

PRE-ISLAMIC ARAB JUDICIARY IN ISLAM

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ABSTRACT

The society of Arabs, before Islam, can be divided into two major groups, the Urbanities who led a semi civilized life in cities like Makkah and Madina, and the rural, who lived nomadic and uncivilized life in other part of Arabia. However, there was no government and ruling power to control the whole peninsula. It hits the mind of a reader that how the Arabs could over come the disputes which were sure in the absence of government. But he is certainly taken aback when he read that despite their ignorance illiteracy they succeed to remove their grievances and quarrels by adopting some simple and easy methods. This paper attempts to give a brief account of the methods for the system of judiciary adopted by the Arabs before Islam, and to discuss their validity according to Islamic Sharia.

INTRODUCTION

Historical study reveals that Arab's pol, social, Economic, moral and religious conditions of life prior to Islam were worst. The Arab was mostly bedowin and Sardar headed the society. Small number of people ran the pol system. Jawad Ali (1970)

Such people inhibited in Macca and Medina. There was no single system of life throughout the Arab country, nor there any central govt which could control Arab. They were leading a nomadic living.

Looking at the nomadic mode of living a question arises in the mind of man that strife is a must. In the absence of the centrally controlled society plenty of the strifes would have arisen. Many poor and weak people would have been tortured. In the face of such kind of situation what steps would have been adopted to end cruelty done to the poor.

This is an important question and answer to this question, no doubt is interesting. When we throw a glance on this period of lawlessness and barbarism we stand astonished as how people living under such queer conditions would have sorted out the solution of their entangled problems.

In this thesis pre-Islamic period traditional methods have been discussed, the Arabs use to decide their issues. Their social life was mostly simple and their problems were of simple nature. For instant:

1. Members of same tribe, quarrelling with each other.
2. Strife among the different tribes
3. Some problematic issues and their decisions.

Discussion will be made as how ignorant Arabs sought out their problems.

PUNCHAYAT

Punchayat was the old method of solving the problems. Bedouins frequently resorted to this system of decision. When ever there was strife in tribe, they brought their problem to punchayat for decision. Head of the tribe used to pronounce his decision along with other members. The head of the tribe used to be a sagacious, capable and intelligent person having the capacity to guide judiciary. Abbas (1988) He used to be held not only responsible for his decision making, but he had to keep rapport with other tribes as well. Any problem given to punchayat to decide used to be brought on anvil and discussed thoroughly. All the members had the right to see the pros and cons of matter out and out. After thorough discussion only then they could jump to the conclusion and decide the matter in hand and then the head having the full consensus made the proper decision. Every decision of the punchayat used to be the final. No appeal could be launched against the decision taken, nor the issue once decided, could be heard again. If the decision was not accepted in the spirit and letter by any one, the head (Sardar) announced / declared the person criminal and rebellious. Then such person could be punished by the men of his own tribe even they could kill him. Balam Lohar (1990)

TEHKEME

Tehkeme is the oldest system of decision making. In this pre-Islamic period those cases were presented which were between the two tribes and the decision of an impartial man was accepted, prior to the

birth of holy Prophet when many tribes fell out regarding the fixing up of Hajre Aswad. Abu Umya Bil Al-Mughira suggested the name of prophet which was accepted. Such person was to be accepted who was famed for his integrity, character, nobility and his intelligence. All the civil and criminal suits for hearing were to be put up. Most of decisions were accepted. The judge was to be selected temporarily, like Umer Bin Aouf of Bani Kinana. There were other people who were impartial man of decorous character, fond of justice, hence were taken judge on permanent basis. Murtaza (1977)

From the Tribe Tamim Aksm Bin Safi, Rabia Bin Mahashan, Aniba Bin Hassan, Hasim Bin Qabiha Bashir Bin Abdullah, Hashim Bin Abdul Manaf, Abdul Mutalib, Abu Talib and Sufwan of Kinana, all were the judges. Shahabuddin (1306)

There are a few women who also performed as judge. Out of Arab judges Alafvi was the first judge. He decided the case of property of Banu Maad. Akshum Bin Safi, Noman Bin ul Munder used to advise the king in civil and criminal cases. Crown to it, Sardar Najran, Mazina and Aslam also took judicial advice from him. Raba Bin Makhshan was the famous judge of Tamim who was known sitting on a high seat and used to give decision.

KAHANCT

In pre-Islamic period Kahan was religious leader and enjoyed more respect than the Sardar. Ahmad Hassan (1980)

The Arab thought that thigh is under them. Who knew the occult things and inform Kahanet. In this way in whole of Arab the

Kahanet retained the status of a judge. Hamid Ullah (1978)

For the decision of the case people used to take resort to kahanet. Whenever there came a case of complex nature or those problems for which there existed no sufficient evidence, or such a case when there was no agreement between sardars, the Kahans give their decision before hearing the case of the parties. All the people had to stick to the decisions due to their superstition. Their decision was the decision of God. There was no room for the appeal. It has been proved historically that dispute of zamzam was to be settled. Abdul Mattalib agreed to go to Bunn Saad. Abdul Muttalib on account of the asking of his son Abdulla went to a Kahan. Ibn-e-Sad (1983)

The famous Kahan were shaq and Satieh, Ableq Asdi (Najdi) Reha Mujala / are of worth mentioning. There were some other methods adopted from time to time to decide the cases.

KIAFA SHINACY

The expert in this field was called Kaif. To know the genealogy/ pedigree of a boy, help was taken from kaif. Kaif used to study the face of the child and traced the whereabouts of his father. Then the decision was taken and the parties had to accept the decision. If murderer theft was committed, then the culprit was to be traced by the foot prints. Khalil (1979)

Tribe Mudleg had special experts. Thus this tribe got the name Alqafa. If the dead body of someone was found and the killer was not found. Fifty men were asked to

give the evidence that they were not the murderer nor they knew the murderer, but they had to pay the ransome. The heirs of the assassinated man were to select fifty men of their own choice. The Qazi used to assess the murderer by his behavior. Ibnul Qayyum (1317)

Toss was in vogue for the selection of witnesses. In spite of all this Qazu was not practiced under certain rules and regulations none could criticize it. Powerful man could do anything he liked. Any regard of the Court decision, it was because party-members were always prone to jeopardy. It was the time of cruelty. In the servicing of the debt the debtor's property and belonging were impounded by the lender. There was no difference between the intentional and unintentional murder. Whole of the tribe used to face dire consequences as punishment of the murder. Therefore without any hesitation Court decision had to be accepted by the guilty tribe-men.

SYSTEM OF JUDICIARY OF MECCA

Mecca was the oldest village. Hazrat Ibrahim along with his son Hazrat Ismail and his mother Hajra inhabited it. Hazrat Ismail was married with a woman of geham tribe. Geham controlled this holy place for a long time. Then the control of Mecca went into the hands of Khaza tribe. With the help of king of Rome drove out the people of Gaza. Qasi assembled all the scattered people of Quresh. Assemblers therefore called majma.

After assembling Quresh Qqsa set up a democratic govt. All kinds of problems,

social, military, trade and religious issues were settled at his house. Awas a leader and word of his was regarded as law. After setting up the govt Qasi divided Mecca in many districts and in each district he set up an institute of justice. Darulendoh was the central big institution of dispensing justice. Abul Hassan (1990)

Quresh used to bring all their social, economic problems pol matters of trade and legal issues for settlement there. All sorts of complaints matrimonial issues were settled there. Feuds among the tribes were also decided there. War and truce were also discussed there. Proper decisions were made and flags for fighting were also given. Trade issue was also being taken up there.

After Qasi, judiciary system was sadly topsetuniyed. Different tribes on the basis of mutual enmity started killing each other ruthlessly. In the circumstances a group of volunteer for settling the dispute was established, but failed to attain its goals. During this period Islam dawned and setup a well-established judiciary system.

JUDICIAL SYSTEM OF MEDINA

Pre-Islamic period judicial system had great importance as compared to other big town. The Arab had interaction with the Jew. The Jew had Torate which contained laws; therefore, people of Medina commonly practised the Jew law. This system ran under a central high Court of law. It was a sort of traditional type of Court which performed the functions of high Court upto 70 Afterwards its pol. powers were put an end to. Its gamut of

work was to decide civic and religious issues. Its members were large. They set up different boards to settle different problems of varied nature. This Court had two parts. One part dealt with the issue of civil nature, while the another part of Court dealt with problems of civil society. Its chief justice was the lord religious leader. He used to interpret the law himself and that was acceptable to all. All the religious ceremonies and fixation of date etc was done with his consent. This Court fulfilled its functions upto 5 B.C. with great pomp and show. When we consider pre-Islamic period of Arab we find Tehkeme and punchayat are natural way of doing things and there is no conflict between the two. God knows every thing. Al Quran (Surah Al Nisa verses No 35)

Kahant, Toss according to Sharieha are not good thing to be trusted Quran is a complete code of life. Quran is not the work of Kahan which consists of conjectures. This all is due to your short sightedness. If you had worked intelligently, you would have got the reality revealed to you. Similarly God has said about Toss. It is a sin. Zalen is that kind of arrow with which luck was tried. Scholars have said all the methods Jafer, pamistry, fal is like gambling. Lotery, Tossing are all not allowed and permissible according to Quran; they are haram. According to Sharieha Muhammad "Toss" is allowed for example division of a combined house. Allah says, O' Muhammad all these things we send you from ghabe. You were not among the people when they were fighting. Imam

Bokhari in book Al-Shahafat has pointed to five incidents. It appears that prophet accepted "Toss" and decided cases between groups of people who had equal right on a certain things. Torat's laws were annulled by Quran and Sunnah. All Islamic religious and sohra Almaidita it has been said, if you have to decide among the people, decide their cases justly. Allah loves such person. The prophet punished the adulterer Jew according to Torat and kept this decision even for the Muslim society also. M Shafi (Al Quran Surah Al Imran

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