



JUDICIAL SYSTEM OF ISLAMIC LAW

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Article history:	Abstract:
Received: 10 th May 2023 Accepted: 8 th June 2023	Initially, Islam did not have a coherent legal system. Prophet Muhammad (SAW), as the head of the Muslim community, personally decided judicial issues and passed judgments, at times entrusting this to his companions. <i>"We have sent down to you the Scripture in truth, so that you may judge among people as Allah has shown you. Do not be quarrelsome for the sake of traitors. And ask Allah for forgiveness: Allah is Forgiving and Merciful!" (Quran, sura -Niso, verse - 105). Judge between them according to what Allah has revealed, do not indulge their desires, and beware of them, so that they do not turn you away from part of what Allah has revealed to you (Quran sura - Moida verse - 49) [1].</i>
Keywords:	

Initially, Islam did not have a coherent legal system. Prophet Muhammad (SAW), as the head of the Muslim community, personally decided judicial issues and passed judgments, at times entrusting this to his companions. *"We have sent down to you the Scripture in truth, so that you may judge among people as Allah has shown you. Do not be quarrelsome for the sake of traitors. And ask Allah for forgiveness: Allah is Forgiving and Merciful!" (Quran, sura -Niso, verse - 105). Judge between them according to what Allah has revealed, do not indulge their desires, and beware of them, so that they do not turn you away from part of what Allah has revealed to you (Quran sura - Moida verse - 49) [1].*

Muhammad (SAW) pronounced sentences in the presence of the conflicting parties. The mosque was often the venue for trials. The right of judgment in the world of Islam belonged to the Prophet (SAW) himself, and after his death - to the Imam-Caliph. *"If the judge, who showed diligence, made a decision and was right, then he will receive a double reward, and if he showed diligence and was mistaken, then one"* (Sahih al-Bukhari and Muslim) [2].

After the Prophet (SAW), Caliphs often personally performed the functions of qaziy in their residence. Usually, both in the residence and on the periphery, the caliph entrusted judicial functions to special judges, kaziys - kazi (Arabic "qaziy" - the one who decides; plural: kuzat) [3].

The first mention of the purpose of qaziy dates back to the time of Caliph Umar. Judges were appointed by caliphs, after the collapse of the caliphate - by sultans and other Muslim sovereigns, who sent the appointed person a special diploma - manshur.

According to Islamic law, fulfilling the duties of a qaziy is considered a religious duty towards the Muslim community - the ummah. It is required that the judge be a Muslim who has received a special spiritual education, has studied the precepts of Islamic law, and is knowledgeable in the opinions of Islamic jurists on certain legal incidents. It was believed that wealthy and financially independent people should be appointed as qaziys. In practice, Islamic judges usually received stipends from the treasury - beit al-mal or pensions from the income of waqf properties.

Kazi had to administer court on certain days and in the court chamber - makhkam, sometimes in the mosque, after each time having performed ablution and prayer in the mosque. During the court hearing, the qaziy, according to the custom of the Hanifites, sat down facing Mecca.

The plaintiff - muddai and the defendant - muddai alayhi, without showing any bias and without expressing his opinion on the case until the end of the court hearing. The judge must invite both the plaintiff and the defendant to sit down. But if one of the litigants is a Muslim and the other is a dhimmiyya, the qaziy invites the Muslim to sit down and leaves the dhimmiyya standing [4].

A characteristic feature of judicial proceedings in early Islam was the absence of lawyers. Kazi directly demanded the personal presence of the plaintiff and defendant. For the Islamic court, they are called the same: "muddai" - "victims". Only at the end of the trial, after the verdict was passed, the convicted person began to be called guilty. Thus, the presumption of innocence was respected.

Another distinctive feature of early trial is the principle of continuity of the trial and the absence of written records. The case was dealt with orally, and publicly, without any formalities, and its final outcome depended entirely on the judge. Of course, over time, the jurisprudence of Islamic law has expanded. Already during the period of the first caliphs, judicial bodies appeared headed by Qaziy al-kuzat.

The gradual improvement of Islamic justice led to the creation of legal institutions, including the Institute of Advocacy. A case, the conduct of which has been entrusted to another, is called "vaqalat", and its executor, its authorized representative, is a wakil - a lawyer. The lawyer could be entrusted with selling a house, concluding a marriage contract, and other matters. Wakil has no right to transfer the case to another lawyer without the permission of the client.

Along with the lawyers, other officials appeared at the trial:

- *Mazakki* - who were engaged in checking the identities of witnesses;
- *Kashima* - court servants who knew all the rules for the distribution of property;
- *Avans* - who established order in the court, carried out its decisions, monitored the appearance of witnesses;
- *Amina al-hukma* - servants in charge of guardianship matters.
- *Katib* - one or more scribes;
- *Bavwab* - gatekeeper;
- *Rasul* - a messenger who was entrusted with delivering the defendant or witnesses to the court.

Later, police bodies appeared - *shurta*. The famous Arab historian Ibn Khaldun reported that "issues related to ensuring the safety of people were dealt with exclusively by the shurta without the intervention of the kazi." "

Islamic legal doctrine began to take shape by the beginning of the 8th century. The first step towards its emergence was the relatively free discretion that was used in explaining the suras of the Koran and hadiths. Thus, new rules of behavior were formed in the absence of corresponding norms in existing sources. This rule received legislative recognition in the famous legend about the conversation between Muhammad (SAW) and the governor of Yemen, Muaz, who was an expert in Islamic legislation and a companion of Muhammad (SAW). To the prophet's question about how justice would be administered, the governor replied that he would judge according to the Koran and Sunnah, and if there were no norms in them, at his discretion. This tradition is interpreted by lawyers as encouragement by the prophet (SAW) for the resolution of judicial conflicts at their own discretion by judges on problems not provided for in the Koran and Sunnah.

The decisions of the qaziys must be based on Islamic law, i.e. on the Koran, Hadith, Qiyas, and Ijma. Kazi cannot be based on personal conviction or on facts known to him personally.

Islamic law recognizes three categories of evidence:

- Ikrar – recognition;
- Shuhud – testimony of witnesses;
- Yamin - oath – oath [5].

The testimony of witnesses is of primary, and most often decisive, importance for an Islamic court. Most court cases, both civil and criminal, require the testimony of at least two witnesses. Islamic law places great importance on the moral character of witnesses. Witnesses are not required to take an oath. But the witness must begin his testimony with the words "I testify" – ashkhada. [6]

The duties of the qazi include conducting all civil and criminal cases in his city, monitoring public morality, appointing, if necessary, guardianship over people and property, supervising property, supervising the property of waqfs, monitoring the condition of public buildings and structures, roads, streets, and areas, monitoring the division of inheritances and observance of wills, the correct execution of court sentences and the imposition of penalties, monitoring the activities of law enforcement agencies and inspection of prisons, monitoring the correctness and distribution of zakat, sadaqah and other public funds and many other duties.

The kazi resolved any case individually in one meeting. If the defendant agreed with the claim brought against him, then no other evidence was required to issue a case. If the defendant refused to admit liability, the plaintiff had to prove the validity of the claim.

The person taking the oath or oath must be of legal age and of sound mind. Oaths of children, the insane, drunk, and forced oaths are considered invalid [7]. The text of the oath must necessarily mention the name of Allah, therefore it is considered unacceptable to swear not out loud or write the oath on paper. An exception is made for the mute, who can take an oath using signs. And most importantly, an oath can be given only if its fulfillment is within the power of the one giving it. Islamic law does not allow evasion of the oath. Otherwise, atonement is necessary - kaffarah, which could be, for example, feeding ten poor people or providing them with clothes. If the above is beyond the power of the one who breaks the oath, he must at least fast for three days.

The foundations of Islamic justice created by Muhammad (SAW) operated without significant changes for a number of years after his death. The first four successors of the prophet (SAW) as the head of the Islamic state: Abu Bakr, Umar, Uthman, and Ali (632-661), who were called the righteous caliphs, concentrated in their hands the supreme judicial power, which was considered one of the most important prerogatives of the ruler.

When resolving disputes, the caliphs relied on the Koran, traditions about the life of the prophet - the Sunnah, and the opinions of their predecessors. In the absence of answers in the sources, the caliphs either formulated new rules of conduct after consultation with their companions based on consensus or introduced new rules at their own discretion. Decisions on such issues, especially if they were made by unanimous opinion, subsequently became the normative basis for the decision of cases by Islamic judges.

The head of the Islamic state, while retaining the post of supreme arbiter, could not single-handedly resolve all conflicts between believers. The first Caliph to delegate the legal proceedings, according to Ibn Khaldun, was Umar al-Khattab. The judicial reforms introduced by Umar had a significant impact on the development of legal proceedings in the Arab Caliphate. During the reign of Umar, many new territories became part of the Islamic state, the population increased,

and therefore the employment of the caliph and governors increased. In this regard, a need arose for judges who would devote their time to the consideration of various court cases and litigations. Then Umar appointed judges in all cities so that people could turn to them. Thus, in the Islamic state, judges appeared - qaziys, who were exclusively involved in legal proceedings, while at the same time, governors acted, performing the functions of judges. Thus, already under the "righteous" caliphs, regular consideration of disputes became common practice both by governors, who performed this function within the framework of general powers to manage the provinces on behalf of the ruler, and by specially selected persons from among experts in Islamic law, who over time became professional judges embodying an independent state institution.

Legal proceedings became one of the most important tasks in the Islamic state. One of the greatest and famous legal scholars in Islam, Imam Ahmad, said: "*People need the power of a judge, otherwise their rights may be trampled upon*" The duties of judges include everything that leads to good: to defend the truth, to help the offended, to protect human rights, to prevent injustice. None of the above can be achieved without a strong judiciary. In short, the judicial system becomes a necessary condition for the existence and development of civil society. It is designed to protect human rights, help the unjustly offended, and stop criminals. With its help, you can resolve controversial situations and guarantee the preservation of human rights and freedoms, call for good and punish evil, and condemn immoral behavior. Every member of society will be able to feel protected if he knows that no one is threatening his life, property, or honor. When the awareness of protection from the law is consolidated, society will be able to develop freely and achieve great success in both the material and spiritual spheres of life [8].

In the Islamic state of that time, all people were equal before the law and the court, they had an equal right to occupy public positions. Since its inception, Islam has shown examples of equality before the law and the courts.

High demands were placed on the judge: knowledge of Sharia norms; piety; indifference to others; sharp mind and insight; severity, but not cruelty, and gentleness, but not weakness; strength of personality; wealth, influence, and noble birth.

The judge had to be sincere in his intentions, work for the sake of Allah, carefully consider cases, treat all parties to the litigation equally, try to reconcile them, encourage the weak, make decisions based on Islamic Sharia and obvious evidence, not take bribes, not resort to *ijtihad* if there is an unambiguous verse in the Quran or Sunnah. The presumption of innocence was taken as a basis. The judge had to consider intricate, complex disputes in consultation with knowledgeable people. The cases of newcomers were dealt with urgently, so that they did not have to stay for a long time in foreign lands, far from their property and families. The judge should not have made decisions in anger or under great emotional stress. He had to wait for the moment when calm and composure returned to him, and only then make decisions. The judge also should not have made a decision when he was very hungry or thirsty. The decision made was no longer subject to change.

Prophet Muhammad (SAW) taught his companions by his example how to respect someone who demands respect for his rights. One day a Jew came to the prophet and demanded the return of the debt, although the term for its payment had not yet come. He spoke to the prophet in an inappropriate manner and said: "Truly, you are always delaying in paying your debts, O Banu Abd al-Muttalib!" Seeing that his companions were angered by his impoliteness, the Prophet (SAW) said: "*Leave him, for verily, he who has the right has the right to speak*" Instructions and instructions designed to help the future judge were compiled by Umar when appointing Abu al-Dardu as judge of Medina, Shuraykh of Basra, and Abu Musa al-Ashariy of Kufa. To the latter, he wrote a well-known message that is still relevant today:

"In the name of Allah, the Gracious, the Merciful! From the servant of Allah Umar ibn al-Khattab, the commander of the believers, to Abdullah ibn Qais. Peace to you! Truly, legal proceedings are an important duty and tradition to be followed. Try to understand the words of both sides and listen to them with equal attention, otherwise, you will miss the truth that may be revealed to you through the words of one of them, and then the rights will not be respected. Meet all people with the same face, sit before them the same, and judge them the same, so that the noble does not expect that for his sake you will act unfairly towards others, and the weak does not despair of your justice. The one who claims must provide evidence, and the one who denies must swear. Reconciliation between Muslims is permissible, except for that which makes the forbidden permissible or makes the permissible forbidden. If you made a court decision, and then, after thinking, realized that you made a mistake and changed your mind, you must return to the truth because the truth is original, and returning to it is better than further progress along the road of lies. Try to understand more deeply the complicated, unclear issues, the solutions to which you will not find either in the Qur'an or in the Sunnah.

Consider hadiths that describe similar cases and use an analogy. Try to make a decision that is closer to Allah and the truth. Give anyone who claims to have any right a certain period of time. If he provides evidence, give him what is rightfully his. Otherwise, leave everything as it is and close his case. It will be better this way because in this case there will be no doubt. The testimony of all Muslims is accepted, except for those who have already been subjected to the punishment established by Sharia - had for any crime, or have already been convicted of perjury, or he was suspected of calling himself the son of someone other than his parents, or he is a former slave calling his master is not the one who gave him freedom, for, verily, Allah hid from you what is in the souls of people, and instead gave you knowledge of evidence and oaths. Avoid bias towards one of the parties and pressure on anyone, for, truly, Allah gives a great reward for the truth spoken when it needs to be said, and it is a wonderful reserve. Whoever has the right intention and who has taken hold of his soul, Allah will deliver him from the evil caused by people. And whoever demonstrates

to people that he has something that Allah knows is not characteristic of him, Allah will disgrace him. Think about the reward of Allah Almighty in the form of a lot in this world and the treasures of His mercy. Peace to you!"[9].

Modern Islamic legal thought, accepting the concept of separation of powers, emphasizes that the leading one is not the legislative, but the judicial power. It turns out that the practical operation of Sharia norms is unthinkable without the bodies of Islamic justice, which undertake to fulfill the main function of the Islamic state. For centuries, in most Muslim countries, it was the Islamic courts that formed the core of the judicial system and took on the role of guarantor of the implementation of Sharia. The situation began to change in the second half of the 19th century, when deep politicians discussed the concept of Islamic law and its relationship with Sharia, administrative and legal reforms in the Ottoman Empire and Egypt led to the fact that Islamic law in the most developed Muslim countries gave way to a central place in the legal system, European-style legislation. As a result of these changes, Islamic courts were significantly modified. In most of these countries, their jurisdiction began to be limited to consideration of issues of the personal status of Muslims. However, even taking into account the existing modifications, these bodies differ significantly from the traditional Islamic courts that operated in medieval Muslim states, and from the ideal model of Sharia justice developed by traditional fiqh. Currently, the organization of Sharia courts and the procedural rules they apply combine traditional Islamic norms and institutions with forms characteristic of modern European law. In particular, if traditional Sharia justice was based on the sole consideration of a dispute by a judge - qazi, now the norm is the collegial resolution of cases. In the Middle Ages, Sharia courts functioned at the same level, and the decisions they made were, in principle, considered final and not subject to revision. Nowadays, in all Muslim countries where such courts operate, there is a multi-level system of Islamic justice bodies, which provides for the possibility, and in some cases even the need, to appeal decisions made by the courts of first instance. Taking into account these changes and the modern experience of specific Muslim countries, Sharia justice should now be understood not as some specific form of court, but as a model of it that is distinguished by very specific characteristics associated with Sharia. First of all, Sharia justice presupposes the regular application of Islamic law by the court, as well as the use of special rules of procedure developed by Islamic legal doctrine. In addition, it is logical to include some principles of organizing such a court, in particular, the requirements for judges. Currently, it is difficult to find a judicial body anywhere that fully meets all these conditions. However, in various Muslim countries, there are courts, in the organization and activities of which these requirements are implemented to one degree or another. Taking into account the above criteria, we can identify several options for modern Islamic courts, or more precisely, forms of implementation of the Sharia model of justice or its elements in modern judicial systems of Muslim countries. Thus, in some of them, all courts of general jurisdiction are called Sharia. So, the Islamic court is a judicial body in an Islamic state, headed by a y. Its organization and jurisdiction, as well as the procedural rules it applies to the consideration of cases, are governed by Islamic law, especially those of its institutions relating to the status of y, evidence, testimony, and the recording of court cases. Since the emergence of the Islamic state, the Islamic court has been the main institution that applies Islamic law. Until the 19th century, they occupied a central place in the judicial systems of Islamic countries. From the middle of the 19th century. As a result of the formation of secular courts in most of them, which began to apply European-style legislation, the role of the Islamic court began to decline and gradually was reduced to considering issues related to the personal status of Muslims - marriage, family, inheritance, guardianship, trusteeship, [10], etc. Currently, in several countries, for example, Egypt, Tunisia, and Libya, the Islamic courts have been liquidated and their functions have been transferred to general civil courts. However, in many countries, independent Islamic courts are maintained or re-created. In Saudi Arabia, Yemen, Iran, Pakistan, and some countries of the Persian Gulf, the Islamic court remains the central link of the judicial system, resolving a wide range of cases, including criminal ones. In tsarist Russia, in areas where Islam traditionally spread, including our territory, there were courts - kazi, which applied the norms of Sharia and adat, which did not contradict the law. After 1917 they were liquidated.

In conclusion, it is necessary to highlight the following characteristic features of the judicial system and judicial system of the Arab Caliphate:

- the Islamic judicial system arose in the initial period of the development of Islam and the Islamic community, when the process of creating a state and class society had not yet ended, legal and other rules of conduct practically did not differ;
- the first Islamic judge and founder of the judicial system of the Arab Caliphate should rightfully be recognized as the Prophet Muhammad (SAW);
- the creation of a complex of judicial and legal norms regulating almost all areas of the life of the Islamic State took place following the example of the prophet by his followers, based on the Koran and Sunnah;
- Islamic justice, being closely connected with the religion of Islam, does not merge with it;
- doctrine played an important role in the development of the judicial system, while the state recognized the conclusions of the madhhabs, appointed judges, and imposed on them the obligation to decide cases based on a doctrine of a certain kind;
- In these conditions, the Koran can be considered the first written source of the foundations of Islamic justice, the development of which continued in the Sunnah, the reasoning of the prophet's followers, the practice of yas, and the doctrine of legal schools - madhhabs.

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