

Islamic concept of justice

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By Syed Imad-ud-Din Asad

Friday feature

IN Islam the concept of justice is more comprehensive, vital, and sacred than in any other system of life. Just as so many other recent western legal notions regarding human rights, equality before law, juristic personality, non-retroactivity, international relations, trade, etc, were never alien to Islam, so is the concept of judicial independence and impartiality.

Revelation, which is available in the form of the Quran and the Traditions, is the primary source of Islamic law. Regarding the administration of justice, the Quran says: "Surely We have revealed the Book to thee with truth that thou may judge between people by means of what Allah has taught thee. And be not one pleading the cause of the dishonest." (4: 105)

It is agreed that the occasion of the revelation of the above-given verse was a dispute between a Jew and a Muslim, in which the Prophet (Peace be upon him) decided against the Muslim.

The Muslim, supported by his tribe, had falsely accused the Jew of theft. At a time when help was sorely needed for the defence of Islam, a verdict against a man supported by his tribe meant the loss of that tribe. But such considerations did not carry any weight with the Prophet and he cleared the Jew of the charge.

Thus, the verse lays down that dishonesty must be punished, and the balance of justice must be held equal between friends and foes and between Muslims and non-Muslims.

Judges are required to be so upright as not to be led swayed by the ties of relationship or by considerations of fear, favour, or compassion. The Quran says: "O you who believe, be maintainers of justice, bearers of witness for Allah, even though it be against your own selves or (your) parents or near relatives — whether he be rich or poor.... And if you distort or turn away (from truth), surely Allah is ever Aware of what you do." (4: 135)

"O you who believe, be upright for Allah, bearers of witness with justice; and not let hatred of a people incite you not to act equitably. Be just; that is nearer to observance of duty. And keep your duty to Allah. Surely Allah is aware of what you do." (5: 8) "...

And give full measure and weight with equity.... And when you speak, be just, though it be (against) a relative. And fulfil Allah's covenant. This He enjoins on you that you may be mindful." (6: 153) ".... So judge between men justly and follow not desire, lest it lead thee astray from the path of Allah. Those who go astray from the path of Allah, for them is surely a severe chastisement...." (38: 26)

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He strictly observed the Quranic instructions regarding equality before law, and never made any distinction between litigants on the basis of religion or relations. Instead of claiming any immunity from the law, he laid down the rule that even the head of the state may be challenged, in both official and private capacity, in the court. The following statement of the Prophet, which he made while deciding the case of a noble woman who had committed theft, demonstrates it all:

"Verily those who were before you were destroyed because when a noble man from among them committed theft, they passed no sentence on him. By Allah, had Fatima, the daughter of Muhammad, committed theft, I would have cut off her hand."

The successors of the Prophet also ensured the implementation of judicial independence and impartiality. Once Caliph Umar went to a judge for the settlement of a dispute. The judge, on seeing the Caliph, rose in his seat as a sign of respect. Umar, considering the act as an unforgiv-

able weakness, immediately dismissed him from the office.

On another occasion, Umar caused his son to be publicly flogged for drinking alcohol. These instances show the extent to which impartiality was expected of the judge. Another example that shows how just and impartial the Islamic judiciary must be is when Caliph Ali went to the court in order to recover his armour from wrongful possession by a Jew.

As the evidence submitted by Ali was inadmissible, the judge gave his verdict in favour of the Jew. The Jew was so impressed by the fairness of Islamic judicial system that he immediately returned the armour to Ali and embraced Islam.

The following portion of a letter that was written by Ali to one of his governors, excellently explains the status and role of judiciary in Islam:

"Select for your Chief Judge one from the people who by far is the best among them; one who is not obsessed with domestic worries; one who cannot be intimidated; one who does not err too often; one who does not turn back from the right path once he finds it; one who is not self-centred or avaricious; one who will not decide before knowing full facts; one who will weigh with care every attendant doubt and pronounce a clear verdict after taking everything into full consideration; one who will

not grow restive over the arguments of advocates; one who will examine with patience every new disclosure of facts; one who will be strictly impartial in his decision; one whom flattery cannot mislead; one who does not exult over his position. But it is not easy to find such men.

"Once you have selected the right man for the office, pay him handsomely enough to let him live in comfort and in keeping with his position, enough to keep him above temptations. Give him a position in your court so high that none can even dream of coveting it, and so high that neither backbiting nor intrigue can touch him."

Thus, we see that Islam provides for an independent and impartial judiciary. As law, in Islam, stands at the apex of social organization, those who administer the law must likewise be elevated and kept independent of executive control. Also, it is the duty of the judges to stand firm for justice though it may be detrimental to their own interests.