

## **The Pillars and Conditions of the Role of Society in Crime Prevention in Islamic Law and Common Law**

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### **Abstract**

In this paper, we will present the pillars of the community's role in combating criminal acts and their conditions, whether undertaken by individuals as their duty or by those assigned by the state to fulfill its responsibilities. It can be said that the pillars of the community's role in combating crime are four: the crime itself, the one who combats the crime, the criminal, and the means by which the community combats criminal acts but first three pillars will be discussed in this article. Each of these four pillars has specific conditions that must be met to allow the community to play a role in combating criminal acts.

This paper examines the conditions of crime (Al-Munkar) in Islamic jurisprudence as outlined by Imam Al-Ghazali. He identified four essential conditions that must be met before an act can be condemned and corrective measures applied. These conditions ensure that enjoining good and forbidding evil is carried out with justice, wisdom, and adherence to Islamic ethical standards.

The first condition requires that the crime must be occurring at the time of admonishment, ensuring immediate and relevant intervention. The second condition states that the act must be an actual wrongdoing, distinguishing between prohibited actions (Al-Munkar) and sinful acts (Al-Ma'siyah) to maintain legal and moral clarity. The third condition mandates that the wrongdoing must be evident without spying, upholding privacy and preventing unwarranted intrusion. This aligns with Quranic injunctions and the teachings of Prophet Muhammad (peace be upon him), emphasizing social harmony. The fourth condition asserts that the prohibition of a reprehensible act must be based on established knowledge, not personal interpretation (ijtihad), preventing unwarranted accusations and ensuring condemnation is rooted in clear religious evidence.

This article discusses the conditions for justifiable defense against aggression in substantive law and the principles of combating crime in Islamic jurisprudence. In substantive law, justifiable defense requires three conditions: the existence of an aggressive act constituting a crime, the imminence of the crime, and the reality of the danger. Defense is permissible against acts considered criminal, even if the perpetrator is excused due to insanity or other barriers. However, defense is not justified against lawful actions, such as disciplinary measures or official duties.

In Islamic jurisprudence, combating crime is rooted in the principles of enjoining good and forbidding evil. Key conditions for individuals engaging in this duty include faith, puberty, sanity, capability, and knowledge of Islamic rulings. Faith is essential, as it motivates the individual to uphold justice and religious values. Capability involves the physical and intellectual ability to act against wrongdoing, while knowledge ensures adherence to Sharia principles. Jurists debate additional conditions, such as justice, the permission of the Imam, and gender. Some argue that justice and Imam's permission are not prerequisites, while others emphasize their importance. Regarding gender, while some jurists restrict women from this duty, others, like the Hanafis, permit it based on historical precedents and Quranic principles.

Islamic jurisprudence views criminals as individuals who have deviated from the right path, emphasizing rehabilitation over revenge. Punishments aim to deter and purify, preserving dignity and guiding offenders back to righteousness. Combating crime is a societal obligation, focusing on preventing wrongdoing while considering both divine and human rights. Special relationships may influence methods but do not negate the duty to enjoin good and forbid evil.

**Keywords:** Quranic principles, Hadiths, Crime (Munkar) community role, pillars of crime, conditions of crime, Islamic jurisprudence, justifiable defense, aggression, enjoining good, forbidding evil, faith, Sharia principles, rehabilitation, societal obligation, divine rights and human rights

### ***First Pillar: The Crime (Al-Munkar) in Islamic Law***

#### **The Conditions of the Crime (Al-Munkar).**

Imam Al-Ghazali mentioned four conditions for the crime that must be addressed. These conditions are: the crime must be present at the time of admonishment, it must be an actual wrongdoing, it must be evident without spying, and the knowledge of the wrongdoing must be obtained without assumptions. These conditions are explained as follows:

#### **The First Condition: The crime must be present at the time of admonishment:**

It is a prerequisite for admonishing someone about a wrongdoing that the sinful act is happening in the present, and the person committing it is engaged in it at the time of admonishment or correction. For example, if someone is drinking alcohol or secluded with a non-mahram, then admonishing or advising the person is appropriate. However, if they have already finished drinking alcohol, admonishing them would not be applicable as the opportunity to stop the crime or correct it has passed.<sup>1</sup>

Moreover, the person must persist in the wrongful act. If there are signs of their refraining from the act or if they have abandoned it, the admonishment loses its relevance.<sup>2</sup>

For instance, if a Muslim sees someone who has already completed drinking alcohol, then the duty of the one who is present is limited to advising and calling the person to repent. Similarly, the judgment should be deferred if the expectation is that the person will commit a sinful act in the future because admonishing someone for an act that has not yet occurred is not permissible. This is to prevent any negative assumptions about the Muslim, as the individual may have decided not to engage in the act for some reason or might have realized the ugliness of their action.<sup>3</sup>

If a person becomes aware of clear evidence and indications that someone is about to commit theft at night and finds them on the way with weapons, then enjoining what is right and forbidding what is wrong becomes an individual obligation for the capable person and others, seeking help from people or authorities to prevent it.

Therefore, this condition has three situations:

**First Situation:**

When one is aware of the intention to commit a wrongful act: If someone finds evidence indicating that a wrongful act is about to occur, and the person involved has the intention to commit it, then the appropriate action is admonishment. However, if the person denies having such intentions, it is not permissible to admonish them as if they were determined to commit the wrongful act. This is to avoid assuming negative intentions about the Muslim, as there might be some hindrance preventing them from carrying out their intentions.<sup>4</sup>

**Second Situation:**

When one is caught in the act (in flagrante delicto): This means that the person is directly involved in the sinful act at the time of admonishment and correction. For instance, if someone is sitting with a glass of wine and drinking from it, then it becomes incumbent upon the person who observes this and is capable of doing so, to admonish and prevent them, according to the rulings of Sharia.<sup>5</sup>

Al-Qadi 'Iyad (may Allah have mercy on him)<sup>6</sup> stated that the one who enjoins what is right and forbids what is wrong has the right to do so in every possible way to eliminate the wrongdoing, whether through words or actions. They may break the instruments of falsehood, spill out the intoxicants themselves, or remove the wrongfully obtained property and return it to its rightful owners.<sup>7</sup>

**Third Situation:**

When the act has already been committed: In this case, it is necessary to establish strong evidence before admonishing the person to avoid accusing anyone of what they did not do. For example, if a person is seen staggering from alcohol, and the smell of alcohol emanates from their mouth, these signs prove that they have consumed alcohol. However, it may raise a question of how to admonish them when they have already completed the act. In such a situation, admonishing is done by presenting the case to

the authorities, accusing them of their actions, and demanding appropriate legal action or punishment as prescribed by the law (Sharia).<sup>8</sup>

**The Second Condition: The act must be an actual wrongdoing (Al-Munkar).**

Imam Al-Ghazali mentioned the concept of "Al-Munkar" (wrongdoing) without referring to "Al-Ma'siyah" (sinful act). This is because an act can be prohibited, but it may not necessarily be considered a sin. Al-Munkar encompasses a broader scope than Al-Ma'siyah.<sup>9</sup>

For instance, if someone sees a child or a mentally impaired person drinking alcohol, they should spill the alcohol and prevent them from doing so. Similarly, if someone witnesses a mentally impaired person engaging in inappropriate behavior with another mentally impaired person or an animal, they should prevent it. In this case, the act is considered Al-Munkar, but it is not attributed to Ma'siyah (sin) since the individual involved does not have the capacity to commit sins.<sup>10</sup>

**The Third Condition: The act must be evident without spying:**

The term "ظهور المنكر" (evident wrongdoing) refers to the clear manifestation of the wrongdoing to the person who intends to enjoin what is right and forbid what is wrong, without the need for spying. This visibility and awareness can be achieved through hearing, sight, smell, touch, or taste.<sup>11</sup>

"تجسس" (spying) is defined by Al-Ghazali as seeking out hidden information, or investigating past events with malicious intent, to discover someone's faults or flaws.<sup>12</sup>

The ruling of enjoining what is right and forbidding what is wrong or spying on the wrongdoing is closely related to the degree of the evident wrongdoing. Different situations require different approaches.

A. If there is a mere suspicion of wrongdoing without any evidence or indication, then one is not allowed to investigate or spy. Otherwise, the person would be committing a prohibited action themselves.<sup>14</sup>

B. If there is a strong presumption supported by evidence or indications, scholars differ on the ruling of enjoining what is right and forbidding what is wrong or spying. Here are some opinions:

Al-Ghazali opines that if there is strong presumption, then enjoining what is right and forbidding what is wrong is permissible, as such presumption is akin to knowledge in cases like these.<sup>15</sup>

Al-Mawardi stipulates that such action should only be taken in cases where it involves preventing an immediate violation of sanctities that cannot be rectified. For example, if someone trustworthy informs you that a man is intending to commit adultery or murder, then it is permissible to spy and investigate in such situations to prevent the violation of sanctities and the commission of prohibited acts. However, beyond this scope, it is not permissible to spy or uncover hidden matters.<sup>16</sup>

As for the level of certainty: it is when the person is absolutely certain about the existence of the wrongdoing, whether they know it through their own senses or through the testimony of two just witnesses. In such case, it becomes the duty of the responsible person to object and denounce the wrongdoing.

However, if the matter requires the implementation of legal punishment (Hadd) on the wrongdoer, then the knowledge of the responsible person, even if they witnessed the wrongdoing themselves, is not sufficient. Rather, it requires the testimony of two just witnesses. This was confirmed when Caliph Umar (may Allah be pleased with him) consulted the Companions while on the pulpit and asked them if a person who witnessed a wrongdoing himself could establish the legal punishment. They responded that it is subject to the testimony of two witnesses and that one person's testimony alone is not enough.<sup>17</sup>

The Qur'an emphasizes the sanctity of people's homes and their privacy in Surah An-Nur (24:27), where it forbids entering houses without permission and even looking inside from openings. Violating people's privacy to such an extent that it becomes a wrongful act, could lead to the application of the legal punishment (Hadd). In fact, the Prophet Muhammad (peace be upon him) said, "If anyone peeps into your house without your permission and you throw a stone at him and damage his eye, there will be no blame on you." This indicates the gravity of violating someone's privacy.<sup>18</sup>

The Prophet (peace be upon him) also explicitly prohibited spying and prying into the affairs of others, saying, "Do not spy, do not eavesdrop, do not compete with one another, do not hate one another, and be the slaves of Allah and brothers (among yourselves)."<sup>19</sup>

The Messenger of Allah (peace be upon him) prohibited spying and said, "Do not spy, do not eavesdrop, do not compete with one another, do not hate one another, and be the slaves of Allah and brothers (among yourselves)."<sup>20</sup>

It is narrated that Umar (may Allah be pleased with him) climbed a house and saw something unpleasant, so he admonished himself saying, "O leader of the believers, if I have disobeyed Allah in one aspect, then you have disobeyed Him in three aspects." Umar asked, "What are they?" He replied, "Allah, the Exalted, said: 'And do not spy,' and you have spied. And He said: 'Enter houses from their doors,' and you have climbed over the wall. And He said: 'Do not enter houses other than your own until you have sought permission and greeted their inhabitants,' and you did not seek permission." Umar left the place and made repentance a condition for himself.<sup>21</sup>

The prohibition of spying prevents a Muslim from eavesdropping on others' conversations to hear the sound of singing or musical instruments, or from sniffing to detect the smell of alcohol or hashish. It is not permissible for a person to spy on someone's clothing to uncover what they are hiding

underneath, nor is it allowed for them to eavesdrop on their neighbors and report back to others about what is happening in their homes.<sup>22</sup>

**The fourth condition: That the prohibition of the reprehensible act (al-munkar) must be based on established knowledge, not personal interpretation (ijtihad).**

If something is a matter of ijtihad, then there is no accountability for it. For example, a Hanafi cannot condemn a Shafi'i for consuming a food item without proper labeling, nor can a Shafi'i condemn a Hanafi for drinking a small amount of wine that is not intoxicating.<sup>23</sup>

However, a Muslim should not follow a weak opinion and then claim to be following the opinion of a qualified jurist, as relying on a weak opinion is not permissible.<sup>24</sup>

Al-'Izz ibn 'Abd al-Salam stated that if someone deems something to be forbidden while believing it to be so, then it becomes necessary to denounce them for violating sanctity. However, if they believe the act to be permissible, then denunciation is not allowed unless the reasoning behind their permissibility is based on weak evidence that invalidates the ruling according to the Sharia. In such cases, denunciation is warranted because the act is baseless. This is analogous to someone having intimate relations with his female slave, believing it to be permissible based on an erroneous religious opinion; in this case, denunciation is obligatory. However, if they do not believe it to be either permissible or forbidden, it is recommended to abstain from such acts without reprimanding or denouncing them.<sup>25</sup>

After presenting the general principles, we can now specify the following points:

Anyone who opposes the Quran, the authentic Sunnah, or the consensus of the early generations without a valid excuse should be censured, and their innovation should be condemned.<sup>26</sup>

All innovations in creed or other aspects should be condemned.

Any act that goes against personal desires without following the guidance of the Sharia should be denounced. Acts that are based on shifting from one opinion to another without following evidence are reprehensible.<sup>28</sup>

Those who follow excessive permissibility (al-rukhsah) or adopt the easier of two valid opinions without proper religious justification should be criticized.<sup>29</sup>

A mere follower (muqallid) is not entitled to pick and choose among the opinions of scholars based on personal preference; rather, they should follow a knowledgeable and trustworthy scholar's opinion. If they choose deviant paths, they should be censured.<sup>30</sup>

If a certain opinion is weak or apparently outweighed (al-murjūh), it should be criticized when someone adopts it while neglecting the stronger opinion supported by evidence.<sup>31</sup>



If someone strictly follows a particular school of thought and deviates from it in some matters without a valid religious excuse, they are following their desires and are subject to condemnation.<sup>32</sup>

Neither a qualified jurist (mujtahid) nor anyone else should impose their own ijthihad on others and criticize those who disagree.<sup>33</sup>

In cases of legitimate scholarly differences (valid ikhtilaf), a qualified jurist should<sup>34</sup> not impose the most well-known opinion or the weaker opinion. <sup>35</sup>Matters that may lead to corruption or evil outcomes should be exempt from this rule.<sup>36</sup>

In summary, the act of condemnation (in enjoining good and forbidding evil) is based on clear evidence and should be done with wisdom and compassion. It is crucial to distinguish between matters that require condemnation and those that allow for legitimate differences of opinion within the framework of Islamic jurisprudence.

In conclusion, Islam forbids spying and violating the privacy of individuals. Muslims are expected to be respectful of others' privacy and refrain from engaging in such unethical and prohibited actions. If there is a serious wrongdoing that needs to be reported or intervened upon, it should be done in a respectful manner that respects people's privacy and rights. In Islamic societies, individuals and communities cooperate with the authorities to combat crimes and wrongdoings legally and in an organized manner. If one witnesses a serious wrongdoing that requires intervention, they should collaborate with the relevant authorities, report the incident, and refrain from violating people's privacy or infringing upon their rights. The teachings of Islam emphasize honesty, fairness, and the protection of people's rights, and call for cooperation with authorities and adherence to the law in combating crime and wrongdoing in a lawful, organized, and respectful manner that respects privacy and human norms.

### ***First Pillar: The Crime in Common Law***

#### **Conditions of Crime in Common Law**

The perpetrator is within the bounds of defense if certain conditions of aggression are met. There are three conditions for justifiable defense against aggression, which are as follows:

##### **First Condition:**

The existence of an aggression that constitutes a crime: The legislator defines aggression as an "act considered a crime," meaning an act that implies the possibility of a crime occurring. If an ordinary person expects that the act will lead to a crime, this act is considered dangerous or aggressive, and defending against it with a crime is justified. <sup>37</sup>It is stated in the explanation of Pakistani law that "there is no right of private defense under the code against any act which is not in itself an offense under it" or

in other words, "an act that is not a crime in itself under this law does not have the right of legitimate defense."<sup>38</sup>

However, if the act directed towards a person is a just act, defense against it is not justified, such as a father disciplining his child or an officer responsible for carrying out a death sentence, or an executioner who seizes the debtor's property. All these actions are justifiable, and resistance against them is not permissible.

"The first condition is that there must be an offence either against the person or against the property of any of the particular classes against which the right is declared to exist."<sup>39</sup>

Furthermore, the act of aggression remains a crime even if the perpetrator is not punished due to reasons such as the nullification of criminal liability or the lack of evidence supporting the mistake in the facts. Liability barriers do not erase the criminal nature of the act, although they prevent liability for it. Therefore, it is permissible to defend against the act of a minor or an insane person.<sup>40</sup>

#### **The second rule has four consequences as follows:**

Firstly, legitimate defense is not permissible to resist disciplinary action, but it is permissible if there is an excessive use of appropriate discipline.

Secondly, legitimate defense is not permissible to resist an act carried out by a public official within the limits of their authority, but it is permissible if the official exceeds their authority under certain conditions.

Thirdly, legitimate defense is not permissible to resist an act that itself constitutes a legitimate defense. However, defense is permissible against an act that exceeds the limits of legitimate defense issued by the first defender.

Fourthly, legitimate defense is permissible to resist any act that is considered a crime under the law, even if the responsibility of the perpetrator is excused due to certain barriers such as insanity, involuntary intoxication, or a state of necessity. These barriers do not remove the description of the initial act as a crime, and therefore, legitimate defense is allowed to repel it with force if necessary.<sup>41</sup>

#### **The second condition: The crime must be imminent:**

For the right of defense to apply, the aggression must be imminent or about to occur against the person's or others' life or property.<sup>42</sup>

If the aggression has already ended, there is no existence of the right of defense. Similarly, if the aggression is independent and has not become imminent or about to occur.

If the assailant has already started the aggression, it is a requirement for the defense to be permissible that the aggression is still ongoing, as the threat of aggression is still present. If the aggression has ceased by completing the crime or ending the aggression, either by the attacked person



or others repelling it or by the assailant stopping, then the defense after that would be considered an unjustifiable retaliation.<sup>43</sup>

Also, in the book *Right of private defense* by K. B. Abbas, it is stated that "It is only present and imminent danger which will give rise to the right. It is a right of defense in cases of immediate danger and not a right of prevention of future danger."<sup>44</sup>

Exactly, as soon as a person merely threatens another with murder, it does not constitute a case of defense for the attacked person. The attacked person has enough time to inform the authorities about this threat. However, if the aggressor does not stop at the point of the threat but brandishes a weapon and shoots at the attacked person, then it is the right of the attacked person to defend themselves using appropriate means to repel the aggression.<sup>45</sup>

**The third condition: The danger must be real:**

The danger must be real. If it is imaginary or illusory, it is not sufficient to justify defense. Article 213 stipulates that the use of force should have occurred to resist a real attack. Therefore, mistaken belief in an impending attack is not sufficient to justify defense because this belief does not provide a basis for mitigating guilt for the accused without considering that the accused was in a situation of self-defense against an imaginary attack.

***Second Pillar: The Person who Combatting Crime in Islamic Jurisprudence***

**Conditions for The Person who Combatting Crime in Islamic Jurisprudence.**

**First Condition: Faith.**

The first condition for a person who combats crime in Islamic Jurisprudence is the presence of faith. It means that the combatant must believe in Allah and Islamic principles, seeking to establish justice and uphold religious and moral values. Faith is considered a fundamental motivation for the individual to fight against injustice, negative phenomena, and crimes in society.

The first condition that jurists have agreed upon regarding the obligation to have it in the enjoiner of good and forbidding evil (commander of virtue and prevention of vice) or in the one who combats crime is that they must be a believer. It is considered "support for the religion, so how can someone who denies the foundation of the religion be among its people?"<sup>46</sup>

Therefore, it is required that those who engage in combating crime be Muslims, as enjoining good and forbidding evil is a triumph for Islam and the establishment of its rituals. A non-Muslim denies it and rejects its rulings, so it is only natural that they should not be assigned such a task.

Enjoining good and forbidding evil entails a form of authority over the wrongdoer, and this is not permissible for a non-Muslim, as Allah says: "And never will Allah grant to the disbelievers a way (to triumph) over the believers." (Quran 4:141)<sup>47</sup>

The requirement of faith for those who enjoin good and forbid evil is a clear evidence of the extent of Islam's tolerance towards non-Muslims and its affirmation of freedom of belief. Enjoining good and forbidding evil, as described by Abd al-Qadir 'Auda, includes commanding all that the Sharia has mandated, such as prayer, fasting, pilgrimage, monotheism, and other obligations, and forbidding evil includes prohibiting all acts and beliefs that contradict the Sharia, such as polytheism, believing in the crucifixion and killing of Christ, and so on. If a non-Muslim were obliged to perform the duty of enjoining good and forbidding evil, they would be compelled to say what a Muslim says and believe what a Muslim believes. They would be required to abandon their religious beliefs and publicly show Islamic beliefs, which would constitute coercion in religion, something strictly prohibited in Islamic law as Allah says: "There shall be no compulsion in religion." (Quran 2:256). To protect freedom of belief, this duty is mandated only for Muslims and not others.<sup>48</sup>

First of all, since appointing a disbeliever over a Muslim entails elevating the disbeliever's status and giving them authority, this goes against the principles of Islamic law. Allah says: "O you who have believed, do not take My enemies and your enemies as allies..." (Quran 60:1).<sup>49</sup>

There is no evidence in the Sunnah or the biography (Seerah) that the Prophet Muhammad (peace be upon him) or the rightly guided caliphs assigned this task to non-Muslims. All positions of authority were assigned to Muslims and not others. However, they sought the assistance of non-Muslims as human resources for gathering information in various situations. For example, they sought the assistance of Abdullah bin Ariqat during the migration, and Abu Ubaidah bin al-Jarrah sought help from the people of Samarra in Jordan and Palestine, who were people of the treaty, to gather information about the Romans. Also, the people of Antioch were asked for information about Mount Lakaam.<sup>50</sup>

Based on this, it is not permissible to appoint a polytheist or a dhimmi (a non-Muslim person of the book) in the Muslim state for enjoining good and forbidding evil or combating crime, even if they are citizens. Enjoining good and forbidding evil requires sincerity, integrity, trustworthiness, piety, and religious devotion, qualities that are not found in non-Muslims.

#### **The second condition: Puberty and Sanity.**

By "takleef" (puberty and sanity), it means that the person must have reached the age of maturity and must be of sound mind. This condition is obvious as the one who is not obligated (mukallaf) is not bound by religious commands, as non-mukallaf individuals such as children and insane people

are not addressed by the orders of Sharia and its prohibitions. Therefore, they are not obligated to enjoin good and forbid evil, so they are not sinful for not doing so. However, they will be rewarded if they do it, and there is no prevention for them from doing it, as it is considered an act of worship, like prayers, fasting, and reciting the Quran, which are acts of worship for non-mukallaf individuals. Imam Al-Ghazali states about this condition, "It is a condition of obligation. As for the possibility and permissibility of the action, it requires only reasoning. Even a mature child, though not obligated, can enjoin good and forbid evil. They can spill wine and break musical instruments, and if they do so, they will be rewarded, and no one can prevent them from doing so because it is a form of worship, and they are among those who can perform acts of worship."<sup>51</sup>

### **The third condition: Capability.**

The first requirement agreed upon by jurists in combating evil or enjoining good is that the person must be capable and possess sound judgment, firmness, and strength in their religion.<sup>52</sup>

This is because enjoining good and forbidding evil require determination and prompt action. These qualities can only be found in a person with correct reasoning, a clear mind, and a strong adherence to the teachings of Sharia, implementing the commands of Allah and His prohibitions without discrimination based on age, social status, ethnicity, or any other criteria. The obligations of Allah apply to all without distinction.

This condition is indicated by the saying of the Prophet Muhammad (peace be upon him): "Whoever among you sees an evil action, let him change it with his hand; if he cannot, then with his tongue; and if he cannot, then with his heart, and that is the weakest of faith."<sup>53</sup>

The Hadith makes it clear that enjoining good and forbidding evil are not obligatory for a person who lacks the capability to do so. In this case, simply disliking the evil in one's heart suffices as it is a fundamental duty for all Muslims to detest evil and distance themselves from its perpetrators. However, if a person has the capacity and ability to take action, they must enjoin good and forbid evil with their hands and tongue.<sup>54</sup>

### **Forms of Incapacity:**

There are three forms of Incapacity:

#### **Sensory Incapacity:**

This refers to physical weakness or disability that hinders a person from physically engaging in the act of forbidding evil. An incapacitated person, as stated by Imam Al-Ghazali, is not accountable, and their accountability is confined to their heart.<sup>55</sup>

#### **Intellectual Incapacity:**

If the person is unable to determine whether the situation is indeed an evil act or not, the obligation to enjoin good and forbid evil is lifted.

Scholars have concluded that laypersons (common people) are not obliged to enjoin good and forbid evil except in clear-cut cases that are commonly known to be forbidden, such as abandoning prayers, breaking the fast during Ramadan without a legitimate excuse, drinking alcohol, committing adultery, or theft. In other matters that they cannot comprehend, enjoining good and forbidding evil is entrusted to scholars.<sup>56</sup>

**Fear of Harm:**

One form of incapacity is when the person fears harm if they attempt to forbid the evil. In this context, Imam Al-Ghazali states: "The absence of obligation does not rely on sensory incapacity; rather, it is connected to the fear of potential harm that might befall the forbidding person. This is what is meant by incapacity."<sup>57</sup>

To assess the presence or absence of capability, two factors need to be considered:

**The Benefit Derived from Enjoining Good and Forbidding Evil:** If the person's action of forbidding the evil does not lead to the prevention of the evil, based on their belief, then enjoining good and forbidding evil is not obligatory for them.

**Safeguarding the Person from Harm:** If the person fears harm from the wrongdoer or others as a consequence of their action in forbidding evil, then the obligation to forbid the evil is lifted. If these two factors coincide, there are four possible scenarios:<sup>58</sup>

By considering these three forms of incapacity and the absence of harm, we can categorize the situations into four scenarios:

**Absolute Capability:** When a person has full capacity and taking action can effectively prevent the evil, without fearing any harm. In this case, enjoining good and forbidding evil becomes obligatory.

**Partial Capability:** When a person knows that forbidding the evil would be ineffective in preventing it and may cause harm to them. In this case, the obligation to enjoin good and forbid evil is lifted, but it is recommended to do so to demonstrate Islamic values and remind people of their religious duties.<sup>59</sup>

In this scenario, the person knows that forbidding the evil upon the wrongdoer will have no impact on preventing them from committing the evil act. At the same time, the person does not fear any harm that might result from the wrongdoer due to the prohibition.

According to Imam Al-Ghazali, in such a situation, enjoining good and forbidding evil is not obligatory because it would not lead to the desired outcome of preventing the evil. However, it is still recommended (mustahabb) to do so for the sake of displaying the symbols of Islam and reminding people of religious obligations.<sup>60</sup>

In this context, the person's action of enjoining good and forbidding evil serves as a visible expression of Islamic values and principles. While it may not have a direct impact on stopping the wrongdoer, it helps maintain

the public awareness of the importance of adhering to religious teachings and maintaining moral standards.

**Absolute Incapacity:**

In this situation, the person knows that forbidding the evil upon the wrongdoer will lead to harm or retaliation against them. However, the person goes ahead and enforces the desired outcome, which is to stop the evil act. For example, the person may break a bottle of alcohol or disable a musical instrument used in sinful activities, knowing that the wrongdoer might retaliate and harm them in return.

According to Imam Al-Ghazali, in this case, enjoining good and forbidding evil is not obligatory (not wajib) and is not forbidden (not haram); rather, it is commendable (mustahabb). This is because of the positive impact it has in removing the evil or preventing it from occurring in the future, as well as other potential benefits.<sup>61</sup>

**The Fourth Condition: Knowledge:**

To be knowledgeable about the rulings of the Islamic Sharia regarding what is commanded and what is prohibited. The standard for goodness and badness is what is revealed in the Islamic law, and there is no place for personal opinions except with the guidance of the light from the Book of Allah and the Sunnah of His Prophet, peace be upon him. Ignorance of Islamic rulings can lead one to consider something good that is actually considered bad in the eyes of the Sharia, and vice versa. This poses a great danger and a significant calamity, especially when such ignorance comes from rulers who are supposed to uphold and enforce the laws of Allah upon the people; this becomes an even greater peril and a more substantial disaster.<sup>62</sup>

The one who commands others must know that what they are commanding is considered good, just as the one who prohibits others must know that what they are forbidding is considered evil. Therefore, they must be well-versed in what they command and what they prohibit, just like a doctor cannot treat a patient without understanding the disease and the medication together.

Allah says: "Say, 'This is my way; I invite to Allah with insight, I and those who follow me.'" (Quran, Surah Yusuf, 12:108).

This verse emphasizes the necessity of insight (basirah) as the clear evidence.<sup>63</sup>

This condition pertains to matters that require independent reasoning (ijtihad). As for the matters that are well-established in the religion, the judgment (hukm) concerning them is for the general Muslim population, as there is no room for independent reasoning.<sup>64</sup>

This does not imply that one must be knowledgeable about all the principles, branches, generalities, and specifics of Islamic jurisprudence. It suffices to be knowledgeable about the apparent wrongdoings (al-munkarat), such as refraining from major sins like prayers, zakat, fasting, and

committing adultery and other evident violations of the Sharia. But if one is ignorant and simple-minded, it creates an opportunity for mischief-makers to declare their corruption openly without fearing consequences, and it becomes evident to the pious observers. This kind of affliction makes the wise laugh, and the worst affliction is what makes them laugh.<sup>65</sup>

### **The Second Topic: Differences regarding the Conditions**

The jurists have differed on whether it is obligatory for those who combat crime to meet the conditions of justice and possess the authority, imamate, and male gender. I will present their opinions regarding each condition as follows.

#### **The First Condition: Justice (عدالة)**

Justice, in linguistic terms, means uprightness.<sup>66</sup>

In Islamic terminology, it refers to being upright on the path of truth by abstaining from what is prohibited by the Sharia. It is a firm quality within oneself that prevents its possessor from committing major sins and persisting in minor sins. Ibn Abidin stated in his commentary, "The best explanation of justice is that the person avoids major sins, does not persist in minor sins, and their righteousness outweighs their corruption, and their correctness surpasses their errors."<sup>67</sup>

Some consider justice as a condition for enjoining what is right and forbidding what is wrong, while others do not consider it a condition.<sup>68</sup>

#### **The First Opinion: Evidence of Those Who Consider Justice as a Condition**

According to this opinion, it is essential for the enjoiner of good and the forbider of evil to be just and not a sinner. One of the indications of their justice is that they act upon what they know and do not contradict their words with their actions. The proponents of this view cite evidence from the Quran and Sunnah.

For example, they cite the verse: "Do you order righteousness of the people and forget yourselves while you recite the Scripture? Then will you not reason?" (Quran, Surah Al-Baqarah, 2:44)<sup>69</sup>

They also cite the verse: "O you who have believed, why do you say what you do not do? Great is hatred in the sight of Allah that you say what you do not do." (Quran, Surah As-Saff, 61:2-3)<sup>70</sup>

Furthermore, in the interpretation of the verse: "And those are the successful," it is mentioned that the sinful person is not qualified to enjoin what is right and forbid what is wrong. The reason is that this verse indicates that those who enjoin what is right and forbid what is wrong are among the successful, and the sinner is not among the successful. Therefore, it is necessary for the enjoiner to be just and not a sinner.<sup>71</sup>

The evidence from the Sunnah (traditions of Prophet Muhammad, peace be upon him) supporting the first opinion, which considers justice as



a condition for enjoining what is right and forbidding what is wrong, is the following Hadith:

Usamah bin Zaid reported that he heard the Messenger of Allah (peace be upon him) saying, "A man will be brought on the Day of Resurrection and thrown into Hell, and his intestines will pour forth, and he will go round them as a donkey goes round a millstone. The denizens of Hell will gather around him and say, 'O so-and-so! What has happened to you? Were you not enjoining us to do what is right and forbidding us to do what is wrong?' He will reply, 'Yes, I was enjoining you to do what is right, but I was not doing it myself, and I was forbidding you to do what is wrong, while I was doing it myself.'"72

This Hadith is used as evidence to show that those who combat crime and enjoin what is right should be just themselves. If they neglect their own duties and engage in sinful acts while urging others to do good and refrain from evil, they will face severe consequences on the Day of Judgment.

The second evidence is based on rational reasoning. It emphasizes that guiding and reforming others is a subsidiary of being guided and upright oneself. Similar to how one cannot straighten a crooked shadow or stick without being straight oneself, a person who is not righteous in their own actions cannot effectively guide and reform others.73

#### **The second opinion: Not stipulating Justice:**

who does not consider justice as a condition, allows those who are not just to enjoin what is right and forbid what is wrong, except in situations where they commit a sin and then prohibit others from doing the same. In such cases, it is acknowledged that their words may not hold weight due to their known sinfulness.74

Evidence for this opinion:

#### **Firstly, from "The Book" (Quran):**

Allah's saying: "You are the best nation produced [as an example] for mankind. You enjoin what is right and forbid what is wrong" (Quran 3:110).75

And His saying: "Let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong" (Quran 3:104).76

And His saying: "And cooperate in righteousness and piety, but do not cooperate in sin and aggression" (Quran 5:2).77

The argument here is that these verses are general and apply to all aspects of goodness and evil, and therefore, it implies that justice is not a condition for society's role in combating criminal offenses.

#### **Secondly, from the Sunnah:**

Narrated by Anas bin Malik: We said, "O Messenger of Allah, should we not ask for goodness and avoid evil until we perform them?" He said, "No, enjoin what is good and forbid what is evil, even if you are not doing

it. And forbid what is evil, even if you are not avoiding it" (Sunan Ibn Majah).<sup>78</sup>

The argument based on this Hadith is that justice requires fulfilling all the religious obligations and abstaining from all sins, and the Prophet (peace be upon him) did not make that a condition.

**Thirdly, Consensus (Ijma'):**

Likewise, in terms of consensus (ijma'), the requirement of being free from sins for the enjoiner and the forbider is considered an extreme view that contradicts the consensus. The Companions (may Allah be pleased with them) used to hold people accountable for committing evil deeds despite not being infallible, except for what lies beyond their capability.<sup>79</sup>

**Fourthly, the Rational Aspect:**

The one committing evil should forbid himself from it because the commitment and denial of evil are both obligations for him. By neglecting one of these obligations, the other obligation does not fall off.<sup>80</sup>

For example, a sinner is obligated to enjoin what is good since it is obligatory for him to abandon that evil action. Simultaneously, he is obligated to forbid that evil action. If he neglects one of these obligations, it does not necessitate neglecting the other obligation. Therefore, rectifying others is not intended for the rectification of oneself, and the rectification of oneself is not intended for the rectification of others. The judgment on this matter depends on one's reasoning. The rational person prioritizes what is important for oneself over what is important for others.<sup>81</sup>

Al-Qurtubi stated, "Being just is not a condition for the enjoiner and forbider, according to the people of the Sunnah, as justice is limited to a few individuals. Enjoining what is good and forbidding what is evil is a general obligation for all people."<sup>82</sup>

Al-Nawawi's explanation also stated, "Being complete in adherence to what one enjoins and refraining from what one forbids is not a condition for the enjoiner and forbider. Rather, one must enjoin and forbid even if they themselves fall short in acting upon what they enjoin and refrain from what they forbid. Therefore, they must apply the enjoining and forbidding to themselves and others. If they fail in one aspect, how can they be allowed to neglect the other? Enjoining what is good and forbidding what is evil is not limited to the rulers; rather, it is permissible for any individual Muslim."<sup>83</sup>

Therefore, performing the act of "Ihtisab" (enjoining good and forbidding evil) is a religious obligation like other Islamic duties. Its fulfillment does not depend on doing more than what is required or having qualifications beyond the necessary requirements. It is not a requirement for the enjoiner to be just according to the jurists in their definition of a just person. The command of the enjoiner or the forbider involves recommending virtuous actions, and the truth should be followed and accepted regardless of the speaker's actions and behavior.<sup>84</sup>

In addition to those who hold the opinion that justice is not a condition for enjoining good and forbidding evil in general, they make an exception for advising and exhorting. They argue that the one who commits a sin should not forbid others from it if they are aware of their own sinful behavior. This is because their advice in such a case would be unappealing to people, and it is said that there is no benefit in advising such a person. Since their sinful conduct affects the effectiveness of their advice, the obligation of enjoining good is then undermined. However, compulsory authority, known as "Al-Hisbah Al-Qahr," which is exercised by an appointed governor or authority, does not require justice as a condition in this context.<sup>85</sup>

### **Preferable Opinion**

The opinion that seems more reasonable is that justice is necessary for those who voluntarily undertake the responsibility of enjoining good and forbidding evil through advising and exhorting. This is because advising a sinner is ineffective when their sinful nature is well-known, and the impact of their sins weakens the credibility of their words. If the benefit of their advice is lost, then the legitimacy of enjoining good in their case is also lost. However, the Hisbah Al-Qahr, which relies on the authority of a ruler and the strictness of governance, does not require justice as a condition in this context.<sup>86</sup>

Indeed, it appears that justice is not a prerequisite for appointing individuals to the position of Hisbah (enjoining good and forbidding evil), as demanding justice as a condition would make it extremely rare to find suitable candidates for such a role, especially in contemporary times. It is challenging to find individuals who possess all the desired qualities for the position while also being entirely just. In many cases, even among the righteous, there may be deficiencies in knowledge or personal shortcomings. The combination of strength and trustworthiness in people is scarce.

The saying of Umar ibn Al-Khattab (may Allah be pleased with him), "O Allah, I complain to You about the weakness of faith and the lack of trustworthiness," highlights the difficulty in finding individuals who possess both qualities in full measure.<sup>87</sup>

Considering the scarcity of individuals who meet all the ideal qualifications, insisting on justice as an absolute condition for Hisbah would lead to an inadequate or almost non-existent pool of potential candidates. In such circumstances, it may be more practical and beneficial to appoint individuals who possess the necessary qualities and skills, even if they are not entirely just in the strictest sense.<sup>88</sup>

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Therefore, the opinion that justice is not a prerequisite for enjoining good and forbidding evil seems more valid. It is not reasonable for a sinful act to become a reason for nullifying another obligation, just as it is not

sensible to say to someone who has committed a sin that they should commit another sin by neglecting the forbidding of evil.

### **Second Condition: Permission of the Imam**

If there is a disagreement among jurists regarding the requirement of justice, there is also a disagreement regarding the requirement of the Imam's permission concerning enjoining good and forbidding evil. The majority of jurists believe that the permission of the Imam or ruler is not necessary. Some believe that enjoining good and forbidding evil is not for the general public, but rather the Imam must authorize it. The third opinion is that of the Rawafid.

#### **First Opinion: Majority's Opinion of Not Requiring the Imam's Permission**

Supporters of this opinion argue for its correctness based on the generality of the verses and traditions related to enjoining good and forbidding evil. They argue that whoever sees evil and remains silent about it has disobeyed, thus it is obligatory to forbid it wherever and however it is seen. Therefore, the specification of requiring authorization from the Imam is a judgment without basis.<sup>89</sup> The righteous predecessors used to enjoin good and forbid evil even on rulers and governors themselves. If the Imam or ruler commits an act that necessitates forbidding, why would one need their permission? Imam al-Haramayn al-Juwayni is reported to have said by consensus of the Ummah that there is no need for the Imam's permission to perform this duty.<sup>90</sup>

#### **Second Opinion: Arguments Favoring Requiring the Imam's Permission**

Some jurists have argued for the requirement of the Imam's permission to carry out the duty of enjoining good and forbidding evil, denying individuals the right to do so themselves. They rely on the saying of the Prophet Muhammad (peace be upon him): "Whoever among you sees evil..." This hadith implies that changing evil is an appointed rank beyond mere advice, thus it requires specific authority.<sup>91</sup> Therefore, it becomes one of the prerogatives of rulers. The Imam or ruler can select those capable of performing this function well, and leaving it to individuals without conditions will lead to corruption and discord.<sup>92</sup>

They also argue that enjoining good and forbidding evil establishes authority and guardianship over the person being commanded, similar to how the Muslim is not obligated to obey the disbeliever despite it being a right. Hence, it is appropriate that the subjects are not obligated to obey individuals without authorization from the ruling authority.<sup>93</sup>

#### **The third opinion: The opinion of the Rawafid:**

They believe that enjoining good and forbidding evil is not permissible unless the infallible Imam, whom they consider the true Imam, emerges.<sup>94</sup>

This opinion is not correct because if the infallible Imam does not emerge, it does not become obligatory to fulfill this duty. Imam al-Ghazali refuted this opinion, saying in response to them: "When you come to the judiciary seeking your rights in your blood and wealth, our support for you and extracting your rights from those who wronged you is enjoining good and forbidding evil. Your seeking of your rights is among the acts of enjoining good. This is not the time for forbearance against injustice and seeking rights, just as you assume that the true Imam has not yet emerged."<sup>95</sup>

The prevailing opinion is what the majority adheres to, which is not requiring the permission of the Imam to fulfill this duty, for the strength of their evidence and because the practice has always been to act upon the opinion of the majority, not requiring the Imam's permission for those who undertake the duty of enjoining good and forbidding evil. This practice has continued throughout history, even during times when the Imam had delegated authority to specific individuals. This delegation did not prevent individuals from fulfilling this duty, and the precedent of the early generations persisted, as they unanimously agreed to dispense with authorization. Therefore, whoever enforces good, if the ruler is satisfied with it, that is fine; but if the ruler is displeased, and his displeasure constitutes evil, it must be opposed. So how can one need to take their permission to oppose it.<sup>96</sup>

### **Third Condition: Gender**

Jurists have differed regarding the requirement of gender in relation to enjoining good and forbidding evil. The majority have concluded that this condition is necessary to fulfill this duty, while the Hanafis and Ibn Hazm have argued that it is not necessary.

#### **1- Evidence of the Majority:**

1- The saying of the Prophet Muhammad (peace be upon him): "A people will never succeed who make a woman their leader."<sup>97</sup> The reasoning behind using this hadith is that the Prophet (peace be upon him) prohibited the leadership of women, including enjoining good and forbidding evil, under the concept of leadership, hence it is included in the prohibition.

2- Fulfilling this duty requires knowledge of apparent and hidden wrongdoings, and women are often unaware of the tricks of traders and merchants, as well as the various methods of deceit and fraud. It also leads to their mingling with perpetrators of evil from the base and immoral elements of society. Therefore, it is not permissible for them to undertake this duty to protect them from suspicions.<sup>98</sup>

#### **2- Evidence of the Hanafis and Ibn Hazm:**

1- Ibn Hazm argued based on what was narrated from Umar ibn al-Khattab (may Allah be pleased with him) that he appointed a woman in his community as a supervisor of the market in Medina.<sup>99</sup> If it was not permissible, he would not have appointed her, and the Companions did not object to this appointment. The hadith "A people will never succeed who make a woman their leader"<sup>100</sup> is interpreted to refer only to general leadership, i.e., the caliphate, and does not include other forms of leadership.

2- The hadith of the Prophet Muhammad (peace be upon him): "Each of you is a guardian and each of you is responsible for his subjects..."<sup>101</sup> The justification for using this noble hadith is that the Prophet (peace be upon him) affirmed the woman's guardianship, which is comprehensive and includes enjoining good and forbidding evil among other responsibilities.

3- The consensus among Hanafis is that women are permitted to adjudicate in all matters except for legal punishments (hudud), because a woman's testimony is valid, so her adjudication in matters is permissible as well.<sup>102</sup> The reasoning behind this is that a woman can fulfill the duty of enjoining good and forbidding evil, because guardianship in adjudication is stronger than in enjoining good and forbidding evil according to the Hanafis, and permitting the stronger implies permitting the weaker as a matter of preference.

The prevailing opinion is the permissibility of women fulfilling the duty of enjoining good and forbidding evil according to the Hanafis and Ibn Hazm, which is a prevailing opinion due to the strength of their evidence and their rebuttal of opposing evidence. Furthermore, the Quran has stated the responsibility of women in matters related to calling to goodness, enjoining good, guiding towards virtues, and forbidding vices, linking them with men in this responsibility. Therefore, it is not part of Islam for women to refrain from enjoining good and forbidding evil based on assumptions or misconceptions that it is exclusively a male domain. Nor is it part of Islam for women to leave their share of this responsibility solely to men, arguing that men are more capable of it, or that it is of a nature that women cannot undertake. Each has their sphere, and life cannot function properly without the cooperation of both genders in what uplifts their community. If one of them hesitates or fails, the course of serious life deviates from its righteous path.<sup>103</sup>

### ***Third Pillar: The Conditions of the Criminal (حال المجرم) in Islamic Jurisprudence***

The Islamic Perspective on the Criminal: Islamic Sharia, being lenient, views the criminal as someone who has deviated from the right path. It aims to take their hand and guide them back to the right path. The Prophet Muhammad, peace be upon him, advised to show gentleness towards those upon whom punishment is executed, refraining from cursing or insulting them. This is evident in the following narrations:



Abu Huraira reported: "A man who had drunk wine was brought to the Prophet (peace be upon him), and he ordered them to beat him. Some of the people struck him with their hands, some with their garments, and some with their sandals. When he went away, some people said: May Allah disgrace you! Upon this the Messenger of Allah (peace be upon him) said: Do not help the devil against him."104

There was a man during the time of the Prophet Muhammad (peace be upon him) known as Abdullah, nicknamed "the Donkey," who used to make the Prophet laugh. Once, he was brought to the Prophet (peace be upon him), and he ordered that he be flogged. Some people said, "May Allah disgrace him! How often he is brought!" The Prophet (peace be upon him) said, "Do not curse him, for by Allah, I know that he loves Allah and His Messenger."105

Thus, Islamic Sharia does not view punishment as a form of revenge or satisfaction against the criminal, as is the case in some man-made laws. Instead, it sees punishment as a deterrent and purification for the offender from the sin they have committed, considered disobedience to their Creator.

Islam stands with the criminal after the commission of the crime to rectify what is within them that led them to deviate. Allah, the Almighty, says: "Indeed, the soul is inclined to evil, except whom my Lord has mercy upon." (Quran 12:53)106

Islamic Sharia preserves the dignity and humanity of the individual, even if they have been blinded by desires and succumbed to temptations, by guiding them back to the right path. Sometimes, it takes their hand to encourage repentance to Allah. It calls people to cover up their faults. If punishment is necessary, it is merciful towards the individual, ultimately aiming to rehabilitate them and reintegrate them into society as righteous individuals, except for some punishments aimed at eradicating criminals and corruptors from the earth, which aim at general deterrence and the prevention of mischief-makers.

As for the conditions of the criminal, it is not required that they be mature and sane. Thus, Imam Al-Ghazali adjusted the definition of wrongdoing from the term "sin" to the term "prohibited act," because wrongdoing is broader than sin, as it includes what the non-responsible person commits, such as the insane and the minor.107 For example, if a child drinks alcohol, it is prohibited for them, and they are held accountable for it.

It is not required that the perpetrator of the prohibited act be distinguished. For instance, if a mad person commits adultery or has intercourse with an animal, they must be prevented, despite not being responsible for their actions, because allowing society to fight crime is based on an objective basis, looking at the act (the crime) itself without considering the criminal responsibility of its perpetrator.

Society's role in combating crime is to prevent wrongdoing for the right of Allah, which includes preventing the various forms of wrongdoing. Preventing

the mad from adultery and the coming of animals to the right of Allah, and likewise, preventing the child from drinking alcohol.<sup>108</sup> The requirement is that the act prohibited for him be considered prohibited, even if the least requirement in this regard is to be a human being. This raises the question of why animals are prevented from damaging others' crops and property.

The jurists answered this question by agreeing on the necessity of prevention due to the presence of the reason for allowing prevention, and the detail is that if a person destroys another's crops, they are prevented from it out of consideration for two rights:

**The first: The right of Allah**, Exalted and Glorified, which the Muslims carry out in their property. Allah has commanded their preservation and protection. The second: the right of the damaged person, who is the owner of the property damaged by the perpetrator of the wrongdoing, who is harmed by the destruction and loss.

It can be said that preventing animals from destruction is in consideration of the right of the owner of the crops, as if the animal destroys them, the wrongdoing will be eliminated. However, prevention is confirmed based on one of the two reasons, which is consideration for the right of the owner of the damaged property, as the aim is not to prevent the animals but to preserve the property because the action of the animal itself is not considered wrongdoing.

Therefore, if an animal eats a dead animal, drinks from a vessel containing wine, or water mixed with wine, it is not prevented from doing so, but if possible, the property of the Muslim should be preserved from loss.<sup>109</sup>

One of the issues that must be highlighted is that combating crime is a general obligation, not standing against a special relationship between the crime fighter and the perpetrator of the crime. This is confirmed by the wise saying in the verse: "O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness." (Quran 5:8)<sup>110</sup>

In reality, some special relationships between the crime fighter and the perpetrator of the crime, such as the relationship of a child with their parents, a wife with her husband, or the subjects with the ruler, may affect the means used by the crime fighter. Still, it does not affect the general obligation of enjoining what is right and forbidding what is wrong, regardless of the special relationships that connect the enjoiners of good and forbid evil to those they are addressing, commanding and forbidding. Therefore, a Muslim must enjoin his parents to do what is right, forbid them from what is wrong, and show them mercy.<sup>111</sup>

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