

Islāmic Justice System in the Courts of Qāḍīs

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Abstract

For maintenance of internal peace, strong judicial system is required in every state. The judicial system is always responsible to decide the issues between the parties on the basis of law enforced. Judicial system was also recognized by Islam. All of the messengers were entrusted to decide the cases of the people on the basis of justice and equality between the subjects. The laws are fixed in Islam and that are Qurān and Sunnah. The Islamic Judicial system is simple, the procedure prescribed by Islamic laws is easier and simple and a matter may be decided in a short time without falling into the technicalities. The simple procedure to present claim/suit, to hear other party, to require the parties to produce evidence in support of their respective contention and pass judgment/ to decide a case. This procedure could hardly take a couple of days. The judicial system of Islam is inexpensive because no money is required, no fee of the lawyers or court fee is required but the party will present claim and he will produce his witnesses/ evidence. Besides that the Islamic judicial system ensure complete equality between the parties as Qāḍī is deciding cases on the basis of divine law of Qurān and similarly he is entrusted to decide on the basis of sunnah/ ahadīth of the Holy prophet SWA being proved as symbol of justice. In the Islamic judicial system, Qāḍī is fully authorize to use his own senses by following the principles of ijthihād where there arise a difficulty but even in ijthihād he will follow Qurān and sunnah and will deduce the matter from the holy Qurān and sunnah. The judiciary was made separate from executive at the time of Ḥaḍrat ‘‘Umar R.A in order to make the judiciary fully independent and concentrated in the delivery of Justice. In the present paper the author has tried to point out the Islamic judicial system effective in the delivery of inexpensive and complete justice.

Key words. Islam, Qāḍī, Justice, procedure, evidence, precedents.

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Introduction

In the primitive ages, there were no laws due to non establishment of states. At that time the concept of might was right was developed. Then tribes were developed and the head of each tribe was used to decide the cases of its members on the basis of his own will. Justice, at that time was dependant only on the sweet will of the head of tribe, the societies were developed but at that time the head of societies was also interested with three kind of power because at the same time he was entrusted to frame the law or rules and similarly he was used to interpret and enforce the law. Then the societies were converted to states and laws were framed by the states and judges were made bound to decide the cases on the basis of existing law in order to ensure equality between the citizens. Later on the modern concept was developed and judiciary was completely separated from executive and other organs of states.

The concept of judiciary is recognized by Islam and the judge in the Islamic state is known as Qāḍī who is always entrusted to decide the case on the basis of Islamic laws laid down in the Holy Qurān and Ahadith of the Holy prophet SWA. The concept of ijthihad is also available in the Islamic system of judiciary.

Meaning of Qaḍā

The word Qaḍā is an Arabic word which is used in different senses. The common sense/meaning of Qaḍā is the completion of a thing or final determination of a thing. The word Qaḍā is also used for order as Allah says in the Holly Qurān,

“¹وَقَضَىٰ رَبُّكَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ”

Similarly, Allah says,

“When the prayer is offered²”.

The word Qaḍā is also used in the sense of discharge, the discharge of a thing/ decision of a matter³.

Importance of Judicial System:

Qaḍā is an Honorable Post:

It is the duty of the public to give respect to Qaḍā. And it is necessary for every Muslim to make himself aware of the importance and status of Qaḍā, it is pretenient to mention that for this work Allah sent his messengers. When the Judicial system is correctly established till that the sky and earth will be established. Ḥaḍrat ‘Abdullah Ibne Mas‘ood narrated from the Holy Prophet

S.W that there are only two things which are liable to Rashak the one is that when a person is awarded with wealth and he used the same in right path and the second is that when a person is awarded by Allah with knowledge and skills and he is using the same in making decision⁴. Allah said when the Holy Qurān that when you are making decision between the people decide it with justice because Allah loved the person who is deciding on the basis of justice⁵.

Ḥaḍrat Abū Huraira R.A narrated that the the Holy Prrphet S.W said that if a Qāḍi is making decision on the basis of Ijtehad and he is making efforts and concluded right decision and justice he has two reward and when he is making efforts and concluded wrong decision that has one reward⁶. Ḥaḍrat ‘Abdullah Bni ‘Umro Ben Aas narrated that the Holy Prophet S.W stated that the persons who are deciding on the basis of justice will be on right side with Rahman/Allah on stage/ membor. These are those people who are giving decision in respect of his Qoums/houses about the things which are in his supervision and they are deciding in according with Justice⁷. Ḥaḍrat Abū Hurrara R.A narrated that the Holy Prophet S.W said that there is no shadow beside the mercy of Allah on that time seven kind of people will be on the shadow of the special mercy of Allah the first one is Imam ‘Aāḍil.

Ḥaḍrat Abdullah bin Aufa RA narrated that the Holy Prophet SAW said that whenever the Qāḍi is not using the way of cruelty and injustice, Allah is with him. Meaning thereby the cooperation and help of Allah is with him but when he is using the way of cruelty and injustice then Allah separated his from his help⁸.

Qualification of Qāḍi

The qualifications of Qāḍi as per Malaki School are as under

1. He must be ‘Aāḍil
2. He must be male.
3. He must be sound mind.
4. He must be familiar to the knowledge of Fiqa.

As per Imām Shāf‘i views

1. A Qāḍi must be Muslim
2. He must be major and citizen of Islamic state.
3. He must be male.
4. He must be ‘Aāḍil.
5. He must be free and not slave.
6. He must have the capacity of listen, see, and speak.
7. He must have the quality to take the responsibility of Dārul Qaḍā.

8. He must be Mujtahid

According to Ḥumbali used

- i. A Qāḍī must be Mujtahid and he must have the ability to decide the cases. As per Ḥanifī views. H Ḥanifī are of the views that a Qāḍī must be the person who could make a difference between Halal and Haram.
- ii. The second condition for the post of Qāḍī as per Imam Abo Hanifa is that he must have sufficient knowledge and in this respect he must be competent to make ijtehād. Beside that Imām Abū Ḥanifa has prescribe the following qualification for the post of Qāḍī.
 - i. He must be Muslim
 - ii. He must be major
 - iii. He must be free and not slave
 - iv. He must be able to see.
 - v. He must be the person who is not charged with Qaḍaf under Ḥudood laws.
 - vi. He must be the person who can listen and speak.
 - vii. For the appointment of Qāḍī it is necessary that the person must have the qualification of a witness as per Islamic Law⁹.

Laws on the basis of which Qāḍī is competent to decide cases

It is narrated that when the Holy Prophet SW was sending Ḥaḍrat Ma‘ūz R.A to Yamen as Governor, the Holy Prophet SWA asked Ḥaḍrat Ma‘ūz that how you will decide a case.

“He replied that he will make decision according to the Holy Qurān. Then the Holy Prophet S.A.W asked him that if you do not find an order in the Holy Qurān what you will do. He replied that he will make decision according to the Sunnah of Rasullullah SW. again the Holy Prophet SA ask him that when solution of a matter is not available in the Sunnah then what will you do then Ḥaḍrat Ma‘ūz R.A replied that he will deduct the solution from the Holy Qurān and Sunnah by using as entire power. Meaning thereby he will use Ijtehād¹⁰.”

Meman-ben-Mehrān narrated that when a matter came to Ḥaḍrat Abū Bakar R.A he was used to decide the same on the basis of the Holy Qurān. And when he was unable to find out any solution in the Holy Qurān he was used to decide the case on the basis of Sunnah of the Holy Prophet S.W. and when he was unable to find out the solution in Sunnah of the Holy prophet SwA then he was used to come out and ask from the Muslims. That what was the decision of the Holy Prophet S.W on this particular matter. Most of the

time it was happened that a few people told him that the decision of the Holy Prophet S.W was that in that particular matter. When he was unable to find out the saying of the Holy Prophet S.W he used to collect the Muslim and ‘Ulamā, and they were used to decide the case with their mutual concentration.

From the above examples and Ahades it is concluded that the following resources of law on the basis of which a Qāḍi is competent to decide a case.

1. Holy Qurān

Holy Qurān is the basic source of Islam and the Qāḍi must be look the solution of a matter in the Holy Qurān. If he is unable to find out the solution he must be guess the solution of a problem from the Holy Qurān.

2. Sunnath e Rasool:

If a Qāḍi is unable to decide a case or deduce a law from the Holy Qurān then he may follow the Sunnah of the Holy Prophet S.W S of the Holy prophet S.W are divided into two categories. The first one is Ahades which are the oral saying of the Holy Prophet S.W. and the second one is Sunnah the practical application of a conduct or behavior by the Holy Prophet S.W himself.

3. Ijmā‘

4. Ijmā‘ is secondary source of Islamic laws. Which was firstly used by the Ḥaḍrat Abu Bakar R.A as mentioned above when the solution of a problem was not available in the Holy Qurān and Sunnah Ḥaḍrat Abū Bakar R.A was used to collect the Muslims ‘Ulamā, and decided the matter with their mutual concentration. So Ijmā‘ is termed as third source.

5. Qiyās

Qiyās is basically the comparison when similar solution of a problem is available in the Holy Qurān and Sunnah which shall be applied to a matter being the second resource of Islamic law.

6. Other Sources

The rest of the sources recognize by the Muslims are Ijtehād, Taqlīd of Aṣḥāba Kirām and ‘Ulamā, Isteḥsān, Istedlāl, etc these sources are basically recognized as principal for the deduction of matters from the Holy Qurān and Sunnah.

Procedure to be followed by the Qāḍī

The purpose of procedure is basically that it should be familiar to every one.

Presentation of claim.

The Qāḍī can not take cognizance until and unless a party is producing a law suit before him.¹¹

Evidence

Qāḍī will decide the case on the basis of evidence.

The Arabic word used for evidence is Shahādat which means to give information after proper observation and not on the basis of mere presumption. Therefore, shahādat means to testify.

The Qāḍī is bound to decide the case on the basis of evidence. When the plaintiff demand the evidence, then the witnesses are bound to appear and give evidence and the concealment of facts is not valid for the witnesses. It is clearly mentioned in the Holy Qurān that when the witnesses are summoned they must not refused but they must appear and must give evidence¹². It is a Hadith of the Holy Prophet SWA that best evidence are those which are given before, for summoning of which, an application is filed¹³.

Number of Witnesses

1. Cases of Zinā

In Zinā cases four male witnesses are required. Meaning thereby, four reliable witnesses must give evidence of Zinā. It is given in the Holy Qurān that:

“If your women commit adultery, four male witnesses shall be produced against her”¹⁴.

2. Ḥudood

Two male witnesses are required in ḥudūd cases.

2. Matters other than Qisas and Ḥudūd

In cases of matter other than qisās and ḥudūd, like sale, property, nikāḥ, ṭalāq, will etc, two male or one male and two female are competent to give evidence.

3. Secrecy of Female

Cases where physical secrecy of female is involved, then evidence of female is acceptable only.

Qualification of witnesses under Islamic law

The person who is giving evidence must be ‘Aādil. Therefore if a person is giving evidence and he is using the word Ashhadū that would be completely correct and if he is using the word ‘Aalam that should not be relied upon.

When the plaintiff produced witnesses before the Qāḍi. Qāḍi will not ask about the truthfulness or falsity of the witnesses according to imam abu hanifa if the defendant is not objecting the evidence. And similarly if he has proved a defect due to which the testimony of the witness is not acceptable. If no objection is made by defendant, then it is required for the Qāḍi to rely upon the evidence of Muslim witnesses and he will make no investigation. It is a hadith that all the Muslims are aadil except convict of Qaḍaf and some are against the others. Similar Ḥaḍrat ‘Umar RA mentioned in its letter to Ḥaḍrat Abū Mūsa Asharī that if a Muslim is apparently ‘Aādil he should be relied upon and no more investigation would be required from him.

Tazkia Shohood.

Which means that a witness must refrain from major sins and must not repeat minor sins.

Judgment.

After closing of evidence, the Qāḍi will announce Judgment on the basis of evidence.

REVIEW/APPEAL

It is narrated by sufyaṅ sūrī that when a Qāḍi is making decision against Qurān or Sunnah or an order which is practicable in ummah, then his decision may be liable to be dismissed. If a thing related to public opinion or ijtihād shall not be dismissed.

Precaution/Principles for the post of Qāḍi

1. Equality

The Qāḍi must maintain equality between are among Muslims. The Qāḍi must look to the parties, the parties equally if he is meeting any gesture etc he must not ignore the principal of equality, he must not allow a party to set in a distance place of the set party with himself. Its Hadis of the Holy Prophet S.W wherein the Holy Prophet S.A.W said that when any of you as appointed as Qāḍī then he must maintain equality in his looking, gestures, and seating between or among them.

2. To refrain from Gossips

It is necessary for a post of Qādī that a person who is appointed he must be refrains from every kind of Gasic and laughing¹⁵.

3. Equality in Decision:

The Qādī must maintain equality in the decision; he must maintain justice between the parties. Umul-Momenīn Ḥaḍrat Umme Salma R.A narrated a Hadith from the Holy Prophet S.W that the Holy Prophet S.A.W said that:

“If any of you is interested with the decision between people it is his necessity that he will not talk in a loud voice with one person in comparison to the other person. It is required for the Qādī that his characters, voice and every act must be equal with both of the parties¹⁶.”

4. Decision with Cool Mind

Ḥaḍrat Abū Sa‘īd R.A narrated that the Holy Prophet S.W said that the Qādī shall only decide the cases when he has sufficiently eaten and drink meaning thereby he must be in complete senses to decide a case¹⁷.

5. Decision on the basis of evidence

It is narrated about Qādī that he was used to tell the people in his court that he is going to decide a case in your favor but he knows that you are not right but he can only decide the case on the basis of proofs produced before him. Therefore, his decision cannot make any Haram, Halal for you¹⁸.

6. To refrain from accepting Gifts etc

when a person he is gifting something to the Qādī the same as counted as corruption therefore, it is required for Qādī to refrain from accepting gifts from the people, however, the Qādī can accept gifts from those people who were giving and taking gifts even before as appointment as Qādī and similarly, gifts of those relatives are valid which are given to the Qādī on the basis of custom. It is narrated that when the Holy Prophet S.W sent Ma‘āz R.A to Yemen as governor the Holy Prophet S.W went with him to a place Sanyatul Wida for his departure, when he was departure then the Holy Prophet S.W sent persons and recalled him, the Holy Prophet S.W said did you know why are you recalled, he said that one thing is remained and you was recalled back for that, the Holy Prophet S.W told them that you are not allowed to take anything without disprametion because any person who is committing betrayal in the Govt. property he will return the same on the day of judgment after that, the Holy Prophet S.W again departure him.

7. The Qāḍi Can Offer Funeral Prayer

When a person died it is required for a Qāḍi to attend his funeral prayer, beside the Qāḍi can also attend the sick person because these are the included in the five primes narrated in Hadith by the Holy Prophet S.W.

8. No Decision in angar

It is narrated from the Holy Prophet S.W that no Qāḍi will make a decision between two persons in the state of angar¹⁹.

9. Refrain from Corruption

The Qāḍi must refrain from taking corruption. It is a Hadis of the Holy Prophet S.A.W that a person who is taking bribe and the person who is giving bribe are both in hell²⁰.

Islamic Decisions/Precedents

1. Decision of Prophet S.A.W

During time of Prophet S.A.W there were two brothers and they have built a wall in the middle of their house. When both the brothers died each one of their LRs claimed the ownership over the wall in question. When the dispute arose between them they come to the Prophet S.A.W for its decision. The Prophet sent them to Ḥaḍrat Ḥuzifa. The said Ḥaḍrat Ḥuzifa after visiting and perusal of the spot, decided the matter in favour of the person/LR whose living place/foundation was attached to the wall. This decision of Ḥaḍrat Ḥuzifa was appreciated by the prophet Muhammad SAW and the Prophet SAW said to Ḥaḍrat Ḥuzifa that you have rightly decided the matter²¹.

1. Decision of Ḥaḍrat ‘Umar RA

When Ḥaḍrat ‘Umar RA ordered the construction of buildings in city of Kofa and Baṣra, the thoroughfare/streets were ordered to be left 20 feet wide and 40 feet long. Similarly, the small streets were left 9 feet wide and the plots were declared to be left 40x60 feet.

2. Statement of the accused.

Some people of the tribes namely Ekal and Hurraina came to Madina to the prophet Muhammad SAW and accepted/converted to Islam and then they said to prophet Muhammad SAW:

“O Messenger of Allah Almighty! We had kept kettle and we had no fields that could produce fruits/food for us and that is why we were only living on

drinking milk but now the conditions here are in Madina are not favorable to us. Upon hearing this the Prophet Muhammad dedicated/given some camels and shepherds and said to them/tribes men to drink milk and urine of the camel in order to medically accustom with the conditions here in Madina. The tribes' men then went to the place of the kettle but upon reaching Harra they did not rolled back from accepting Islam and killed the shepherds of the prophet Muhammad SAW and fled from the scene along with the camels. Upon hearing this, the prophet Muhammad SAW ordered to capture them and resultantly they were caught and brought to Madina. The prophet Muhammad then ordered that hot needle be rubbed in their eyes and also their hands and legs were removed/cut. They were ordered such harsh punishment because they have done the same to the shepherds of the prophet Muhammad SAW. Similarly, the tribes men in question were left at placed called Harra, thereafter, they died in such condition²²."

3. Murder decision of Holy Prophet SWA.

Sahal Bin Abi Hasma who was quoted that some people of his tribe went to Khyber and upon reaching there they left each other's company. Thereafter, they found that one of their member has been killed and when they found the deceased with some of his people they said to them that you have killed this person. The people told them that they have not killed the deceased and they also do not know who killed the deceased. Henceforth, they went to the prophet Muhammad SAW regarding the issue in question. The prophet Muhammad SAW told them to produce eye witness of the murder in question. They told him/Prophet Muhammad SAW that we do not have any witness in this regard. The prophet Muhammad SAW then told them that Yahud leaving nearby the occurrence will take oath that they have not killed the deceased but tribesmen told Prophet Muhammad SAW that they are not ready to accept the said by them. The prophet Muhammad SAW then realised that the deceased blood is going to waste. The prophet Muhammad SAW then handed over 100 camel to the LRs of the deceased.

4. 'Ahd e Farooqi

A dispute arose between Ḥaḍrat 'Umar RA and Ḥaḍrat Ubbi Bin Kab regarding an orchard/property. At that time Ḥaḍrat 'Umar RA was Amir ulMomeneen (leader). Both of them appeared before Zaid Bin Sabith the then Qādī. Ḥaḍrat 'Umar RA said that both the parties should appear before the mediator/Qāḍi in his house. However, Ḥaḍrat Zaid Bin Sabith vacate his seat there at the spot and told Ḥaḍrat 'Umar RA to sit on his seat. Ḥaḍrat 'Umar RA

told him that you have started your proceedings from cruelty/unfairness and further told him that you should have ordered me to set with the other party/ Ḥaḍrat Ubbai Bin Ka'b. Henceforth both the parties set before the Qāḍi/Zaid Bin sabith. ḤaḍratUbbai Bin Ka'b narrated his pleadings/claim to which Ḥaḍrat'Umar denied. The Qāḍi then asked ḤaḍratUbbai Bin Ka'b regarding the witnesses to be produced. He told the Qāḍi that he has no witness. The Qāḍi then told Ḥaḍrat 'Umar RA that he will need to take oath and then the Qāḍi told Ḥaḍrat Ubbi Bin Kab that do not offer oath to Ḥaḍrat'Umar RA/Amir. Upon hearing this, Ḥaḍrat 'Umar RA told the Qāḍi that are you deciding all the cases in such a manner. The Qāḍi nodded in negative. Ḥaḍrat 'Umar RA told him to decide the issue between them just like he decide the issues between the other people. The Qāḍi then told Ḥaḍrat 'Umar to take oath. Ḥaḍrat 'Umar RA told the Qāḍi that if he is not feeling reluctance while eating the fruit/food of the orchard in question then how he will feels reluctance while taking oath in this regard. Then he took oath and stated that he swear on Allah Almighty that Ḥaḍrat Ubbi bin Kab has no right whatsoever, over the orchard in question²³.

5. 'Ahd e Uthmani

The Islamic empire in the leadership of Ḥaḍrat Usman was extended and in this regard, the numbers of Qāḍi were also increased wherein, Ḥaḍrat Usman was also deciding some matters by himself between various parties. However, his method of decision was such that he would told one party to bring Ḥaḍrat 'Ali and Talha Bin Ubaidullah and told the other party to bring Zubair Bin 'Awam and Ḥaḍrat 'Abdur Rahman Bin 'Awf. When they all come he would told each party to state his/their pleadings. Then after hearing pleadings of the parties Ḥaḍrat Uthman would ask the opinion of the persons ibid/Sahaba and after hearing the opinion of the Sahaba ibid if he agrees with it he would announce the decision otherwise, he would adjourn the matter for further thinking.²⁴ Ḥaḍrat Abu Huraira's decision:

He has a famous judgment that a person was severely in a debt and later on became poor. The lender of the money told Abu Hurerra/the then Qāḍi to send him to Jail. The Qāḍi rejected this plea of the lender of the money and stated I am not sending him to jail due to your debt I am releasing him from your debt in order to earn for his children and pay your debt²⁵.

6. Sawwar Bin 'Abdullah

There was police person namely Afar Haqba Bin Aslam who was famous for his cruelty. He captured a person who brought a pearl from the sea and snatch from him the said pearl. The wife of the said person approached the court of Qāḍi Sawar regarding the matter and also cursed the Qāḍi in this regard. Sawar wrote a letter to the police person/Afar Hqba Bin Aslam by stating that he swear on Allah almighty if he/police failed to release and returned the pearl of the said person then he will come to him in white dress by attacking without any weapon and will kill him that people will remember it forever. The fellow persons of Aqba terrorized him of the consequences and the police/Afar Hqba Bin Aslam released and return pearl to the said person.

7. Qāḍi Shuraih:

Qāḍi Shuriah was amongst (تابعين) who was born in the days of ignorance, however, he did not meet in person with Prophet Muhammad SAW nor seen him. Ḥaḍrat 'Umar RA appointed him as Qāḍi. A dispute arose between Ḥaḍrat 'Umar RA and villager/native. Ḥaḍrat'Umar RA want to buy a horse from a villager and in this regard, fixed the rate of the horse and told another person to ride the said horse to his home wherein, on the way the horse got injured. Consequently, a dispute arose between them wherein, the villager told him to appoint a mediator in this regard, thus, Ḥaḍrat 'Umar RA told him lets approach Qāḍi Shuraih. The villager told Ḥaḍrat 'Umar RA that he do not know the Qāḍi in question. Ḥaḍrat'Umar RA told villager that he will call the Qāḍi. The villager then brought/call upon the Qāḍi. The pleadings of the parties were heard by the Qāḍi. Suhriah announce his decision and told Ḥaḍrat 'Umar RA that you bought the horse at time when the horse was in good shape now you have to pay the full price.

Conclusions

To conclude, the Islamic judicial system is an inexpensive system, which could ensure speedy justice on the basis of equality. The modern judicial system recognized by modern communities is just seems to be a mere developed copy of Islamic principles recognized by the Holy prophet SWA. The principles of evidence is the basic principles of islam to be relied upon while deciding a case by Qāḍi. In the modern system of justice, heavy delay is caused and the legislatures are trying to curb delay but every effort in this regard is causing more delay as result instead of speediness. Islamic laws are

the laws which are framed for all time and the same, if followed strictly in accordance with its spirit, may solve different problem in the field of justice.

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