

# Administration of Justice in Umar Farooq's Caliphate

By PROF. JAMIL FAROOQUI

**G**overnance is defined as administering and managing the affairs of a state in such a way as to provide the people with better life conditions, directing them to the appropriate path and achieving the purpose for which the state is formed. It generally refers to the government, the principles on and for which it works and the strategy it adopts to create conducive conditions for leading a peaceful and dignified life.

Oliver Williamson explains governance in two ways: one is 'good order and workable arrangements', the other is based on John R. Commons' view and alludes to 'the means by which order is accomplished in a relation in which potential conflict threatens to undo or upset opportunities to realise mutual gains'.

In a broad sense, governance appertains to the entire social order, the purpose for which it is constructed and the way it

works. Though the principles on which governance is based differ according to space and time, there are certain criteria universally accepted and taken into account to evaluate the process of governance and on which there is a consensus among men of knowledge.

The basis of governance is the well-being of all. The concept of well-being is explained in different ways. In Western context, it is mostly concerned with material gain and development. In Islamic perspective, it is a comprehensive term and refers to overall benefit of mankind. It includes both spiritual and material welfare and development with emphasis on the spiritual one. It is denoted by the word *flah*. This is why Islam, being a distinct system of life based on high standards of morals and norms, proclaims the well-being of humankind in this world and in the hereafter.

The Islamic way of life is grounded in 'the unity of God', meaning that God is One, the Most Powerful, Sovereign, Master and the Ultimate Source

of the animate and inanimate objects of the universe. Every object gets strength and vitality to exist, and work according to His plan. Humans have been given freedom to choose how they have to lead life. If they want to live in peace and harmony, develop their potentiality, get prosperity and success, they have to plump for the righteous way, the way God has shown and commanded them to follow. Hence, humans have to surrender to the will and commandments of God, manifest His sovereignty and suzerainty in their thoughts and actions as well as in all aspects of their lives. They have to evolve and mould social arrangement, organise social institutions according to the will of God.

In this perspective, governance in Islam is founded on the cardinal principle that sovereignty and suzerainty are the domains of God and not of any organisation or person. He is the only source of all power and authority. He revealed a certain set of guidance according to which delegated power and authority should be exercised,



affairs of the state and society should be administered, and humans should lead life accordingly. On this account, governance in Islam means to administer the affairs of the state and society according to Divine will and guidance. Any decision and act that, according to Iqbal and Lewis, 'contravenes or fails to conform with the revealed blueprint of social order' is neither valid nor appropriate.

Justice is the core of governance because without which governance in its true sense is not at all possible. It is generally said that a ruler without justice is a large-scale robber. Justinian, the Byzantine emperor, explains justice as 'the constant and perpetual will to

render to everyone his due'. It also indicates the maintenance of equality in dealing with everybody or the distribution of privileges of the state to everyone at equal level. Justice in Islam is most important as it is the most virtuous act and covers all aspects of human life. It is a comprehensive term and encompasses all the goods and virtues necessary to lead a moral, righteous and dignified life. It is the most appropriate and desirable act in a particular situation and in establishing relations with animate and inanimate objects.

The Qur'an uses three terms: *adl* (justice), *qist* (equity) and *meezan* (balance) to signify justice and equity, and impresses upon humans to do

justice in dealing with fellow humans (Qur'an, 4:58). The Qur'an elucidates justice as such: "Allah commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you that you may receive admonition" (Qur'an, 16:90).

Prophet Muhammad (peace and blessings of Allah be to him), his companions and the rightly guided caliphs adopted all the canons of justice and exhibited them in all aspects of their lives. The most significant aspect of the administration of justice we find in the governance of caliphs is that they strictly followed the revelation, the Divine guidance,

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and the precepts of the Prophet (peace and blessings of Allah be to him). Here, some glimpses of the administration of justice done by Caliph Umar Farooq, the second Caliph, are presented to understand the nature and significant features of governance in Islam.

Caliph Umar was a man of numerous abilities and full of virtues. He had a sharp mind, high degree of piety, morality, frugality, humility and political insight. He had a high degree of courage and valour and used them to follow the right path and create resistance against evil. He was an epitome of simplicity, commitment and dedication to the injunction and commandment of God. He loved truth and justice and never hesitated to implement them in personal and social life. He had strong conviction in his faith and dedicated his entire life to implement it.

The other feather in his cap was he received training and guidance of the Prophet (peace and blessings of Allah be to him). In a nutshell, he was a true servant of God and a staunch follower of His Messenger (peace and blessings of Allah be to him). During his last days Abu Bakr, the first Caliph, observed Umar's talents, capabilities and devoutness to the faith and nominated him as the second Caliph and decided to leave the reign of the Islamic state in his capable, strong and safe hands. Caliph Abu Bakr told the people who gathered there of his decision and they approved of the Caliph's verdict.

Umar assumed the office of Caliphate with all humility and modesty and after that he addressed the people

assembled there. In his address, along with other things, he promised the people that he would, to the best of his ability, perform the onerous duties of the office according to the injunctions of Islam and in this attempt he would take guidance from the Qur'ān, follow the precepts of the Prophet (peace and blessings of Allah be to him) and examples set by the first Caliph. He declared that the people would follow him if he had followed the right path. If he had deviated, the people should correct him so that they would not go astray.

#### ADMINISTRATION OF JUSTICE

Caliph Umar knew that justice is the backbone of administration without which it is not possible to run the state properly and perform its functions in an authentic and bona fide way. Officials often cross their limit and go beyond their jurisdiction of power if their actions are not subject to scrutiny and judicial evaluation. Similarly, dominant and strong persons take advantage of their position, deprive the poor and the weak of their rights and usurp their properties. It is necessary to safeguard the interests of such persons, provide them with full opportunity to live respectfully and restore their rights. They should have the right to get redress of unfairness and suffering from the court. In view of this situation, Caliph Umar tried to enhance and rejuvenate the entire judicial administration to make it more effective, fair and speedy. His purpose was to administer justice according to the strict canons of Islamic principles.

#### SEPARATION OF JUDICIARY FROM EXECUTIVE

The first significant step Caliph Umar took to revitalise the judicial system was to separate it from the executive. At the time of the first Caliph, the officials and the Caliph himself used to act as judges. In the beginning, Caliph Umar retained the arrangement as the government machinery was not settled and was in fact in the process of development. But he separated the two departments soon after the government was settled, and its departments began to work smoothly and sufficiently. This was a momentous act and an important aspect of Islamic civilization whereby judiciary was independent, separated from the executive and worked freely and fairly without any influence. He was the first in history who introduced this idea that, after long duration, was adopted by other civilizations and now is considered an essential ingredient of governance.

#### RECRUITMENT OF JUDGES

Judicial system cannot work and deliver properly if judges are not of high calibre, men of integrity and have deep knowledge of law, man and society. Caliph Umar realised this fact and thereby took great precautions in the appointment of judges (*qadis*). He developed certain criteria for the appointment of this important position. In particular, this person should be a man of integrity, have high moral character, committed to the Islamic doctrine and command public respect.

Shibli Numani with



reference to *Akhbar-ul-Qudat* of Muhammad b. Khalf states that the Caliph wrote to Abu Musa Ash'ri, the governor of Kufa, asking him not to appoint any person who did not command public respect. He abided by this rule and forbade Abdullah b. Mas'ud to hear suits. Second, the person should have high knowledge and deep understanding of Islamic law and is well-versed of the legal position on different issues. This is why he appointed learned persons famous for their intelligence, knowledge and character as judges. For instance, Zaid bin Thabit, the Qadi of Madinah, was considered an expert in civil law and had command over Syriac and Hebrew. Ka'b b. Sur al-Azdi, the Qadi of Basra, was a man of great insight and his judgments became very famous. Ibada b. al-Samat was the Qadi of Palestine; he was one of the five persons who had memorised the Qur'an at the time of the Prophet (peace and blessings of Allah be to him). Shuraih, the Qadi of Kufa, regarded as a model judge due to his intelligence, interpretation of law and commitment. Ali called him 'Aqd-ul-Arab' or the most judicious of all the judges of Arabia.

The third criterion was that the Qadi should be well-to-do and of high social status so that he would not be influenced by a person of high position and have no temptation of money and wealth. Further, Qadis were not allowed to involve in business and trade or other profitable work so that they could wholly devote themselves to their duties and perform them honestly and to the best of

their endeavours. Besides these criteria, the Caliph himself tested the abilities and calibre of the candidates before recruitment. He used to appoint judges after due consideration and becoming sure of their capabilities.

#### NUMBER OF JUDGES

The Caliph appointed sufficient number of judges to provide speedy justice for people. Almost every district had a Qadi to dispose cases and settle disputes. The number in view of the population structure was sufficient. He had also given high salaries to the judges so that they would not be tempted to money from other sources; for instance, Salman Rabi'ah and Q a d i

Shuraih used to get five hundred darham a month as salary, which was quite sufficient according to the economic condition of the period.

#### GUIDELINE AND JUDICIAL PROCEDURE

The memorable contributions of Caliph Umar in the development of judicial system were to lay down the broad principles and establish the judicial procedures that should be followed in deciding the cases and pronouncement of judgment. He used to send instructions called *farman* from time to time to Abu Musa Ash'ri, the Governor of Kufa, in which he set down fundamental principles that should be



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observed in the courts of justice. These served as guidelines for the judges to be followed in the adjudication of justice. These principles are the backbone of justice and later adopted in the modern system of justice. In one of the *farmans* issued to the judges, Caliph Umar laid down the following principles to be observed in the courts:

1. Justice is an important obligation to God. This responsibility is given to you, and you have to discharge it with all sincerity and ability to get the pleasure of God and earn the goodwill of the people.

2. All people are equal, treat them alike so that the weak are not deprived of justice, and the well-placed persons are not favoured.

3. Onus of proof in a suit lies on the plaintiff. He has to present proof for his claims. The claims are denied only on oath.

4. Compromise is possible in case it is lawful and does not turn unlawful into lawful and vice-versa.

5. You can change your previous decision if you think after due consideration that the previous decision was not correct.

6. When you are in doubt on certain issue and do not find any explanation in the Qur'an and the Sunnah of the Prophet (peace and blessings of Allah be to him), think over it again and again, consider thoroughly the precedents and analogous cases, and then decide by analogy.

7. A date should be fixed for a person who wants to produce witnesses. If he proves his case, decide in his favour, otherwise dismiss the suit.

8. All Muslims are eligible to give witness except those who are punished or have given false witness or their integrity is doubtful.

These are valuable principles necessary to adjudicate justice and make courts function impartially as well as in a just and equitable way. All civilizations, in one

way or the other, have adopted these principles to enrich the judicial system and deliver fair and speedy justice to their people. There are three factors upon which a substantial judicial system rests. First is the comprehensive and perfect law according to which judicial decision should be made and disputes be settled. Second, judges should be capable and of high character and integrity and decide cases with all fairness. Third, there should be a code of conduct that prevents judges from favouring one and doing injustice to the other.

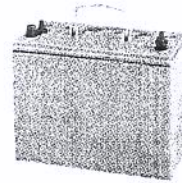
Caliph Umar applied these principles in the judicial system in the true sense. Islamic law is based on the Qur'an according to which cases should be decided. If it is silent on a certain issue or requires some explanation or interpretation, one has to recourse to the Sunnah or the way the Prophet (peace and blessings of Allah be to him) interpreted and acted upon it. Even when the matter is

not clear, one should rely on *Ijma* or the consensus of jurists. It is obvious that the interpretation of law on which the majority of the jurists agree will be more reliable. Failing all these alternatives the judge should use his own wisdom and decide cases on *qias* or analogy.

These are the basic sources of Islamic law and should be taken into consideration in the application of law to concrete situation and pronouncement of judgment. Caliph Umar instructed the judges to follow this procedure in deciding cases and

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interpreting the Qur'ānic injunctions. In one of the *farmans* to Qadi Shuraih, the Caliph elaborated this procedure and instructed him to follow it strictly. In addition to these *farmans*, he used to send the written judgments or fatwas on complex and sensitive issues to the judges so that they might take guidance from them and decide cases accordingly.

**ADMISSIBILITY OF EXPERT EVIDENCE**

Caliph Umar took drastic steps and introduced many innovations to make the judicial system more relevant, effective and accessible. One of the remarking innovations he introduced in the law of evidence was the requirement and admissibility of the evidence of the experts. In some suits, questions of technique or matter of expert knowledge are involved and require expert opinion without which it is difficult to deliver the judgment. The Caliph allowed and invited experts to clear the matter and help the court to decide the case judiciously. Many such cases were reported during his period. Two among them were important. In one case, the Caliph himself invited

Hassan B. Thabit, a poet of eminence, to explain poetic terminology and delivered judgment according to his expert opinion. In another case, an expert of physiognomy was called to give evidence in a case of disputed heredity.

**ACCESSIBILITY TO JUSTICE**

One of the important features of efficient justice is that it should not be expensive and should easily be accessible to all

persons; prince and peasant alike. The Caliph was very much particular about this fact and made the judicial procedure so simple that everybody could present their grievances to the court and seek justice. Mosques were used for the adjudication of justice where judges heard the cases and decided them on merit. No money was required to file the case; anybody can go and present his case. Instruction was given to the judges to treat



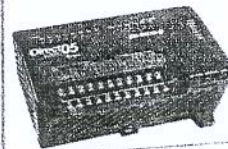
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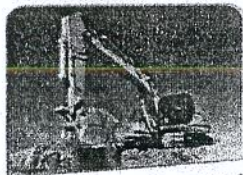
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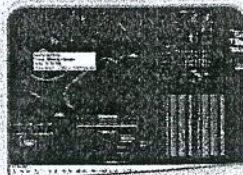
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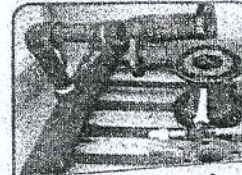
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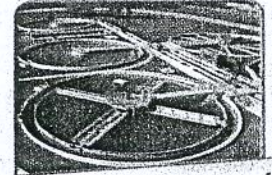
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the common man and the poor properly so that they should not have any inhibition to state their case.

### MAINTENANCE OF EQUALITY

Caliph Umar took special care and precaution to maintain equality in the administration of justice. He wanted everybody, irrespective of his socio-economic background, to be treated equally in the court of law. He was conscious that the basis of justice is equality in the eyes of law. He wanted to see it in the court as well as in the attitude of the judges. This is the reason that he himself went to the court on several occasions as a party to suits to observe whether the required equality was maintained at the court. Once Ubayy b. Ka'b filed a suit against the Caliph in the court of Zaid b. Thabit. The Caliph appeared in the court. The judge showed him honour; the Caliph expressed his displeasure and told the judge that that was his first injustice. The Caliph sat with the plaintiff as an ordinary man. Further, Ubayy, the plaintiff, wanted the Caliph to follow traditions by taking an oath. Zaid, in view of the highest position of the Caliph, requested Ubayy to waive the right of oath. The Caliph disapproved the idea and said, "If Umar and any other man are not equal in your eyes, you do not deserve for the post of judge."

### SOME GLIMPSES OF MOMENTOUS ACTS

Caliph Umar's governance spread over a decade from 634 C.E. to 644 C.E. and is considered exemplary in human history. He established

various landmarks in governance of the state, administration of justice, public affairs and in serving people, which are still memorable and affect the mind and heart of people. His simplicity, devotion to the faith, commitment to his duties, service to God and His people are no match in history. He was the embodiment of virtues, simplicity and equality. He used to eat coarsest food, wear coarsest of clothes and led a simple life without any pomp and show.

Once he was late for the Friday congregation (prayer) because he had to wash his clothes that took time and delayed his departure to the mosque. He had only one shirt in his wardrobe and that too was patched. This was the specimen of the head of an Islamic state, the strongest and largest nation of that time. The kings and rulers of the adjoining countries expected that the head of an Islamic state would have magnificent and splendid living but when they came to know the reality, they were greatly amazed. When the envoy of the Byzantine emperor came to Madinah to see the Caliph, he found the Caliph sitting in the mosque in ordinary clothes with ordinary people.

The most glorious and precious aspect of his life was the maintenance of justice and equality in his action and in his entire behaviour. He practised what he believed and considered good. He applied his thoughts and the principles he cherished to his practical and day-to-day life. It was exhibited at the time of the surrender of Jerusalem.

The patriarch of Jerusalem desired that Caliph Umar should go to Jerusalem and receive the surrender of the city because it was written in their holy books that the city would surrender to a man who was the best among the Muslims. The Caliph decided to proceed to Jerusalem. He was accompanied by only one slave. There was one camel with them, and it was decided that they would take turns riding the camel. When they reached Jabia, it was the turn of the slave to ride. The slave requested the Caliph to ride the camel, but he refused because it was a violation of the previous decision. As they entered Jabia, the world witnessed the most auspicious and splendid act of fairness whereby Caliph Umar's slave was on the back of the camel while the Caliph was walking on foot, holding the reins of the camel. This paragon of justice, equity and fairness can only be found in Islamic governance and not in any other system.

The momentous and historic acts done by Caliph Umar Farooq were based on the cardinal principle that human beings are servants of God, and they have to establish the sovereignty of God on earth. They are not rulers and have not built their own empire, but they are the trustees, and 'they have to render back the trust to those whom they are due'. As such, they have to set up the government on Divine principles, run the state according to the Divine will and serve the people to seek His pleasure.