

THE judgment between the phenomenon of Refusal and claiming to reform in the 1sr abbasid era

القضاء بين ظاهرة الرفض والمطالبة بالإصلاح في العصر العباسي الأول

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Abstract:

This study aims to show , the spread of judiciary refusal Phenomenon in the first Abbasside era . especially over famous judges such as Abu-Hanifa Charik and Souar..etc Thereby, most of them had accepted self or objective reasons.

In fact,the main reasons of their refusal were different. while most of judges were good at biography and reputation . They did not accept any intervenion or pressure in the judgment matters.

Keywords : judge, judicature, abbasid, caliph, refusal, dismissal, justice, To inter-vene, autonomy, reform.

ملخص :

يهدف هذا البحث إلى إبراز ظاهرة رفض القضاء في العصر العباسي الأول. ببيان أسبابها وآثارها. ونماذج عن القضاة الذين رفضوا العمل في مجال القضاء، ومنهم من كان يستقيل منه.

وأشهرهم القاضي شريك والإمام أبو حنيفة وسفيان الثوري وابن المقفع وغيرهم. وكان لكل منهم مبرراته الذاتية الموضوعية لذلك. ومنهم من انبرى يقترح برامج لإصلاح القضاء ، يبين الخلل ، ويصف الحلول .

الكلمات المفتاحية : القضاء ، العباسيون ، الخلفاء ، العدل ، العزل ، الاستقالة ، التدخل ، الاستقلالية ، الإصلاح .

introduction:

After the establishment of the abbasid state , the abbasids started to develop its authorities. In order to serve societies. Therefore , promoting judgment was the main focus and priority , to improve justice .which is a basis for any civilization arrangements and affairs.

The early Abbasid Caliphs had chosen their honest and knowledgeable judges . So they reflected typical behaviour in settle justice among people, and keep rights.

Although, many judges were used to refuse judgment , and some others were obliged to judge for a short period, Then then resigned. Now the questions are :

_ At what extent did the judges bear their responsibility in cases of resignation and separation ?

_ Was it a justified refuse ? or was it just a deny ? or was it an escape from moral and social responsibility ?

_ what were the main issues asked to reform ?

_ what were their fields ?

_ what were the given suggestions and solutions ?

_ To what extent was the answer of the caliphs and the judges to these reforms ?

Abbasid Caliphs were clearly interested in mixture between religion and politics.⁽¹⁾ so the juridical institutions were mostly effected by this new Abbasid policy.

So the focusing on juridical system was indeed practical early in the 1st Abbasid era.⁽²⁾ All this made capable judges and helped them to keep the pillars of the reign.

Although ,the high rank of judgment ; many scholars were not satisfied of holding this post. they didn't accept it at all.⁽³⁾

1/ Basics of judgement in Islamic jurisprudence :

It is narrated that the messenger of Allah when He intended to send Mu'adh

ibn Jabal to yaman , He asked him:« What will you do if a matter is referred to you for judgment ? »⁴

Mu'adh said:«I will judge according to the book of Allah.»

The Prophet asked :«what if you find no solution in the book of Allah ?» Mu'adh said:«I will judge by Sunna.»The Prophet asked :« what if you don't find in Sunna of the Prophet ?»

Mu'adh said:«Then I will make Ijtihad to formulate my own judgment.» The Prophet said: « Praise to Allah who has guided the messenger of His Prophet to that which pleases Him and His Prophet. »

2/the excuse for the unacceptance judgment :

The refuse and the excuse of holding judgment was an old phenomenon . that referred to Rachidi reign. And repeated frequently in the coming reigns. this refuse indicated that those judges were honest and responsible. The caliph **El-Mansur** expressed his desire to have such honest judges : « I need to be on my door four persons ; one of them is a honest judge who will not be effected of blaming in the right. »⁽⁵⁾

The most famous issue of judgment refusal related with this example ; after the death of **El-Basra** judge « siwar » . the Caliph El-Mansur invited **Imam Abu-Hanifa** who swore not to accept this responsibility , and said : « I'm not able to this post. And Oh Allah , if i were faithful ,you wouldn't appoint me . and if i were a liar , you couldn't appoint a liar in this post. » **El-Mansur** left him off.⁽⁶⁾ Although , **El-Mansur** attempts to convince **Abu-Hanifa** to accept judgment , then at last he failed.⁽⁷⁾

Some judges justified frankly their refusal . **Imam Soufian Thowri** was one of them. He criticized the Abbasid reign . He was always away to accept the juridical responsibility.⁽⁸⁾ after that , the Caliph **El-Mahdi** tried a lot to convince **Imam Soufian Thowri** to accept any juridical responsibility , and he failed too. After long disappearing , **Imam Thowri** was found . He didn't show any respect to the caliph **El-Mahdi**.

Most consultant ministers advise the caliphs. like **Rabi'a ibn younes** –the minister of the caliph **El-Mahdi**- was very angry of this conduct. El-Mahdi told to

his minister : « if you kill such this scholar , you will be in hell. whereas, he will be in paradise. Let's appoint him on justice institution of **El-Kufa**, and none can oppose him.⁽⁹⁾

So these Caliphs got much benefits of their judges (Kadis) . while most of those judges were employed in order to improve their living conditions.⁽¹⁰⁾

3/Resignation of judgement because of its biggest responsibility :

The resignation of judgment was as a result of many reasons as follows :

a/ the fear of holding judgement :

because many prophet's sayings that warn from its holding such :

* The Messenger of Allah —peace be upon Him- said : « he who has been appointed judgment among people, is like the one who has been killed without a knife. »

* the Messenger of Allah —peace be upon Him- said too: « we will never employ in our work one who asks it. »

Such these prophet's sayings indicate to the highest responsibility of holding judgment , especially in the hereafter. Whoever being a strong judge will not submit to any one except Allah's satisfaction.

It is worthy to mention that the caliphs of the abbasid era were giving expensive gifts to their judges. In order to improve their level conditions or to prevent them from greediness . encouraging them on their noble job(judgement).⁽¹¹⁾

so it was the politics of the abbasids concerning the raising of judges salaries in order not to steal people's rights and money. As an example about that ; in the of 155h, **Abu-jaafar** gave his judge on egypt 30dinars a month(a big salary). So did the caliph **El-Mahdi** later.⁽¹²⁾

b/ Honesty and Allah fearingness :

most of judges during 1st Abbasid era were very religious devout. whenever one of them felt in his heart a deviation to some of the opposites , would immediately resign.⁽¹³⁾

It is narrated that the judge **Afia ibn yazid** , the famous scholar asked the Caliph **EL-Mahdi** to discharge him from judgement . The Caliph **EL-Mahdi** asked him about his reasons. **Afia** replied that he had recieved two opposits , then he delayed them both inorder to excuse each other. After that one them discovered that this judge **Afia** likes ripe dates(not used to be found at those days). Then he gathered a huge amount and brouhgt it to the judge (as a curruption). then he gave some money to my gatekeeper (as acurruption too) to let the plate pass to me. when I realized that , I drove the gatekeeper out and gave the plate back. The day of the appointment , surely the tow opposits were not equal in my eyes and heart. I felt this in case I didn't accept the gift (as a bribe). So what if I accepted it. so the caliph **El-Mahdi** accepted his designation.⁽¹⁴⁾

4/ the dismissal of judges :

The high rank of juges was reinforced by being the authority of of their ap-
pointment in the caliphs hands . inorder to facilitate continuous controlling.⁽¹⁵⁾

Although , the detectation of the 1st Abbasid era caliphs to choose their judges. They sent spys for them on the judges affairs and special custims and relationship with the society.⁽¹⁶⁾

Even the mailmen had sent to the caliph **El-Mansur** about everything hap-
pened in the state .El-Mansur was asking them about suspected judge inorder to confirm the suspicion.⁽¹⁷⁾

Even the Caliph **El-Mahdi** was very serious to separate any suspected judge immediately , when the suspicion is true. As what **Waki'a** narrated that **khaled ibn Toleik** the judge of **El-basra** who was complained too much by the heads of the city .because of hos arrogance and Ignorance in the matter of the judgment. The caliph **El-Mahdi** gathered between the delegation and the judge. At that time, the caliph discovered the truth and separated the judge and replaced him with **Umar ibn Othman Tamimi**.⁽¹⁸⁾

Sometimes the cause of the judges dismissal might be the envy between the judges and the doorkeepers. And this is what had happened with the judge **Charik** who was very serious and strong in the matter of of judgement . He was not used to allow to anyone to intervene in his matter . So the doorkeeper **El-Rabi'a Ibn**

Younes had ambuscaded and embittered the caliph against him.⁽¹⁹⁾

Despite ,during the 1st Abbasid era , the dismissal of judges was limited .So they were more stable. Because the walis and princes (Umara) had been expropriated the right of separation of judges. Who were separated only by the boss of judges (central judge in the capital).⁽²⁰⁾

5/ The autonomy of judgement :

It means there's no authority above the judges'one. Maybe make them deviate from the high aim. Which is holding justice among people and giving them their rights.⁽²¹⁾

One of the Abbasid achievements is relating between the administration of justice and the religion(shari'a). judges were not just scholars appointed by the state .but they referred only to the religion (shari'a) without any administrative intervention. Even if it was a theoretical autonomy.⁽²²⁾

Most of judges appointed by the caliphs had acquired the autonomy in the adjudication . in order not the **walis** could intervene in their matters.⁽²³⁾ The Abbasid Caliphs were very interested in preventing judgement from any prevention whether with punishment or jail.⁽²⁴⁾

One of the famous examples of autonomy of judgment is that **Siwar Ibn Abdullah** the judge of **El-basra** threatened its prince(wali) if he didn't allow to some people had been jailed wrongly. And at last. The prince accepted and the jailed man went out .⁽²⁵⁾

In the same context , we have the example of the judge **charik** who condemned to jail the writer of **El-Kufa** prince. Because left the suspected writer out of the jail. The judge threatened him to tell the caliph (the prince of believers) . at last , the prince of **El-Kufa** ordered to re_jail the man.⁽²⁶⁾

El-Baghdadi narrated an other attitude proved the authority was in parallelism with the caliph one. He stated that the judge **CHARIK** had a story of a woman who pretended that the prince of the believers (Amir El_Mouminine) had taken her garden. The judge **CHARIK** had insisted on the presence of the prince himself. When the prince came , he would confess to give the garden back to the woman.⁽²⁷⁾

The competition and the dispute between governors and the judges started more and more dangerous. Each team tried to widen his specialities over the other. But most of people preferred to appeal to the judges rather than the governors.⁽²⁸⁾

6/ The issues demanded to reform in the judiciary :

Although the judiciary had its official form since the 1st abbasid era, that didn't prevent the existence of many defects and blemishes in the judicial system in general. For that many callings were spread to reform different sides of corruption, suggesting many treating solutions.

These conciliators had given their demands of the reformation to the rulers of the state. Whereas, sometimes some caliphs entrusted to some judges the total responsibility to reform the corruption anywhere and any time, whether in the domain of judiciary or any other domain.

The famous reformers who called to reform the judicial system in the 1st Abbasid era were : the writer **Ibn almuqaff'a** in his letter to the caliph **El-mansur** entitled in « Resalt sahaba » ; « letter of retinue » . And the minister **Al-Anbari** in his letter to the caliph **El-Mahdi**. These two letters had shown the defects of the judicature and given the appropriate solutions. The famous issues which have been demanded to reform were :

A/ the difference in the judgments :

Ibn Almuqaff'a had indicated to the judiciary problems. He criticized many sides and precised the solutions. He had given a good view of the judicial system at that time. His opinions have shown clearly the theory of impossibility of a good leadership to the state, without a good legislative system (good law).⁽²⁹⁾

Ibn Almuqaff'a had reminded the caliph with the mess of judicature. Which was related to the lack of law, and leaving the judiciary matter into judges opinions. The aspects of this mess were a lot like ; contradiction in the opinions, the difference in the judgments in the one issue and the one town.⁽³⁰⁾

The phenomenon of the difference in the judgments was, because of the difference in the environment and the culture of the judge and his religious and juristic doctrine. Like the difference in « Al-Fatwa » ; the legal judgment, deferred in the time and place.

In fact , this was a difficult problem , resulting a bad effects like what **Ibn Almuqaff'a** said : « bloodshed in El-hira , whereas forbidden in El-kufa . even inside El-kufa the difference had existed from a district to another one. Although, those different wrong judgments, but they were unfortunatally applied on the muslims in their souls bloods and honors , by injustice judges. »⁽³¹⁾

The main question related with the source of the condification law to the state. **Ibn Almuqaff'a** suggested the direct submission of the state to the law, in his opinion the judges were on two types :

-**Type one** : the supporters of this direction depended on the opinion or the mind. **Ibn Almuqaff'a** had said : « some judges jared to say –in their opinion- in the big matter of muslims unagreeable saying, then the confessed that it is unjustified opinion neither in the holly Quran , nor in the prophet's traditions.(Sunna) »⁽³²⁾

-**2nd type** : the supporters of this direction relied on the prophet's traditions « Sunna » as source of the judgments. **Ibn Almuqaff'a** confessed ctha these supporters pretended that they engaged to be « Sunnites » . But they had exaggerated alot in what they calle dit « Sunna » too much bloodshed without any argument, they pretended that it is « Sunna ».Whenever they were asked about that , they couldn't answer that bloodshed in it during the prophet's era. When they were asked : to which Sunna they **shedded** these bloods ? They answered that **Abdulmalik Ibn Marouan** had done that , or anyone of the other princes... »⁽³³⁾.

From **Ibn Almuqaff'a** 's point of view , All supporters have misused the judiciary, leading to conntradictions in the judgments not related islamic charia'a. **Ibn Almuqaff'a** had tried to the reasons and sources of the mixture. He showed the fault of the 1st part in the misuse of he concept of Sunna. He demonstrated that they **shedded** bloods without any proof. Pretending that is according to Sunna. And the only source of these wrong judgments was referd to **Abdulmalik Ibn Marouan's** deed, or some other princes deeds.⁽³⁴⁾

Ibn Almuqaff'a had not left the issue without an explanation about the reason of his reatments , deminstrating the source of the Sunnites fault existed in the transmitted issues ,which were agreeable. Resulting the difference in the judges point of view in judgments.⁽³⁵⁾

Ibn Almuqaff'a said : « ...he should look at the two teams . which one is sincere , and which matter is justic⁽³⁶⁾.then he had suggested a solution of all differences in judgments to the prince of the believers to show the arguments of each team. then he would choose the true arguments. Inorder to write them in a book , and make many copies sent to all towns over the state. Untill they could end these difference in judgments.⁽³⁷⁾

B/The misuse of the mind :

The fault of the supporters of the mind was refered to the misuse measurement , regardless of intalacement and obscurity issues.⁽³⁸⁾

Ibn Almuqaff'a didn't cricized the measurement from a juristic or a religious point of view . and he was not against the supporters of the mind, but his opinion was purely political. Because the use of measurement meant giving the freedom to the judges. And this was not an association with the caliph in the authority . whereas it might be in the caliph hand.⁽³⁹⁾

For that **Ibn Almuqaff'a** advised to precise the responsibility of giving judgment related to the caliph. So the judges suggested the judgments and the caliph revised them inorder to choose the appropriate ones .⁽⁴⁰⁾

Even the minister **ALanbari** had edvised the cliph **El-Mahdi** in his letter .

hich was like a reform plan, consisted of many sides might be reformed like :

C/ 1st matter : Engagement with the judgments sources :

ALanbari had said : « .. concerning he judgmens , we have to refer to the holly Quran , then the prophet's traditions. If not , se should look at the agreeale metter between he scholars. Then the governor diligence with cosultation of scienists ».⁽⁴¹⁾

These resources of judgments were the same ones that the prophet (p.b.u.h) had edvised **Moaad Ibn Jabl** when He sent him to Yaman.⁽⁴²⁾

In fact , these resources may prevent the judges to mix the judgments , because some issues were justified whether from the Quran or the prophet's traditions. But some oher ones were not and remained to he research of the scholars and judges, according to the benifit , the time and the place.

these resources which judgments were built on **Ibn Almuqaff'a** had called to found , in different issues , in order to copies sent to all towns as a unique law. Preventing the differences and the contradictions .This was what he minister Alanbari had stated about the obligation of the engagement to the sources of he judgments , avoiding the mess of judiciary .⁽⁴³⁾

2nd matter : Good Choice of judges .

The miniser **Alanbari** comleted his suggestions to reform the judiciary like the good choice of judges , giving some attributes might be in all judges. He had said : « the judges- like the prince of believers knows - must be clever,sincere and stict , depending – in his opinions- on the holly Quran and the prophet's traditions with the consultaion of the schoolars. »⁽⁴⁴⁾

3/Aspects of juridiciary reform:

The judiciary seemed to be affected in the 1st abbasid era by the change and reform callings. So the caliphs were personally too interested in judiciary . Because of its effects in justice and safety.

« The judicature is related with the justice . if the judiciary is good , the justice will be good. And people will be safe in their selves , wealths and honors. In the ine verse, if the judiciary is bad , , the justice will be disappeared. And the mess spread. Then the state was about to disappear. »⁽⁴⁵⁾

Some aspects of judiciary reform in the abbasid era :

Abbasids had focused on founding a special organization superving judiciary issues called « walayt almadalim » . Its object is the looking in the disputings issues, and reform them.⁽⁴⁶⁾

the 1st abbasids themselves were used to manage this mission. When **Abu jaafar El-Mansur** was a prince on « Arminya » to his brother the caliph **Abulabbas El-sffah** standed to greivances . one day , someone entered to complain and said : « Ibn Nahyak had **oppressed me and taken** my garden. Would you help me to give me buck my garden. If not , I will compel to ask Allah the Almighty. **El-Mansur** replied immediately : first of all , I dismiss **Ibn Nahyak** of his work, I oedered to give your gaeden buck soon.⁽⁴⁷⁾

In general, the 1st abbasid caliphs were used to have advice from the schoolars and the thinkers in the judicial , financial and economical maters. They were used to do according to the suggestions of those reformers.

As a result of the autonomy of judgment , the judge **Siwar** had been recieved a letter from the caiph **El-Mansur** . in which there were many things wrong. the judge **Siwar** refused to confirm **El-Mansur** opinion, and told him : « Oh , the prince of believers ; holding justice by the judge **Siwar** is only added to your caliphate . So the caliph stopped .⁽⁴⁸⁾

In fact , this wisdom of the judge **Siwar** should be written and learnt by heart by all princes , judges and rulers . Because it is the proof of judgment autonomy.

Endnotes :

- 1 abdrrezzak ali el-anbari ; nizam kada'i fi baghdad fi el-asr el-abbassi, nagjef,1977 , p 25-26.
- 2 Nokhba mina el-bahihiin al-iraqyine:hadar Iraq,dar el-jil, 1984, vol6, p178.
- 3 chahada el-nnatour : Alnozom el-islamia, taba't 2, dar el-aml, 1992,p116.
- 4 al-ssarouji:Adab al-qadi,dar el-bachair el-islamia, aba't 1,1418h/1997m,p102.
- 5 Tarikh tabari,ahkik med abu el-fadl, dar al-maarif, misr,vol 8,p67. 6 Waki : akhbar al-quddat, aalem elkutub, beyreuth,vol 1, p26.
- 7 Ibid.
- 8 Al_qada fi aldoulah al-islamia, dar nachr bilmarkaz alababi lidirassa alamnia, 1425hj,vol2, p173-174.
- 9 Farouk omar fawzi :Ala-basyoun alawaa'l(1326247H/749-861M)? tab'at 1,2003, majdelawi, amman, vol2, p446.
- 10 basman nouri el_kwan ; al-qada fi ahde abi jaafar al-mansur , majalt adab el-farahidi ,n8,sept 2011 , p199.
- 11 salama mouhamed; Al_qada fi aldoulah el-islamia, vol2,p272-273.
- 12 Ibid.
- 13 salama : Ibid,p165.
- 14 ibn al-jawzi al-muntzam fi tarikh al-muluk wal umam, dar al-kutub el-ailmia , beyreuth , vol 9,p52.
- 15 Hadart al-iraq, vol 6,p174.
- 16 salama mouhamed; Al-qada fi aldoulah al-islamia, vol 2, p158.
- 17 Ali hosni el-kharboutli : el-mahdi alaabasi,al-ddar al-misrya,p67.
- 18 salama mouhamed; Al-qada fi aldoulah al-islamia, vol 2, p160- 161.

- 19 Ibn Farhoun El-Maliki : Tabsirat El-Hukkam , T 1, p 87..
- 20 Mouhamed al-zuhaili: tarikh alqada,p234.
- 21 Ahmed sayam selayman : mabd'a istiqlal al-qada,p52.
- 22 Mawsouat al-hadara al-arabia al-islamia, taba' 1, 1995, dar el-fars,amman, vol 3,p35.
- 23 Tarikh al-yakoubi , dar sadir, beyrouth, vol2,p122. Abd al-aziz al-duri:Al-Asr al-abbasi al-awwal, dar tali'a, beyrouth, p79.
- 24 Salama :ibid , p249.
- 25 ibid, p249-250.
- 26 Waki : akhbar al_quddat,vol 3,p151-152.
- 27 Tarikh Baghdad , T9, p 291.
- 28 Mouhamed al-zuhaili: tarikh alqada, p231.
- 29 Ahmed Amine: Duha el-islam, 1/208.
- 30 Ibn Almuqaff'a: Resalt el-sahaba, 39.
- 31 Ibid, p 39-40.
- 32 Ibid, p 40.
- 33 Ibid, p 40.
- 34 Bachar Kouider: Al-islam Al-iqtisadi wa El-ijima'l, p31.
- 35 Ibid.
- 36 Ibn Almuqaff'a: opcit.
- 37 Bachar Kouider: opcit.
- 38 opcit.
- 39 Mohammed abid el-jabiri: Ala'kl el-syassi Alarabi, p 350.
- 40 Ibid.
- 41 Waki : akhbar al_quddat, aalem elkutub, beyreuth,vol 2, p101.
- 42 Ibn kudama El-makdisi: Almoughni, 11/ 375.
- 43 Waki : akhbar al_quddat, beyreuth,vol 2, p101-102.
- 44 Ibn kudama El-makdisi: Almoughni, 11/ 375.
- 45 Mustapha elchka'a: maalim amhadara al_islamia, p71.

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46 Alqaqachandi :sobeh al-a'acha , dar elkitab almisrya, 1346 H/1928AD, 3/277.

47 Ibn al-jawzi: al-muntadim, 7/311-312.

48 Salama : ibid, p251.