

Published on Al-Islam.org (https://www.al-islam.org)

<u>Home</u> > <u>Imam Ali (a.s.)'s Book of Government</u> > <u>Chapter Seven: Judicial Policies</u> > 7.12 The Status of Islamic State Expediency in Issuing Verdicts

Chapter Seven: Judicial Policies

7.1 Selection of the Elite for Judgment

369. Imam Ali (a.s.) – in his letter to Malik Ashtar: "Then choose to judge among men him who in your sight is the most excellent of subjects, i.e., one who is not beleaguered by (complex) affairs, who is not rendered ill–tempered by the litigants, who does not persist in error, who is not distressed by returning to the truth when he recognizes it, whose soul does not descend to any kind of greed, who is not satisfied with an inferior understanding (of a thing) short of the more thorough, who hesitates most in (acting in the face of) obscurities, who adheres most to arguments, who is the least to become annoyed at the petition of the litigants, who is the most patient (in waiting) for the facts to become clear and who is the firmest when the verdict has become manifest; a man who does not become conceited when praise is lavished upon him and who is not attracted by temptation. But such (men) are rare."1

7.2 Financial Support of the Judges

370. Imam Ali (a.s.) – in his letter to Malik Ashtar: "Then choose to judge among men him who in your sight is the most excellent of subjects...and grant generously to him that which will eliminate his lacks and through which his need for men will decrease."2

7.3 Job Security for Judges

371. Imam Ali (a.s.) – in his letter to Malik Ashtar: "Then choose to judge among men him who in your sight is the most excellent of subjects.... Bestow upon him that station near to you to which none of your other favorites may aspire, that by it he may be secure from (character) assassination before you by men of importance. (In sum) study that (i.e., the selection of judges) with thorough consideration, for this religion was prisoner in the hands of the wicked, who acted with it out of caprice and used it to seek (the pleasures of) the present world."3

[It is also narrated in the same letter in Tuhaf al-'Uqul:] Then, very often check his decisions and grant

generously to him that which will eliminate his lacks, and through which his need for men will decrease. Bestow upon him that station near to you to which none of your other favorites may aspire, so that he remains safe from the harm of those around you. Be respectful to him when you associate with him, favor him in sessions, agree to his judge, implement his rulings, support him, and choose the best of his matches as his supporters. They should be from among jurisprudents and people of piety who would advise for the sake of Allah and his servants. He may discuss with them in any doubtful question, refer to them in what he does not attend, and they should be witnesses on his settlement of disputations, God willing."4

7.4 Enjoining to Observe Judgment Rules

372. Imam Ali (a.s.) – to Shurayh: "Look into the state of those delaying in discharging people's rightful due from among the rich and the needless, who put the Muslims' riches at the rulers' disposal. So, take the Muslims' rightful due from them and sell the houses and lands, for I heard the messenger of Allah saying: 'delay by the rich Muslims is [equal to] oppression to Muslims; and those who do not own lands, nor houses or wealth are not to be obliged."

"And let it be known that no one will enjoin people to rightfulness except he who drive them away from falsehood. Then, treat Muslims equally by way of your facial expression, speaking, and meeting so that those who are near you not to be tempted to do injustice and your enemy not to lose hope at your justice. And return the swearing to the claimant by presenting evidence (two witnesses), for this will remove ambiguity and maintain (sound) judgment."

"And let it be known that Muslims are just, with some bearing witness to others except the one who has been whipped for a punishment and has not repented or is known as giving false witnesses. And take care not to express suffering and pain in a judgment session, for Allah has decreed a reward for it and there is a good reward in store for the one who judges rightfully."

"And let it be known that peace among Muslims is permissible, excepting the peace that renders unlawful something lawful or lawful something unlawful; and give a respite to the one who claims to have absent witnesses. If he presents them, his right will be restored, and if not, he will be duly judged. Take care not to carry out a verdict concerning retaliation (qisas), Divine sanctions, and the Muslims' rights without informing me about it – God willing. And do not sit for judgment except after you have had your meal."5

373. Al-Kafi – related by Ahmad b. Abi 'Abd Allah (in the form of marfu'6): "Amir al-Muminin told Shurayh, 'Do not whisper to anyone in a judgment session, and if you get infuriated, stand up. Then, do not make any judgment while being infuriated."

374. Imam Ali (a.s.) – when he was informed that Shurayh was making judgments in his house: "O Shurayh! Sit in the mosque as it is more just to be among the people, and certainly it is feebleness for a

judge to sit in his house."8

375. Imam Ali (a.s.) – from his letter to Rifa'a, when appointed him as his judge in Ahwaz: "Leave aside aspirations, object to the desires, and adorn knowledge with righteous manners. Forbearance is a good assistant for religion; should forbearance be a man, it would be a competent one. "

"Beware of [expressing] boredom, for it is [a sign] of folly and meanness! Do not let the one who is not your like attend your sessions, and choose the brave men. Judge by the appearances, and leave the interior to the Knower [Allah]. Give up saying, 'I suppose!' or 'It seems to me!' There is no ambiguity in religion. Do not dispute with the fools and the legal experts (faqihs); because the latter will deprive you of his blessings and the former will dishearten you by his evils. Do not dispute with the People of the Book except in a manner that is best by the Qur'an and the sunna. Do not accustom yourself to laughter, for it effaces your eminence and make your enemy brazen against you. Beware of accepting gifts from the adversaries and be wary of the inward state of affairs!"

"The one who trusts in a silly woman and consults with her and consents to her will repent. Beware of the tears of the faithful, for the one who moves them to tears will be shattered; and the seas of fire will be put out with their tears. Do not humiliate the adversaries, and do not chide the beggar. Do not associate with the inexpert in the judgment sessions and do not consult with them in your verdicts, for consultation is done in warfare and in urgent expediency. Religion is not a matter of opinion; rather, it is a matter of following and obedience. Do not waste the obligations, and do not [merely] depend on supererogation."

"Do good to the one who did evil to you; forgive the one who did you injustice; pray for the one who assisted you; pardon the one who deprived you; and be humble to the one who granted to you. Be thankful to Allah for what He granted to you and praise Him for what He tried you with. Knowledge consists of these three: the firm sign, the established practice and the just duty, and their touchstone is what we command." 10

376. Imam Ali (a.s.) – to Rifa'a: "Do not make judgment while you are angry, nor when you are drowsy."11

377. Imam Ali (a.s.) – in his letter to Muhammad b. Abi Bakr: "If you judge among people, you should treat them with gentleness, treat them leniently, relax your face before them, and use equal looks at them so that the chief will not expect your injustice for their sake and the weak will not despair of your fairness with them." 12

378. Imam Ali (a.s.): "The one who practices justice should treat people equally in looks and sitting [postures]." 13

379. Imam Ali (a.s.): "It behoves a judge to avoid paying attention to one of the litigants, to share his glances at them equally, and not to let one party do injustice to the other." 14

380. Al-Imam al-Sadiq (a.s.): "A man came to Ali (a.s.) to stay with him [as a guest]. Then he brought up a lawsuit that he had not earlier informed Amar al-Mu'minin about. Amar al-Mu'minin asked him if he were one of the litigants. And he said he was. Then he said, 'Go away from us, verily the Messenger of Allah has prohibited that one litigant be a guest [to the judge] unless the other one be with him to."15

7.5 Dismissing Judges Violating Judgment Rules

381. 'Awali al-Li'ali: "Amar al-Mu'minin appointed Abu al-Aswad al-Du'li as a judge. Then he dismissed him. He [Abu al-Aswad] asked him, 'Why did you dismiss me, whereas I did not commit any crime nor betrayed?'"

"Ali (a.s.) replied, 'I noticed your voice was louder than that of the litigant." 16

7.6 Overseeing the Judgment of the Judges

382. Imam Ali (a.s.) – in his instructions to Malik al–Ashtar after mentioning to him the way to select judges: "Then, very often check his decisions." 17

383. Imam Ali (a.s.) – to Shurayh: "Take care not to carry out a verdict concerning retaliation (qisas), Divine sanctions, and the Muslims' rights without informing me about it – God willing!" 18

384. Al-Imam al-Sadiq (a.s.): "When Amar al-Mu'minin appointed Shurayh as a judge, he warned him not to carry out any verdict unless he informs him about it." 19

7.7 Warning against Unjust and Negligent Judgments

385. Imam Ali (a.s.): "The vilest act is the injustice of the judges."20

386. Imam Ali (a.s.): "The one whose judgments are unjust, his power will vanish."21

387. Imam Ali (a.s.): "Among all the people the most detested before Allah Almighty there are two persons: ... and the one who has picked up men from among the ignorant, he is senseless in the thickness of mischief. Those resembling like men have named him scholar but he has not lived soundly even for a day. He goes out early morning to collect things whose little is better than plenty, till when he has quenched his thirst from polluted water and acquired meaningless things. He sits among the people as a judge responsible for solving whatever is confusing to the others. And if he opposes the judge preceded him, he will not be secure of his verdict being invalidated by the one who come after him, as he did to the preceding ones. If an ambiguous problem is presented before him he manages shabby argument about it of his own accord and passes judgment on its basis."

"In this way he is entangled in the confusion of doubts as in the spider's web, not knowing whether he was right or wrong. He does not consider as knowledge what he does not accept it himself and believes

in no religion except what he has come to believe himself. If he measures something with another, he will not disclaim his own view; and if he wrongs, he will conceal it lest they tell him he does not know, for he is well aware of his own ignorance. Thus, he ventures to make judgments. So, he is the key to darkness, seeking doubts and wandering astray in ignorance."

"He does not excuse for what he does not know so as to keep safe. He does not try to find the reality of knowledge in order to make gains. He scatters the traditions as the wind scatters the dry leaves. [The unjustly divided] Inheritances will weep because of you and the blood will cry on account of you. By his judgments, what is lawful becomes unlawful and what is unlawful becomes lawful. He is neither to be trusted in the verdicts he passes nor is competent in what is performed by him; for he [only] claims to have knowledge about rights."22

7.8 Imam's Direct Judgments

388. 'Awali al-Li'ali: "Ali (a.s.) is reported to have been sitting in the mosque of Kufa to judge, and there was a special platform for this purpose, called the platform of judgment (dakkatu'l qada)."23

389. Irshad al-Qulub: "It is reported that when Ali (a.s.) found respite from battles, he would engage in educating people and judging among them."24

390. Imam Ali (a.s.) – from his sermon when he assembled people, exhorted them to jihad, and they all kept silent: "What is the matter with you? Have you become dumb?"

A group of them replied: "O' Amir al-Mu'minin! If you go forth we shall be with you."

Whereupon Amir al-Mu'minin said: "What has happened to you? You may not be guided aright or shown the right path! Should in these circumstances I go forth? In fact, at this time one of the brave and the valorous among you whom I select should go out. It does not befit me to leave the army, the city, the public treasury, the land revenue, and the dispensation of justice among Muslims and looking after the demands of the claimants; and then, follow one contingent after the other moving here and there like a featherless arrow moving in the quiver. I am the axis of the mill. It rotates on me while I remain in my position. As soon as I leave it the center of its rotation would be disturbed and its lower stone would also be disturbed. By Allah, this is a very bad advice."25

7.9 Consistency in Judgment Procedures

391. Imam Ali (a.s.) – in his instructions to Malik al–Ashtar: "...then, you should do your best for inspecting the reporters on judgments. They should not disagree nor dispute regarding the verdict of Allah and the traditions of the Prophet (S). Disagreement is the waste of justice, inadvertence in the religion, and cause of divergence. Allah has shown what to do and what to spend; and ordered to refer to those with whom Allah has entrusted the knowledge of His Book and authorized for issuing rulings, in

what they are ignorant."

"Divergence of judges occurs when tyranny controls them and each depends on his own opinion without referring to those whose leadership is imposed by Allah. Neither the religion nor its followers will be righteous by such behaviors. Judges should issue verdicts according to what they know from the prophet's traditions and practices. If it is impossible for them to judge in a case, they should refer to the people of judging. If people of judging are absent, they should discuss the case with the Muslims' jurisprudents. They should not leave this to other categories of people."

"Two judges of the Muslim community should never issue different rulings regarding one case before they file it before the Leader. Hence, the Leader will judge in that matter according to his knowledge that he received from Allah. The two judges then should agree on the Leader's ruling whether it corresponds or differs their opinions. You should have piercing eye in this matter because this religion has formerly been a prisoner in the hands of vicious persons when action was taken according to passion, and worldly wealth was sought."

"Write letters to the judges of your regions ordering them to provide before you any question of judgment about which they dispute. You should see into these rulings, authorize any ruling that you find consistent with Allah's Book, the Prophet's traditions, and the Imam's indication, and order the judges to follow. Regarding matters that you suspect you should gather the jurisprudents before you and discuss the matter with them. Authorize what they agree upon unanimously. Each matter about which the subjects dispute should be referred to the Imam. The Imam should seek Allah's aid and do his best for instituting the doctrinal provisions and imposing the subjects to follow his commandment. There is no strength save in Allah."26

392. Imam Ali (a.s.) – on disparagement of the differences of view among scholars: "When a problem is put before anyone of them he passes judgment on it from his imagination. When exactly the same problem is placed before another of them he passes an opposite verdict. Then these judges go to the chief who had appointed them and he confirms all the verdicts, although their Allah is One (and the same), their Prophet is one (and the same), their Book (the Qur'an) is one (and the same)."

"Is it that Allah ordered them to differ and they obeyed Him? Or He prohibited them from it but they disobeyed Him? Or (is it that) Allah sent an incomplete Faith and sought their help to complete it? Or they are His partners in the affairs, so that it is their share of duty to pronounce and He has to agree? Or is it that Allah the Glorified sent a perfect faith but the Prophet fell short of conveying it and handing it over (to the people)? The fact is that Allah the Glorified says: (*We have not omitted anything from the Book...*)27

And says that one part of the Qur'an verifies another part and that there is no divergence in it as He says: (*Had it been from* [someone] other than Allah, they would have surely found much discrepancy in it.)28

Certainly the outside of the Qur'an is wonderful and its inside is deep (in meaning). Its wonders will never disappear, its marvels will never pass away and its intricacies cannot be cleared except through itself."29

7.10 Execution of Legal Punishment Equally on Near of Kin and Strangers

393. Imam Ali (a.s.) – in his sermon: "The most appropriate thing a ruler should undertake about his subjects is to commit himself to the affairs that Allah has imposed on them as His rights in the religious matters. Certainly, it is upon us to command you on what Allah has commanded you [to do], and prohibit you from what Allah has prohibited you from [doing]. And [it is also upon us] to carry out Allah's commands on both the people who are near and those who are far [in kinship], and not to heed on whom justice is being administered."30

394. Al-Imam al-Baqir: "Indeed, Amir al-Mu'minin ordered Qanbar to whip a man as legal penalty. He gave the man the due lashes plus three more. Ali (a.s.) [found out about it and] retaliated him with three lashes in return."31

395. Al-Imam al-Sadiq (a.s.): "Amir al-Mu'minin said to 'Umar b. Khattab, 'There are three things that if you take heed of and act accordingly, you will be free from needing other things, and if you abandon them, other things will be of no benefit to you."

"'Umar asked, 'What are those three O Abu al-Hasan!"

"The Imam said, 'Executing legal penalty on the near and the far [of kin]; administering justice on the basis of the Book of Allah in both [states of] anger and satisfaction; and equitable distribution among the black and the white."

"'Umar said, 'By my life, you said it tersely and eloquently." 32 See The Encyclopedia of Amir al-Mu'minin, Vol. VII, Section VII, Chapter Four (Najashi, Tariq b. 'Abd Allah)

7.11 Submission to Judgment

396. Al-Kamil fi al-Tarikh – related by al-Shaʻbi: "Ali (a.s.) found his shield with a Nazarene. He took him to Shurayh [the judge], sat beside him and said, 'If my litigant were a Muslim, I would be equal to him.' And then said, 'This is my shield.'

"The Nazarene said, 'This is my own shield', and Amir al-Mu'minin was not lying!"

"Shurayh asked Ali (a.s.), 'Do you have any evidence?"

"Ali (a.s.) said, laughing, 'No."

"The Nazarene took the shield, walked a few steps away, and then returned and said, 'I bear witness that these are the Prophets' commands. Amir al-Mu'minin brought me to his judge and he judged against him."

"Then the Nazarene converted to Islam and admitted that Ali (a.s.) had unknowingly dropped the shield on his way to Siffin. Ali (a.s.) was pleased by his embracing Islam, and granted his the shield as well as a horse. The Nazarene took part in his company in the battle against Khawarii."33

397. Al-Gharat – related by Sha'bi: "Ali (a.s.) found his shield with a Nazarene. He took him to Shurayh and made a complaint against him. When Shurayh noticed him, he headed for another direction. Ali (a.s.) said, 'Stop where you are!' He went to him, sat beside him and said, 'O Shurayh! If my litigant were a Muslim, I would certainly sit next to him; but he is a Nazarene and the Messenger of Allah said, 'If you happen to walk on the same way with them [the People of the Book], force them to the narrow part of the road and humiliate them, as Allah has humiliated them; but do not do any injustice to them."

"Then Ali (a.s.) said, 'This is my shield and I have not sold it, nor given it away."

"Shurayh told the Nazarene, 'What does Amir al-Mu'minin say?'

"'This is my shield, and to my view Amir al-Mu'minin is not a liar.' Said the Nazarene."

"Shurayh faced Ali (a.s.) and asked, 'Do you have any evidence?"

"He said he did not."

"Then shurayh passed the verdict in favor of the Nazarene."

"Then he [the Nazarene] delightedly set out to go, turned back and said, 'Let it be known that I bear witness that this judgment is [the type of] Prophets' judgments. Amir al-Mu'minin brought me to his judge and he passed a verdict against him! I bear witness that there is no god apart from Allah, Who is unique and without partners. I also bear witness that Muaammad is His servant and His Prophet. I swear by Allah O Amir al-Mu'minin! The shield is yours! It dropped off your tawny camel while you were on your way to Siffin along with your troops."

"Then Amir al-Mu'minin said, 'Now that you have embraced Islam, keep the shield for yourself!' and he mounted him on a horse [granting it to him too]."34

398. Rabi' al-Abrar: "A man made a complaint to 'Umar against Ali (a.s.), who was sitting down. 'Umar faced Ali (a.s.) and said, 'O Abu al-Hasan! Get up and sit next to your litigant! Ali (a.s.) stood up and sat next to his litigant and both began to debate, the man left and Ali (a.s.) returned to his place."

"'Umar found him troubled in his face and asked him, 'O Abu al-Hasan! Why do I see you disturbed? Are you upset about what happened?"

"He said, 'Yes.'

"'Why?' Asked 'Umar."

"Ali (a.s.) replied, 'You called me by my nickname in the presence of the litigant. Why did you not say: 'O Ali! Get up and sit next to your litigant?'"

"'Umar held Ali (a.s.)'s head [in his hands] and kissed between his eyes. Then said, 'May my father be sacrificed for you! Because of you, Allah guided us and by you, He moved us out of darkness into light."35

7.12 The Status of Islamic State Expediency in Issuing Verdicts

399. Al-Gharat – related by Shurayh, "Ali (a.s.) sent someone to me ordering me 'to go on judging as you did before until the integration and consistency of people's affairs is maintained'."36

400. Sharh Nahj al-Balagha – explaining Ali (a.s.)'s statement "If my steps acquire firmness out of these slippery places, I would alter several things".: Undoubtedly, in certain legal ordinances and events he moved in a direction which contradicted the companions (sahabis)'s declarations on such issues as amputation of the thief's tips of fingers [rather than the whole hand], sale of a slave-maid having children [from her master], etc.; what prevented him from reforming the previous ordinances was his involvement in battles against the rebels and Kharijis, to which he referred as madahid (slippery places) and out of which he wished his steps acquired firmness.

Thus, he ordered his judges "to go on judging as you did before until the integration and consistency of people's affairs is maintained". Here the word "until" suggests that he allowed them to follow the previous procedures in judgment so long as people's integration is maintained; and [it is evident] that the clauses after "until" and "as far as" are in contrast to the main clauses (i.e., when integration is maintained, do not follow the previous procedures any more).37

- 1. Nahj al-Balagha: Letter 53, Tuhaf al-'Uqul: 135.
- 2. Nahj al-Balagha: Letter 53, Tuhaf al-'Uqul: 135 & 136, Bihar al-Anwar: 33/605/744.
- 3. Nahj al-Balagha: Letter 53.
- 4. Tuhaf al-'Uqul: 136.
- 5. Al-Kafi: 7/412/1, Tahdhib al-Ahkam: 6/225/541, Man la Yah®irahu'l Faqih: 3/15/3243.
- <u>6.</u> A hadith, which is either directly or through intermediaries attributed to the Prophet (S) or one of the Imams (a.s.). [Muʻjam al-Mustalahat al-Rijal wa al-Daraya: 155.]
- 7. Al-Kafi: 7/413/5, Man la Yahsirahu'l Faqih: 3/14/3239.
- 8. Da'a'im al-Islam: 2/534/1897.
- 9. Apparently it is intended to say that Divine Ordinances are explicit and there is no need for dispute and philosophizing.
- 10. Da'a'im al-Islam: 2/534/1899.
- 11. Da'a'im al-Islam: 2/534/1909, Dasturu Ma'alim al-Hikam: 63.
- 12. Tuhaf al-'Ugul: 177, Bihar al-Anwar: 33/586/733.
- 13. Al-Kafi: 7/413/3, Tahdhib al-Ahkam: 6/226/543, Nasb al-Raya: 4/73.

- 14. Da'a'im al-Islam: 2/533/1895. Tahdhib al-Ahkam: 6/226/544,
- 15. Al-Kafi: 7/413/4, Tahdhib al-Ahkam: 6/226/544, Man la Yah®irahu'l Faqih: 3/12/3236.
- 16. 'Awali al-Li'ali: 2/343/5.
- 17. Nahj al-Balagha: Letter 53, Bihar al-Anwar: 33/605/744.
- 18. Tahdhib al-Ahkam: 6/226/541, Al-Kafi: 7/412/1, Man la Yah®irahu'l Faqih: 3/16/3243.
- 19. Al-Kafi: 7/407/3, Tahdhib al-Ahkam: 6/217/510, Da'a'im al-Islam: 2/534/1898.
- 20. Ghurar al-Hikam: 3011, 'Uyun al-Hikam wa al-Mawa'iz: 119/2671.
- 21. Ghurar al-Hikam: 7943, 'Uyun al-Hikam wa al-Mawa'iz: 454/8161.
- 22. Al-Kafi: 1/55/6, Al-Nahj al-Balagha: Sermon 17, Al-Irshad: 1/231, Al-Ihtijaj: 1/621/143.
- 23. 'Awali al-Li'ali: 2/344/8.
- 24. Irshad al-Qulub: 218, 'Udda al-Da'i: 101, Bihar al-Anwar: 103/16/70.
- 25. Nahj al-Balagha: Sermon 119.
- 26. Tuhaf al-'Uqul: 136, Bihar al-Anwar: 77/251/1.
- 27. Al-Qur'an, 6:38.
- 28. Al-Qur'an, 4:82.
- 29. Nahj al-Balagha: Sermon 18, Al-Ihtijaj: 1/620/142, Bihar al-Anwar: 2/284/1.
- 30. Al-Gharat: 2/501, Bihar al-Anwar: 27/254/15.
- 31. Al-Kafi: 7/260/1, Tahdhib al-Ahkam: 10/278/1085, Da'a'im al-Islam: 2/444/1552.
- 32. Tahdhib al-Ahkam: 6/227/547, Tarikh al-Yaʻqubi: 2/208, Manaqib Al al-Abi Talib: 2/147.
- 33. Al-Kamil fi al-Tarikh: 2/443, Jawahir al-Matalib: 2/127.
- 34. Al-Gharat: 1/124, Bihar al-Anwar: 101/290/4, Al-Bidaya wa al-Nahaya: 8/4.
- 35. Rabi' al-Abrar: 3/595, Al-Manaqib: 98/99, Shara Nahj al-Balagha: 17/65.
- 36. Al-Gharat: 1/123.
- 37. Sharh Nahj al-Balagha: 19/161.

Source URL:

https://www.al-islam.org/imam-ali-ass-book-government-muhammadi-reyshahri/chapter-seven-judici al-policies#comment-0