

## **The twelfth lecture**

### **The second requirement: Judicial organization in the Islamic system:**

The Islamic State exercises its function in establishing justice through courts that preserve people's rights when they are attacked, denied, exposed to, or attempted to violate. Judicial bodies in Islamic Sharia are three, each of which has its own courts, independent system, and full jurisdiction. They are, respectively: courts of ordinary judiciary, courts Hisbah judiciary, and the courts of the Board of Grievances, as will be explained successively.

#### **The first section: ordinary judicial courts**

This type of court is competent to consider and decide the following disputes:

- ✓ Settle disputes and end quarrels and disputes, either by reconciliation, compromise, or by force of a final ruling.
- ✓ Establishing the limits set by God Almighty on behalf of the Imam.
- ✓ Looking at blood, wounds, and punishments.
- ✓ Browse witnesses and trustees, and choose representatives, supervisors, supervisors, and guardians.

Fulfilling rights, delivering them to their owners and those who deserve them, and suppressing the oppressors from transgression, usurpation, and other things.

- ✓ Establishing guardianship over those who are forbidden to act due to insanity or childhood, and prohibiting the foolish and wasteful, taking care of orphans and minors, preserving their money and investing it in legitimate ways.
- ✓ Marriage of a lay woman and a woman who has no guardian, because the judge is the guardian of the one who has no guardian, and this is according to the majority, while Imam Abu Hanifa believes that this does not fall within the scope of his guardianship except as a precaution, because it is permissible for the woman to be alone in his eyes to conclude the marriage contract and perform it herself.

- ✓ Implementing wills according to the conditions of the testator, as permitted by Sharia law and not prohibited by it.
- ✓ Consider endowments by preserving their assets, developing their branches, seizing them, and disbursing them for their purpose.
- ✓ Considering public interests, including building mosques, repairing roads, and building fences and bridges.

Ordinary judicial courts are considered to have the original jurisdiction to resolve and end people's disputes, whether civil or criminal. Such powers were gradually transferred to judges after the caliphs and governors had monopolized them, especially those related to punishments, retaliation, and wounds. They then relinquished them to the judges.

### **The second section: Courts of the Board of Grievances**

The tasks of the Board of Grievances were many and varied under the Islamic State, as it exercised advisory and legislative jurisdiction, disciplinary and inspection jurisdiction in the face of employees and state workers, and it also exercised judicial jurisdiction through its consideration and adjudication of disputes and disputes that occurred between the subjects and the rulers.

The Grievances Judge is competent to consider the following matters:

- ✓ What falls on the part of the governors over the subjects, and on the workers who are under their authority.
- ✓ The usurpation of the funds of the treasury and the usurpation of people's money occurs by the governors.
- ✓ The rape that occurs from powerful and influential people.

Examining the issues of tax collectors and the injustice they commit in collecting money.

- ✓ Considering the condition of the clerks and administrators of the bureaus and managing their affairs, then looking into their competence to perform them and their honesty in them, which is a type of oversight over state employees.
- ✓ Considering the issues of endowments in terms of implementing their conditions, rebuilding the ruins, and holding the overseers accountable for

them.

- ✓ Consider the grievances of employees and military personnel regarding their livelihoods and conditions.
- ✓ Implementing the judges' rulings and the orders of the muhtasib that he was unable to implement.
- ✓ Consider grievances related to the head of state's violation of the provisions of Sharia law.

Considering between quarrels, and judging between disputants as judges' rule. The governor of grievances also has broad authority in research, consideration, methods of proof, and reasoning based on indications, evidence, and evidence of the circumstances. Accordingly, he enjoys broad powers and powers that exceed those granted to judges. Therefore, the conditions that must be met by him are strict and strict, including that he must be of great esteem, enforce the matter, and have great prestige. Outwardly chaste, little greedy, very pious.

### **The third section: Hisbah Judiciary**

Hisbah is enjoining what is right if it is apparent that it is abandoned, and forbidding what is wrong if it is apparent that it is done. What is good is everything that Islamic law has obligated to do or approved and recommended, and evil is everything that violates the provisions of Sharia law and is more general than disobedience. It was legislated in Islam to resist evil, protect good deeds, and form a virtuous society. Virtues prevail and vices are eliminated.

The Hisbah is a private, independent system that involves administrative jurisdiction, and is currently reserved for many specialized departments supervised by the state.

The Hisbah also practices the individual accusation system, which is expressed by the Hisbah claim in criminal matters, in which the role of the Public Prosecution or Public Prosecution is diminished, and the Muhtasib also looks into cases.

Related to recognized rights that are submitted to him or come to his knowledge or that he sees with his own eyes, without the need to file lawsuits or hear arguments and evidence, such as lawsuits for fraud, deception, distortion, and manipulation of weights and prices, He deviates from morals and legal rulings in buying and selling, and orders punishment for the perpetrators of violations and prohibitions that do not amount to punishment or retaliation. He also begins preventing evils quickly, which is what is currently known as urgent justice, relying in achieving all of this on the strength, authority, and compulsion he enjoys in doing so. With his work.

The jurisdiction of the Hisbah judge - as appears from its definition - includes two matters:

- ✓ Enjoining good with regard to the rights of God Almighty, the rights of human beings, and the rights common between them.
- ✓ Forbidding evil, whether the evil is related to the rights of God Almighty, human rights, or rights common to the two rights.

Thus, the Hisbah exceeds the Judgment in two matters:

- **The first:** The muhtasib looks into the evil, asks for its removal, and orders what is right, even if a lawsuit is not filed with him or an opponent is brought before him, unlike the judge who only rules by filing a lawsuit and having an opponent present. He is not restricted by specific procedures and decrees, but rather looks into the matter quickly and decides on it immediately.
- **The Second:** The Hisba Supervisor has the power and authority to prevent evil and intimidate his companions, contrary to the judiciary.

The punishment is divided into degrees of severity and force, the first of which is introducing the evil, then preaching and intimidation, then verbal abuse, then change by hand and force. The jurists differed regarding direct beating and the use of weapons, some of them forbade it for fear of the emergence of temptations, and others permitted it to remove the evil.

From the above, it is clear that the judiciary, the Hisbah, and the Board of Grievances are three institutions that complement each other and complement each other, and they all aim to achieve one goal, which is to establish justice and fairness to the people, preserve rights and funds, implement the legal rulings that aim for the happiness of people in this world and the hereafter, and establish a complete Islamic society.

Added to these courts is the court of the military judge, which existed in the later eras in the Islamic state, where it decided on soldiers' disputes, which was a venerable religious function in ancient times. If the judges of the Commander of the Faithful went out with him, they were allowed to rule in any country in which the Caliph resided, because they are not judges of the land, but rather judges of the land. Khalifa judges, meaning that their jurisdiction is general in terms of location and quality.

#### **The fourth Section: Degrees of litigation**

According to the opinion of the majority of jurists, the courts consist of one level,

and it is not permissible to establish second-level courts, which are called “courts of appeal,” which look into the basis of the case and lawsuit, and re-examine it in study, reasoning, proof, and evidence, then evaluate the ruling of the first-level court, confirm it or overturn it, and then refer the case. Or the case is referred to the same court or to another court, or it takes the initiative to look into it and decide as it deems appropriate.

However, the public’s opinion of prohibiting the establishment of second-instance courts does not necessarily mean a refusal to supervise or monitor first-instance courts, or to review the rulings issued by them. Jurists have stated the necessity of supervising judges and inspecting and monitoring their work.

Accordingly, the courts in Islamic jurisprudence are of two types:

- **The first type:** Subject matter courts, which are courts of first instance that hear cases, decide disputes, and issue rulings.
- **The second type:** The Supreme Court, the Court of Control, or the Court of Cassation: It is the one that monitors the actions of the judges and considers their rulings, approving them if they agree with the Sharia text or jurisprudence, and reversing them and returning them to the judge who issued them or to someone else if they contradict the Sharia text or jurisprudence.

This type of court is not considered a level of judiciary, but rather a supreme court, whose function is to supervise the correct application of Sharia rulings before all courts and to monitor the work of the judiciary and the proper conduct of justice. Therefore, it is called the Supreme Court or the Surveillance Court.

### **The fifth section: Multiple judges**

Individual judiciary means that a single judge appointed by the Imam or his deputy assumes the position of judiciary to decide disputes and disputes between people in a particular country on his own, and may be allocated to specific lawsuits and cases. As for group judiciary, it means that the Judicial Council is composed of two or more judges who all participate in examining lawsuits and deciding disputes. Conflicts, achieving rights, and administering justice.

The jurists agreed on the legitimacy of the first type, while they disagreed on the legitimacy of the second type due to the possibility of multiple jurisprudence due to multiple judges and differences in rulings due to multiple people in one issue, so they divided into two groups:

- **The first group:** He said that this type of collective judiciary is illegal, and this is what the Shafi’is and Hanbalis held, citing as evidence the action of the

Messenger of God, may God bless him and grant him peace, who did not appoint two judges for one case and did not appoint two judges in one country and in one place, but rather appointed one judge, so the judiciary It is news of the Sharia ruling as a matter of obligation, and the Sharia ruling against a Muslim cannot be multiple, because it is God's rule, and God's rule is one, and accordingly it is not correct for judges to be multiple, because it is impossible for God's rule to be multiple.

- **The second group:** He said that it is permissible for a group to judge, and this is what the Hanafis and Hanbalis agreed upon, as they said that it is permissible for two or more people to appoint the judge of one country. If they meant a single imitation, then neither of them should be alone, like guardians and agents, and that the Mahdi delegated the judgeship to two.