

Historical Outline of the Ombudsman from the Islamic Perspective

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In the Name of Allah, the Beneficent, the Merciful

Introduction

Judging in Islam is a pride, and it is said that (*Adl*) Justice is the basis of authority, and Allah called himself the “*Adl*” and the *hakam* which means judge. In the sayings of Prophet Mohammad, He told that heavens and earth were set justly. All people are obligated to be just even with enemies; in His Holy Book, God says:

“O ye who believe! Stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to Piety: and fear Allah. For Allah is well-acquainted with all that ye do.” [Al-Maidah 5:8]

God also says:

“O ye who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin.” [An-Nisa 4:35].

God says:

“Allah doth command you to render back your Trusts to those to whom they are due; and when ye judge between man and man, that ye judge with justice: verily how excellent is the teaching which He gives you! For Allah is He Who hears and sees all things.” [An-Nisa 4:58]

The Holy Prophet of Islam said: “A moment of justice is better than sixty years of worship in which you keep fasting and pass the nights in offering prayers and worship to Allah.” And that is because the benefit of worshipping goes only to the worshipper, while being just and giving back the due rights to their weak owners are matters of common welfare.

Prophet Mohammad himself used to handle judging and when Muslims increased in numbers and at the expansion of Islam, he delegated some of this task to his companions. When the Prophet sent *Mu'ath* to Yemen and ordered him to judge among people he asked him: “What is your reference in judging if you were to judge *Mu'ath*?” *Mu'ath* said: “My

reference is God's Holy book." The Prophet asked him: "What if you did not find it?" Mu'ath said: "With the *sunnah* (teachings) of Allah's messenger." The Prophet asked: "What if you did not find it?" Mu'ath said: "I will have my own interpretations", so the Prophet agreed with that.

The rightly guided Caliphs went on with the same method after the death of the Prophet, for they used to judge themselves due to the greatness of this post.

When the Islamic state expanded and the tasks of the Caliph became more varied, they started to assign this job to other men who were known to be wise, pious, have great faith and justice.

In assigning Abu Mosa Al-Ashaari to be a judge, Omar told him in his famous letter (The Principles of the Judiciary System): "The judiciary is a fixed obligation and a followed tradition, so you must understand clearly when they turn to you, because speaking of a right that has no basis is not useful Treat people equally in your presence, in your company and in your decisions so that the weak despair not of justice and the strong have no hope of favour, be aware of anxiety, dullness, hurting people and neglecting opponents."

And here is Ali Ibn Abi Taleb, writing a letter to his Wali in Egypt (Al ashtar al-Nakh'e) describing the qualities of judges whom he chooses to judge: "Then you should choose the best citizen to judge, someone whom matters would not trouble, challenges would not shock, and someone who would not use his position."

Judges used to have a high position in the country, and their verdicts would be binding for everyone including Walis and commanders. And there are many incidents which are evidence of this, as when the judge Abu Yusuf dismissed the testimony of Al-Fadhel Ibn Rabee' – a minister with the Caliph Al-Rasheed. When the Caliph asked him about that, the judge Abu Yusuf insisted on his opinion and he said: "I heard him saying 'I am a slave for the Caliph', so, if he was honest, we will not accept the testimony of the slave, and if he was lying, then his testimony would be a lie because he is a liar."

Defining the administration of grievances

Al-Mawardi and Abu Ya'ly Al-Fara' define it as "to deter litigants from controverting and repudiating each other and to restrain wrongdoers from contesting and vying with each other". The person who is in charge of administering the grievances is called the "Nathir" (one exercising grievances jurisdiction) and not a judge, because his job is not only judiciary, but also executive, for he might deal with clear matters by execution, settlement or anything that would give the one who has a right his rights.

Evaluation of the Diwan al-Mathalem (Registrar of Grievances)

During the first era of Islam, there was no need calling for the existence of such a registrar. And that was because people had a strong faith, and they were controlled by religious intentions. As a result, conflicts were rare among people, since each one knew his rights and his duties, and that would explain why no one appealed to Omar Ibn Al-Khattab for two years when the Caliph Abu Baker assigned him to be judge in Medina.

When worldly characteristics became dominant over the Arab and Islamic state from the Umayyad period, people started to declare grievances and conflicts. Preaching was not enough to prevent them from infringing on people's rights, so there was a need to deter the oppressor and defend the oppressed by establishing an administration of grievances which was independent of the judiciary system. Caliphs themselves used to exercise this administration. Afterwards they established the post of a specialised Wali for this task, later a special *Diwan* was established: it was known as the Diwan al-Mathalem (Registrar of Grievances) and it was a supreme court which was headed by the Caliph himself or one of his officials. Its mission was to stop the aggression of high officials and workers in the state and those who were wealthy and well-known citizens.

This Diwan played an important role in the Islamic state, for it was a main pillar in the Islamic system and it had to oversee the execution of the principles of *Shariia* (Islam teachings) and the sovereignty of law. The chief Registrar of Grievances used to be an honourable, well-known man, who had a strong character and a convincing opinion. The first Registrar of Grievances was Ali Ibn Abi Taleb, and one of the Caliphs who assigned a day to address grievances was Abdu Allah Ibn Marwan.

Hilf al-Fudul (the Alliance of Excellence)

Historians trace the history of this system back to the Jahilya (the era before Islam), as they say: "When leaders increased in Quraish (a big tribe in Mecca), they held the *Al-Fudul Alliance*. This incident occurred in the house of Abdullah bin Jad'an between the greatest tribes in Mecca. One of the principles they agreed upon was backing up any oppressed person in Mecca. Regardless of his origin, they vowed to help him regain his rights.

The legitimate origin of the administration of grievances

The legitimate origin of this administration is that it was created to take back the right from the oppressor and the aggressive and give it

to its real owner, and this is taken from the teachings of the Quran and *sunnah*. Allah said in the Holy Book, “The curse of God is on the wrongdoers”.

Allah also said:

“Let there arise out of you a group advocating what is good, demanding what is right, and forbidding what is wrong. They are the ones to attain success.” [Aal-e-Imran, 3:104]

Allah Himself is absolutely just and has forbidden Himself any form of injustice. Allah said in a *hadith qudsi*:

“O My slaves, I have forbidden Myself oppression and I have made it between you forbidden, so do not oppress one another.”

The Prophet warned us about the twin evils of oppression and greed in the following:

“Beware of oppression for oppression is darkness on judgment day and beware of greed for greed destroyed those who were before you. It drove them to spill one another’s blood and to violate their sanctity.”

Combating an oppressor however brutal he may be, and supporting an oppressed however low he may be, are consistent with the spirit of Islam that enjoins what is right, forbids what is wrong and calls for abiding by the limits set by Allah, and they fall under the framework of advocating what is good and forbidding what is wrong. And this is the duty of every Muslim as the Prophet said: “*Whoever amongst you sees an evil should change it with his hand. If he is unable to do that, then with his tongue. If he is unable to do that, then with his heart, and that is the weakest level of Iman (faith).*”

In countries which have order and stable systems, individuals cannot have their rights back unless someone leads the incapable and conveys his issue to the authorised people, because triumphing for and supporting the oppressed and delivering the right to its owners and punishing oppressors is the duty of commanders and Walis or there would be chaos.

The creation of the Registrar of Grievances (the Ombudsman)

The aim of the administration of grievances is to pursue evil and oppression, and especially the oppression by Walis and high officials in the state, so the “Nathir” (one exercising grievances jurisdiction) should be an honourable, well-known man, who has a strong character and a convincing opinion, not greedy, pious and faithful because in his

job he needs the might of Walis and the constancy of judges, so he has to have both qualities.

These qualities could be summarised as follows:

- 1 –He should have apparent chastity and virtue, be pious, not greedy, and these qualities relate to the human being and his faith.
- 2 –He should be well-informed and constant in his judging, and these qualities relate to acquiring an education and a wide experience.
- 3 –He should be reputable and have might and these are general psychological characteristics and relate to the authorised person.

So, no wonder that we saw the Caliph himself used to adjudicate grievances.

Assistants of the Registrar of Grievances (the Ombudsman)

Due to the particular nature of adjudicating grievances and the fact that it goes back and forth between judiciary and executive administration, it needs the association of various factors so that it can be accomplished at its best, and these factors are:

- 1 –Assistants: and they are chosen to triumph over everyone who seeks power and aggression or is running from the law.
- 2 –Judges and rulers: and their task is to advise the Ombudsman on some problematic matters.
- 3 –Fuqaha' (jurists): and the Ombudsman seeks their advice on problematic matters.
- 4 –Kuttab (clerks): and their task is to write down what happens between complainants and to prove their rights.
- 5 –Witnesses: and their task is to testify that the verdicts which were issued by the judge are just.

From the creation of the assistants of this Diwan, we see that it is based on mutual institutional work, since the responsibility of the Ombudsman is great and risky, and in his job he needs to have a group of assistants around him. Also, if sometimes he may get furious in his work and that would lead to aggression and oppression, then he would have a team to work with him, advise him and guide him.

Times of holding the sessions for looking into grievances

Some of the Walis used to hold sessions of grievances at any time. Al Mansour Al-Mouahedi used to sit himself to judge in the cases no matter how big or small they were, and nothing used to be hidden from him, until one day two men came to him fighting over half a Dirham (money which was used at that time), so Abu-Yehya the commander told them

that this was not a good reason to complain to the Wali. This incident made Al-Mansour sit to look into grievances on certain days.

Some Walis used to assign a certain day in every week to look into grievances.

Abu Yusuf advised Haroon Al-Rasheed to look into grievances at least once every month or every two months.

Whereas if an Ombudsman was assigned to the post, then he should be available to look into grievances all the time.

Venue of the sessions

The Mosque was the place of judging besides being the place of worshipping. Complainants used to go to the Mosque because they knew that the Caliph would be there at the time of prayers.

Also, complainants used to go to the Caliphs in their homes or in any place they went to. Later, they had buildings and halls and courts to look into grievances.

Al Muhtadi (255-256 Hijri) built a dome which has four doors and he called it the Dome of Grievances and it was for public and private citizens.

Specialisations of the Registrar of Grievances (the Ombudsman)

In their books, Al-Mawardi and Abu Ya'ly Al-Fara' mention the specialisations of the Ombudsman as follows:

- 1 -To look into the aggression of Walis against citizens, so their acts would be reviewed and if they were fair and just he would support them, and if they were otherwise, he would dismiss them.
- 2 -To look into the aggression of the tax officers about the taxes and how much they take from people, and thus he will return the extra money to its owners.
- 3 -To look into the work of clerks or the employees in the state in general and into their complaints against their supervisors and high officials in the state.
- 4 -To return unlawfully acquired money to its real owners whether this deed was done by the state or one of its employees.
- 5 -To execute unexecuted verdicts whether the reason was weakness of judges and their inability to execute them or the authority of the oppressor.
- 6 -To observe the public morals of the Islamic society and protect the community against any aggression in any way.
- 7 -To observe worship such as Friday prayers, feasts, Haijj and Ramadan.

8 –To adjudicate between adversaries and rule between opponents in general.

From reviewing the most important specialisations of the court of grievances, it is clear that it does have religious, administrative and judiciary tasks.

I would like to present this humble effort to everyone who participates in ending the oppression of any human being and establishing the principles of right, justice and equality.
