TMQ Surah al-Baqarah: 286]. This principle is affirmed in the Sunnah by the Prophet (saw) when he said, **«ما نهيتكم عنه فاجتنبوه، وما أمرتكم به فأتوا منه ما استطعتم»** **“What I have forbidden you, avoid it. What I have ordered you to do, do as much of it as you are capable of.”** Thus, Shariah obligation is bound by capacity and ability. There is no blame on the incapable. There is also no excuse for the able who refrains.

The importance of this concept is evident across all areas of Shariah obligation, from individual acts of worship and rituals, to transactions and, ultimately, the major collective Shariah obligations of sufficiency, like Jihad and the establishment of the state.

Herein lies the dilemma: How do we determine that capability exists, thus necessitating the immediate declaration of a state, or whether there remains a valid Shariah excuse, and what is the Shariah obligation in such a case? Does it mean, for example, that if we are excused, we should declare a secular state, and hand over leadership to America?

In this investigative study, we will analyze the meaning of capability (istita'ah) in the Noble Qur'an and Blessed Sunnah, and distinguish between individual capability and that of the group, the state, and the Ummah. Our aim is to understand its impact on political fiqh (Shariah jurisprudence) and the ruling on establishing a state and implementing Shariah. We will present a critical and objective examination of how inability is sometimes used as a pretext for inaction, emphasizing that Islam does not demand the impossible, but it does command the pursuit of attainable strength and means.

On the ground, we will examine a contemporary example, which is the transition of the Syrian revolution into a state entity under the leadership of Ahmad al-Shar'a, amid the devastation caused by long years of conflict, the destruction of cities, and a legacy of entrenched tyranny. Then came the Zionist entity's strikes on weapons depots and war industries to deprive the leadership of its sources of power.

Despite this, a deeply significant positive effect emerged. The masses rallied around the project of change and were determined not to allow a return to the old regime. This gave the new state a massive popular backing, making it very difficult to penetrate or topple it through conspiracies.

This contrast between crushing material pressure and overwhelming popular support reveals that capability is not merely a matter of physical or military strength. At its core, it is the fruit of collective awareness and a unifying ideology that consolidates ranks, and builds the domestic resilience of the state before any foreign threats.

When studying the issue of capability, it is essential not to reduce it to individual power, or confine it to material military might, as if the individual believer is the one who must wage war against a superpower! Or as if the opposing force will only confront the emerging state through all-out war. The capability that carries legal weight in Shariah has a broader scope. It includes evaluating the sum of the Ummah's or state's power elements, the nature of the conflict and its forms, and the possibilities and scenarios of responses.

Foundational Concept Document in the Methodology of Establishing the Islamic State

Introduction

Establishing the Islamic state is neither an impulsive act, nor an experimental step taken under the influence of political emotions or revolutionary waves. Instead, it is an elaborate Shariah process governed by fixed societal laws and consistent historical patterns. At the same time, it is subject to definitive Shariah rulings in Islamic Law that cannot be bypassed or manipulated.

Any attempt that neglects these societal norms or disregards these Shariah rulings is doomed to fail, or to deviate from its intended goal, even if it succeeds in toppling an existing authority or regime.

First Concept: The Societal Laws of Change and Their Impact on State Building

Historical and Shariah Indications about Societal and Political Change

Historical and Shariah induction has shown that the transformation of societies and systems of governance follows fixed, divinely created societal laws that do not change or shift. Allah (swt) says, ﴿وَلَنْ تَجِدَ لِسُنَّةِ اللَّهِ تَبْدِيلًا﴾ **“And you will never find in Allah's Sunnah any change”** [TMQ Surah Al-Ahzab: 62]. These laws do not operate randomly. They follow objective principles. They include that the emerging state is a natural extension of the social entity in which it was born, and that its authority (sultah) reflects the people's authority (sultan), convictions, thoughts, and values. Moreover, these Shariah Laws take into account the real state of societies, observing their interaction with the Dawah for change.

For example, societies that were shaped by colonialist powers over decades, where the colonialists built their culture and political relationships, have power centers in specific places, with specific thoughts. Such societies will require a particular intellectual and ideological struggle to be addressed with the necessary thoughts, means, and methods. This process leads to the natural emergence of a state with a strong community backing.

Therefore, any attempt to circumvent these laws, such as taking power through a military coup, foreign intervention, or without preparing the society intellectually and ideologically, will produce a fragile state, dependent on the military or foreign forces. This state will not survive a siege, war, or difficult living conditions, without making fundamental concessions that undermine its identity, and prevent it from developing into an Islamic state in the future.

Second Concept: No Compromise on the Issue of Governance

The definitive rulings of Shariah concerning governance and politics necessitate the exclusive application of Allah's (swt) Shariah Law. They do not allow for gradualism, compromise, or selecting some Shariah rulings over others. The ruling that governs with something other than what Allah (swt) has revealed is categorically prohibited in Islam.

Allah has placed this prohibition in three consecutive verses in Surah Al-Ma'idah, describing those who rule by other than Allah's law as being among the disbelievers, the oppressors, and the immoral based on the status of the actor. Allah (swt) says, ﴿وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْكَافِرُونَ﴾ **“And whoever does not rule by all that Allah has**

revealed those are the disbelievers” [TMQ Surah Al-Ma'idah: 44], ﴿فَأُولَٰئِكَ هُمُ الظَّالِمُونَ﴾ **“... those are the oppressors”** [TMQ Surah Al-Ma'idah: 45] and ﴿فَأُولَٰئِكَ هُمُ الْفَاسِقُونَ﴾ **“... those are the evil doers”** [TMQ Surah Al-Ma'idah: 47].

These Shariah texts are definitive (qat'iyyah) in condemning those who govern by other than Allah's (swt) Shariah Law, accepting that state of affairs or attempting to change the Shariah Law.

Even more alarming is what Allah (swt) says in the following verse, ﴿الَّذِينَ يَزْعُمُونَ أَنَّهُمْ آمَنُوا بِمَا نُزِّلَ إِلَيْكَ وَمَا أُنزِلَ مِنْ قَبْلِكَ يُرِيدُونَ أَنْ يَتَحَاكَمُوا إِلَى الطَّاغُوتِ وَقَدْ أُمِرُوا أَنْ يَكْفُرُوا بِهِ ۚ وَيُرِيدُ الشَّيْطَانُ أَنْ يُضِلَّهُمْ ضَلَالًا بَعِيدًا ۖ﴾ **“Have you not seen those who claim to believe in what was revealed to you and what was revealed before you, yet they wish to refer to Taghut for judgment, even though they were commanded to reject it? And Satan desires to lead them far astray”** [TMQ Surah An-Nisa: 60].

The point here is that this Quranic verse clearly shows that even the desire to refer to Taghut, non-Islamic authorities, for judgment, which means referring to something other than Allah's (swt) Shariah Law, invalidates their claim of Iman. Allah (swt) has made their belief a mere claim because their desiring to refer to anything other than Allah's (swt) Shariah Law breaks the very foundation of submitting to Shariah. How, then, can anyone want to make Taghut the constitution of a state or its governing systems? Such an act is further removed from Iman!

In fact, Allah (swt) has called all laws that differ from His Shariah the laws of Jahiliyyah (the Age of Ignorance), saying, ﴿أَفَحُكْمَ الْجَاهِلِيَّةِ يَبْغُونَ وَمَنْ أَحْسَنُ مِنَ اللَّهِ حُكْمًا لِّقَوْمٍ يُوقِنُونَ ۚ﴾ **“Do they seek the judgment of Jahiliyyah? And who is better than Allah in judgment for a people who are certain in faith?”** [TMQ Surah Al-Ma'idah: 50]. This ayah evidences that any legislation not based on Allah's (swt) revelation is considered Jahiliyyah (pre-Islamic) law, and participating in a political system that produces and enables such laws is participating in glorifying and accepting it. A true believer, however, is commanded to both reject it and disbelieve in it.

Allah (swt) has connected true Iman with the act of judging by His law alone, saying, ﴿فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنفُسِهِمْ حَرَجًا مِّمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا ۖ﴾ **“Certainly, no, by your Lord, they will not believe until they make you, O Muhammad, judge concerning that over which they dispute among themselves and then find within themselves no discomfort from what you have judged and submit in full submission”** [TMQ Surah An-Nisa: 65].

The implication here is that true Iman cannot be completed unless the judgment of the Prophet (saw), meaning his Sunnah and the Shariah, is applied. Judging by anything other than this contradicts the very essence of Iman.

The notion that gradual implementation of Shariah is permissible after the establishment of the state or assuming political power implies, in reality, temporary acceptance of ruling by something other than all that Allah (swt) has revealed. This is prohibited by explicit Shariah texts that cannot be misinterpreted. These texts are absolute and not limited by time, circumstances, or political interests.

Some have cited the gradual prohibition of alcohol or other similar rulings as evidence for gradualism, but this was during the Prophetic period before the Deen was completed. Once Allah completed the Deen, with the death of the Prophet (saw), all rulings from the Shariah must be implemented immediately, without delay or suspension.

The Companions (ra) of the Prophet (saw) had a Unanimous Consensus (Ijma'a) over applying Islam in its entirety and without delay in the regions they opened to Islam. They did not retain any of the laws or practices of Jahiliyyah (pre-Islam). Allowing false laws to remain temporarily under the pretext of gradualism only reinforces them in the

people's awareness, and prolongs their existence, ultimately weakening the Ummah's drive for change. It also makes temporary matters appear permanent.

There is no Shariah interest in Islam that contradicts a categorical text. True public interest in Islam is precisely what Allah (swt) and His Messenger (saw) have decreed.

The Prophet (saw) set the highest example by rejecting any compromise with non-Islamic governance. When he (saw) was offered to rule in Makkah, to be given some authority in exchange for compromising on some aspects of the Dawah to Islam, or postponing certain Shariah rulings, or even allowing some elements of shirk (polytheism) to remain, he rejected categorically. A whole chapter of the Noble Quran was revealed as a constitutional declaration on this matter, rejecting ruling by anything other than Allah's Shariah Law, regardless of the temptations or price. Allah (swt) said, ﴿قُلْ يَا أَيُّهَا الْكَافِرُونَ ۝ لَا أَعْبُدُ ۝

Say, O disbelievers * I do not worship what you worship * Nor do you worship what I worship * And I will not worship what you have worshiped * Nor will you worship what I worship. * For you is your religion, and for me is my Deen" [TMQ Surah Al-Kafirun: 1-6]. This is a complete and final declaration of the separation between Iman and Shariah on the one hand, and kufr (disbelief), its laws, and systems on the other. The matter was concluded with the declaration, ﴿لَكُمْ دِينُكُمْ وَلِيَ دِينِ ۝﴾ **"For you is your religion, and for me is my Deen"**, evidencing the prohibition of ruling by anything other than what Allah (swt) has revealed and prohibiting any compromise on that principle.

Despite the extremely difficult conditions faced by the kuffar at that time, enduring severe torture, day and night, from the disbelievers, the Shariah rulings related to ability and capacity are only tied to the required actions in Islamic Shariah Law, not to the actions that are forbidden. The prohibited actions cannot be justified by claiming a lack of ability or capacity. In the hadith narrated by Bukhari and Muslim from Abu Huraira, the Prophet (saw) said, «ما نهيتكم عنه فاجتنبوه، وما أمرتكم به فأتوا منه ما استطعتم» **"What I have forbidden for you, avoid it; and what I have commanded you, do as much of it as you can."** In another hadith, he (saw) said, «إذا أمرتكم بأمر فأتوا منه ما استطعتم، وإذا نهيتكم عن شيء فاجتنبوه» **"If I command you with something, do of it what you can. And if I forbid something to you, then avoid it."** Here, compliance with commands is linked to ability, whereas the prohibition must be abstained from absolutely, with no exceptions.

This clearly shows that all justifications for ruling by anything other than all that Allah (swt) has revealed are invalid, even in a single matter. The abandonment of the haram (forbidden) is part of the ability to act, whilst the Shariah has not tied the abandonment of forbidden actions to one's capability (istita'ah) in origin. The Prophet (saw) and his Companions (ra) endured far more difficult conditions but never violated the prohibited out of necessity, or perceived inability.

The Prophet (saw) also rejected the military support (nussrah) of Banu Shayban when they made a condition that was in conflict with the general nature of the Dawah to Islam and the establishment of Deen in all aspects. They wanted to limit the Risaalah message to the Arabs and exclude the Persians. This clearly indicates that accepting compromised governance based on man-made laws is invalid, even if it is claimed as a first step toward change. In reality, it serves only to affirm falsehood and distracts from the Divine Right of Allah (swt) in governance.

The claim that gradualism means applying some of the Shariah rulings today, and others later, actually justifies applying certain elements of kufr (disbelief) gradually. This approach paints falsehood in a more palatable light, discourages people from rejecting it, and presents it as temporary, which it is not and never is. Moreover, they apply only a few aspects of personal status laws in Islam, and this is an extension of the Western attempts to put the majority of rulings in the hands of the regular courts that operate on man-made laws. This leaves Islamic judicial authority confined to personal matters, while Muslims

are compelled to resort to secular courts that follow man-made laws to resolve their disputes, preventing them from resolving issues based on Islam. This ultimately reinforces the supremacy of secular law in Islamic countries and undermines the foundational Islamic principle that disputes should be judged by Shari'ah and not by the taaghut (tyrannical laws).

This is a major principle that doctrinal and legislative compromises are never permissible, even if rejecting them leads to delays in the establishment of the state or difficulties along the path. Some Islamic movements have promoted the slogan of gradualism for over fifty years, and all we've seen is a gradual acceptance of Jahiliyyah (pre-Islamic ignorance) and its laws, and a slow disconnection from Islam and its Shariah rulings, under the guise of difficult circumstances, wisdom, and patience. We have not seen a single step in the opposite direction that brings us closer to the implementation of Shariah.

Third Concept: The Method of the Prophet (saw) for Change is a Shariah Obligation, Not a Choice

After the fall of the regime in Egypt, the Muslim Brotherhood found themselves lacking the foundations to demonstrate readiness for implementing Shariah. This forced them into a media dilemma, where they had to assert that they did not wish to rule by Shariah. Similarly, we saw the trajectory of the Ennahda Movement in Tunisia, which separated political Islam from the Dawah to Islam, focusing on a democratic national state and rejecting any move toward the Khilafah (Caliphate) or the implementation of Shariah. These pivotal moments in contemporary history show that bypassing the method of the Prophet (saw) for change places movements in the whirlwind of confusion, steering them away from a natural, inevitable state-building process that would have its societal foundation and community support.

The Prophetic method for change starts with culturing and the building of a guiding structure for change and leadership, followed by intellectual conflict and political struggle to create public opinion supporting Islam in society. This shift in public opinion must then spread to sufficient centers of military power in society, which would grant nussrah (military support) to the Islamic political project for establishing the Islamic state. These steps are essential for change, directly derived from the Noble Quran and Prophetic Sunnah, not simply a tactical option but obligations rooted in Shariah.

The Noble Quran and Prophetic Sunnah provide precise details for the steps of change. The intellectual conflict was guided by the divine revelations, which led the Prophet (saw) in his struggle between truth and falsehood in Makkah. The Noble Quran's verses provided the foundation for this intellectual conflict and political struggle. Allah (swt) commanded the Prophet (saw) to seek authority through nussrah, and declared the Prophet's method to be clear, unwavering, and not deviating. Allah (swt) says in Surah Yusuf, ﴿قُلْ هَذِهِ سَبِيلِي أَدْعُو إِلَى اللَّهِ عَلَىٰ بَصِيرَةٍ أَنَا وَمَنِ اتَّبَعَنِي وَسُبْحَانَ اللَّهِ وَمَا أَنَا مِنَ الْمُشْرِكِينَ﴾ **“Say, This is my way. I call to Allah with insight, I and whoever follows me”** [TMQ Surah Yusuf: 108]

This verse clearly shows that deviating from the Prophet's (saw) method in the Dawah to Islam and establishing an Islamic state is prohibited. If we fail to follow his (saw) method, we have transgressed and deviated from the authentic Islamic approach.

The Sunnah also supports this method, showing that any alternative to the Prophet's (saw) method is not acceptable. The Seerah (biography) of the Prophet (saw) further confirms his insistence on adhering to this method, even in the face of hardships, rejecting any compromises. By following this method, a state can be built on an aware popular base, which is less likely to be infiltrated or collapsed during a crisis.

The approach taken by Hizb ut Tahrir in promoting this method has had a significant impact in creating public opinion in favor of the Islamic state across the Muslim World,

especially in ash-Sham (Levant). In the context of Syria, for example, there was a natural belief among the people in the necessity of applying Shariah. The foundation for building the state must be laid on this belief, capitalizing on the existing popular base for the application of Shariah.

Fourth Concept: The Necessity of Material and Political Preparation for Facing Siege and Hegemony

Contemporary reality confirms that colonialist powers surround any independent entity, economically and politically, from the moment it is established, forcing it to integrate into their order. Any emerging Islamic state that does not have clear plans to secure its resources, protect its infrastructure, and control its energy and transport resources, will fall prey to conditional loans, restrictive agreements, and cultural and educational dependency.

An Islamic state must be prepared for these challenges from the outset, ensuring its economic sovereignty and political independence, and resisting any foreign pressures to compromise its integrity. Without this preparation, it risks being reduced to dependency, just like many former colonized states that failed to establish true independence after gaining sovereignty.

Fifth Concept: Overthrowing the Regime Is Not Enough Without a Complete Alternative

Overthrowing the ruler or regime is not considered a real victory unless there is a ready, complete, and Shariah alternative from day one, an alternative that includes a constitution, systems of governance, economics, and politics based on Shariah. Otherwise, the resulting vacuum will either be filled by a new autocratic regime, international guardianship, or the reproduction of the previous system with new faces. The old secular capitalist system has confirmed its failure in managing the affairs of the Ummah, leaving it in hardship, with its failed economic, judicial, and penal systems. It has also shown its ties to the global colonialist order. Therefore, merely reviving it with new faces will change nothing in reality, except for superficial touches that do not move us an inch closer to the implementation of Shariah.

Sixth Concept: "Incomplete Capability" and Its Effect on Cementing Mistakes

When an Islamic movement comes to power without having the full ability to implement Shariah, due to a lack of preparation or strategic plans to face attempts to thwart it, or neglecting to activate a supportive public opinion to ensure cohesion between the leadership and the Ummah, or failing to prepare for natural expansion throughout the entire Muslim World by engaging in Dawah and reform activities across all Islamic countries, and preparing public opinion to support the Khilafah (Caliphate) when it is established, and creating a sound practical plan to activate that popular support in a way that pressures colonialist powers trying to undermine the state, then it falls into the trap of "incomplete capability." This justifies continuing to rule by secularism under the guise of necessity or gradualism. In reality, this is simply moving the Ummah from one mistake to a bigger mistake, and unjustifiably delaying the establishment of the Shariah rule of Allah (swt). Those in power bear responsibility for the disasters that result from the failure to implement Islam in life and its impact on society, as they are the ruling authorities. Failing to rule by Islam results in the establishment of a secular constitution and systems in the state, which means that they have made themselves, or those who enacted these laws, lords besides Allah (swt), thus sharing in His exclusive right to sovereignty.

It is not permissible under Shariah to justify the call for or implementation of kufr (disbelief) and its systems by invoking local or international circumstances, necessity, or incapacity. This is one of the greatest prohibitions, and even worse is the false claim that Islam permits applying disbelief (kufr) due to necessity or inability. What kind of necessity are we speaking of here? How do we understand the necessity of those who could end a

tyrannical regime that lasted for decades, defeating its army, militias, and tribal forces by the hundreds of thousands, only to find themselves, once they attain power, incapable of implementing Islam? Then, they declare that they are “forced to implement disbelief (kufr)” and pass legislation based on that, seeking approval from the enemies of the Ummah, so that they may receive a certificate of good conduct and be accepted by them!

As for the meaning of al-idtirar (compelling necessity الاضطراب), Ibn Abidin said in his Hashiyah (5/45), (المراد بالاضطرار، أن يخاف هلاك نفسه أو عضيه منه إذا لم يرتكب المحذور), “Necessity means fearing for one’s life, or an organ, if the prohibited act is not undertaken.” Additionally, as for the condition of عدم المخرج “absence of escape”, Al-Qarafi said in “Anwar al-Buruq” (4/200), (لا يجوز ارتكاب أخف الضررين إلا إذا تعذر الخروج من الضرر بالكلية، فلو أمكن), “It is not permissible to commit the lesser of two harms unless it is impossible to avoid both harms entirely. If it is possible to avoid both harms, neither should be pursued.” The majority of jurists have decided that harm cannot be removed by an equal or greater harm. What harm could be greater than legitimizing the rule of kufr (disbelief), changing it from a “foreign imposition” forced on society, into a “domestic choice,” after cloaking it in legitimacy and deceiving the people who previously fought against it?

Moreover, Shariah compelling necessity (al-idtirar) is never communal and collective but is instead individual and personalized, such as eating carrion through fear of death. Imam al-Shatibi said, (الضرورات لا تبيح المحظورات إلا بقدرها), “Compelled necessities do not make prohibitions permissible except to the extent of the necessity,” and he also said, ولا يجوز أن تتحول الرخصة إلى أصل دائم “It is not permissible for a Rukhsah (Shariah concession) to become a permanent principle.”

The Seventh Concept: Aware Public Opinion as a Guarantee for the Stability of the Islamic State

A state that is established on the basis of temporary popular enthusiasm, without solidifying Islamic thoughts and concepts within the Ummah, will quickly lose both its political and Shariah legitimacy. It will then rely on coercive mechanisms, rather than fostering aware interaction between the leadership and the Ummah. In other words, it will depend on laws to impose change, which weakens its domestic cohesion and makes it more vulnerable to infiltration. This is because the methodology of Islam is based on changing convictions from the very beginning, so that the source of change originates from within the people themselves.

The Eighth Concept: Reproducing Colonialism from Within the New Leadership

When the new leadership lacks vision and planning, major colonialist powers can lure it into their international order. They bind its economy and infrastructure to Western interests, by signing entangling agreements and loans, imposing security and cultural policies that contradict Islam. As a result, what appears to be a “victory” turns into a series of strategic concessions, emptying the change of its real content.

Conclusion

Any project to establish the Islamic state that is not based on understanding these concepts and adhering to their Deen and Sunnah-based necessity will remain fragile, no matter how strong it seems in the initial stage of its momentum. The only guarantees for the establishment of a firmly rooted state, resistant to hegemony and capable of carrying its Risaalah (message) to the world, are adherence to the method of the Prophet (saw), engaging in comprehensive intellectual, societal, and material preparation, and rejecting any compromise on ruling by Shariah.