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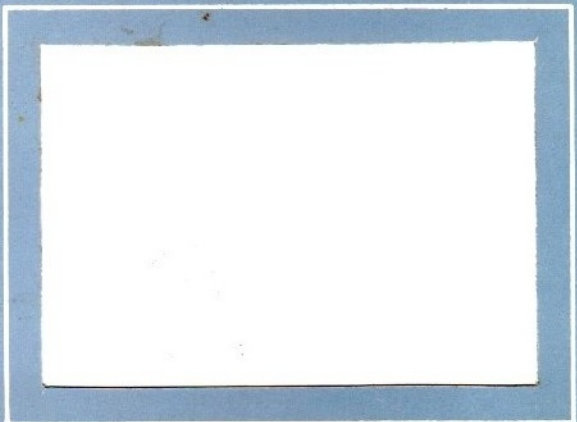
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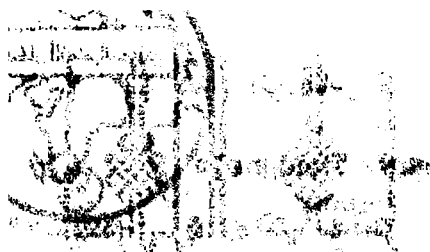
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Imam Khomeini's outlook

on Judicial Issues

by

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ



“Surely Allah commands you to make over trusts to their owners and that when you judge between people you judge with justice.”
(4:58)

“Surely We have revealed the Book to you with the truth that you may judge between people by means of that which Allah has taught you...”(4:105)

The 8th Islamic Thought Conference, coinciding with the anniversary of the Ten-Day Dawn ceremonies marking the Islamic Revolution, is being held at a time when the great leader of the Islamic Revolution and founder of the Islamic Republic of Iran, Imam Khomeini — that great man of history; the brilliant light radiating from the world of Islam at the end of 14th Century; the man who liberated Islam from the clutches of superstitious religions and the devious schools of the West and the East — is not present among us. Nevertheless, his lofty and divinely-inspired thought prevails over all sectors of our society, our system, our government, and our people.

I would like to thank the conference organizers for including this humble presentation: The Imam’s Outlook on Judicial Issues, in the agenda of the conference. The scope of the topic is so vast that it calls for extensive deliberation. Being pre-occupied with official duties and thus presses for time, I have contended myself with a brief presentation.

Imam Khomeini's (may his grave be sanctified) views on the judiciary conform to those of the majority of prominent Muslim jurisprudents, who see the judiciary as a branch of government, with the task of appointment to it being vested primarily in the ruler. As such, only the Holy Prophet (SAWA) and the immaculate Imams and their appointees have the right to judge, in the same way as they have the right to rule.

Imam Khomeini believed that the validity of judgement was interconnected with the legitimacy of the government. Judgement then, should be the province of government as is customary in all government systems of the world.

To pinpoint the status of the judiciary in an Islamic system, let us see what the Imam had to say. His view on the question was clear with his endorsement of the constitutional law, the ratification of the Constitution Revision Council, as well as the idea of a centralized management in judiciary power, with which he attached paramount significance.

Regarding the Imam's views on the nature and quality of judgement, one would do well to look at the introduction to his book "Tahrir-al-Wasileh".

First of all, he defines judgement as an effort to put an end to hostility and as a decree to terminate disputes between individuals, not mere issuance of fatwa (religious decree) on a contentious subject.

Secondly, he assesses the post of a judge as a position which should not be entrusted to even a qualified man on his own request; rather, he should be appointed by the leader of the government.

Finally, the passing judgement is one of the vital government posts; a momentous talks of immense significance. At the same time it is highly weighty and serious, it is also honorable and rewarding. In support of this conviction, he recalled scores of narrations including:

The Imam rejected holding of the position by those who are not qualified and who are not appointed by legiti-

mate governments. He considered such appointments as illegal, and authorized people to seek recourse to judicial officials serving in unlawful governments only in emergency cases.

The Imam's jurisprudential view on qualifications required of a judge, the character of judgement, investigation and; generally speaking, the process of trial and codes of procedure more or less conform with those held by the majority of Muslim jurists. He advocates the independence of opinion for the judge, the necessity of executing verdicts, and forbids violations and delay in the work of the judge. The Imam emphasized the idea of a judiciary independent from the legislative and administrative branches of government.

If in the early centuries of Islam, judgement was undertaken by the executive ruler, that procedure does not run counter to this conviction as the hadith states:

Imam and the Judiciary in Iran's Islamic Republic System:

The first issue worth noting here concerns the debate between the Supreme Judicial Council and the Council of Guardians over "Ta'azirat" (flexible punishment prescribed in Islamic penal code). The Imam's view on judiciary is revealed from the instructions and guidelines he provided in the course of debates on the subject in the early days of the first session of the Islamic Consultative Assembly (Majlis), when I myself served in the Majlis' legal and judicial commission. A detailed record of the debates is available in the legal office of the Majlis and with the secretariat of the Council of Guardians.

Provision four of article 156 of the constitutional law approved in 1979 and revised in 1980 stipulates that investigation of crime, prosecution and enforcement of Ta'azirat on criminals, and execution of "Hudud" (specific punishment prescribed in Islamic penal code) should be based on regulations laid down by Islam. In article 161 of the constitution, responsibility to foster the unity of procedural practice vests with the Supreme Council.

It follows that court verdicts should conform with the laws laid down and approved by the majlis, so as to prevent enforcement of different punishments for similar crimes committed in corresponding circumstances. The judicial commission of the Majlis should define Ta'azirat for each crime based on Islamic penal code.

The Council of Guardians rejected a bill prescribing specific (Ta'azirat) punishments as contrary to "Sharia law", in view of an indisputable Islamic principle which stipulates that Ta'azirat is in the jurisdiction of the judge and the ruler, who can enforce the punishment bearing in mind the conditions of time, place and the culprit.

The administrative disputes and debates on how to draw up a bill and set deadline for receiving and returning the views of the members and chairman of the Majlis' executive committees, unfolds another subject which we are not going to take up. However this would be useful for researchers to delve into.

Another point worth highlighting is that many of our judges are "Ma'azoon", i.e., they have not obtained the status of a "Mansob" judge, one qualified to independently issue a religious decree on a matter. We faced executive problem in specifying the realm of their activities.

To elaborate, Imam Khomeini stressed that an essential condition required of a judge is that he should have developed the stages of Ijtihad (independent strive to infer decrees from Islamic sources). He especially emphasized that a "Mutejazzi" judge (one who is expert only in one or two branches of law) cannot in the full sense, assume the position of a judge. According to Imam Khomeini — he pronounced this view with reservation — a judge should be the one outstanding among the Mujtahids (clerical authority in Islamic jurisprudence) in his region. However, we do not have sufficient number of qualified Mujtahids to meet the needs of only our big cities, nor could we stop judicial work, which constitutes a daily requirement of the public at large.

Out of necessity, those who were not fully qualified Mujtahids, but who were acquainted with judicial matters were temporarily authorized to take up the position of a

judge and render verdict until the vacuum is filled.

The Majlis gave the right of adjudication to those holding an M.A. in law, the graduates from the law school of Qom Theological School, and those who had passed a minimum two years of their advanced courses in theology (equivalent to an M.A. degree). However, the limit of the activity of these Ma'azoon judges were restricted; they were only allowed to judge within a specific legal framework, to ensure conformity of punishment with law and to maintain observance of unity of procedure.

As regards ta'azirat, the problem was to some extent solved by setting a minimum and maximum punishment. For example, one who committed a certain crime should be sentenced to a punishment, say, from three months to two years imprisonment; or be forced to pay a fine of a certain amount, or else be subjected to lashing.

Here another question cropped up: the restriction of ta'azirat to whipping. Irrespective of diverse fatwas issued by different faqihs (muslim jurisprudents) on the question, Imam Khomeini observed that in cases expressly stated in the text, lashing would do; but in governmental offenses, the judge can enforce whatever punishment he deems would serve as preventive. The exact wording of the Imam runs as such: "In government-related commands which stand outside legal ta'azirat, the ruler or his deputy can primarily subject the culprit to preventive punishment."

In response to another question the Imam replied: "In legal ta'azirat it is cautious to be contented with punishments expressly stated in the text, unless the offense assumes a public dimension such as hoarding and overcharging, or violation of government regulations of the latter type."

Another significant point made by Imam Khomeini in judicial matters concerns the judge's verdict and its composition. Majority of Muslim jurisprudents believe it to be in the jurisdiction of the judge to compose and issue the verdict; mere issuance of fatwa or mere composition is not sufficient. In response to a question as to whether judgement could be made in consultation and verdict of a group of judges, the Imam authorizes in case of Ma'azon judges. The question

and the Imam's fatwa is quoted below:

“His Holiness, Imam Khomeini:

In His Holiness view, is it necessary in judicial trials that a single judge render a verdict or whether more than one judge can also issue a verdict in consultation? In case it is not authorized, does this rule apply to trials conducted by judges who are not absolute Mujtahids.”

The Imam replied:

“In the name of the Most Exalted.

In case of Ma'azon judges there is no objection if they are numerous and act in consultation.”

Ruhollah Al-Musavi Al-Khomeini

While the Imam authorizes in the case of Ma'azon judges, another question arises as to whether it is permissible to appeal a verdict to another judge if objection is raised against the verdict, irrespective of the legal authorization for reconsideration of a verdict in triple cases reserved in the law. The question and its reply is quoted below:

Continuation of the former question:

“If either or both parties object to the judge's verdict, is it possible to appeal the verdict to another court?”

The Imam responded in the following words:

“In the name of the Most Exalted

In case of a Ma'azon judge there is no objection to reconsidering his verdict in the presence of an absolute Mujtahid.”

Ruhollah Al-Musavi Al-Khomeini

The Imam, however, does not permit consultative composition or reconsideration of the verdict issued by qualified judges and absolute Mujtahids.

It is beyond the scope of this paper to treat Imam Khomeini's responses to different judicial questions pronounced orally or set down on paper. Nor is it possible here to highlight his decrees and circulars issued to individuals or

the public, though these issues warrant special attention. For this purpose, i.e., collecting all the writings on judicial matters ranging from circulars and decrees he provided on the judiciary's responsibilities, to answers to legal questions, efforts have been made in the hope that it would be published in the form of a useful book.

The final discussion here concerns the judgements made by Imam Khomeini about individuals and different cases such as his edict on the apostate Salman Rushdie, sentencing him to death. This decree is not only pronouncement of a religious fatwa, but also bears responsibility for the executioner. Or take the Imam's fatwas, written in his own pen, concerning such groups as the nationalists, liberals, Hojjatiyeh Association, the so-called Liberation Movement, and the Munafeghin (an outlawed terrorist group), in which case the totality of the organization has been condemned not the individual members.

Another important question remains which I will explain briefly. Judges of revolutionary courts across the country unanimously sent a letter to Imam Khomeini seeking his advice on the narcotics dealers, who acted in organized gangs and who could be likened to the belligerent and corrupt Munafeghins.

In response, the Imam made a written pronouncement, advising that a distinction should be drawn between the narcotics contrabandists acting in an attempt to undermine the Islamic Republic, in which case they are regarded as belligerent, and those committing a specific crime whose punishment is determined by law.

The question was finally put before the council of Expediency which devised, approved and circulated a law for combating the drug-traffickers, being successfully carried out across the country.

Imam Khomeini had also underlined on different occasions the need for directness, speed, decisiveness precision and observance of Islamic principles, i.e., Islami-zation of the country's judicial system. He had already made the effort in his writings and guidelines addressed to Martyr Dr. Beheshti and Martyr Qoddosi, who served as

chief justices in the Islamic Republic of Iran, stressing that the Justice Ministry should be Islamized. The Imam's speeches and writings are available. These documents will be collected and published under the title of "Imam and Judgement."

In this short time, it is not possible to treat the subject in more details, so I wrap up my paper and hope that researchers will follow-up these issues and arrive at the desired conclusion. Insha Allah.