

PRINCIPLES OF JUDICIARY IN ISLAM

The era of the Messenger of Allah (ﷺ) and the caliphs after him was a golden period for common judiciary rules, its progress and development. Some of its aspects are as follow:

1. **A** Judge is bound to issue judgment only as per the Islamic Shari'ah.
2. **To** inform, in decision, about the end of the oppression. The Messenger of Allah (ﷺ) said:

« إِنَّ اللَّهَ مَعَ الْقَاضِي مَا لَمْ يَجْرُ فَإِذَا جَارَ تَخَلَّى عَنْهُ وَلَزِمَهُ الشَّيْطَانُ » [ترمذي، أحمد]

Translation: “[Indeed] Allah is with the judge as long as he is not unjust. So when he is unjust, He leaves him and he is attended by Shaitan.” [Tirmizi , Ahmad]

And the Messenger of Allah (ﷺ) said:

« مَنْ طَلَبَ قَضَاءَ الْمُسْلِمِينَ حَتَّى يَنَالَهُ ثُمَّ غَلَبَ عَدْلُهُ جَوْرَهُ فَلَهُ الْجَنَّةُ وَمَنْ غَلَبَ جَوْرُهُ عَدْلُهُ فَلَهُ النَّارُ » [ابوداؤد]

Translation: “If anyone seeks the office of judge among Muslims till he gets it and his justice prevails over his tyranny, he will go to Paradise; but the man whose tyranny prevails over his justice will go to Hell.” [Abu Dawood]

3. **A** Judge must be away from whatever may influence his decision. It is so that he is quite healthy, fit and active. Hunger, thirst, restlessness and anger may influence his decision. The Messenger of Allah (ﷺ) said:

« لَا يَحْكُمُ أَحَدٌ بَيْنَ اثْنَيْنِ وَهُوَ غَضْبَانٌ » [بخاري و مسلم]

Translation: “No judge should give judgment between two people while he is angry.” [Bukhari & Muslim]

4. **It** is haram to bribe a judge. Similarly, for a Judge accepting bribe is also haram. If any guilty tries to bribe the judge, he should give him suitable punishment. It was so that the judge who were stern in Islamic Shari'ah, did not host either of the parties nor did they accept gifts and presents because these things may influence the decision. The Messenger of Allah (ﷺ) said:

« مَنِ اسْتَعْمَلَنَاهُ عَلَى عَمَلٍ فَرَزَقْنَاهُ رِزْقًا فَمَا أَخَذَ بَعْدَ ذَلِكَ فَهُوَ غُلُولٌ » [ابوداؤد]

Translation of Meaning: “When we appoint someone to an administrative post and provide him with an allowance, anything he takes beyond that is unfaithful dealing.” [Abu Dawood]

And the Messenger of Allah (ﷺ) said:

«لَعَنَ اللَّهُ -الرَّاشِيَّ وَالْمُرْتَشِيَّ» [ابوداؤد، ترمذي]

Translation: “Allah cursed the one who bribes and the one who takes bribes.” [Abu Dawood, Tirmizi]

5. Frightening both the parties the consequence of false witness for himself:

«سُئِلَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ عَنِ الْكَبَائِرِ ، قَالَ: الْإِشْرَاكُ بِاللَّهِ، وَعُقُوقُ الْوَالِدَيْنِ، وَقَتْلُ النَّفْسِ، وَ شَهَادَةُ الزُّورِ» [بخاري و مسلم]

“The Messenger of Allah (ﷺ) was asked about the major sins. Upon this he observed: Translation of Meaning: "Associating anyone with Allah, disobedience to parents, killing of a person and false testimony." [Bukhari & Muslim]

6. Searching the truth while hearing a case: The hadith has:

«جاء رجلان من الأنصارِ يَخْتَصِمَانِ إلى رسول الله صلى الله عليه وسلم في مَوَارِيثَ بَيْنَهُمَا قَدْ دُرِسَتْ لَيْسَ بَيْنَهُمَا بَيِّنَةٌ، فقال رسول الله صلى الله عليه وسلم: إنكم تَخْتَصِمُونَ إِلَيَّ وَإِنَّمَا أَنَا بَشَرٌ وَلَعَلَّ بَعْضَكُمْ أَلْحَنُ بِحُجَّتِهِ أَوْ قَالَ لِحُجَّتِهِ مِنْ بَعْضٍ فَإِنِّي أَقْضِي بَيْنَكُمْ عَلَى نَحْوِ مَا أَسْمَعُ، فَمَنْ قَضَيْتُ لَهُ مِنْ حَقِّ أَخِيهِ شَيْئًا فَلَا يَأْخُذْهُ، فَإِنَّمَا أَقْطَعُ لَهُ قِطْعَةً مِنَ النَّارِ يَأْتِي بِهَا إِسْطِمَاءٌ فِي عُنُقِهِ يَوْمَ الْقِيَامَةِ، فَبَكَى الرَّجُلَانِ وَقَالَ كُلُّ وَاحِدٍ مِنْهُمَا: حَقِّي لِأَخِي، فقال رسول الله صلى الله عليه وسلم: أَمَّا إِذَا قُلْتُمَا فَاذْهَبَا فَاقْتَسِمَا ثُمَّ تَوَخَّيَا الْحَقَّ ثُمَّ اسْتَثْمَمَا ثُمَّ لِيَحْلِلْ كُلُّ وَاحِدٍ مِنْكُمَا صَاحِبُهُ»

«Two men from the Ansar came to the Messenger of Allah (ﷺ) with a dispute regarding some old inheritance but they did not have evidence. The Messenger of Allah (ﷺ) said, Translation of Meaning: “You bring your disputes to me, but I am only human. Some of you might be more persuasive in their arguments than others. I only judge between you according to what I hear. Therefore, whomever I judge in his favor and give him a part of his brother’s right let him not take it, for it is a part of the Fire that I am giving him and it will be tied around his neck on the Day of Resurrection.” The two men cried and each one of them said, ‘I forfeit my right to my brother.’ The Messenger of Allah (ﷺ) said, “Since you said that, then go and divide the inheritance, and try to be just in your

division. Then draw lots, and each one of you should forgive his brother thereafter (regardless of who got the best share).» [Bukhari, Muslim & Ahmad]

It means that people will approach the judge with their issues and then he will decide through his *ijtihad*. There is a possibility that he does not arrive at the right in some cases, and so he decides in favour of an underserving person. In such a case, the decree of the judge should not make allowed for him what he does not deserve legally.

7. Preferring reconciliation to decree: It is a proof of greatness of Islam's judicial system. The judgment may lead to hatred and enmity being reared while in reconciliation it is not feared. It is so that Islam has declared reconciliation as allowed. It is necessary to reform the damage, through reconciliation, that has been done due to the trick of the satan. The Messenger of Allah (ﷺ) said:

«الْصُّلْحُ جَائِزٌ بَيْنَ الْمُسْلِمِينَ، إِلَّا صُلْحًا حَرَّمَ حَلَالًا، أَوْ حَلَّ حَرَامًا، وَالْمُسْلِمُونَ عَلَى شُرُوطِهِمْ، إِلَّا شَرْطًا حَرَّمَ حَلَالًا، أَوْ حَلَّ حَرَامًا» [السنن الأربعة]

Translation: “Reconciliation is allowed among the Muslims, except for reconciliation that makes the lawful unlawful, or the unlawful lawful. And the Muslims will be held to their conditions, except the conditions that make the lawful unlawful, or the unlawful lawful.”[The Four Books of Sunan].

Umar bin al-Khattab (*Radhi Allahu Anhu*) said: Postpone the disputes until people have made reconciliation because judicial decree leads to enmity and hatred.

Among the great characteristics of Islam, is that it has allowed the judge to intercede to either of the parties for the other. The hadith has:

«عَنْ كَعْبٍ - رَضِيَ اللَّهُ عَنْهُ - أَنَّهُ تَقَاضَى ابْنُ أَبِي حَذْرَدٍ دَيْنًا كَانَ لَهُ عَلَيْهِ فِي الْمَسْجِدِ، فَارْتَفَعَتْ أَصْوَاتُهُمَا حَتَّى سَمِعَهَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَهُوَ فِي بَيْتِهِ، فَخَرَجَ إِلَيْهِمَا، حَتَّى كَشَفَ سِجْفَ حُجْرَتِهِ فَنَادَى ” يَا كَعْبُ “ . قَالَ لَبَيْكَ يَا رَسُولَ اللَّهِ . قَالَ ” ضَعْ مِنْ دَيْنِكَ هَذَا “ . فَأَوْمَأَ إِلَيْهِ، أَيْ الشَّطْرَ . قَالَ لَقَدْ فَعَلْتُ يَا رَسُولَ اللَّهِ . قَالَ ” قُمْ فَأَقْضِهِ “

Narrated Ka'b bin Malik (*Radhi Allahu Anhu*): Ka'b demanded his debt back from Ibn Abi Hadrad in the Mosque and their voices grew louder till Allah's Messenger (ﷺ) heard them while he was in his house. He came out to them raising the curtain of his room and addressed Ka'b, “O Ka'b!” Ka'b replied,

“Labbaik, O Allah’s Messenger (ﷺ).” (He said to him), “Reduce your debt to one half,” gesturing with his hand. Ka’b said, “I have done so, O Allah’s Apostle!” On that the Prophet (ﷺ) said to Ibn Abi Hadrad, “Get up and repay the debt, to him.” [Bukhari & Muslim]

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