

Government Influence and the Judiciary

(part 1 of 2)



The Independence of the Judiciary

Islamic Law, through the sacred texts and through its basic principles, prohibits the governing officials from interfering with or influencing the decisions of the court in any way. Islamic Law, in its general principles and individual statutes, seeks to

realize its primary objective of establishing justice on the foundation of monotheism. Monotheism is not just lip service. It is realized through actions that verify the profession of faith. These actions must entail carrying out the commandments of God and preventing what God has prohibited. This is a collective responsibility of Muslim society. This requires that God's commands and prohibitions be applied as the standards of truth and justice. Whatever God has commanded is truth and justice and whatever He has forbidden is falsehood and oppression. Consequently, prohibiting what God has forbidden is truth and justice.

There are numerous verses in the Quran that command justice and forbid oppression. God says:

“Verily, God enjoins justice, doing good, and spending on one’s relatives, and forbids licentious deeds, wrongdoing, and transgression. He admonishes you, so perhaps you might take heed.” (Quran 16:90)

And God says:

“...And let not the hatred of others dissuade you from justice. Be just, that is nearer to piety; and fear God. Verily, God is well acquainted with what you do.” (Quran 5:8)

And God says:

“...And if you judge (O Muhammad), judge between them with justice. Verily, God loves those who act justly.” (Quran 5:42)

And God says:

“...And whoever does not judge by what God has revealed, they are the disbelievers.” (Quran 5:44)

In the hadîth, God’s Messenger relates:

“God says: ‘O My slaves, I have prohibited oppression upon myself and made it prohibited between you, so do not oppress one another.’ (Saheeh Muslim)

These are but a few of the sacred texts that show the obligatory nature of judging with justice and with what God has revealed. This is a general command, equally applicable to the one who governs and the one who is governed. The political power in Islam is bound by God’s Law. There is no obedience due to the government if it requires disobedience to God’s Law. This is the way our pious predecessors acted upon Islamic Law. The political leaders are merely appointed to the affairs of state. The true ruler is God. The Caliph or leader is but one of the Muslims, equal with the others. The Muslims are the ones who select him and place him in authority. They can monitor his activities. He must consult with them. If he violates Islamic Law and acts against the welfare of the people, they can have him removed from office.

In the past, the political leaders of the Muslim state understood that justice – by which the heavens and the Earth are kept right – is the basis for governing in Islam.

Amr b. al-As said: “There is no political leadership without men. There are no men available without wealth. There can be no wealth without a prosperous civilization. Civilization cannot prosper without justice.”

The Caliph^[1] Umar b. Abdulaziz wrote to one of his functionaries who sought permission to fortify his city: “Its fortification is achieved through justice and through removing oppression from its streets.”

Saeed b. Suwayd said in one of his addresses in the city of Homs: “O people, Islam has an impenetrable wall with a secure gate. Its wall is the truth and its gate is justice. Islam will remain inviolable as long as the political authority is stern. This sternness is not by whip or sword, but by judging with truth and applying justice.”

Footnotes:

^[1] Caliph: From the Arabic word *Khaleefah*, or Successor. A term used to denote the political leader of the Muslim nation.

For this reason the Rightly Guided Caliphs and the leaders of the Islamic state worked hard to bestow every possible dignity and honor on the judiciary and strove to protect it from all outside interference. They did this to ensure truth and justice. Therefore, they did not attempt to turn the court rulings to their favor or the favor of those they liked.

They, themselves, adhered to the decisions of the judiciary, respected them, and carried them out. They accepted the verdicts of the judge. Even when the rulings were against their own selves, they would dutifully carry them out. The history books are full of narrations where the Rightly Guided Caliphs and later Muslim governors were involved in litigation with others and the judges who they themselves appointed ruled against them. In some cases, the Caliph knew what the truthful outcome should be, but still allowed the case to go to court in order to set an example of conduct for those who would come after them. They would also do this to test the strength of the appointed judges in the face of such a situation where their adversary might even be a Jew or other Non-Muslim.

The judges themselves were no less concerned about these things than the governors were. The judge in his courtroom was an imposing and well-respected figure. He would not sway from the truth on account of criticism. He would treat the prince and the pauper equally. The history books give us some examples of this.

Al-Ashath b. Qays entered upon the judge Shurayh while he was in his courtroom. Shurayh greeted him and bade him sit next to him. At this time, a person came in with a case against al-Ashath. Shurayh then said: "Stand up and take the defendant's seat and address the other."

Al-Ashath said: "On the contrary, I will speak to him from here."

Shurayh then said: "Will you stand on your own, or must I bring someone in who will make you stand?" At this point, he stood up and took his place as ordered."

Abu Yusuf – one of history's most extraordinary judges - has a case brought before him where a man claimed that he owned a garden that was in the possession of the Caliph. Abu Yusuf had the Caliph appear in court and then demanded that the plaintiff bring his proof. The plaintiff said: "The caliph misappropriated it from me, but I have no proof, so let the Caliph take a solemn oath."

The Caliph then said: "The garden is mine. Al-Mahdi purchased it for me but I find no contract for it."

Abu Yusuf bade the Caliph thrice to testify under oath, but the Caliph would not do so. At this point, Abu Yusuf ruled in favor of the plaintiff.

The Caliph, Abu Jafar al-Mansoor, once wrote to Siwar b. Abdullah, the presiding judge in Basra: “Look at the land that so-and-so the general and so-and-so the merchant are disputing about and give the land to the general.”

Siwar wrote back: “The proof has been established before me that the land belongs to the merchant. I will not take it from him without proof.”

Abo Mansoor wrote back: “By God, besides Whom there is no other god, you will not take it from the merchant without right.” When the judge’s letter had reached him, he had said: “I have filled it, by God, with justice, and my judges have begun to refuse me with the truth.”

Islam did not stop at prohibiting the political leadership from interfering with the decisions of the judge. It went further, providing other guarantees to ensure that the judiciary would remain strong and independent.

Since the judge holds such a prominent and serious position in society – being that he is the one who decides between others in their disputes – it is necessary for him to enjoy the respect and trust of the people so that they will be content in accepting his judgments as just. A judge will not be able to attain this public esteem except with some concrete proof of his character.

He provides this proof through his good conduct that must be free of eccentricities and through his unyielding adherence to justice when passing judgment. The jurists stress this point and discuss the types of behavior and work that a judge should stay away from. Without doubt, the things that they mention are not exhaustive, but are merely given by way of example.