

Summary of Judiciary By Bo Perrin

Hizb's Judiciary section begins by saying, "Only Islam can provide justice for humankind." (A) Yeah, right. I would add that this might be true as long as a person is not a woman, dhimmi or kufr. Basically, that leaves only faithful Muslims.

Hizb argues correctly that no society can be peaceful or tranquil without justice. Their question is, whose justice? The example Hizb offers is the difference between Shari' ah and the 1st Amendment of the U.S. Constitution. Should a person be allowed to insult Mohammad or be killed for doing so? Of course, everyone who knows Shari' ah knows Hizb's answer.

So, obviously Hizb has a distinctly different idea of justice than those of us in the West. Hizb rejects democracy because they believe justice is merely a matter of human desire and the Representatives of the people define crime and punishment according to human standards. Hizb offers Shari' ah law within the Khilafah system. Allah, not the people are the true sovereign. Shari' ah, not democratic principles, defines crime and sets the criteria for judicial proceedings. Shari' ah alone is the judicial standard for the Khilafah system therefore, only Shari' ah courts exist. There is no division of the judicial system as in American because Shari' ah ruling cannot be appealed.

One issue Hizb has with the Western judicial system is that true justice may take years and even after years of court battle true justice may never happen. Of course, the same is true in Pakistan as well. Hizb argues the Khilafah system will put an end to this situation because the court's ruling is final. (B) The Khilafah, no other court or individual can overturn a particular court's ruling unless that ruling violates Shari' ah. But according to Hizb this situation is not possible. But if the impossible happens then the court's ruling can be appealed to the Court of Unjust Acts (Mahkamat ul-Mazlama). This court is the only organization that has the authority to overturn an unjust ruling. Hizb argues this system will offer the following benefits. First, there is immediate justice. Second, the court system will not be as burdened as in the West. Third, criminal elements will live in fear of immediate sentencing.

In the Western judicial system a person can be jailed for being a suspect in a crime whether they committed the crime or not. Hizb argues this will not happen in the Khilafah's judicial system. In the Khilafah system an individual is innocent until proven guilty. The only people who are in jail are those who have been found guilty and sentenced. Therefore, they can jail no one whom they have not sentenced. It is the responsibility of the plaintiff or security departments to prove a suspect is guilty and if they cannot then the case is squashed. So the general rule is that no one can be jailed before sentencing. One exception exists. A judge could jail a person if the judge believed the individual is a flight risk. This is a loop hole large enough to drive a bus through. All a judge has to do is declare the individual a flight risk and now he or she can be incarcerated prior to sentencing. This exception destroys Hizb's claim to the higher judicial ground. This exception can and would be used to quash human rights and dignity.

Hizb, rightly so, is concerned with politicians who seem to believe and live as if they are above the country's laws. Hizb specifically mentions Article 248 of Pakistan's Constitution which exempts certain politicians from prosecution. Conservative Americans are concerned about the same political mentality in nation. Hizb's solution differs from the solutions that we as American would choose. Hizb claims that the reason this state of affairs exists is because humans are allowed to create their own laws. Instead, Shari' ah is the answer so says Hizb. In the Khilafah system no man, including the Khilafah himself, is above the law. The reason no man is above Shari' ah is because Allah is the true sovereign and Shari' ah is his law. No man is above Allah and his law. The Islamic judicial system contains the Court of Unjust Acts

made up of the Qadi Muzalim. The Qadi Muzalim has the authority to hear a case brought against a ruler and to dismiss a ruler who is found guilty of violating Shari' ah including the Khilafah. Any citizen of the Islamic state can bring a complaint against the Khilafah and other rulers to the Court of Unjust Acts.

Besides the judicial system itself Hizb states there are other factors needed to produce a judicial system. To begin all laws must be based on Islamic concepts or Shari' ah. Those laws must explain the rules of evidence, types of punishment, rights of pardon etc. For Hizb's judicial system to work the Ummah must restore Khilafah system.

Next: Social System

A) Hizb ut-Tahrir, Manifesto of Hizb ut-Tahrir for Pakistan: Pakistan Khilafah and the re-unification of the Muslim World, [online] (Hizb ut-Tahrir Wilayah Pakistan, date unknown, accessed 27 July 2010) , 15 available from

<http://www.hizb-pakistan.com/home/wp-content/uploads/2009/02/manifesto-english1.pdf>

B) Ibid, 15