

## The Reformation of the Judiciary in the Thought of Writers and Ministers in the 1<sup>st</sup> Abbasid Era

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### Abstract :

This study aims to show some loyal holes. In judicial system. Which some reformers (writers and ministers) . main two examples were Ibn Almukaff'a in his letter « Resalt sahaba » to the caliph El-Mansur. And the minister Alanbari in his letter to the caliph El-hadi. Both letters had focused on common issues to reform in judiciary. And for such reasons sme judges reused judgment post.

**Keywords :** Judiciary.- The caliph.- Reform.- Abbasid. Law.- Issues.

### الملخص:

رغم تطور القضاء الدولة الإسلامية ، إلا أنه في بداية العصر العباسي ظهرت بعض الثغرات القانونية في المنظومة القضائية. فانبرى لها بعض المصلحين من الكتاب والوزراء. وكنماذج لذلك الكاتب ابن المقفع في رسالة الصحابة الموجهة للخليفة المنصور. وكذلك الوزير العنبري في رسالته للخليفة المهدي. ومن أهم ما أمتعت عليه الرسالتان بعض المسائل المهمة لإصلاح القضاء.

الكلمات المفتاحية: القضاء. الوزراء. الكتاب. إصلاح. القانون. العباسيون. إصلاح.

## Introduction:

The judicial system in Islam is a huge historical development. Muslims were very interested in judicature. Especially in the 1st abbasid era. Which was the golden age of the islamic civilization in many fields, like the judicial domain.

Although, from time to time, some lawful holes were existed in the judicial system in the abbasid state. At that time some scholars and thinkers from the ministers and the writers were ready to pay attention about. Putting some suggestions and solutions.

Now the questions are :

\_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 ?

### 1/the juridicature in the islamic civilization :

The judiciary in the arabic language means to complete and finish something.

<sup>(1)</sup> As a concept, the judiciary is to show the legal judgment and engagement with it.<sup>(2)</sup>

Some muslim scholars had given many definitions as :

\_Telling a legal judgment in the obligatory way.<sup>(3)</sup>

\_Reformation between people, because they can't be strict without it.<sup>(4)</sup>

If this judgment is not obliged, there's no point in it at all. But, since there were authorities helping the judge to impose his judgments. Paving the way to apply the judgments according to the

legal proofs. This might be acceptable anyway. Avoiding the cases of injustice, and personal benefits. That may some people exploit the laws to their favour against the adversary.

The judiciary is known since the beginnings of the Islamic state, so it is not possible to any government to dispense with it. It is obliged to judge between people. All nations consecrate it, regardless their development or under-development.<sup>(5)</sup>

The progress of judicature is related with the progress of the life itself. In addition, to the emergence of juridical **doctrines**. The judges become more obliged to be engaged to the judgments of **the prevalent doctrine in the state**.<sup>(6)</sup>

During the Umayyad period, the judicature was independent. The caliphs were not used to intervene in it. Even the judges were not used to judge according to their different diligence.<sup>(7)</sup>

In the abbasid era, the judiciary knew a seen development. Thanks to the care of the caliphs, judges and the scholars. In order to develop the judiciary into an independent institution may keep people's bloods and rights.<sup>(8)</sup>

As a result, the abbasids didn't found the judicature institution, but they had completed it. Their caliphs had appointed personally many judges to prevent the governor domination.

#### **4/ the issues demanded to reform in the judiciary :**

Although the judiciary has 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 1<sup>st</sup> Abbaside ra 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 judicaure 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). <sup>(9)</sup>

**Ibn Almuqaff'a** had reminded the caliph with the mess of judicature . Which was related to the luck of law, and leaving the judiciary matter into judges opinions. The aspects of this mess were alot like ; contradiction in the opinions , the difference in the judgments in the one issue and the one town. <sup>(10)</sup>

The phenomenon of the difference in the judgments was , because of the difference in the envirnment and the culture of the judge and his religious and juristic doctrine. Like the difference in « Al-Fatwa » ; the legal judgment , deffered 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 unfortunately applied on the muslims in their souls bloods and honors, by unjustice judges. »<sup>(11)</sup>

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) »<sup>(12)</sup>

**-Type Two :** 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 exagerated 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... »<sup>(13)</sup>

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.  
(14)

**Ibn Almuqaff'a** had not left the issue without an explanation about the reason of his treatments, demonstrating 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. <sup>(15)</sup>

**Ibn Almuqaff'a** said : « ...he should look at the two teams . which one is sincere , and which matter is justic.(then <sup>16)</sup> 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. <sup>(17)</sup>

### **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. <sup>(18)</sup>

**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. <sup>(19)</sup>

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 in order to choose the appropriate ones . <sup>(20)</sup>

Even the minister **ALanbari** had edvised the cliph **El-Mahdi** in his letter . which was like a reform plan, consisted of many sides might be reformed like :

### **C/ 1<sup>st</sup> matter : Engagement with the judgments sources :**

**Alanbari** had said : « .. concerning he judgments , we have to refer to the holly Quran , then the prophet's traditions. If not , se should look at the agreeable metter between he schoolars. Then the governor diligence with cosultation of scienists » .<sup>(21)</sup>

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.<sup>(22)</sup>

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 schoolars and judges, according to the benifit , the time and the place . These were 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 engagment to the sources of he judgments , avoiding the mess of judiciary .<sup>(23)</sup>

### **2<sup>nd</sup> 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. »<sup>(24)</sup>

### **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 inverse, if the judiciary is bad, , the justice will be disappeared. And the mess spread. Then the state was about to disappear. » <sup>(25)</sup>

Some aspects of judiciary reform in the abbasid era . Abbasids had focused on founding a special organization supervising judiciary issues called « walayt almadalim » . Its object is the looking in the disputings issues , and reform them. <sup>(26)</sup>

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. <sup>(27)</sup>

### 5/ Basics of judgment in Islamic though:

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 ? » <sup>28</sup>

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

The Prophet asked :«what if you find no solution in the book if 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. »



**6/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. » <sup>(29)</sup>

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. <sup>(30)</sup> Although , **El-Mansur** attempts to convince **Abu-Hanifa** to accept judgment , then at last he failed. <sup>(31)</sup>

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. <sup>(32)</sup> 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. <sup>(33)</sup>

So these Caliphs got much benefits of their judges (Kadis) . while most of those judges were employed in order to improve their living conditions. <sup>(34)</sup>

In general, the 1<sup>st</sup> abbasid caliphs were used to have advice from the scholars and the thinkers in the judicial , financial and economical matters. They were used to do according to the suggestions of those reformers.

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