

Appendix 29:

Judicial Ethics in Islam

Justice Abdulmalik Bappa Mahmoud¹ and Jan H. Boer

Justice Abdulmalik Bappa Mahmoud wrote a three-part BZ series on defects in the sharia system and how to overcome them. The defects were already found during the emerging years of Islam. Back in the 7th century AD. (approximately 140 A. H. on the Muslim calendar), there was a judge by name of Imam Malki, who resisted codification of sharia. Jurist Iran Ibn Mugaffa insisted on its necessity, because justice administration had become chaotic, “because judges don’t base their decisions on valid grounds.”

The based their interpretations on their independent views. This brings a sort of different judgements on some facts to the extent that in the same town one judge decrees an act unlawful, while another in a different ward is a lawful one. He said judges were divided into two groups. The first group consisted of those who insisted that their judgements were based on the Qur’an and Sunnah. The second group consisted of those who followed their independent reason, interpreting issues by their own independent reasoning and were not following the injunctions of the Qur’an or Sunnah.

Eventually, the controversy was solved in favour of Imam Maliki wherever Maliki law holds sway, as in West Africa. Judges were authorized to “interpret laws through their independent reasoning through the theory of analogy and *ijtihad* on what was in the Qur’an or *Sunnah*.” However, new sects arose that differed in their divergent views on the above issue. This now necessitated the authority to withdraw the powers of judges to engage independent reasoning. They were now “forced to follow the views and interpretations” of the “most learned jurists who views had been regarded as binding... to all.” Subsequently, the judicial system was centralized under the authority of a Grand Khadi, who was beholden to the Caliph, the highest in command. This new arrangement now made it possible for the political masters to force their will on judges “to follow the winds of politics wherever it blew.”²

Muslims advocate various measures to overcome this negative history in which human nature so easily leads to the system degenerating into an oppressive judiciary, including Nigeria.

¹13-27 January, 1989.

²A. Mahmoud, 16-30 Dec/88, p. 8.

Mahmoud provided a list of judicial etiquette or protocol for judges to follow to avoid the trap of corruption and to encourage just and righteous sentences. Since the first installment of his series is missing, I cannot vouch for whether he culled this collection of etiquette from established tradition or whether this list is the mature expression of an experienced judge. At any rate, he offered 35 rules as corrective and rejuvenation of a severely wounded system that Muslims in both the BZ and AZ eras recognize as very corrupt.

(Continued from last edition)

(2) A judge should not be boastful and pompous on account of his post or executing his judgement. He should not place his priority on luxurious food, clothing and shelter lest he become like those mentioned in Suratu al-Ahka'af verse 18: "Ye received your good things in the life of the world."

(3) He should always be calm in all his undertakings.

(4) He should be a fluent speaker but not talkative. In other words, he should avoid talking rubbish.

(5) He should avoid making gestures with his hand or turning his head sideways while speaking or talking.

(6) His laughing should not be more than a smile.

(7) He should always appear in clean, suitable and moderately beautiful dress that can dignify his personality. That is to say he should not appear in torn, dirty and shabby dress.

(8) A judge is not permitted to receive presents, unless they are from his closest relatives such as his son, father, stepfather, and father in-law. This is because receiving presents may lead to corruption and downgrade his integrity. In this regard, some jurist said that a judge was therefore permitted to receive or give presents from or to his friends. Once a present was made to Caliph Omar IBM Adularia, but he refused to accept it. He was then told that the prophet (P.B.U.H.) used to receive presents. He replied that to the holy prophet it was a present, but to us it was a bribe. He added that whoever gave presents to the prophet wished to draw himself nearer to him for being the Prophet of Allah; while whoever gave to us wished to associate and be close to us for our being in authority. Thus the messenger of Allah (P.B.U.H.) said: "A time will come when people will legalise corruption in the name of presents, kill a fellow being in the name of admonishing, kill the innocent in the name of giving lessons to others." Also, witness to a case is not permitted to receive presents from any of the contending parties while the case is under adjudication. However, he can receive it after the case is over.

(9) A judge should not do I'tikafi, i.e. seclusion in a mosque for the period of some days for the purpose of worshipping because, when he is in seclusion, he will not be able to try cases and this will not be in the interest of the public.

(10) A good judge should not accept invitation to a party except those of a marriage ceremony or happy occasions; however, some jurists are of the view that he can attend those parties which comprise a large gathering of people. At such parties, he may or he may not eat but it is preferable that he should not eat, as eating in the public can tarnish his good image. If the party is not for a happy occasion, he should not attend it; likewise where he is singularly invited for a dinner, unless it is from his relations or friends.

(11) A good judge should abstain from seeking help or borrowing working tools from people, such as cutlasses or transport like a horse or, in our present day, the motor vehicle.

(12) He should avoid borrowing money from the public unless where necessary, but if it is so, the amount should be small and it should not be from litigants or their relations.

(13) A judge should not enter into commercial business either in the court or at his residence.

(14) He should not have a permanent servant (house boy) who buys or sells things for him, because people may favour the servant while dealing with him; they will also be afraid of taking him to court when there is a dispute between them because of his connection with the judge.

(15) He should not be making visits to people except to the leader who appointed him.

(16) He should not be taking a bath in the bathing place such as a swimming pool, because, by his nakedness, he will lose his dignity and public respect.

(17) He should avoid associating with people of dubious and dishonest character.

(18) The judge should not allow people to follow him from behind when he goes out on foot or horseback or in a motor vehicle; however, people are allowed to follow him when making a visit to an area in dispute. One day Caliph Usman (may he be agreed with), left his court on horse for an area of land which was in dispute. On the way he was told that Caliph Umar had visited the area and passed judgement on the case. Caliph Usman therefore returned home without making the visit. This action of Sayyidina Usman created an estoppel by judgement in Islamic law.

(19) A judge should not allow people to visit him freely except those who are truth worthy, honest and enjoy a high degree of moral probity. He should not allow visits by individuals for no worthy purpose. Whoever visits a judge constantly and without good cause is considered as not a good person. Some jurists say that if a person visits a judge three times for no worthy purpose, he should not be trusted.

(20) A judge should not allow people to be sitting in front of his house.

(21) A judge should not indicate to the public that to him a specific person has undue respect.

(22) A judge is not allowed to try cases in his house. One day Caliph Usman learnt that Sayyidina Abu Musa Al-Ash'ari was trying cases in his house. He thereupon ordered the burning down of the houses. Then Sayyidina Abu Musa asked for mercy and resigned from the judicial post. Where it is necessary for a judge to try cases in his house, the trial should be openly conducted for any person who wishes to enter and witness the proceedings.

(23) The court should be situated in the centre of a town so as to ease the problem of attendance by litigants.

(24) He should not set a particular day in the week as his free day, as the responsibility for adjudication between the people rests on him.

(25) A judge can be permitted to enjoy casual leave for some few days so as to enable him to visit his relations.

(26) It is permissible for a judge to look for his welfare and that of his family every day after working hours.

(27) A judge should not sit in court when he is angry or sad or when he is hungry or has not eaten.

(28) He should not sit in court during odd times especially where it will cause hardship to litigants.

(29) He should not sit in court on specified days of festivals or on days just before them or on the days for departure or returning of pilgrims of the town and not even on annual events for remembrance, celebrations or mourning. But he can sit for cases which require urgent intervention and which, if not attended, people will suffer.

(30) He should not try cases while on transit. However, where his help is required, such as in emergency cases, he may order certain specific performances or certain actions.

(31) Imam Malki preferred making sitting to be for some specific hours of the day. Otherwise the sitting should not be expanded for a period of a whole day which can exhaust and confuse the trial judge.

(32) While in court he should not leave the courtroom abruptly for his personal needs unless those that are absolutely necessary.

(33) He should not engage himself in a private conversation with people. If he wants to have such a conversation for relaxation, he should retire to the chamber, but at any rate, it should not be with the litigants.

(34) He should not mix men and women in the same sitting place. Each should be given a separate place in the court.

(35) He should neither accommodate nor allow litigants to reside in his house; neither should he be accommodated or reside in any litigant's house or their relations. For proper practical administration of justice, adherence to these ethics has therefore become very necessary and with the few and foregoing points with which I have taken much of your time, I hope the interest for broadening your study in this area will be greatly aroused.