

## The Current Man-Made System of Judiciary Ensures that Might is Right and Justice is Delayed

The most profound and detailed jurisprudence in human history is that of Islam. From the time of the Messenger of Allah (saw) Islam is characterized by its swift and fair justice.

So, the Messenger of Allah (saw) personally inspected the markets and judging upon fraud and cheating. Islam did not enforce punishment in the case of doubt, rather only with firm Shariah testimony, for the Messenger of Allah (saw) said, «ادْرَعُوا الْحُدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ، فَإِنْ كَانَ لَهُ مَخْرَجٌ فَخَلُّوا سَبِيلَهُ، فَإِنَّ الْإِمَامَ أَنْ يَخْطِئَ فِي الْعَفْوِ خَيْرٌ مِنْ أَنْ يَخْطِئَ فِي الْعُقُوبَةِ» **Repel the punishment from the Muslims as much as you can, so if there is a way out clear the path for it, for it is better for the Imam to make an excuse in pardon then make a mistake in punishment.** [Tirmidhi]. The cutting the hand of the thief was not performed in the Year of Famine was to alleviate the starvation, as Sarakhsi mentioned in “Al-Mabsoot” from Makhool that the Messenger of Allah (saw) said, «لَا قَطْعَ فِي مَجَاعَةٍ مُضْطَرِّ» **“There is not cutting in the compelling famine”** and this is what Omar (ra) did during the famine. The Jewish citizen won the case of the shield against the Khaleefah Ali (ra) because the Judge refused the witness of the son of the Khaleefah, and so on are embedded in the hearts and minds of the Muslims.

Thus, the corner stone of Islam's judiciary was fair, swift and sure justice. Moreover, Shariah was a standard for world civilization for thirteen centuries, inspiring the Western nations to revise their legal and ruling frameworks, for example Shariah influenced France's Napoleonic Code, Britain's Magna Carta and the US Constitution.

Settling the disputes, accounting the rulers and securing the rights of the people is now in an appalling state in the Muslim World since the abolition of the Shariah which was implemented through the Khilafah. The Shariah was abolished firstly under the Western occupation, that began in the eighteenth century, and then through the abolition of the Khilafah in 1342 AH which is 1924 CE. Since then the criterion has become the human mind in defining the issue of crime, conviction and punishment.

Now the Muslim World implements kufr laws, with a selective implementation of Islam. This has led to oppression upon the citizens, regardless of their school of thought, gender, religion and race. In Pakistan, it is British law, including the Criminal Procedure Code (CrPC) which was originally written in 1898, that defines crime, trial and punishment. The people sense that privileged people escape punishment whilst the weak in society are falsely implicated in cases, with prolonged court cases sometimes exceeding decades. So today the judiciary is characterized by might is right and justice delayed, justice denied and people avoid them as much as possible.

### Judiciary Secures the Interests of the Elite

The elite within the military and political leadership secure their interests and those of their colonialist masters through the judiciary. Democracy allows them to decide what should be legalized and what should be declared a crime and the judiciary as the law enforcer merely enforces the will of the elite group. However, in Islam, the crime is that which has been made a crime by Allah (swt) and His Messenger (saw). So, that which is regarded as forbidden in a hadith or an ayah is regarded as a crime and is punished. So, whilst Islam sees imposing General Sales Tax and Income Tax as a crime, Democracy enforces usurping of people's private property through such taxation, which is then used to benefit the colonialists through interest payments on loans and the ruling elite through financial corruption. In Islam, energy is a public property and privatization is not allowed as it usurps the community right to benefit from our energy resources.

However, in Democracy, privatization is legal and actively promoted benefiting the ruling class and their entourage. In Islam accounting the ruler and exposing any collaboration with the enemy is a duty, whereas in Pakistan today it is regarded as anti-state activity, disturbance of the public order or terrorism. Thus, under democracy, kufr laws secure the benefit of the ruling elite and their entourage, as they actually make the law, irrespective of the commands and prohibitions that Allah (swt) has revealed. Moreover, this elite group is protected from prosecution through judicial immunity of the rulers, as well as ordinances such as the National Reconciliation. So, the Musharraf-Aziz regime was free to execute the orders of America and only Musharraf was brought to court after that, whilst the Kayani-Sharif regime continued to betray Pakistan, without any challenge or threat from the judiciary.

### **Settling the Disputes, Securing the Rights and Accounting the Rulers**

Unlike Democracy, in Islam, it is Allah (swt) Who has revealed the laws regarding the crime, its testimonial evidence and punishment. Allah (swt) said, ﴿أَلَا يَعْلَمُ مَنْ خَلَقَ وَهُوَ اللَّطِيفُ الْخَبِيرُ﴾ **“Should not He Who has created know And He is the Most Kind and Courteous, All-Aware.)”** [Surah Al-Mulk 67:14] Islam is the firm basis of the judiciary in the Khilafah. Ignorance (Jahl) is other than Islam, including the British law, French penal codes and all other forms of kufr. The judge, whether a man or woman, Hanafi or Jafari, must be knowledgeable in Islam for he or she will judge by it. And the one who judges by other than Islam is in Hellfire, the Messenger of Allah (saw) said, «الْقَضَاءُ ثَلَاثَةٌ: وَاحِدٌ فِي الْجَنَّةِ، وَاثْنَانِ فِي النَّارِ، فَأَمَّا الَّذِي فِي الْجَنَّةِ فَرَجُلٌ عَرَفَ الْحَقَّ فَقَضَى بِهِ، وَرَجُلٌ عَرَفَ الْحَقَّ فَجَارَ فِي الْحُكْمِ، فَهُوَ فِي النَّارِ، وَرَجُلٌ قَضَى لِلنَّاسِ عَلَى جَهْلِ فَهُوَ فِي النَّارِ» **“The judges are of three types: one is in heaven, the other is in fire. As for the one who is Jannah, he is the man who knows the truth and judges by it, whereas the one who knows the truth and aggrieves it in judgment, he is in fire. And the man who judges for the people on ignorance is also in fire.”** [Abu Daud]

So in Islam, as it is the will of Allah that is imposed through the judiciary there is no favouritism or privilege based on power or status or any other matter. The rights of the weak are restored to them, regardless of their race, status, gender, school of thought or religion. Abu Bakr as-Siddique (ra) affirmed to the people upon becoming the Khaleefah, «وَالضَّعِيفُ فِيكُمْ قَوِيٌّ» **“The weak amongst you is strong before me till I return to him his right, Allah willing, and the strong amongst you is weak before me till I take the right from him Allah willing.”**

Moreover, when it was requested that a woman who committed theft be pardoned because she was from a noble family, The Messenger of Allah (saw) warned the Muslims by saying «إِنَّمَا أَهْلَكَ الَّذِينَ قَبْلَكُمْ أَنَّهُمْ كَانُوا إِذَا سَرَقَ فِيهِمُ الشَّرِيفُ تَرَكَوهُ وَإِذَا سَرَقَ فِيهِمُ الضَّعِيفُ أَقَامُوا عَلَيْهِ الْحَدَّ وَآيَمَ اللَّهُ لَوْ ...» **“The people before you were ruined because when a noble person amongst them committed theft, they would leave him, but if a weak person amongst them committed theft, they would execute the legal punishment on him. By Allah, were Fatimah, the daughter of Muhammad, to commit the theft, I would have cut off her hand.”** [Bukhari]

### **No Immunity for the Ruler in his Violation of Islam**

There is no immunity for the ruler in his violation of Islam and any ruler, be it the Khaleefah or a Wali, that seeks guidance from IMF, ISAF, UN or the US State Department will be brought for immediate trial. Moreover, even the Khaleefah has no right to remove the judge over his case once it is under process, a far cry from Nawaz Sharif and Musharraf's tussles with the judiciary.

In its **Introduction to the Constitution**, Hizb ut Tahrir has adopted in **Article 13**, **“In a narration by Tabarani in al-Mu’jam al-Awst by al-Fadhli bin al-Abbas narrated that the**

«فَمَنْ كُنْتُ جَلَدْتُ لَهُ ظَهراً فِهَذَا ظَهري فَلْيَسْتَقْذِ مِنْهُ، وَمَنْ كُنْتُ شَتَمْتُ لَهُ عَرِضاً فِهَذَا عَرِضِي فَلْيَسْتَقْذِ مِنْهُ» Prophet (saw) said, **«Whoever I had whipped his back here is my back, let him retaliate! Whoever I had cursed his honor, here is my honor let him curse it! Whoever I had taken some money from him here is my money, let him take from it.»** It further states in **Article 87** “The judge of the Court of Injustices (*Madhalim*) is appointed to remove all injustices which have been inflicted upon any person who lives under the authority of the State ... irrespective of whether the injustice was committed by the *Khalifah* or anyone below him from the rulers and civil servants.” And in **Article 88**, it states, “The judge of the Court of Injustices (*Madhalim*) is appointed by the *Khalifah*, or by the Supreme Judge. However, he cannot be removed during his investigation of a *Madhlamah* against the *Khalifah*, or the executive assistants, or the Supreme Judge; rather the power to remove him in these circumstances is for the Court of Injustice Acts (*Madhalim*).”

### **Islam Establishes Swift Justice**

Not only does Islam prevent might being right, for the mighty is the one upon the truth, Islam establishes swift justice. Uniquely Islam has no appeal system, with endless circuits in courts of various levels. For once the rule of Allah has been established in a matter, the case is concluded. The only situation of annulment is if the judgement contradicts that which Allah has revealed or it was clear that he contradicted the reality of the case.

Hizb ut Tahrir states in its **Introduction to the Constitution, Article 83**: “There is no court of appeal, and no court of cessation, so the judiciary, as far as the method by which the cases are treated, is of a single level. If the judge pronounced a verdict, it would become binding, and it cannot ever be annulled by the verdict of another judge unless he ruled by other than Islam... or it became clear that he gave a verdict that contradicted the reality of the situation.”

In addition to the Judges of Mazalim and the general Judges, Islam has the Judge of Hisbah, a judge that will secure the rights of the community, even when there is not plaintiff who has noticed the usurping of the right that Islam granted.

In its **Introduction to the Constitution**, Hizb ut Tahrir states, in **Article 84**: “The *Muhtasib* is the judge who investigates all cases, in the absence of an individual litigation, involving the rights of the public that do not involve the *Hudud* (proscribed punishments) and criminal acts.” It further states in **Article 85**: “The *Muhtasib* has the authority to judge upon violations as soon as he learns of them, irrespective of the location and without the need to hold a court session. A number of policemen are put at his disposal to carry out his orders and to execute his verdicts immediately.”

### **Islam Secures Sure Justice by its Rigorous Procedures for Establishing Crime**

Not only does Islam secure swift justice, it secures sure justice by its rigorous procedures for establishing crime. Regarding testimonial evidence, whilst Islam stipulates certainty or the least amount of doubt for conviction, the Western criterion freely allows the use of circumstantial evidence for conviction. Thus the mixture of Islam and kufr in Pakistan, has led to tens of thousands of wrongful convictions in Pakistan's history. And throughout the world there have been hundreds of thousands of wrongful convictions under the prevalent kufr rule. For punishments, Islam stipulated Shariah testimonies which are Shahadah (Eye witness) Yameen (Oath) Iqrar (confession) Mustanidat-e-Qatayiah (Documentary evidences), such as official documents and signed documents, and these all have Shariah evidences for them. Circumstantial evidences as used in Western law are used in Islam for the sake of familiarization only and not in the place of firm testimony. So, when the Messenger of

Allah (saw) asked the dying female slave, who killed you and she pointed to a Jew, he did not accept her statement as testimonial evidence. He (saw) used it for familiarization, not for conviction and the Jew who was only killed after his confession. Islam, the Deen of Mercy, repelling the punishment in doubt, for there is no punishment without the firm Shari'ah testimony. The Messenger of Allah (saw) said, «ادْرءُوا الْحُدُودَ عَنِ الْمُسْلِمِينَ مَا اسْتَطَعْتُمْ، فَإِنْ كَانَ لَهُ مَخْرَجٌ فَخَلُّوا سَبِيلَهُ، فَإِنَّ الْإِمَامَ أَنْ يَخْطِئَ فِي الْعَفْوِ خَيْرٌ مِنْ أَنْ يَخْطِئَ فِي الْعُقُوبَةِ» **“Repel the punishment from the Muslims as much as you can, so if there is a way out clear the path for it, for it is better for the Imam to make an excuse in pardon then make a mistake in punishment”** [Tirmidhi]. As for the Discretionary Punishments (Ta'zeer), forensic evidences can be taken to establish the crime. For example, the examination by the doctor or midwife in the case of rape, in order to enforce the Tazeer of fifteen years imprisonment, public lashing and exile for the rapist, if there is not Shariah testimony to perform the Hudd punishment.

### **Islam has Stipulated Exemplary Punishment that Acts as a Deterrent**

Regarding punishment, after firmly establishing the crime took place, Islam has stipulated exemplary punishment that acts as a deterrent to others from committing crime, whereas the Western punishments have led to ever increasing crime, as well as huge prison populations. Under the kufr system, Pakistan's prisons have become schools to teach criminals how to evade capture in the future. Moreover, their punishment is not known to society, as it is behind the walls of the prison, so far from being a deterrent, the current punishments ensures the promotion of crime. This is far from that which Islam has stipulated, where the punishment is only implemented after Shariah testimony and when it is confirmed, punishment is carried out publically to deter others and discourage them, for example, the cutting of the hand of the thief takes place publically, such that the entire community is witness to this punishment. Thus there were only a few cases of cutting the hand of the thief under the Khilafah in over a thousand years of the implementation of Shariah, whereas under the current laws this amount exceeds many times that in a single day! Thus the crime rate in the Khilafah was so low it allowed the people to live in peace and security.

Moreover, not only are the punishments a restraint and deterrent for others to abstain from crime, they also secure the one who is punished by the Khilafah state, from the most severe punishment, that of the Hereafter. The Messenger of Allah (saw) said, «بَايَعُونِي عَلَى أَنْ لَا تُشْرِكُوا بِاللَّهِ شَيْئًا وَلَا تَسْرِفُوا وَلَا تَزْنُوا وَلَا تَقْتُلُوا أَوْلَادَكُمْ وَلَا تَأْتُوا بِبُهْتَانٍ تَفْتَرُونَهُ بَيْنَ أَيْدِيكُمْ وَأَرْجُلِكُمْ وَلَا تَعْصُوا فِي مَعْرُوفٍ فَمَنْ وَفَى مِنْكُمْ فَأَجْرُهُ عَلَى اللَّهِ وَمَنْ أَصَابَ مِنْ ذَلِكَ شَيْئًا فَعُوقِبَ بِهِ فِي الدُّنْيَا فَهُوَ كَفَّارَةٌ لَهُ وَمَنْ أَصَابَ مِنْ ذَلِكَ شَيْئًا ثُمَّ سَتَرَهُ اللَّهُ عَلَيْهِ فِي الدُّنْيَا فَهُوَ إِلَى اللَّهِ: إِنْ شَاءَ عَفَا عَنْهُ وَإِنْ شَاءَ عَاقَبَهُ» **“Swear allegiance to me on the basis that you will not associate anything with Allah, or steal, or commit fornication, or kill your children, or produce slander which you yourselves have falsely fabricated, or be disobedient concerning what is good. If any of you fulfils his promise, Allah will undertake his reward but if anyone perpetrates any of these things and is punished for it in this world, it will be an atonement for him. If, however, anyone perpetrates any of those things and Allah conceals it regarding him, the matter lies in Allah's hands; if He wishes He will forgive him, and if He wishes He will punish him.”** [Bukhari]

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Hizb ut Tahrir

Wilayah Pakistan