



The State of the Judiciary in Early Islam

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Abstract

Due to the formation and existence of conflicts in human societies from the distant past until now, the issue of justice has always been very important. Accordingly, in the Holy Qur'an and the Prophet's (PBUH) history, judiciary has taken a prominent place. After the Prophet (PBUH), the issue of judiciary has continued to be the focus and attention of the caliphs and rulers, especially the rightly caliphs. The treatise on judicial review is in the history of early Islam. Based on this, this is an investigation into the history of judiciary in Islam, the image of its character, the judiciary in the early days of Islam, and this shows the general purpose of this article., to complete the content of this article from authoritative books such as: *alnizam alqada' fi alfiqh al'islamia bad aye alsanaye*, *nizam alqada' fi alsharieat al'iislamia* and other books have been used, and the results show that the jurists have defined judiciary in such a way that judiciary is the means the termination of hostilities due to the manifestation of a Sharia ruling in that regard. Considering the importance of judiciary in Islam, the Holy Prophet (peace and blessings of Allah be upon him) used to judge personally for the purpose of ensuring justice and the realization of public rights, and he resolved the cases and listened to the speech of the parties in the dispute and always told both sides the truth and They invited honestly. Also, the rightly caliphs (may God be pleased with them) always tried to assign the task of judiciary to people who are trusted among the people of the society, who have patience and good character, and who have self-governance and the ability of diligence.

Keywords: *Early; Islam; Judiciary; State*

Introduction

Judiciary is a great job and a prestigious position, not everyone can hold this position and sit on the judicial chair. In the greatness of this office, it is enough that he is in charge of this matter Prophet (peace and blessings of Allah be upon him) for the first time, and later he recommended handing it over to his successors and companions

Perhaps the special attention and care of Allah Almighty to this issue is that the basis of the realization of happiness in any society is not possible without learning about fairness and justice, and it goes without saying that learning about fairness and justice in all institutions of a society depends only on the existence of justices and impartial courts in that society.

Otherwise, the oppressors will waste and usurp the rights of the oppressed, and the human society will suffer severe chaos and security will disappear.

Based on the importance of Judiciary, I wanted to research the history of Judiciary. Therefore, in this research, an effort has been made to provide information using reliable sources and make it available to dear readers.

Research Method

The research method has been the library, for the purpose of completing the presented topics, books such as Bada'e al-Sana'i, Mughni al-Muthaghat, Nizam al-Qadaa in Islamic law, Nizam al-Qadaa in Islamic jurisprudence, and others have been used.

Definitional Terms

Judiciary means judgment and obligation. (Razi, 1987)

In judicial terminology, it is applied to a verdict issued by a judge with specific words and phrases. (Zidaan, 1988)

Judiciary in the Terminology of Jurists

The jurists of the four schools each had a different definition of Judiciary, which we will explain separately.

Definition of Hanafi

Judiciary is a binding promise that is issued by the public province (Kasani, 2006). Another Hanafi definition of Judiciary is stated as follows: Judiciary means resolving hostilities and ending disputes (Hanafi, 1975).

Definition of Maliki

Judiciary means informing about a ruling from the rules of Sharia for the sake of obligation (Nafrawi, 1720).

Definition of Shafi'i

It is required by the Sharia ruling in a specific event on behalf of the person who has guardianship (Sharbini, 2011).

Definition of Hanabalah

Making the Shari'i ruling clear and binding on it and resolving disputes and disputes (Bhuti, 1796).

Comprehensive Definition

But the comprehensive and comprehensive definition that is approved by all is this definition: the cessation of hostilities due to the manifestation of the Shari'ah ruling on it is mandatory. The above definition includes the following contents (Zaidan, 1988).

A: The duty of the judge is to end the dispute.

B: The duty of the judge is to declare the verdict of God in the case.

C: The ruling of the court is binding and mandatory, unlike ifta, which does not have the aspect of mandatory obligation.

Judiciary in the Age of Ignorance

Since the beginning of human creation, when people have entered the stages of life, they have needed to resolve their conflicts personally, so it is inevitable that honorable, dignified and intelligent people of tribes and families conduct their judicial affairs and that's it. The people who were famous for their physical and mental strength were responsible for the administration and judicial leadership of their tribes.

As will be explained below, the Arabs used to act in the same way during the time of ignorance (before Islam). The lifestyle of the people of Arabia in the era of Jahiliyyah (ignorance) was desert wandering and tent-dwelling, and the life of city dwellers was not much different from the lifestyle of desert nomads.

These people did not have an orderly government and a strong policy and powerful kings that could prevent the encroachment and aggression of the strong against the weak by using its executive power. Rather, the people of that land consisted of tribes that, as their number increased, they were divided into tribes and clans, and the relationship between their tribes was the same as blood and kinship, and the tribes of the same blood and relatives formed a political unit called a tribe, and the members of that tribe They were responsible for defending the interests and obeying the custom and religion of that tribe, and the tribe was reciprocally responsible for protecting the rights and bloodlust of the people from the aggressors.

Each of these tribes had a sheikh, (leader) whose members were under his command and accepted the authority of his leadership, and the responsibility of the tribe's foreign relations and relations with other nearby and distant tribes was the responsibility of the sheikh of the tribe. In the case of disputes and conflicts that occurred between the members of the tribe, the competent authority for investigation and resolution was often the sheikh of the tribe, who stood up to his duty according to the custom, customs and traditions of the tribe, and sometimes the disputants referred to another authority who was in understanding, adequacy, and tact. He had a reputation, they used to visit.

We can say that Judiciary in during the time of ignorance was optional and the means of punishment was based on the necessity of nature and instinct, resorting to strong power. For this reason, the Arabs call the judge Hakam (arbiter) and even if it is an independent duty, it did not exist anywhere else except among the Quraish, which was one of the officials and positions that were in charge before Islam, and it did not exist anywhere else in Saudi Arabia.

The people who used to judge the people before the spread of the religion of Islam in Arabia are known as the following people. From the Tamim tribe, Hajib bin Zarara, Iqra bin Habs, Rabia bin Makhsh from the Thaqif tribe, Ghilan bin Muslimah, and from the Quraish family, Hashim bin Abd Manaf, Abdul Muttalib bin Hashem, Abu Talib bin Abdul Muttalib (uncle of the Prophet (peace be upon him)) and Rabi'ah bin Khawar from Bani Asad tribe, Salmi bin Nawfal from Kanana tribe and others were the people who performed the judicial affairs of the tribes. (Ajlani, 1988)

The discussion and research in the important texts and sources of Arabic literature show that in cases of disputes and conflicts, the Arabs sometimes referred to the sheikh of the tribe, sometimes to one of the priests and monks, and sometimes to famous people with originality of opinion. But these judges have never used written law and certain rules in their trials and rulings, rather, the extent and property of their rule was the custom and tradition, part of which came from long experiences, part from their ancient beliefs, and another part from Heavenly sources are used.

However, the remarkable thing about this is that the parties to the lawsuit did not have any obligation to refer their case to the judges and obey their rulings, and in general, right and justice in the true and real sense did not exist in the life of the tribes of Arabia before Islam, because the right to The custom and term of the tribe was considered to be the thing that guarantees the benefit of the tribe, and

according to this illogical law of the Arabs, the heads of the tribe, whether sheikhs or judges, were obliged to take the side of their tribe in conflicts and lawsuits, even if the other tribe was right. (Hosami, 2011)

Judiciary in Islam

In such an oppressive environment and unfair conditions, which had fed up all the people, the Islamic revival took place and the wide-ranging program of reforming this heavenly religion paid attention to all the affairs of the people's lives, including matters related to the judiciary.

And for the first time, he implemented explicit rights and justice in the general and correct sense in the world and legislated comprehensive and solid laws from the Qur'an and Sunah in order to protect people's lives, property, intellect, reputation, and generations, and civil society such as buying and selling and Mortgages and leases, farms and leases, and the like, as well as criminal matters such as murder and theft, adultery, and the like, as well as personal situations such as marriage, made divorce based on strong verses of solid laws.

And in order to coordinate judicial institutions and prevent chaos and division, and to prevent the interference of unscrupulous authorities in the sensitive affairs of the judiciary, he made the judicial independence of Islam his goal.

After a brief review of Judiciary in Islam, now we will specifically discuss Judiciary and Judgment at the beginning of Islam.

At the beginning of Islam, the Prophet (peace and blessings of Allah be upon him) used to perform the duty of justice. In other words, after the advent of Islam, during the time of the Messenger of God (peace be upon him), there was no ruling other than his person (peace be upon him).

Considering the importance of judiciary in Islam, the Prophet (peace and blessings of Allah be upon him) used to judge personally for the purpose of ensuring justice and the realization of public rights, and he resolved the cases and listened to the speech of the parties in the dispute and always called both parties to be truthful and honest.

One day two people had a conversation among themselves and finally they went to the Prophet (peace and blessings of Allah be upon him) and the Prophet (peace be upon him) advised them and said: "Perhaps one of you is stronger than the other in providing proofs." but in reality the right is not on the his side, and the opposite party, despite the fact that he is said to be the owner of the right, but in the presence of the court, he cannot provide evidence to prove his claim, and in the end, he loses the case, according to the person who has the right reason. If he makes a claim, he will be punished and will win the case, and in fact, the claimant's case is the price of a cloth of fire, which I will place on his feet, and on the Day of Resurrection, the same thing will be placed around his neck.

When those two people heard the words of the dear Prophet (peace and blessings be upon him), both of them started to cry and one of them gave up their rights for the other, and the Prophet (peace be upon him) divided the claimed property between them equitably. (Bukhari) , 1978)

Just as the Prophet (peace and blessings of Allah be upon him) used to judge, sometimes he assigned his companions (may God be pleased with him) to judge and arbitrate between people, and sometimes he assigned a companion to solve a specific issue.

The Prophet (peace and blessings of Allah be upon him) had given permission to some of his companions to issue fatwas, the first of whom was Hazrat Abu Bakr Siddique (may God be pleased with him). And he was the only person who gave fatwas in the presence of the Prophet (peace be upon him).

Hazrat Ali bin Abi Talib (may God be pleased with him) was among the persons appointed by the Prophet of Islam (peace and blessings of Allah be upon him) as a judge. He was appointed by the Prophet of Islam (peace and blessings of Allah be upon him) as a judge in Yemen, and Mu'adh bin Jabal (may God be pleased with him) was also assigned the duty of judiciary. (Uthman, 1995)

Without a doubt, the Prophet of Islam (peace and blessings of Allah be upon him) is the first person who regulates the issue of judiciary in Islam and assigns his companions to this important and dangerous task and advises them to establish justice and fairness, and those who have deep studies in Islamic judiciary. They know that the issues that the Holy Prophet (peace and blessings of Allah be upon him) resolved are said to be rich sources of jurisprudence and jurisprudence for the Islamic world, because the Prophet (peace be upon him) personally deals with claims related to family rights, legal claims, and punishments. They judged that each paragraph constitutes a judicial rule in Islamic jurisprudence.

The Judiciary in the Era of the Caliphs

When the caliphate came to Hazrat Abu Bakr Siddiq (may God be pleased with him), he appointed the second caliph [Hazrat Umar] (may God be pleased with him) as the judge of the city of Medina. Abu Bakr al-Siddiq (may God be pleased with him) the judgment in Islam was regulated to some extent, despite the fact that the term of the first caliph was limited and in addition to that there were seditions and rebellions, which made up most of the caliph's time to deal with the matters of military regulation, according to that authentic narration. In the era of the first caliph, the judiciary was not separated from the province, and the duty of the judiciary was also placed on the shoulders of a governor.

The time of the Messenger of God (peace be upon him) and the period of the caliphate of Hazrat Abu Bakr Siddique (may God be pleased with him) passed in this way, that is, the judgment was the responsibility of the caliph, because the caliphate was considered a religious office, which was held by the vicegerent of the Prophet (peace be upon him). The Prophet (peace and blessings of Allah be upon him) was also in charge of judging, as he was the preacher of the Shari'ah, in the days of the Prophet (peace be upon him) and during the caliphate of Hazrat Abu Bakr Siddiq (may God be pleased with him) Muslims, except for him (peace be upon him).) and Siddique Akbar (may Allah be pleased with him) did not have another judge. Because the nation of Islam was simple in that era and its territory was limited, it was like this and it continued until the days of Omar Farooq (may God be pleased with him) there were many conquests of Islam and the Arabs found contact with other nations and peoples. The new situation required that principles be established to resolve disputes between Arabs and foreigners, and for this purpose, judges were elected to settle such disputes on behalf of the Caliph according to the rules of the Qur'an and the Sunnah, and in some cases that the Qur'an is silent, there is no hadith in hand, and a consensus is not continuous, and they use analogy as the basis of action. (Masri, 1970)

As mentioned above, during the caliphate of Hazrat Omar Farooq (may God be pleased with him), due to the size of the Islamic countries and the expansion of the area of construction and population and the abundance of work, it was not possible for the caliph or his vicegerent to resolve disputes in conquered countries and states. For this reason, Hazrat Omar Farooq (may God be pleased with him) separated the judiciary from the government and left the judgment to someone other than the governor, and the second caliph was extremely careful and strict in choosing the judge, if the caliph either personally chose the judges or He assigned them to the province. And based on this idea of separation of powers in some provinces, he appointed independent judges next to the governor and personally checked their actions and gave judicial advice to the judges in resolving closed and complex issues. Judges had regular salaries that were given to them from Bait Al-Mal.

Hazrat Omar Farooq (may God be pleased with him) chose three people from the people of science and religion to judge, Hazrat Abul Darda (may God be pleased with him) was with him in Madinah, Shareeh in Basra, and Hazrat Abu Musa Ashari (may God be pleased with him) was in Kufa. He was chosen as a judge, and these were the first judges of the Islamic state. (Bahi, 1988)

Hazrat Ali (may God be pleased with him) had complete experience in judicial matters, because the fourth caliph had been engaged in judicial affairs and ifta since his youth and acquired sufficient knowledge in a judicial field, and his rulings received special and general attention. Hazrat Ali (may God be pleased with him) had full knowledge of the meaning of the Book of God and the hadiths of the Prophet of Islam (peace be upon him), and he applied the verses of the Holy Quran and the hadiths of the Prophet (peace be upon him) in solving issues. He followed the judicial method of the Prophet and the opinions of his companions, and if he did not find a ruling on the matter with them, he used ijihad, and his scientific and jurisprudential position was a source of surprise for everyone.

And Uthman bin Affan (may God be pleased with him) was in charge of the governorship for the time being, like the appointment of Ka'b bin Sur over the jurisdiction of Basra, and he left the jurisdiction to the governor for the time being, like my student, the governor of Basra, to establish Basra. Isolation of Ka'b bin Sur. As well as Ya'li ibn Umayyah, the guardian and judge of Ali Sana'a (Ibn Khayyat1995)

But Ali bin Abi Talib (may Allah be pleased with him) personally took charge of Kufa, and in cities judges were often appointed by the governors, but Ali (may Allah be pleased with him) appointed some judges directly. (Ibn Khayyat1995)

In short, the rightly caliphs (may Allah be pleased with them) always tried to assign the task of judiciary to people who are trusted among the people of the society, who have patience and good character, and who have self-governance and ijihad ability.

Regarding the compilation and implementation of rulings, it should be noted that during the period of the rightly caliphs (may God be pleased with them), judgment was emerging and developing, there were no events that required the writing of rulings, because often the litigants were more similar to the people asking questions. To those who file a lawsuit, because as soon as the judge verbally expressed his opinion, they were satisfied. And without needing their executive power, they executed the verdict and gave me the right for the right.

The sources of governance and judiciary in the era of the Rightly Guided Caliphate were the Qur'an, Sunnah, consensus, and ijihad. He was known among the jurists of the Companions and those who gave fatwas, many and moderate, in the era of the Rightly Guided Caliphate: Abu Bakr Al-Siddiq, Omar, Uthman, Ali, Abdullah bin Masoud, Aisha, Muaz bin Jabal, Abu Musa Al-Ash'ari, Anas bin Malik, Abu Hurairah, Salman Al-Farsi, Abu Saeed Al-Khudri, Abdullah bin Omar, Abdullah bin Abbas, and Zaid bin sabet.(Ibn al-Qayyim1991)

But after that, during the Umayyad period, events occurred that made the judges realize that they should issue written rulings, because some people filed a claim regarding inheritance with Salim bin Atar al-Tajibi, the judge of Egypt, and he also gave a ruling, but then they denied it. Therefore, he ruled twice in writing so that those people will not deny the judge's decision again, so he is the first judge in Islam who has codified his rulings. (Zahili, 1995)

Conclusion

Through research, the basic and important issues that are known are as follows:

Judiciary is applied to a verdict issued by a judge with specific words and phrases.

When the all-inclusive and comprehensive religion of the religion of Islam came into existence, the judicial system found a real meaning.

During the lifetime of the Messenger of Allah (peace and blessings of Allah be upon him) and the period of the caliphate of Hazrat Abu Bakr Siddiq (may God be pleased with him), the judgment was the

responsibility of the caliph, until during the days of Hazrat Omar Farooq (may God be pleased with him) there were many conquests of Islam, the new situation was necessary to resolve. For this reason, judges were chosen to settle disputes on behalf of the Caliph according to the rules of the Quran and the Sunnah, and in cases where the Quran is silent, there is no hadith, and a consensus that occurs not continuously, is the basis for action.

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