

Concept of *Jizyah* under Islamic Law and The Historical Factors Contributing to its Decline

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Abstract

Jizyah is a tax imposed on non-Muslim inhabitants in an Islamic state. The tax is usually levied on adult male non-Muslims who can work, and earn a living. *Jizyah* taxation has been exposed to various stages of development from the prophetic era till the fall of the Islamic state. These stages must be addressed during discussions of the present status of *jizyah* due to the influence of the former on the latter. *Jizyah* was an important economic product of the Islamic State across centuries till its abolishment after the fall of Ottoman empire. Moreover, several modes of taxation have been invented in contemporary times, but most of them are afflicted with rejection from the majority of Islamic jurists. This phenomenon always discourages Muslim countries to involve in many fiscal policies. This work examines the development of *jizyah* under Islamic law, and the factors responsible for its current extinction. The study is library-oriented, where several Islamic primary and secondary sources were relied upon. The author proposes that there is no need to agitate for Islamic state restoration to facilitate revival of *jizyah*, and benefit from its economic impacts during the twenty-first century. However, conciliatory *jizyah* should be considered for remodelling to tackle some fiscal challenges that may face some Muslim countries that are restricted by Islamic law while advancing their fiscal policies.

Keyword: *Ganīmah, Zakāt, Jihad, Dhimmis, Muwāda‘ah, Tax.*

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Introduction:

Jizyah is a tax that non-Muslims living in Islamic states were required to pay as a form of protection and exemption from military service. The tax was usually levied on non-disabled adult males who were not Muslims, and the amount varied depending on their wealth and status. The payment of *jizyah* indicates *dhimmi*'s submission to Muslim rule and reinforces the superiority of Islam over other religions. However, the tax should not be oppressive or discriminatory, as it was also levied on Muslims in the form of *zakāt*, a compulsory charitable donation.

According to Eliyahu (2019), the chances of *jizyah* to continue demonstrating its economic impacts in contemporary time has been blocked from the end of the Islamic state till now due to different challenges encountered by *jizyah* application that are traceable to the falling of the Ottoman empire. Accordingly, *jizyah* cannot continue with its part in public services and social well-being because it has lost its position in society since the fall of the Islamic state.

Further, if someone compares the circumstances of the states in the Muslim world today and the bases of the determination of citizenship, it would be perceived to be something different from what was available in the early days of Islam up to the Ottoman Empire. It is challenging to describe any state as an Islamic state now. Citizenship of states in contemporary times is neither dependent on religion nor ethnicity. (Amoloye, 2014).

Conventional taxes are afflicted to rejections from the majority of Islamic jurists unless there is a circumstance that renders its imposition to be necessary due to insufficiency in government funds to finance necessary expenses that is due for attention. In such a situation the Islamic law maxim: "*mā lā yatimmu al-wājib ilā bihī fahuwa wājib*" (i.e., when an obligation will not be executed, except with an antecedent, the antecedent will become mandatory) will therefore, applies. (Raden-Bamband, 2019, p.263)

This work attempts to demonstrate the significance of *jizyah* as a means of generating revenue in the Islamic state and to examine what has operated for centuries concerning some challenges that encountered its application at a time in order to open the way for studies on how to revive *jizyah* amidst those challenges. This will help to solve the financial dilemma that may emerge from the negating position of

the majority of scholars towards conventional tax. The scope of the work will include the concept and evolution of *jizyah*, and the role of the Islamic State, jihad, and *maṣlahah* in the application of *jizyah*.

Concept of Jizyah:

It is indispensable to elaborate on the concept of *jizyah* at the foremost of this work, being the most critical word in the title. Without it, the remaining word will be rendered valueless. However, the concept of *jizyah* will be discussed based on some crucial dimensions.

Jizyah, similar to other Islamic law terms, also has two categories of meaning: linguistic and legal. Hence, linguistically, according to Al-Jawharī quoted by Bun-Manzūr (1984) & Al-Fayūmī (2010), *jizyah* means a duty usually collected from dhimmis. Its root is from *jazā'*, i.e., reward as if its payers give it to the Islamic State for not being killed.

However, jurists have different views in determining the proper legal meaning of *jizyah* according to their disagreement on its nature and the obligation of its payment by those conquered with force. According to the Hanafī and Mālikī schools of thought: it is a name given to anything collected from dhimmis either forcefully or voluntarily. (Ibn Nujaym, 2010). According to Shāfi'ī, *jizyah* is the property collected voluntarily from the dhimmis to accommodate them in our home or save their lives and properties. (Al-Hisnī, 2010). Moreover, Hanbalī jurists define *jizyah* as the property to be collected yearly from dhimmis (i.e., non-Muslims living under the protection of the Islamic state) in the way of humiliation in place of their lives and staying on our land. (Al-Hijāwī, 2010).

Based on the above definitions of the four Sunni schools of law, it is evident that they all agreed that *jizyah* is a special tax usually imposed on dhimmis. However, their divergence was only on whether those conquered with force were among those who must pay *jizyah*. They also disagree on the nature of collecting *jizyah* in terms of humiliation and the purpose, as observed from the above definitions.

Generally, *jizyah* has some sets of conditions which are conditions for its obligation and its validity. Al-Hisnī limits the conditions of its obligation to five in number. They are; sanity, majority, freedom, manhood, and being a member of *Ahl al-kitab* (i.e., People of the Book, such as the Jews & the Christians) or their likes. (Al-Hisnī, 2010).

However, the validity of *jizyah* contract has two conditions. They are the Imam or his deputy who will be the ones to state the

terms of the *jizyah* contract in the contractual place and an acceptance of the *jizyah* offer based on the terms stipulated by the Imam: (Ibid). Based on that, the dhimmis must agree to comply with Islamic rulings. They must also agree to pay a fixed amount as their *jizyah*. (Ibid).

Generally, the expenditure from *jizyah* income is similar to that from fay (booty) income, which should be used to finance public projects, according to the jurists. (Al-Zayla'ī, 1896; Bun Rushd, 1975).

However, after the death of the Prophet, the income from *jizyah* is to be spent on the public interest, which includes; security, defence, solidarity works, and social amenities such as the construction of school buildings, mosques, roads, and the like. This is contrary to the position of Shāfi'ī that believe that the moveable portion of fay should be shared among the five parties mentioned in the verse of *ganimah* (booty). However, they agree with other jurists regarding 4% of the whole moveable properties that they can be used for public interest since it remains the share of the Prophet after his death based on their perspective. They also agree on the whole immovable portion. (Al-Zuhailī, 1433).

Evolution and Development of *Jizyah*:

Jizyah had been in vogue before the advent of Islam. The Persians often impose *jizyah* on the less privileged among their citizens. However, the Eastern Roman kingdom also levied heavy taxes on every nation they conquered as they collected a minimum of 15 dinars and a maximum of 19 dinars from those within the age limit of 14-year-old and sixty years old, except the children of the warriors. (Ziauddin, 1995; Hāshim, 2017). Nevertheless, with the outset of Islam and the prophethood of the Messenger of Allah, *jizyah* was implemented most reasonably in the history of the world. (Hāshim, 1995). Hence, below are the different stages of growth and development of *jizyah* during the lifetime of the Messenger of Allah:

The Prophet - during his lifetime - coexisted in Medina with Jews and other groups of non-Muslims for eight, or nine years - based on different narrations -. However, he allowed them to enjoy complete protection and grant them full social and political status as the Muslims without imposing *jizyah* on anybody. Moreover, the Charter for the foundation of the Islamic state at Medina contains no provision for *jizyah*. (Bun Al-Qayyim, 1994; Bun Kathīr, 1999).

After the conquest of Mecca in the year 8, Allah ordered the Prophet to fight the people of the book (Jews & Christians) and accept *jizyah* from those not embracing Islam among the conquered ones. They were, in return, granted complete protection of their life, property, and religion. (Suhas, 2008; Uthmān, 2009).

However, the Prophet acted based on the instruction of his lord, and he sent messages to various rulers of the unbelievers. His messages contain his request for them and their people to embrace Islam, pay *jizyah*, or face Muslim troops. Some of them accept Islam, such as Negus of Ethiopia. At the same time, some of them subjected themselves to paying *jizyah* like the people of Yemen, and some refused to surrender themselves to the Islamic authority, such as *Kisrā* emperor of Persia (now Iran). (Abu 'Ubaid, 2007; Abdulhayy, 2010). Among the sets of people on whom the Prophet imposed *jizyah* were the people of Najrān, the people of Yemen – among them are Arab -, the people of Bahrain, which are *Majūs*, the people of Udhruh (a town in Jordan), the people of Djerba (in Tunisia), the people of Maqnā town (in Saudi Arabia), etc. (Al-Khuzā'ī, 1985; Hāshim, 2017).

Based on several narrations, the Prophet has included the men, the women, the freemen, and the slaves, unlike minor ones who should pay one dinar each as their *jizyah* rate according to his message sent to the rulers of Hāmīr land. (Bun-Jarir, 1987; Bun-Manzur, 1984).

However, there is no uniformity in the rate of *jizyah* imposed by the Prophet on the various tribes of Arabia. For instance: the Prophet levied 2000 Hulla on the people of Najrān. He directed Mu'āz to collect one dinar from the people of Yemen and agreed for the people of Udhruh to pay 200 Dinars every month of Rajab. Further, he required the people of *Khaibar* to give half of their farms' products, etc. (Uthmān, 2009; Ziauddin, 1995).

During the regime of Abūbakri, Iraq areas, and some other towns were conquered. Therefore, there was more advancement of sources of *jizyah* revenue during his regime. (Basher). Abūbakri imposed different rates at different times on the same people due to the repetition of agreement. For instance, Hīrah started with the payment of 1000 *dirhams*. Then they paid 60,000 *dirhams*, 70,000 *dirhams*, and later on, 84,000 *dirhams*, 90,000 *dirhams*, 100,000 *dirhams*, 190,000 *dirhams*, 400,000 *dirhams*. There is an initiative to pay *jizyah* in bulk, as applied to Hīrah people. Abūbakri related to those whose lands were conquered peacefully the same way he related to other people,

as he did to the Sawād villages, where he collected their *jizyah* in bulk. (Al-'Umrī, 1994).

During the era of Umar, there was more expansion in the sources of *jizyah* as Iraq, Shām, Iran, and Egypt was conquered. (Al-'Umrī, 1414) His government is well-known for justice, tolerance, and consideration of the payers' ability while collecting *jizyah*. Accordingly, he has relieved some people from paying *jizyah* due to their inability. He has added to the rate levied on the people of *Shām* for the surplus in the city, unlike Yemen and the like. Moreover, his government made three days of hosting (according to some reporters: 1 day) of the *dhimmi* visitors among the Muslims as part of *jizyah* expected to be paid by the people of *Shām* and *Sawād* (south Iraq). Also, his government accepted to collect *jizyah* from the non-Muslims that have insisted on paying it only in the name of charity. (Ziauddin.1995; Suhās, 2008; Abdul-Karīm, 2017; Bun Al-Qayyim, 1994; Bun Qudāma, 1405).

Further, Umar made *jizyah* rate uniform as he divided the population of *jizyah* payers into three categories as follows:

Table 1.1: Tabular Explanation of *Jizyah* Payment Based on The Three Classes

Yemen		
	Dinar (gold coin)	Equivalent in grams
Every one eligible	1	4.25
Iraq		
	Dirham (silver coin)	Equivalent in grams
The rich	48	142.80
The middle class	24	71.4
The workers	12	35.7
Egypt & Sham		
	Dinar (gold coin)	Equivalent in grams
The rich	4	17
The middle class	2	8.50
The workers	1	4.25

Source (Abdul-Karīm, 2018)

There is no reliable report on the total amount of *jizyah* collected during the time of Umar. However, some reports indicate some districts' total amount of *jizyah* revenue. For instance, Māwardiy fixed the limit of 120,000,000 dirhams as the total income from *jizyah* revenue generated only in Sawād. (Ziauddin.1995; Suhās; Abdul-Karīm; Bun Al-Qayyim, 1994; Bun Qudāma, 1985).

During Uthmān period, he first attempted to stabilize the control of the Islamic state over the unsettled conquered regions by deploying sufficient troops to ensure total submission of the people therein to the Islamic state authority. Then he conquered new regions, which included Morocco, Al-Andalus, Beyhagh (presently known as Sabzevar), Africa, Tūs, Cyprus Island, and the like. For that reason, the total amount of *jizyah* revenue raised in his regime got beyond 220,000,000 dirhams, whereby 100,000,000 was received from Iraq, 48,000,000 from Egypt, 30,000,000 from Africa, 20,700,000 from Iran, etc. (Al-'Umrī, 1994).

The riot in the time of Ali negatively influenced the advancement of sources of *jizyah* revenue during his regime, where the authority could not expand the region of *jizyah* revenue sources. Their number fell somewhat due to a lack of proper monitoring. Another factor that affected the development of *jizyah* during the Ali regime was the acceptance of Islam from the people of Azerbaijan and the like. (Ibid)

However, during the Omayyad period, there was a significant extension in the lands that the Muslims conquered during the regime of Omayyad. However, the pioneer of their government started his movements by removing the destabilization of an Islamic state that resulted from *fitnah* between him and Ali by sending troops to different areas. This decision has contributed a lot in ending the movement of some dhimmis of Furs and Rome against the payment of *jizyah*. Then, Bukhara, Samaraq, and Tirmidh were conquered by his government, respectively. More lands were conquered during the period of Omayyad under the leadership of different caliphs of Omayyad, such as Pakistan, Andalus, Constantinople, Algeria, Morocco, Cyprus, Marwu, etc. (Nidāu' Al-Imān, n.d.).

Their governments imposed 1 dirham on the rich and poor men that engaged in some craft. Their era experienced some forms of corruption and deviation, especially during the regime of Hajjāj. For

instance, Al-Mahlab Bun Abū Safwan collected assets from those that lacked a surplus of money among Khwarm people, with half of their value, till he received what is equivalent to 50,000,000 dirhams from them. Umar Bun Abdul Azīz later fought corruption during his regime and returned people's belongings to them from Bait Al-Māl. Unfortunately, the effect of Umar reforming operation dies with the end of his government, and the caliphs after him did not follow in his footsteps. (May Allah be pleased with him). (Al-Şallabī, 2008).

During the Abbasside period, more lands were conquered, such as Binzintiyat Empire at Constantinople, Antakya, India, Indus, Nubia land, etc. For instance, the Constantinople ruler agrees to pay 90,000 dinars yearly to Khalifah Al-Mahdī. (PHPBB, 2018).

During this regime, *jizyah* was fixed at 48 dirhams per year for the rich, 24 for the middle class, and 12 for the laborers, and non-Muslims were exempted from military service since the tax paid by them was in lieu of the protection and security provided to him. (Muhammad, 2018).

During the Ottoman period, there were more conquests in Syria, Egypt, Iraq, etc., as the government's need was very high compared to previous governments. However, women, children, incapable ones, and religious men were exempted, and the payers used to be relieved in cases like sickness, arid, and pestilence. Nevertheless, their authority went further to enforce *dīwāniyyah* taxes (other forms of tax not known in the first century) on people, for the higher need of funds during their regime, such as additional *jizyah* to some individuals, 5% of goods from traders and manufacturers, charges on bills issued by the judges on issues like marriage, etc. However, jurists disagree with all *dīwāniyyah* taxes the Ottoman government levied. However, none of them denied that the need for the fund was very high during their time, and Islamic law sometimes relates to the general need the same way it relates to necessity. (Al-Āmidī, n.d.).

Collecting *jizyah* became forceful to the extent that the payers protested against their government. Later, they removed *jizyah* when all Christians and Jews agreed to participate in the military service in response to the government's request and the situation—the agreement was held on February 6, 1856. Islamic state fell with the end of the Ottoman government in 1918 as the national government establishment started in 1920. (Joseph, 2016; Al-Şallabī, 2008; Ashraf, 2008).

Based on the above scenarios, it is evident that most aspect of *jizyah* is subject to *ijtihād*. However, the interest of Muslims and the right of non-Muslims should be duly observant in exercising it to ensure a violence-free application of *jizyah*.

Legitimacy Of *Jizyah* In Islam And The Wisdom Behind Its Legislation:

Jizyah is legitimate according to the Qur'an, *Sunnah*, and *Ijmā'a* (i.e. consensus), which are primary sources of Islamic law. In the Qur'an, Allah says:

Fight against those who (1) believe not in Allah, (2) nor in the Last Day, (3) nor forbid that which has been forbidden by Allah and His Messenger, (4) and those who acknowledge not the religion of truth (i.e., Islam) among the people of the Scripture (Jews and Christians), until they pay the *jizyah* with willing submission, and feel subdued. (Quran: 9:29).

In the *Sunnah*, it is verifiable that the Messenger of Allah always tells his soldiers when they are about to take off for combat, as reported by Sulaimān Bun Buraid through his father: "If they (the non-Muslims) refuse to accept Islam, demand from them the *jizyah*. If they agree to pay, accept it from them and hold off your hands. If they refuse to pay *jizyah*, seek Allah's help and fight them". (Muslim, 2010).

Furthermore, for *Ijmā'a* i.e. consensus, all scholars unanimously agreed on the legitimacy of the imposition of *jizyah*. Abūbākr, Umar, and the caliphs collected it without any objection from their companions. Based on that, it is legitimate by *Ijmā'a*. (Al-Shahūd, 2008).

Some scholars believe that *jizyah* can only be collected from *Ahl Al-Kitāb* as indicated by *Zāhir* (apparent meaning) of the above verse of the noble Qur'an. However, the opinion of those that allow implementation of *jizyah* on all categories of unbelievers - including those that are not *Ahl Al-Kitāb* - is the superior opinion as indicated in the hadith of Buraid whereby the Messenger used a word that is generic to cover all sets of unbelievers. (Al-Jibrin, 2008; Bun Al-Qayyim, 1997).

There are reasons for the enactment of *jizyah* in Islam, like other Islamic rulings; details of this are below: (Al-Jibrīn, 2008).

1. *Jizyah* is a sign of submission to the authority of the Islamic state: This is in line with the explanation of Imam Shāfi'ī on the word "*sāgirūn*" in the *jizyah* verse to be a continuous application of Islamic rule on them, and he claimed that he has also heard that from several learned persons. (Bassām, n.d.).
2. *Jizyah* ensures the safety of disbelievers that are within the boundary of the Islamic state: (Al-Zuhailī, 2012) Ali Bun Abū Talib (may Allah be pleased with him) said: "They pay the capitation tax so that their blood and wealth become like our blood and wealth, immune from all harm." (Bun-Qudāmah, 1985).
3. It was also imposed on the non-believers as a means for their guidance: Al-Qarāfī said: the concept of *jizyah* is worldly damage for the non-believers to prevent them from lasting damage based on the hope that they may later accept Islam. Hence, they are allowed to pay *jizyah* instead of them to be killed. (Al-Qarāfī, 2010, p.23).
4. To enable the non-believers to contribute to government revenue, which is used for the general welfare. (Al-Shuhūd) All citizens must contribute to the treasury, which will be used for public services such as courts, security, construction of roads and bridges, and all other services meant for general consumption. Muslims pay *zakāt* and other alms to support this. It is, therefore, not unfair that such a tax is to be levied on non-Muslims. (Bassām, n.d.).

Types Of Jizyah:

Different scholars have done the divisions of *jizyah* in different parameters. However, based on the consideration of the consent of the payers, it can be divided into two as asserted by Al-Zaila'ī (1896), they are:

1. *Al-Jizyah Al-Sulhiyyah* (Conciliatory *Jizyah*): This depends mostly on the payer's consent and the outcome of their treaty (*sulh*) with the Muslim government. The *jizyah* is always received from those who peacefully surrender to the Islamic authority.
2. *Al-Jizyah Al- 'Anwiyyah* (Forceful *Jizyah*): This lacks their consent because it was imposed on them, after which Muslims conquered them through war.

Shāfi'i and Hanbalī schools of thought did not recognize the above categorization because they believed that the imposition of *jizyah* is always without the payers' consent. (Al-Ramlī, 1431; Bun-Qudāmah, 1985)

Al-Shuhūd, (2008) explained several attributes that distinguished *Al-Jizyah al-sulhiyyah* from *al-jizyah al-'anwiyyah*. Those attributes include:

1. Jurists agreed that the price of *al-jizyah al-sulhiyyah* has no limit, unlike *al-jizyah al- 'anwiyyah*, due to its limitation according to some scholars.
2. There is no stipulation of sanity, majority, and manhood as conditions *al-jiziyah al-sulhiyyah*, unlike *al-jizyah al- 'anwiyyah*.
3. *Al-jizyah al-sulhiyyah* can be paid in a group or individually, unlike *al-jizyah al- 'anwiyyah*, whose payment must be individual.
4. *Al-jizyah al-sulhiyyah* can be imposed on heads or properties, while *al-jizyah al- 'anwiyyah* can only be imposed on heads.

Considering *jizyah* subject - the subject of the matter *jizyah* can also be divided into head *jizyah*, and percentage *jizyah*. Head *jizyah* is usually imposed on heads in which every head must pay a specific price as *jizyah* rate with no regard to the actual quantity of their properties. Percentage *jizyah* is imposed on peoples' properties whereby the tax rate will be fixed to be a certain percentage of someone's property. (Ibid)

Considering various attributes or categories of the payers or not, *jizyah* is of two divisions: non-discriminatory *jizyah*, and discriminatory *jizyah*: In non-discriminatory, there is no consideration for different categories of the payers while fixing *jizyah* amount; every head will instead pay the same amount. Discriminatory *jizyah* is a type of *jizyah* where different rates are imposed on different categories of people. (Ibid)

Based on the consideration of *thaman* (consideration), Al-Shuhūd (2008) divided *jizyah* into three, as follows:

1. *Monitory Jizyah*: This is the type of *jizyah* where money is used as the consideration for its payment.
2. *Commodity Jizyah*: This is the type of *jizyah* where a commodity is used to fulfil its payment.
3. *Mixed -Jizyah*: Money and commodity will be paid simultaneously.

According to Al-Şallābī (2008), *jizyah* can also be divided based on the number of those responsible for the payment into individual *jizyah*, and group *jizyah*. Under individual *jizyah*, every individual will be responsible for himself in terms of payment of *jizyah* because people are to pay their due separately, unlike group *jizyah* where a certain amount is expected to be paid by a particular community of dhimmis in the group. Consequently, leaders of the respected community will be responsible for determining how to contribute the amount and make payment to the authority on behalf of their people.

The Role of The Islamic State in *Jizyah* Application:

Leadership is highly significant in Islamic law. The protection of religion can be ensured through it, and without religion, the life of mankind will remain in jeopardy and distress. In addition to that, the necessity of the nature of mankind in terms of depending on one another calls for the exigency of the existence of their union, which might be threatened without their submission to leadership. (Bun-Taimiyah, 2010)

Bun Hazm (2010) reported an *Ijmā'a* of the Muslim *Ummah*, including the Sunnis and non-Sunnis on the obligation of the existence of leadership as he also reported their consensus on the obligation of the *Ummah* to be submissive to a righteous leader that governs people with Islamic law.

Moreover, based on the tradition of the Messenger of Allah as contained in an authentic Hadith, reported by Abū-Daūd (2010), it is expected from three people when they embark on a journey to appoint one of them as their leader at the time of their journey. Therefore, the need for constituting a government in every district is compelling.

Al-Shuhūd (2008) defined State, in contemporary usage as a big group of people that stay permanently in a particular geographical region and submit themselves to a superior leadership or a particular political system. It shows from the above definition that the state has three components: leadership, which may be any system of leadership, citizens, which is often determined by states of origin; and political region domiciled in a particular area. However, a state will be Islamic when its three components are in a specific form, as explained below:

1. Its leadership must comply with Islamic law regarding the procedures of appointment, the system of ruling, and the like.
2. Its citizens must be the citizens of *Dār Al-Islām* (conquered land by the Islamic state), which involves Muslims
3. Moreover, its region must be *Dār Al-Islām* which consists of lands, oceans, and all places under the control of the Muslims, irrespective of their geographical areas or lengths.

In view of this, an Islamic state is a group of people that stay permanently in *Dār Al-Islām* and submit themselves totally to the Islamic leadership, which is the authorized system of leadership for *Dār Al-Islām*.

The continuous existence of an Islamic state and the nonentity of Islamic leadership cessation in the world imply certain conditions which can be generally categorized under two. They are; jihad and *ijtihād*. (Al-Nadawī, 1990). Jihad, in its general context, includes all sorts of effort that can be devoted to the exaltation

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of Allah's word, whether it is a combating or non-combating effort. (Al-Hamud, n.d.). However, *ijtihād* means exercising an act of discretion in order to deduce *Sharī'ah* rulings from its various sources. *Ijthād* is very important to the Islamic State as implementing Islamic law is essential because *ijthād* is a continuous means to its proper implementation. (Al-Hamūd, n.d.; Al-San'ānī, 1986).

Allah has stated the role of a leader in implementing Islamic law through an instruction from Him directed to the Prophet Muhammad (S.A.W.):

And We have sent down to you (O Muhammad S.A.W.) the Book (this Qur'an) in truth, confirming the scripture that came before it and *Mohaiminan* (trustworthy in highness and a witness) over it (old Scriptures). So, judge between them by what Allah has revealed, and follow not their vain desires, diverging away from the truth that has come to you. (Quran 5: 48)

Since a leader must rule his people according to Islamic law, he needs to exercise some acts of *ijtihād* in deciding on different cases. However, if he cannot do that for his lack of capability or any other reason, he can engage some jurists to do it on his behalf.

The land is of two divisions considering the Islamic State's control over lands. They are *Dār Al-Harb* (non-conquered land by Islamic State), and *Dār Al-Islām* (conquered land by Islamic State). *Dār Al-Harb* consists of the lands under the control of non-Muslims where they are not ruled by Islamic law, and Islamic rites may not be made famous within its environment. On the other hand, *Dār Al-Islām* includes lands controlled by the Muslims and ruled by Islamic law. Muslims are secured and saved within their environment. (Al-Hamūd, n.d.)

This division can be deducted from the injunction of the *Qurā'n* as follow:

Allah has promised those among you who believe, and do righteous good deeds, that He will certainly grant them succession to (the present rulers) in the earth, as He granted it to those before them, and that He will grant them the authority to practice their religion, that

which He has chosen for them (i.e., Islam). And He will surely give them in exchange a safe security after their fear (provided) they (believers) worship Me and do not associate anything (in worship) with Me. But whoever disbelieved after this, they are the *Fāsiqūn* (rebellious, disobedient to Allah). (*Qurā'n* 24:55)

The Islamic state's role in applying *jizyah* is essential because the imposition of *jizyah* is established in the first instance by the Prophet when his government was constituted and gained its reign in the world. (Ziauddin, 1995; 'Uthmān, 2009).

Besides, the expected group for the payment of *jizyah*, i.e., dhimmis, can only exist with the existence of *Dār Al-Islām* since a permanent settlement of the unbelievers is required in *Dār Al-Islām* for them to be Dhimmis in Islamic law. Further, land can only be regarded as *Dār Al-Islām* when it is under the control of the Islamic state, where those that will be subjected to the payment of *jizyah* must subject themselves to the authority of the Islamic state. (Al-Hamūd, n.d.). Moreover, it has also been stated that the imposition of *jizyah* on the dhimmis is in lieu of the security they will enjoy from the Islamic state, where its non-existence will negate the possibility of providing such a service. (Walter, n.d.).

Based on the above, the Islamic state's role in applying *jizyah* concerning the classical scheme remains integral, and without it, all efforts to revive its application will likely yield no positive result.

The Role of *Jihād* in *Jizyah* Application:

Jihād, a condition of the Islamic state and an essential factor influencing *jizyah* application in classical usage has linguistic and technical meanings. The etymological origin of the word *jihād* is derived from *jā-ha-da*, which means exertion or striving. So, "jihad in Islam refers to the maxim of struggle and sacrifice of a Muslim, physically, orally, mentally and materially, in the cause of Islam." (Hayāti, 2012).

According to Hanafī, it is "the calling to Islam and to combat those that refuse to accept it with properties, life, tongue, etc." (Al-

Kāsānī, 1982). However, the majority of the jurists defined it as combating the unbelievers (*kuffār*) for Islamic propagation's sake. (Al-Qairawānī, 1992). Therefore, jihad legally means exerting one's power and efforts to combat the unbelievers (*kuffār*) and to defend their evils with one's properties, life, tongue, etc. (Al-Zuhailī, 1995).

According to Al-Zuhailī (2008), the Imam (political leader) has a significant role in jihad declaration after considering different reasons and several factors that can make the establishment of jihad necessary under the objectives of Islamic law. The Imam will send enough warning to the enemies and may only need to verify whether the Islamic call has already reached them based on the view of some scholars. Imam is the only person the *Ummah* can expect a declaration of jihad from because the role is peculiar to him. Hence, the declaration of jihad has something to do with the existence of the Islamic State, as the Islamic State has something to do with jihad.

Jihād has significantly contributed to the application of *jizyah* as known to the world. To buttress this point, the application of *jizyah*, being a kind of fay, depends on the outcome of jihad in classical times. Moreover, the division of lands into *Dār Al-Harb*, and *Dār Al-Islām* is one of the expected outcomes of jihad; without jihad there will not be a portion of land that will be declared as *Dār Al-Islām* based on the view of the majority of jurists. (Al-Hamud, n.d.) This is because the fundamental principle is that the land of Allah is one. The unexpected change in the fundamental principle of dividing land into two is due to the occurrence of jihad. (Al-Zuhailī, 2008).

Furthermore, it has been discussed earlier that *Dhimmi*'s existence, i.e., the population expected to pay *jizyah*, depends strongly on the existence of *Dār Al-Islām*. Logically, applying *jizyah* cannot be possible without jihad since there is no *Dār Al-Islām* without Jihad. Based on that, there is a tight relationship between *jihād* and *jizyah* application in classical times.

The Role of *Maṣlahah* (Interest) In *Jizyah* Application:

It is not all time that jihad will be the solution to the problems of an Islamic state which hinders the realization of the well-being of the people through *Jalb al-Maṣālih* (i.e., preserving interests), and

Daru' al-Mafāsīd (i.e., elimination of harms). There will sometimes be a need to incline to *muwāda'ah* to achieve a preponderant objective of Islamic law therein.

The word *muwāda'ah* was derived literally from *wad'u* (i.e., *tark*), which means in the English language to leave. Therefore, *muwāda'ah* implies leaving jihad. (Bun Manzūr, 2010) Legally, it is a kind of treaty that occurs between the Imam and the people of *Dār Al-Harb* to ceasefire within a specific period for the interest of the Muslim *Ummah*. (Bun-Hajar, 1960).

However, it was defined by the Māliki as a truce between Muslims and *Harbis* (i.e. opposition in war) concluded to end the physical conflict for a fixed period under Islamic law, while Shāfi'ī defines it as a contract concluded for the sake of ending war for a fixed period with or without compensation. Hanbalī defines it as abstaining from fighting for a fixed period with or without compensation. (Labeeb, 2010). This implies ceasing combat between the two parties for a while. This implies the termination of the Islamic state sources of revenue derived from jihad, i.e., *ghanimah* and *fay*. (Al-Zuhailī, 2012).

The basis for *muwāda'ah* in Islamic law is the verse below:

Nevertheless, if they incline to peace, you also incline to it, and (put your) trust in Allah. Verily, He is the All-Hearer, the All-Knower. (Quran 8:61).

Further, in line with the action of the Messenger of Allah, he agreed with the people of *Mecca* to a ceasefire between the two parties for ten or two years, according to different reports. The treaty was held in *Hudaibiyah*. (Ahmad, 2010).

The jurists believe that the general principle disallows running into *muwāda'ah* treaty with unbelievers, but it is only allowed in the case of necessity. The basis for this claim is the following verses of the noble Qur'an:

Allah said:

So do not become weak (against your enemy), nor be sad, and you will be superior (in victory) if you are indeed (true) believers (Quran 3:139).

According to Bun Ahmad Al-Hanafī quoted by Al-Bābartī (1970), *muwāda'ah* is an indirect jihad because the wisdom behind jihad is the same as the one behind *muwāda'ah*, which is ensuring interest and the preventing of evil. Other names of *muwāda'ah* include *muṣālahah*, *musālamah*, *mu'ahadah*, and *muhādanah* whose all imply peace-making and conciliation. (Al-Zuhailī, 2012).

Considering the existence of *Muwāda'ah* between the Islamic state and the people of *Dār al-Harb* or otherwise, *Dār Al-Harb* can also be divided in two; *Dār Al-Harb Al-Muṭlaq*, which means the land that is under the non-Muslims, and there is no *muwāda'ah* (peace treaty) between the Imam of Islamic State and its land, and *Dār al-Harb Ghair al-Muṭlaq* (also known as *Dār Al-'Ahd*, *Dār Al-Sulih*, or *Dār Al-Muwāda'Ah*), which means the land that is under the control of non-Muslim but *muwāda'ah* (peace treaty) is existing between the Imam and the people of the land. (Al-Zuhailī, 2008).

Al-Sa'adī (1984) observed that *muwāda'ah* between the Muslims and the unbelievers are of three types where the Imam can go for anyone that is of more interest to the *Ummah*:

1. The *muwāda'ah*, where the unbelievers are expected to pay a portion of their properties to the Muslims at once or yearly like *jizyah*.
2. The *muwāda'ah*, where Muslims are the ones to give some of their properties to the unbelievers.
3. The *muwāda'ah* where none of the two parties is expected to pay something to another.

There are several conditions of *muwāda'ah* as suggested by different jurists based on disparities in their manners of approach, as follows:

1. It must be done by the Imam or his deputy based on the view of the majority of the jurists, unlike Hanafī, in compliance with the action of the Prophet. (Bun Qudāmah, 1985).

2. The interest of the *Ummah* must be observed due to the damages caused by *muwāda'ah*, which requires observing an interest that will supersede those damages before running into it, such as considering the weak status of the *Ummah*.(Bun Nujaim, 2010; Al-Shirbīnī, 2010; Al-Bahūtī, 2010).
3. Specifying a time limit: Based on the view of the majority of the jurists, the non-existence of a time limit will lead to total negligence of jihad. Furthermore, Shāfi'ī, among the majority of the jurists, limits the time length to 10 (ten) years when the Muslims are weak and 4 (four) months when they are partially strong. (Al-Shirbīnī, 2010; Al-Haythamī, 2010).
4. It must be free from invalid conditions except in the state of necessity: conditions such as the imposition of *kharāj* (farmland tax) on Muslims, returning the *ghanimah* collected by the Muslims, permitting them to enter *Haram* or to live in *Hijāz*, everlasting discontinuation of combat, etc. However, Hanafī held the view that when such conditions are made, they will be non-enforceable. However, *muwāda'ah* will remain valid because *muwāda'ah* is different from buying and selling, where they entrain ignorance of consideration. (Bun Qudamah, 1985; Al-Shirbīnī, 2010).

According to Al-Asmarī (2000), the sanction of jihad and its followers in law is due to some expected benefits, such as protecting faith, keeping *Ummah* affairs, ensuring harmony, peace, and welfare of humanity, and establishing human rights and justice worldwide, etc. However, benefits often contradict another one superior or equivalent to it. When interest is contrary to its superior, the superior one will be preferable.

In reaction to this dilemma and based on the fact that the status of *maṣlahah* often changes per the differences in time and place, Islam has allowed a kind of treaty that will negate the right of the Islamic state to establish jihad or impose *jizyah* on the unbelievers for a period which is *muwāda'ah*, based on the principle of the *maṣlahah* for its contradiction to a superior *maṣlahah* or an equivalent *mafsadah*. (Al-San'ānī, 1986). This is the nature of Islamic law in several cases, where

several laws have been abrogated by the lawgiver based on the new standard of *maṣlahah* during the period of the Prophet. (Al-Basrī, 1983).

Though, *muwāda'ah* sometimes requires payment of a certain amount by the unbelievers based on the agreement between the two parties. However, *muwāda'ah* tax differs from *jizyah* because *Dār Al-'Ahd* remains part of *Dār Al-Harb*, and *jizyah* is imposed on those who stay in *Dār Al-Islam*. (Al-Hamūdī, n.d).

Conclusion:

This work looked into the application of *jizyah* with some factors that contributed to its successful application in the classical time, such as the existence of the Islamic state, certainty of the *Ummah's* *maṣlahah* in *jihad*, and the declaration of *jihād* by the Imam. Findings show that those enabling factors are not available in contemporary time. This has immensely contributed to the extinction of *jizyah* application in the contemporary era. Given that *jizyah* can be used as an economic growth instrument in every nation, work must be done on designing a workable way of running a *jizyah*-based economic system that will dispense the aforementioned factors. The author posits that conciliatory *jizyah* should be considered for remodelling in a way that all concerned people will be motivated to contribute to national development through *jizyah*. This may solve the dilemma of shortage of funds that may be encountered by Muslim nations that base their fiscal policy on the opinion of the majority of Islamic jurists concerning the lawfulness of contemporary modes of taxation. Since the restoration of *jihād* will cause more harm to the *Ummah*, and may set the world ablaze, a conciliatory approach remains the best option for several Muslim nations to achieve their economic goal.

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