

The Islamic System of Judiciary in the Qur'an

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There are a number of noble Qur'anic verses which deal comprehensively with the 'system of the judiciary', and which we must examine closely. In the following sections, these verses will be studied and the results sought for derived from them:

1.The need for the judiciary (al-qada'), which is indispensable for the life of human society.

2.The criterion for judiciary.

3.The rules of conduct for the judge, his qualities, rights, and particular duties.

4.The duty of the 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 view of them.

1. 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. (49:13)

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 (al-ta`aruf) 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. (11:118-119) God's responsibility is to show the way; and some do swerve from it. If He willed, He would have guided you all together. (16:9)

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. (2:213)

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 statement of God, the Exalted:

Nay, but they cried lies to the truth when it came to them, and so they are in a matter perplexing. (50:5)

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 one to another" even though they are "hard against the unbelievers" (48:29). It has described the believers as being "a building well-compacted" (61:4) in confrontation with untruth, and as "friends one of the other; they bid to honour and forbid dishonour" (9:71). It has called them to "enter the peace, all of you" (2:208), 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 rancour towards those who believe" (59:10).

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 behaviour, 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 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. Thereat 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).

2. The Criterion for the Judiciary:

It has been explained in the previous section that judiciary is necessary for safeguarding social system and to curb unruly behaviour. In this section we will discuss its criterion. 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 ensue 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 laying 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. (4:165)

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 per. formed

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. (17:15)

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?' (20:134)

This proves that it is not God's practice to chastise His creatures before dispatching Messengers, nor to humiliate, disgrace, and destroy 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. (4:11)

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. (40:83)

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. (57:25)

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 intellect and without the need for revelation, there would have been no need

for it. 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 imperishable. Since he moves from one abode to another, he must seek perfection 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-the capacity of divine revelation in explaining the judicial system-is indicated by several Qur'anic verses.

Whoso judges not according to what God has sent down-they are the unbelievers. (5:44)

Whoso judges not according to what God has sent down-they are the evildoers. (5:45)

Whosoever judges not according to what God has sent down-they are the ungodly. (5:47)

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 pagandom then that they are seeking? Yet who is fairer in judgment than God, for a people having conviction? (5:50)

These verses suggest that judgment is either the judgment of Allah, determined by revelation, or the judgment of pagandom (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. 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. (42:10)

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. (5:48)

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-Gehenna, wherein they are roasted; an evil establishment!" (14:28-9), 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. (81:26-27)

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: No; but they cried lies to that whereof they comprehended not the knowledge, and whose interpretation had not yet come to them. (10:39)

Has not the compact of the Book been taken touching them, that they should say concerning God nothing but the truth? (7:169)

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 (17: 36)

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 a knowledge of Allah, the Exalted, and faith in Him.

Similarly, it facilitates a knowledge of the Messenger and the necessity of his infallibility and freedom from sin and error in delivering the message, and a 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. (2:151)

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