

# **JUDICIAL SYSTEM FROM SHARI'AH (ISLAMIC LAW) PERSPECTIVE**

**By:**

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## **1.0 Introduction**

This article will analyse the Shari'ah Judicial System. Islam is a divine religion which deals with different issues related to all human needs, material and spiritual. Islam is not a set of rituals. It is both a religion and a perfect way of life. For a non-Muslim, religion may be a private relationship between man and his creator. But for a Muslim religion comprehends the whole of life. No sphere is left in which the thoughts and deeds of a Muslim - both in his personal and public life - are inconsequential to his fate in the hereafter. This is why Islam does not make a distinction between what is religious and what is secular, nor does it recognize division of authority between Allah and Caesar.

In Islam, only Allah is the Law-giver, because He is the Creator. Allah therefore owns everything. Caesar, a creature of Allah, has nothing, except what has been entrusted to him by his Creator. Thus, all aspects of life-religious, educational, social, political, economic and legal have their legitimate place in the all-inclusive system of Islam. This is why Allah (SWT) calls upon Prophet Muhammad (SAWA) to say:

“Verily, my prayer, my sacrifice, my living and my dying are for Allah, the Lord of the worlds”<sup>2</sup>.

This means that the whole life of man in all spheres should be an expression of complete submission to Allah, the Creator of the universe.

One of the important issues that Islamic law in its sources gives due consideration is the administration of justice. Shari'ah in its system of administering justice deals comprehensively with the `system of judiciary', in a way that cannot be found in any other system prevailing on the globe. In this paper, we are going to closely

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<sup>2</sup> Holy Qur'an: 6: 162.

examine verses of the holy Qur'an, the primary source of shari'ah, in which Allah (SWT) talks about judicial system in its best form. The following topics are some of which will be studied in this paper, which all are directly or indirectly derived from the primary source of shari'ah (The holy Qur'an):

1. The need for judiciary (al-qada'), which is indispensable for the life of human society.
2. The criterion for judiciary.
3. The rules of conduct for a judge, his qualities, rights, and particular duties.
4. The duty of litigants in observing the criteria specified by none other than revelation and in refraining from opposition to and questioning what has originated from the Source of the judiciary.
5. Matters concerning judiciary, such as testimony and the duties of the witness.

We will discuss these important issues, and study the Qur'anic perspective of them.

## **2.0 THE HOLY QUR'AN (main source of Shari'ah):**

The Qur'an is Allah's word revealed to prophet Muhammad (SAWA). The language, meaning, and sentence structure are all from Allah and there is no human contribution to them.

The Qur'an is protected from any additions or subtractions. There is only one version of the Qur'an in the whole Muslim world. Any distortions would have led to variations in the different texts.

The Holy Quran, which provides us guidance in this regard, is Allah's revealed message to humankind. It contains verses pertaining to belief in the oneness of Allah, and in the Prophet Muhammad (p.b.u.h,) as His last messenger. It is known as the "Furqan"(discriminate), because it brings to light the distinctions between good and evil, and truth and falsehood. The Quran sheds light on ethical and moral principles, and describes how human beings must conduct their affairs among themselves. The verses dealing with ethical principles include issues such as interpersonal relationships, Muslim virtues, and the mode of conduct to be adopted

in social and business dealings.<sup>3</sup> Muslims believe that these principles are meant for the entire human race and for people from all walks of life and socioeconomic backgrounds. This contention has its basis in the belief that Islam is the culmination of all of the Abrahamic faiths, and its precepts universalize the reforms introduced by the earlier prophets. They also go a step further by making them complete and comprehensive.

The Qur'an is the primary source of Shari'ah (Islamic law). All other recognized sources are secondary to the Qur'an and are validated by it. Knowing the circumstances of the revelation of a verse helps us understand the ruling of the verse. Exegesis of the Qur'an based on personal opinion, is to be avoided.

In the preponderant majority of situations the Qur'an only gives general legislative foundations and principles. Detailed or particular rulings are few and are given for the most important aspects of the law.<sup>4</sup>

Evidence from the Qur'an on legal rulings can either be definitive or probable. A verse can have only one meaning and some verses can have more than one meaning. The discovery of the true and intended meaning requires special expertise in the science of exegeses of the Qur'an.<sup>5</sup>

The Qur'an is very comprehensive. It however does not provide the specifics of the majority of legal rulings. Its comprehensiveness is then in its provision of principles and methodology of the law. Specific rulings can then be derived using the Qur'anic principles and the Qur'anic methodology.

Any discussion on Qur'anic legal rulings must take into account the philosophy behind the teachings of Islam. It is important to bear in mind that in Islam there is no dichotomy between the spiritual and the practical aspects of human life. In the Quran, spiritual advice is given in conjunction with practical advice. What a man does in his daily affairs, whether it is social, professional or economic, has a direct bearing on his spiritual development, and will determine his fate in the hereafter. Conversely, the spiritual development will have a direct bearing on what he does in his daily affairs. Thus "Amal" (action) of a believer which can be termed to be the

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<sup>3</sup> Mubarak Abdulkadir(2012) "*Shari'a and Democracy*" A book chapter in "The footprint of a legal icon in honor of his lordship Jibrin Ndajiwo, chief justice of Niger state.

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

subject-matter of all laws laid by the holy Qur'an is an integral part of the Islamic doctrine. The Qur'an therefore is a book not only of religious injunctions and beliefs, but also of laws and ethical codes, and must be viewed in totality.

### **3.0 The Need for Judiciary**

Man is a social creature. He is unable to dissociate himself completely from others and live in isolation and seclusion. He is also unable to live in complete harmony with others, since each person has his own particular ideas, qualities, and conduct to which his nature inclines, which characterize him without anyone else sharing them either partly or wholly.

If man is unable to live alone and remain in absolute solitariness, nor able to live in complete harmony with others, then differences will undoubtedly appear between individuals and groups. There will be strife between them and disputes will take place about particular interests, with each one having an eye out for his own interests.

If there were no general rules to which people could take recourse, and no criteria by which truth could be distinguished from falsehood, social order would be disrupted, human society would break down, and public affairs would be in disarray. The noble Qur'anic verses testify to this. As regards the first point, i.e., man's nature as a social creature, it is indicated by the statement of God, the Exalted:

“O mankind, We have created you male and female, and appointed you races and tribes, that you may know one another”<sup>6</sup>.

If man was not social by nature and individuals were able to live by themselves, there would be no need of races and tribes, since they would not require the mutual acquaintance which depends on social ties.

Regarding the second point, i.e., the inevitability of conflict, God, the Exalted, says:

“Had thy Lord willed, He would have made mankind one nation; but they continue in their differences, excepting those on whom Thy Lord has mercy”<sup>7</sup>.

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<sup>6</sup> Holy Qur'an: 49:13.

“God's responsibility is to show the way; and some do swerve from it. If He willed, He would have guided you all together”.<sup>8</sup>

It is not correct to make them 'one nation', because that compulsion would be inconsistent with human responsibility and would also be inconsistent with voluntary growth and development. In fact, it would be inconsistent with wisdom as well, since differences on the whole are beneficial, sacred and commendable. What is reprehensible is the difference that arises even after distinguishing of rectitude from error and the clarification of truth. These two types of differences have been indicated by God, the Exalted:

“The people were one nation; then God sent forth the prophets, good tidings to bear and warning, and He sent down with them the Book with the truth, that He might decide between the people touching their differences; and only those who had been given it were at variance upon it after the clear signs had come to them, being insolent one to another; then God guided those who believed to the truth, touching which they were at variance, by His leave; and God guides whomsoever He will to a straight path”<sup>9</sup>.

It is inferred from the first part of the verse that primitive man was simple in his beliefs, with a sound natural disposition (fitrah) and far from deviation and desire (haws), even though he would differ from others of his kind on certain matters. Differences in matters such as these were inevitable in his life's course since man had been created for perfection, and these formed part of the stages of his growth.

In order to settle these differences and elucidate the truth during conflict, Allah, the Exalted, revealed the Book accompanied by the truth, which moved along with it. On the elucidation and clarification of the truth, the people were divided into two groups some of them believed and followed what the Book had brought, and others did not believe through insolence and hostility. This is the disagreement concerning faith and conviction, and it is a reprehensible disagreement. Regarding the third point the necessity of determining the general rule to resolve disagreements-that is indicated by the state-ment of God, the Exalted:

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<sup>7</sup> Holy Qur'an: 11:118-119.

<sup>8</sup> Holy Qur'an: 16:9.

<sup>9</sup> Holy Qur'an: 2:213.

“Nay, but they cried lies to the truth when it came to them, and so they are in a matter perplexing”.<sup>10</sup>

Almighty censures them for the disorder of their state. They have fallen into confusion by their denial of the truth, and He enjoins them to resort to the truth, avoid creating confusion, and maintain the correct order.

Islam has been concerned with removing these differences through training, educating, discipline, and purification. It has urged adherence to 'the strong rope' of Allah and abstention from conflict which would result in social discord. It has brought about brotherhood among the believers, and made them "merciful to one another even though they are hard against the unbelievers"<sup>11</sup> It has described the believers as being "a building well-compacted"<sup>12</sup> in confrontation with untruth, and as "friends one of the other; they bid to honor and forbid dishonor"<sup>13</sup>.

It has called them to "enter the peace, all of you"<sup>14</sup>, and not to be separated from the circle of Islam even by an inch, since one isolated from the community is, for Satan, as the isolated sheep is for the wolf." It has praised those who ask the forgiveness of Allah, the Exalted, for themselves and their brothers who had preceded them in the faith, and told them to call on God, the Exalted, not to put into their hearts "any rancor towards those who believe"<sup>15</sup>. Apart from these, there are other lofty qualities necessary for removing differences and for preventing their development in the hearts, or their becoming apparent in their behavior, since people have been taught that Allah knows what they hide in themselves and what they disclose through their conduct.

In order to preserve the social order and safeguard social unity, disagreements are to be removed by referring them to the judgment of Allah and His Messenger, by appointing Him as arbitrator in their disputes, and by not turning away from Him to another, since His judgment is the sole legal recourse to settle disputes and solve differences, and no one has a choice in what Allah and His Messenger have ruled. The judiciary is the guarantee for applying a just system of regulations and

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<sup>10</sup> Holy Qur'an: 50:5.

<sup>11</sup> Holy Qur'an: 48:29.

<sup>12</sup> Holy Qur'an: 61:4.

<sup>13</sup> Holy Qur'an: 9:71.

<sup>14</sup> Holy Qur'an: 2:208.

<sup>15</sup> Holy Qur'an: 59:10.

preventing disarray in social affairs. It requires the establishment of everything in its proper place, the returning of every right to its owner, and everyone obtaining his due.

That is why the "proposition" is termed "qadiyyah"; because as long as the predicate and its judgment as regards the subject has not been ascertained and the subject's judgment has not been determined in relation to the predicate, either negatively or positively, one is hesitant and uncertain until rightness is distinguished from error and the sound from the unsound. When the intellect judges a particular matter and gives a specific verdict, then the peace of mind is achieved and doubts end. There, the matter with regard to its conceived terms is described as qadiyyah, and the mental form with regard to its conceived terms is called judgment (tasdiq).

#### **4.0 Criterion for Judiciary**

It may appear at first that the human intellect can independently discover these rules and that its range covers what the thinking man attains through his judgment without resorting to heavenly scriptures and, in fact, without needing them at all. However, a deep study of the evidence for the necessity of judiciary shows that the human intellect is insufficient for it and is incapable of determining the criterion for judiciary and defining its scope.

This is because the views of one person-as has been mentioned- are not all in agreement with those of other people. Each person considers his ideas to be right and regards other people's ideas as misconceptions. He imagines that his views are appropriate and would benefit mankind, while the ideas of others are inadequate and harmful. Thus ensure the intellectual arguments and the academic debates and discussions.

In addition to this, everyone is naturally disposed to put one's interests and those of one's group and family above those of others, regarding them to be better entitled than others. This would have great consequences for the method of lying down and applying the law.

The following conclusions can be derived from the above discussion.

The need to remove disagreements and solve disputes makes the existence of a judiciary necessary. The human intellect is not adequate to provide felicity to human society on its own.

On the contrary, it is the light that illuminates the way-the way indicated by divine revelation-and guides those who follow it to the desired goal. If the human mind-because of its intellectual inadequacy and its being infested by questionable motives-is inadequate in determining the criterion for judiciary, then an inquiry should be made into what the perfect standard for judgment between people should be. This may be done by looking at two points:

Firstly, the inability of human thought and its failure to offer the judicial standard. Secondly, the genius of divine revelation and its competence in determining the judicial system, since it has been derived from the Unseen and transcends the natural laws, as we will see, God willing. The first point is indicated by the statement of God; the Exalted: ...Messengers bearing good tidings, and warning, so that mankind might have no argument against God, after the Messengers; God is All-mighty, All-wise.<sup>16</sup>

This indicates that the intellect on its own is inadequate for attaining perfection and guidance to the most correct path. For were it sufficient, the argument for the adequacy of the intellect and reliance on its guidance would be justified. If people committed sins and performed offences, the argument of Allah against them would be established (for the intellect which had been given them had forbidden them from it, so why did they not follow it but go against it) It would then be right for them to be punished for their sins and evil deeds. However, the noble Qur'an does not support or sanction punishment before sending Messengers. God, the Exalted, has said:

“We never chastise until We send forth a Messenger”.<sup>17</sup>

Had we destroyed them with a chastisement aforetime, they would have said,

“Our Lord, why didst Thou not send us a Messenger, so that we might have followed Thy signs before we were humiliated and degraded?”<sup>18</sup>

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<sup>16</sup> Holy Qur'an: 4:165.

<sup>17</sup> Holy Qur'an: 17:15.



This proves that it is not God's practice to chastise His creatures before dispatching Messengers, or to humiliate, disgrace, and destroys through punishment a people before sending prophets to them. Were it not so, these creatures would protest to God that the punishment was carried out before the proof was completed. The weakness of human thought and the fact that man is not aware of all beneficial and harmful consequences of his acts, even in matters closest to him, is pointed out in the statement of God, the Exalted, when explaining the distribution of inheritance and appointing specific shares to each heir:

“You know not which out of them is nearer in profit to you”.<sup>19</sup>

When explaining the necessity of belief in revelation and the impermissibility of turning away from it, God, the Exalted, says:

“So when their Messengers brought them the clear signs, they rejoiced in what knowledge they had, and were encompassed by what they mocked at”.<sup>20</sup>

This indicates that man's knowledge does not guarantee him happiness; otherwise it would not be wrong on his part to be content with it. However, it is not so because he is incapable of attaining through it what he needs. Thus it is reprehensible for man to confine himself to his own knowledge and turn away from what the prophets have brought. In the following statement, God, the Exalted, indicates that man is unable to establish justice and determine the rules of a just judiciary with the sole means of the intellect that has been given him:

“Indeed we sent Our Messengers with the clear signs, and We sent down with them the Book and the Balance so that men might uphold justice. And We sent down iron, wherein is great might, and many uses for men, and so that God might know who helps Him, and His Messengers, in the Unseen. Surely God is All-Strong, All-Mighty”.<sup>21</sup>

This indicates that the aim of sending the Messengers with clear signs and sending the scriptures with them was that the people should uphold justice. If man were able to achieve justice through his intel-lect and without the need for revelation, there would have been no need for it.

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<sup>18</sup> Holy Qur'an: 20:134.

<sup>19</sup> Holy Qur'an: 4:11.

<sup>20</sup> Holy Qur'an: 40:83.

<sup>21</sup> Holy Qur'an: 57:25.

The reason for man's being unable to define the standard for the judiciary is that there lie before him various worlds and higher and lower levels and degrees of existence. He moves from one world to another and from one level to another and he is immortal and imperish-able. Since he moves from one abode to another, he must seek per-fection through a power that does not cease or perish, and which does not harm his world or his Hereafter.

Obviously, determining such a power requires a comprehensive knowledge of the true nature of man and what makes him ascend to the highest stages or brings him down to the lowest levels. How does that knowledge compare with the little knowledge that has been given man, who does not have much understanding of what will benefit or harm him?

The second point which is the capacity of divine revelation in explaining the judicial system is indicated by several Qur'anic verses.

“Whosoever judges not according to what God has sent down-they are the unbelievers”.<sup>22</sup>

“Whosoever judges not according to what God has sent down-they are the evil-doers”.<sup>23</sup>

“Whosoever judges not according to what God has sent down-they are the ungodly”.<sup>24</sup>

The difference between unbelief (kufr) and the other contingent evils, as regards the judiciary, will be explained. Among them is the statement of God, the Exalted:

“Is it the judgment of pagan Dom then that they are seeking? Yet who is fairer in judgment than God, for a people having conviction”?<sup>25</sup>

These verses suggest that judgment is either the judgment of Allah, determined by revelation, or the judgment of pagan Dom (jahiliyyah). The latter includes every judgment and law followed by men, whether it is described as civilized or not and whether it is accepted or rejected by all people or some of them.

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<sup>22</sup> Holy Qur'an: 5:44.

<sup>23</sup> Holy Qur'an: 5:45.

<sup>24</sup> Holy Qur'an: 5:47.

<sup>25</sup> Holy Qur'an: 5:50.

This is because there is nothing after truth except falsehood, and following that which is not from Allah, the Exalted, necessitates moving away from the straight path which leads to paradise. There are only two paths, whatever they may be called, and no third one: the path of Allah, guiding to the straightway, and the path of the false god (taghut) leading down into the deep abyss of perdition. Furthermore, God, the Exalted, says:

“And whatever you are at variance on, the judgment thereof belongs to God. That then is God, my Lord; in Him I have put my trust, and to Him I turn penitent”.<sup>26</sup>

The verse indicates that the sole recourse for settling differences is judgment of Allah, and no other, whether these differences concern rights, property or some other matter. God, the Exalted, says: So judge between them according to what God has sent down, and do not follow their inclinations to forsake the truth that has come to thee.<sup>27</sup>

This judgment is none other than that which has been revealed by Allah. There are other verses which restrict the criterion for judiciary to divine revelation, indicating that everything besides that is ignorance and error that anything other than the law (Din) of Allah is not acceptable and that any other path will not lead to the pleasure of Allah and paradise. On the contrary, it will lead to Allah's displeasure and "the abode of ruin Jahannam (hellfire), wherein they are roasted; an evil establishment!"<sup>28</sup>, for it is not a path which guides to the right goal. That is why the Mighty and Sublime has addressed those who have turned away from the revelation and from the Messenger, saying:

“Where then are you going? It is naught but a Reminder unto all beings.”<sup>29</sup>

The meaning of the term knowledge (‘ilm) becomes clear when God the Exalted, urges that we should not say what we do not know and that we should not deny what we do not know. He emphasizes that affirmation and denial must be through knowledge, and confirmation and rejection through understanding. He says of those who disbelieve without knowledge:

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<sup>26</sup> Holy Qur'an: 42:10.

<sup>27</sup> Holy Qur'an: 5:48.

<sup>28</sup> Holy Qur'an: 14:28-9.

<sup>29</sup> Holy Qur'an: 81:26-27.

“No, but they cried lies to that whereof they comprehended not the knowledge, and whose interpretation had not yet come to them”.<sup>30</sup>

“Has not the compact of the Book been taken teaching them that they should say concerning God nothing but the truth”?<sup>31</sup>

This verse urges one to restrict oneself to speaking only through knowledge and affirming only through understanding. Similarly, God, the Exalted, also says:

“And pursue not that thou hast no knowledge of; the hearing, the sight, the heart—all of those shall be questioned of”<sup>32</sup>.

The knowledge mentioned in these and other similar verses refers to that which relates to happiness and a good life and is in keeping with the revelation of God, the Exalted, to His Messenger. It is immune from the evils of ignorance, forgetfulness; and tyranny, and it is rightly the object of hope and the sole basis for judiciary. As for the intellect, it is independent in matters of doctrine (usul al-Din) and its guidance makes possible knowledge of Allah, the Exalted, and faith in Him.

Similarly, it facilitates knowledge of the Messenger and the necessity of his infallibility and freedom from sin and error in delivering the message, and knowledge of the doctrine of the Hereafter and man's resurrection with his soul and body for the Judgment. Despite this, however, the intellect is incapable of grasping many matters relating to these important principles, and is also incapable of understanding the benefits and harms latent in actions, laws, and customs. Therefore, it is always in need of the guidance of revelation in circumstances that come upon it and in need of its instructions on what it cannot attain by itself. God, the Exalted, says: “...and to teach you that you knew not.”<sup>33</sup>

To conclude, the criterion of the judiciary is the criterion, which Allah has sent down through revelation and laid down for the people in order that they may establish justice and equity amongst themselves.

## **5.0 Rules of Conduct for Judges**

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<sup>30</sup> Holy Qur'an: 10:39.

<sup>31</sup> Holy Qur'an: 7:169.

<sup>32</sup> Holy Qur'an: 17: 36.

<sup>33</sup> Holy Qur'an: 2:151.

It has been made clear that the judiciary is necessary to protect human society and that its criterion is nothing other than revelation. Here, we wish to discuss its external realization and how it can exist in the desirable form that will afford the application of divine justice derived from revelation.

The administration of justice in human society is possible through a judge who has knowledge of the divine criterion for judiciary and who believes in it and acts in conformity with it.

If knowledge, faith, and action did not exist together, the criterion itself would not have any effect, for it would be like a lamp in the hand of a blind person who can neither benefit from it himself nor benefit others. He would not be safe from stumbling and the lamp would either break or be extinguished. Thus, the practicing judge has to be a just scholar (*ʿalim ʿadil*).

Man is controlled by three important faculties from which springs felicity or misery. They are: his intellect (*ʿaql*), through which he grasps matters; his Desire (*shahwah*), through which he seeks things and wants them for himself; and his Anger (*ghadab*), through which he repels from himself what he dislikes. Knowledge and justice must inform these three faculties, so that the judge may not deviate in judgment or depart from the path of truth.

His intellect should be directed towards acquiring and teaching that which has been brought by the prophets, so that desires (*ahwd'*) do not affect him. There is no room for personal judgment (*ray*) in religion, and whoever rules through his personal judgment perishes. He, who abandons the Book of Allah, the Exalted, and the Sunnah of His Prophet, has disbelieved; he who relies on himself when faced with a problem is led astray and he who relies on his judgment in ambiguous matters is as one who has made himself his own leader (*imam*).

Justice should inform his Desire, and he should not rule out of a liking for a particular matter or a specific person. Nor should he rule out of a desire for wealth, status, or position, or for other reasons springing from vain urges. His Anger should be temperate, and he should not rule out of hatred for a matter or hostility to a person, or out of fear of a threat or intimidation, or for any other reason related to anger, hatred, and the like. The person who is balanced in his intellect through the teaching of the divine revelation and his faith in it, and is balanced in his desire and

anger since his love and hatred are in the way of Allah, the Exalted, such a person is suitable for judgment between people.

Concerning self-discipline, particularly in relation to judiciary, the Noble Qur'an deals with the regulation of the three above mentioned faculties.

Firstly, it refers to the moderation (ta'dil, a derivative of `adl, justice; ta'dil means informing something with justice) of the intellect through the scriptural instruction and teachings of the prophets, peace be upon them. He, who does not judge according to what Allah has revealed, is a disbeliever. This has been mentioned in the previous section, so we will not repeat it. Secondly, it refers to the ta'dil of love. God, the Exalted says:

“O believers, be you securers of justice, witnesses for God, even though it be against yourselves, or your parents and kinsmen...”.<sup>34</sup>

God, the Exalted, has commanded the believer to be a `securer of justice', which is more important than upholding justice. He has com-manded that his testimony should be for God, even though it may be against himself, his parents, or his kinsmen, so that his love for him-self or his kinsmen does not prevent him from establishing justice or bearing witness for God. If he was required to make an admission, against himself; he should do so.

If the establishment of truth calls for testifying against his nearest relatives, he should not hold back from it. Then his Desire would be just, and his love would be for God, and he would be attracted towards God. He would not desire anything that God was not pleased with, nor be tempted by something God disliked. He would not desire an unjust thing or incline towards vanity, and it would not be possible to influence or dominate him through his Desire. Thirdly, it refers to ta`dil of anger, as God, the Exalted, says:

“O believers, be you securers of justice, witnesses for God. Let not detesta-tion for a people move you not to be equitable; be equitable-that is nearer to god fearing. And fear God; surely God is aware of the things you do”.<sup>35</sup>

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<sup>34</sup> Holy Qur'an: 4:135.

<sup>35</sup> Holy Qur'an: 5:8.

In this verse, God, the Exalted, commands the faithful to be 'securers of justice' for God and witnesses for justice. Like the previous verse this one is also concerned with justice and equity. God, the Exalted, also warns the believer - lest hatred of a people and enmity to them should lead him to abandon justice and lest hatred should influence his judgment. The judge must be-guided by the laws of God, the Exalted, so that his anger is only for the sake of God, and his hatred for a people must not cause him an unjust ruling. If the faculty of his 'Anger' is regulated in this way, he will have no fear of anyone other than Allah and it will not be possible to influence him through the arousal of his anger.

When man attains this kind of control over the self, and is possessed of knowledge and justice, and his intellectual and behavioral faculties have been moderated, then it is in order for him to apply himself to adjudication and occupy the position held by none other than the prophet or his authorized trustee (wasi) for even if he is neither a prophet nor authorized as a trustee through a special trusteeship (wisayah) as in the case of the Infallible Imams, peace be upon them-he is a trustee through a general trusteeship in accordance with the texts of appointment (nash).

It is also proper that this judge should pave judgment through his knowledge, since all dicta are proved through knowledge whereas knowledge is a proof in itself. So if a just judge has knowledge of the truth, then he should judge according to his knowledge, so as to comply with the verses which command ruling with justice.

In fact, if the evidence produced is contrary to his knowledge or the denier takes an oath asserting something contrary to his knowledge, he should refrain from judgment or refer the case, for example, to another judge. It is not permissible for him to rule contrary to his knowledge, even if the evidence or the oath is acceptable.

It is not right that his judgment should be revoked or refuted, since this would be like refuting the Infallible Imam, which in turn would be similar to refuting God, the Exalted. That would actually amount to unbelief and practically to polytheism (shirk), though it may not involve creedal unbelief, because creedal unbelief concerns the outright denial of one of the fundamental doctrines of religion.

One of the most important rules of conduct for the judge is to be on guard against bribery when passing judgment, because that amounts to unlawful gain, unfaithful

conduct and transgression and has been forbidden by the noble Qur'an: "Consume not your goods between you in vanity; neither proffer it to the judges, that you may sinfully consume a portion of other men's goods, and that wittingly".<sup>36</sup>

The Qur'an has forbidden the giving of money to judges in the hope of extracting an unjust judgment from them. The term idla' (proffering) means sending a bucket down into the well to bring out water from its depths. It should be noted that the use of this word here means that bribery is like a bucket sent down into the bosom of the judge to extract injustice and wrong from his wicked heart. The inward must be pure and the heart unblemished, so that it does not incline towards wealth and is not influenced by coercion. The Qur'an has forbidden these two qualities in the following verse:

"So fear not men, but fear you Me; and sell not My signs for a little price".<sup>37</sup>

The first part of the verse is a prohibition against misplaced fear, as a regulation of the faculty of Anger, and the second is a prohibition against misplaced attraction, as a regulation of the faculty of Desire, along with the suggestion that the whole world is of little worth. If the unjust judge were to take the whole world for making a wrong judgment, he would have sold the judgment of Allah for a 'little price', since what is transitory is of little value however much it may appear to be.

The bribery that has been forbidden is not only of the pecuniary kind. On the contrary, it also includes advantages and benefits and may be a particular act performed by the briber, or words of praise, or a display of his respect and reverence for the judge. All these are forbidden, for the term 'bribe' is applicable to them and the, rule concerning it applies to them.<sup>38</sup>

In the 'Rules of Conduct for Litigants' we will mention that giving and receiving bribe are both unlawful.

It is apparent from what has been previously mentioned that it is necessary for the judge to be on guard against becoming an advocate for the treacherous person, whether it is by misplaced inclination or repulsion. God, the Exalted, says:

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<sup>36</sup> Holy Qur'an: 2:188.

<sup>37</sup> Holy Qur'an: 5:44.

<sup>38</sup> Al-Tabataba'i, al-'Urwat al-wuthqa, p.3.



Surely We have sent down to thee the Book with the truth, so that thou Mayest judge between the people by that God has shown thee. So be not an advocate for the traitors.<sup>39</sup>

The judge has been forbidden to be an advocate for the traitor and defend him, for the traitor only deceives himself, and so is not liked by Allah, the Exalted. The judge must be on his guard against inclining towards him, defending him, driving away the oppressed person, and standing by the oppressor.

## **6.0 The Rules of Conduct for the Litigants**

It has been demonstrated that the criterion for judiciary is nothing other than Divine revelation, and that the sole authority in settling disputes is someone learned in the revelation, who believes in it and possesses the attributes that have made him fit for adjudication. It is essential that he should be referred to in a dispute, and turning away from him to refer to someone else is turning from truth to falsehood.

It is 'far error' as God, the Exalted, has said:

“Hast thou not regarded those who assert that they believe in what has been sent down to thee and what was sent down before thee, desiring to take their disputes to tyrants (taghut), yet they had been commanded to dis-believe in them? But Satan desires to lead them astray into far error”<sup>40</sup>.

It is not for a believer to seek the judgment of one in whom he has been commanded to disbelieve. It is also not for an oppressor (taghut) to appoint himself to judgment. Man will not attain the degree of faith until he makes the Messenger of Allah the judge, choosing him as the arbiter, as Allah, the Exalted, had chosen him, referring to him in his disputes with others, and then not finding any objection or reservation in himself against what the Messenger has ruled, whether it is for or against him, since a believer is one who submits his affair to Allah, the Exalted:

“But no, by thy Lord! They will not believe till they make thee the judge regarding the disagreement between them and then find in themselves no impediment touching thy verdict, but surrender in full submission”<sup>41</sup>.

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<sup>39</sup> Holy Qur'an: 4:105.

<sup>40</sup> Holy Qur'an: 4:60.

<sup>41</sup> Holy Qur'an: 4:65.

The noble verse clearly explains the duty of the litigants in a disagreement or dispute, and urges taking recourse to the Messenger and no other person. It also urges complete submission to his judgment when an appeal is made to him--May blessings of Allah on him and his family-for faith is the tranquility and peace of the soul, and is not achieved except through the submission of both the heart and the action of bodily members.

The Noble Qur'an has described as wrongdoing (zulm) the act of one who does not seek the judgment of God and His Messenger except if he is in the right. Similarly it has described as 'success' the act of one who complies and is obedient when called to Allah and his Messenger so that judgment may be made between him and his adversary. The Almighty says:

When they are called to God and His Messenger that he may judge between them, lo, a party of them swerves aside; but if they are in the right, they will come to him submissively. What, is there sickness in their hearts, or are they in doubt, or do they fear that God may be unjust towards them and His Messenger? Nay, but those they are the wrongdoers.<sup>42</sup>

This indicates that turning away from the judgment of the Messenger only arises from wrongdoing. God, the Exalted, also says:

All that the believers say, when they are called to God and His Messenger, that he may judge between them, is that they say, 'We hear, and we obey'; those-they are the successful.<sup>43</sup>

This indicates that success requires submission to Allah and His Messenger. It means that the believer pledges allegiance to Allah and His Messenger, and the requirement of allegiance is that he 'sell' himself and all the wealth and family he possesses to Allah and His Messenger. In this way, he neither owns his own self nor did anything attach to him, since he has sold it all to Allah and His Messenger, and it is not for him to act independently concerning himself or what appertains to him, except with the approval of Allah and His Messenger. Therefore Allah, the Exalted, has said:

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<sup>42</sup> Holy Qur'an: 24:48-50.

<sup>43</sup> Holy Qur'an: 24:51.

It is not for any believer, man or woman, when God and His Messenger have decreed a matter, to have the choice in the affair. Whoever disobeys God and His Messenger has gone astray into manifest error.<sup>44</sup>

Just as the believer does not have a choice in seeking the judgment of Allah and His Messenger, since it is incumbent on him, similarly, he does not have a choice in his affair after their judgment has been passed against him. Not submitting to their judgment is disobedience and straying from the right path. In addition, the Messenger was sent with the Book to judge between the people with the truth, and this judgment was made obligatory on him, may benediction of God be on him and his family.

Thus, referring to him and accepting his judgment became incumbent. If it were not so, then, on the one hand, judging between the people with the truth would not have been made obligatory on the Messenger, and on the other hand, it would not have been incumbent on the people to seek the judgment of the Messenger and abstain from determining it among themselves.

Firstly, it should be noted that taking recourse to the taghut is disobedience, and taking wealth by virtue of his judgment is unlawful gain, even though what has been taken may be lawful. This is if the disputed wealth consists of a particular property or article. As regards debt, it is doubtful whether the same rule applies to it. Details of this should be sought from books on jurisprudence.

Secondly, adjudication is only for the settlement of disputes, and has no effect in altering facts, whatever they may be. When someone makes a false claim and supports it with a false witness, or denies a truth and takes a false oath, and that is hidden from the judge, the latter will rule according to the false evidence or oath and contrary to the facts. It is incumbent on everyone who has knowledge of it to be on his guard against it, for it is a piece of fire. The details of it are also in legal books.

### ***7.0 Rules of Conduct for a Witness***

Judgment has a particular basis on which the judge relies when giving his judgment. If it is strong, then the ruling is correct and in keeping with the facts, not

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<sup>44</sup> Holy Qur'an: 33:36.

otherwise. Like the judge, the witness must be knowledgeable and just. The difference between the two is that the judge must have knowledge of the Divine law, while the witness must have knowledge of the matter that has been witnessed. He must comply with two points: firstly, he must have been present at the event in order to have witnessed it himself; secondly, he must be present in the court to report it<sup>45</sup> without alteration or evasion.

He must not avoid, conceal, or alter testimony, because "the one who conceals it, his heart is sinful; and God has knowledge of the things you do"<sup>46</sup>. Allah, the Exalted, says:

“O believers, be you securers of justice, witnesses for God, even though it be against yourselves, or your parents and kinsmen, whether the man be rich or poor; God stands closer to you than either of the two. Then follow not desire, so as to swerve; for if you twist or turn, God is aware of the things you do”<sup>47</sup>.

The conclusion of this noble verse is that no personal, communal or economic factor should interfere with the testimony, not even the love of oneself or of parents or kinsmen. Similarly, economic factors, such as prosperity or poverty, should not influence the mode of giving witness or abstention from it. That is because Allah, the Exalted, is aware of the actions of His servants and witness to them, whatever they may be.

Whoever knows that protects him against lapses and humiliation. The verse also shows that kinship is no hindrance to acceptance of the evidence of one of the relatives, even if it is the child's against the father. The details concerning the verse can be found in the books on law.

## **8.0 Rules of Conduct for Judgment between People of the Book (Ahlul-Kitab)**

The two litigants may be Muslims, or Jews or Christians, or of differing religions. If the two litigants are Muslims, the judge will rule between them only in accordance with Islam. If they are Jews or Christians, then the judge has the choice of ruling between them according to Islam, or referring them to special courts of

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<sup>45</sup> Holy Qur'an: 2:282.

<sup>46</sup> Holy Qur'an: 2:28.

<sup>47</sup> Holy Qur'an: 4:135.

their religious communities so that they may be judged according to them. Allah, the Exalted, says:

“If they come to thee, judge thou between them, or turn away from them; if thou turnest away from them, they will hurt thee nothing; and if thou judgest, judge justly between them; God loves the just”.<sup>48</sup>

This noble verse expressly suggests the choice between the two alternatives, and it is not contradicted by the literal meaning (zahir) of another text stipulating judgment between them in accordance with Islam, because, firstly, an express text (nass) enjoys precedence over the literal meaning (zahir) and also because the choice between the two alternatives is also in accordance with Islam. Thus there is no room for thinking that this verse is abrogated by the following one:

“So judge between them according to what God has sent down, and do not follow their caprices”.<sup>49</sup>

There is no contradiction between the nass allowing choice and the zahir specifying judgment in accordance with Islam. In addition, the choice has also been revealed by Allah, the Exalted. As regards the elaboration of the opinion which says that when the two litigants are from different religious communities, it is permissible for a Muslim judge to rule according to their laws, Imam `Ali, peace be upon him,

"Were the cushion folded for me, I would judge between the people of the Injil in accordance with their Injil...".

Some legists<sup>50</sup> under the teachings of Jafari school of Islamic legal thought have supported the necessity of ruling between the two parties in accordance with Islam, since referring them back to one of the religious communities would cause fitnah. Imam al-Khumayni, has ruled that if a dhimmi man committed adultery with a dhimmi woman, or if one dhimmi committed sodomy with another, the Islamic punishment (hadd) should be enforced.<sup>51</sup>

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<sup>48</sup> Holy Qur'an: 5:42

<sup>49</sup> Holy Qur'an: 5:48

<sup>50</sup> Al-Suyuti, Kanz al-'irfan, ii, 378.

<sup>51</sup> Tahrir al-Wasilah, ii, 464, 470, 506, 507

## 9.0 Uncommon Judicial Rulings

It has been stipulated in Islamic jurisprudence (fiqh) that adjudication has certain criteria which the judge may not violate. These include: evidence or oath, the oath given on weak and inconclusive evidence (qasamah in cases of lawth), the knowledge of the judge, or admission, where the judge is not able to give a positive or negative judgment violating them.<sup>52</sup>

He may resort to drawing lots only when there is a conflict of rights, not in order to determine and reveal the ruling but to make a division and in cases which are similarly doubtful. The matter is elaborated in legal works. It has been pointed out that drawing lots has a basis in the Noble Qur'an, and to mention it here is not without benefit. God, the Exalted, has said:

For thou wast not with them, when they were casting quills which of them should have charge of Mary; thou wast not with them, when they were disputing.<sup>53</sup>...And cast lots, and he was of the rebutted.<sup>54</sup>

The last verse means that Jonah was a loser in the casting of lots when his arrow appeared, and he was thrown into the sea and swallowed by the whale. That has no connection with adjudication because of the general character of the act of drawing lots. Nevertheless, it has some relation to it and so must be indicated here.

The difference between the rulings of Dawud (AS) and Sulayman (AS) on tillage-"when the sheep of the people strayed there"<sup>55</sup> may come to one's mind. Sometimes their difference is attributed to ijtiḥād, and at other times to the revelation to Sulayman which abrogated the ruling of Dawud.

With regard to Divine judgment, there is no scope for a prophet to perform ijtiḥād according to personal judgment and reflection. In addition, God, the Exalted, has said: "And We made Sulayman to understand it".<sup>56</sup>

This suggests that the 'understanding' was the result of Divine inspiration. Similarly, that which was given to Dawud, peace be upon him, was from God, the

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<sup>52</sup> Ibid.

<sup>53</sup> Holy Qur'an: 3:44.

<sup>54</sup> Holy Qur'an: 37:141.

<sup>55</sup> Holy Qur'an: 21:78.

<sup>56</sup> Holy Qur'an: 21:79.

Mighty and Sublime, since God gave him "wisdom and speech decisive (fasl al-khitab)." <sup>57</sup>. It is said that by fasl al khitab is meant the rule that evidence lies with the claimant and oath upon the denier.

As for the abrogation, it has perhaps not been established because of the possibility of both the judgments being correct though Sulayman's ruling was more beneficial and proper with regard to the litigants.

## **Conclusion**

From what is treated above, it could clearly be understood that the aim of judiciary in the administration of justice, from shari'ah perspective is that, judiciary is necessary to protect human society and that its criterion is nothing other than revelation. The administration of justice in human society is possible through a judge who has knowledge of the divine criterion for judiciary and who believes in it and acts in conformity with it. A judge should possess the greatest impartiality, emanating through wisdom in the intellectual faculty, through generosity and integrity in the faculty of Desire, and through courage in the faculty of Anger, so that the judiciary becomes free from the pollution of injustice, vanity, and falsehood, and achieves unequalled good. One of the rules of judiciary from the perspective of Shari'ah is that judges should not hasten with judgment before complete investigation and questioning of the litigants. This is indicated by the statement of God, the Exalted:

Behold, this my brother has ninety-nine ewes, and I have one ewe. Yet he says, "Give her into my charge"; and he has overcome me in the argument.' Said he, 'Assuredly he has wronged thee in asking for thy ewe in addition to his sheep; and indeed many partners do injury one against the other, save those who believe, and do deeds of righteousness-and how few they are!' And David thought that We had only tried him; therefore he sought for-giveness of his Lord, and he fell down, bowing, and he repented. <sup>58</sup>

This verse indicates that it is essential to abandon haste in identifying the culprit and the offence, even though it is in compliance with the presumption of the soundness of the case. There is nothing in the verse to indicate criticism in relation to the conduct of the Prophet David, since this episode is narrated in the Surat Sad

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<sup>57</sup> Holy Qur'an: 38:20.

<sup>58</sup> Holy Qur'an: 38:23-24.

between two commendations of Dawud, peace be upon him. Before the above-mentioned verse, God, the Exalted, says: And We gave him wisdom and speech decisive.<sup>59</sup> After the verses 23-24, God the Exalted says:

David, behold, We have appointed thee a viceroy in the earth; therefore judge between men justly.<sup>60</sup>

Undoubtedly, a prophet whom Allah has given 'wisdom and speech decisive' and whom He has made a viceroy in the earth, commanding him to judge between men justly, does not hasten in judgment before decisively completing a proper investigation. Thus it is certain that what issued from Dawud, peace be upon him, was only mentioned as a presumption and a hypothesis, i.e. it is an injustice to presume the veracity of a hypothetical case.

Therefore, the judge must abandon haste in such a decision as well, and must treat both the litigants equally in looking at them and speaking to them. He should know that his tongue is between two flames of fire, and that his tongue is behind his heart; so if it is right for him he should speak, otherwise he should hold back. The holy Qur'an has forbidden the giving of money to judges in the hope of extracting an unjust judgment from them.

If a judge has not learned to conduct himself in accordance with the Divine norms, his judgment would have no significance, even if it were correct; since two matters have to be taken into account in adjudication; firstly, the actual good (al-husn al-fi'li), which is that the judgment should be in accordance with the truth; secondly, the efficient good (al-husn al-fa'ili), which is that the judgment should issue from a pure soul and a heart with certain faith, and without fear of anyone's reproach. 'The judges are of four kinds, three of which go to the hellfire and one to heaven.<sup>61</sup> This kind is the one who judges rightly and knows that it is right.

In the administration of justice, from shari'ah perspective, no personal, communal or economic factor should interfere with testimony, not even the love of oneself or of parents or kinsmen. Similarly, economic factors, such as prosperity or poverty, should not influence the mode of giving witness or abstention from it.

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<sup>59</sup> Holy Qur'an: 38: 26.

<sup>60</sup> Holy Qur'an: 38:26.

<sup>61</sup> Al-Wasa'il, Chapter 4, "The Qualities of a Judge".