

Summation of Hizb ut-Tahrir's Judiciary By Bo Perrin

It is very important for every non-Muslim to examine the Caliphate judicial system since within an Islamic state the judicial system will be in absolute control of each life. For a dhimmi this is not good.

According to Hizb ut-Tahrir al-Islami the judgeship is concerned with creating a verdict and pronouncing it in a binding way. (Article 66) Supposedly the judgeship is supposed to settle disputes to prevent the community's rights from being harmed. The judgeship covers everybody from the Caliphate to the average individual Muslim and dhimmi. As with the army, the Caliphate appoints the chief judge. (Article 67) The chief judge is authorized to appoint, discipline and dismiss unruly judges within regulations. The chief judge must be a Muslim (since Shar' ia is the law of the courts), sane, just and a jurist.

There are three types of judges. (Article 68) The first judge is the jurist who settles disputes in transactions (Mu'aamalaat) and punishments ('Uqooabaat). The second judge is the muHtasib who settles the violations of the community's rights. The third type of judge is the judge for the Court for the Unjust Acts (maHkaamat ul-maDHalim). He adjudicates disputes between people and officials of the State.

All judges must be Muslim, mature, free, sane, 'adl and a well-trained jurist (Article 69) The judges of transactions maHkaamat ul-maDHalim must additionally be a male and a mujtahid, i.e., a person capable of making ijtihaad. The appointment for the muHtasib may be a general or particular location. (Article 70) The maHkaamat ul-maDHalim is given a general appointment and may be appointed to a particular location. Each court comprises only one judge who has authority but this judge is permitted to have other judges he may rely on for interpretational and applicational help. (Article 71) Interestingly, every verdict must be pronounced in a court session. (Article 72). Also, there are various judicial grades and a judge may be assigned based on a particular grade dealing with particular cases. (Article 73)

Unlike Western judicial systems there is no court of appeal in the Caliphate because all judgements have equal standing (Article 74) This is because each decision is supposed to be based on the Qur'an, Sunnah or Ijmaa' us-SaHaabah and therefore, there can be no mistaken decision. One type of judge is the muHtasib (Article 75) His responsibility is to investigate all cases involving non-criminal activities involving public rights. This judge has the authority to judge upon violations as soon as he hears of them without a court session and seemingly, without any investigation. (Article 76) He has numerous police who answer to him alone. He is also allowed to appoint and assign deputies who have the muHtasib's qualifications (Article 77)

The other type of judge is the maHkaamat ul-maDHalim. (Article 78) This judge is authorized to remove all unjust acts committed by anyone government official that they have inflicted on anyone Muslim or not. This judges are appointed only by the Caliph or chief judge. (Article 79) The Caliph carries out any discipline necessary. There is no limit to how many judges might be appointed for unjust acts. (Article 80) This judge's power has the power to dismiss anyone including the Caliph (Article 81) and to investigate any case of iniquity no matter the source (Article 82) and even if there is no source (Article 83)

Islamic jurisprudence argues that everyone has the right to appoint a proxy, male or female, to act on their behalf in court even for a salary. (Article 84) This is true even of any who holds office including the Caliph. (Article 85) In this case, the proxy is limited to merely appearing on behalf of the individual who has hired him to appear in court and does not extend to work of the office held.