



Qadā' (Judicial Decision): Introduction, Significance, Importance, Elements, and Etiquettes: Scholars' Perspective in the Light of the Quran and Sunnah

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Abstract

Qadā' (Judicial Decision) holds a paramount position in Islamic jurisprudence, embodying a profound sense of justice and equity. This paper provides a comprehensive exploration of Qadā' by delving into its introduction, significance, importance, essential elements, and the etiquettes associated with its implementation. The discussion is grounded in the perspectives of eminent scholars, drawing insights from the Quran and Sunnah. The introduction outlines the fundamental concepts of Qadā', establishing its role in resolving disputes and upholding justice within the Islamic legal framework. It serves as a cornerstone in the administration of justice and maintaining social order. Significantly, the paper emphasizes the importance of Qadā' as derived from Islamic teachings. It elucidates how Qadā' aligns with the principles of fairness and impartiality outlined in the Quran and exemplified by the Prophet's practices, emphasizing its vital role in fostering societal harmony. The exploration of essential elements of Qadā' elucidates the key components that contribute to a just and effective judicial decision. These elements, rooted in Islamic principles, ensure the integrity and righteousness of the legal process. Etiquettes associated with Qadā' are crucial in ensuring the implementation of justice with dignity and respect. The paper delves into the manners and decorum expected from the Qādī (judge), emphasizing the significance of ethical conduct in the judicial sphere. Drawing insights from the Quranic verses and Hadiths, the scholars' perspective highlights their nuanced understanding of Qadā'. Their interpretations and scholarly discussions provide valuable insights into the multifaceted aspects of judicial decision-making in Islam. In conclusion, this paper offers a holistic view of Qadā' as a vital component of Islamic jurisprudence. By combining theoretical foundations with practical insights, it contributes to a deeper understanding of the role Qadā' plays in fostering justice in society.

Keywords: Qadā', Judicial Decision, Islamic Jurisprudence, Quran, Sunnah, Scholars' Perspective.

1.1. Qadā' (Decision of Dispute):

Judgment is a sacred religious obligation. All the Prophets (عليهم السلام) carried out this responsibility in their Ummah and handed over this responsibility to their followers. When the blessed time of our beloved Rasūl Akram (صلى الله عليه وآله وسلم) came, He himself carried out the responsibility of

justice very gorgeously¹ and appointed the Ṣaḥābah (رضوان الله عليهم) as a Qāḍī in different areas.² Khulāfā' Arba'ah (رضي الله عنهم) carried out this responsibility for a long time in a worthy manner. Islamic way of justice was implemented to some extent in the age of Banū Umayyah and Banū 'Abbās. But after that, there were many deficiencies in the implementation of it. Even in our own country, after the completion of 70 years of freedom, there are those laws and procedures are enforced with some amendments which were set by the English.

The need of the hour is that Islamic Judicial System should be upheld in our country. The establishment of Islamic Judicial System is necessary for Islamic State as it protects the human rights. It helps the oppressed and prevents the oppressor. In this way the order of Rasūl Akram (صلى الله عليه وآله وسلم)³ "انصُرْ أَهْلَكَ ظَالِمًا أَوْ مَظْلُومًا"³ would be carried out.

The basic purpose of this thesis is to introduce this aspect of Justice System and Ādab al-Qāḍī under this topic. In this beginning chapter, some basic elements would come under discussion so that it become easy to understand the legal discussions which will come in to next chapters.

1.2. Literal meanings & Definitions of Qaḍā' (قضاء):

Dictionary meaning of the term Qāḍā':

In dictionary, the word Qāḍā' has several meanings; to complete something, the clarity, to end something, to be abolished, to be paid, to be implemented, to pass, settling the matter, to decide. But generally, it means to decide the dispute between two parties or to complete some task as a whole.

The word Qāḍā' would be implemented on every task which is essential and which is completed, done in a worthy way, the aspect of implementation and issuing the orders is completed.⁴

The word "قَضَى" is the past verb, its future word is "يَقْضِي" The word "قَضَاءٌ" is 'Maṣḍar' of it. It was actually "قَضَاي" and according to the rule of Arabic Grammar, 'Yā' was alternated with 'Hamzah'. Qaḍā' means to judge, to nominate. Its subject is "قَاضِي" and its object is "مَقْضِي عَلَيْهِ"⁵ According to Lisān al-'Arab

(قضي) القضاء الحكم وأصله قضاي لأنه من قضيت⁶

¹ al-Tirmidhī, Muḥammad b. Īsā. (n. d) al-Jāmi', Iḥyā' al-Turāth al-'Arabī. Beirut, Abwāb al-Aḥkām, Bāb mā jā'a Fī an al-Bayyanat 'alā al-Mudda'ī (1340,1341), 5/51

! Ibn Mājah, Muḥammad b. Yazīd Qazwīnī. (n.d) Al-Sunan, Dār al-Fikr, Beirut, Kitāb al-Aḥkām, Bāb Qaḍiyat al-Ḥākīm (2318), 2/777

! Muslim, Ibn al-Ḥajj āj b. Muslim, al-Jāmi' al-Ṣaḥīḥ, Kiāb al-Ḥudūd, Bāb Man I'taraf a 'ala Nafsihi biz-Zanā, (1691), 3/1398

² Abū Dāwūd, Sulaymān b. al-Ash'ath. (n.d) Al-Sunan, Dār al-Kitāb al-'Arabī, Beirut, Kitāb al-'Aqdīyah, Bāb Ijtihād al-Rāyī Fī al-Qaḍā' (3594), 3/330

³ al-Bukhari, Muḥammad b. Ismā'il Abū 'Abd Allāh. (1422H) al-Jāmi' al-Ṣaḥīḥ, Ed. 1st, Dār Ṭāq al-Nijāt, Kitāb al-Mazālim, Bāb 'An Akhāka Zālimā ... (2443, 2444, or 6952), 3/128, 9/22

! Ibn Ḥibbān, Abū Ḥātim Muḥammad b. Ḥibbān b. Aḥmad b. Ḥibbān. (1993) al-Ṣaḥīḥ, Ed. 2nd, Mu' assisat al-Risāla, Beirut, Kitāb al-Ghaṣb, Bāb Zikr al-'Amr Birad al-Zālim ... (5166), 11/570

⁴ Ibn al-Athīr, Alī b. Muḥammad al-Jazarī. (1979) al-Nihāya fī Gharīb al-Athar, al-Maktabat al-'Ilmiyya, Beirut, Bāb al-Qāf Ma' al-Ḍād, 4/125

⁵ Zubaydī, Muḥammad Murtaḍā, (n.d) Tāj al-'Arūs Min Jawāhir al-Qāmūs, Dār al-Hidāya, Bāb al-Qaḍā, 39/310,311

⁶ Ibn Manzūr, Muḥammad b. Mukarram. (n.d). Lisān al-'Arab, Ed. 1st, Dār Ṣādir, Beirut, Bāb al-Qaḍā, 15/186

Qaḍā means to decide as actually this word is قضاى because its past is قضيت

Also quoted in Lisanul Arab as

"قال ابن السيرافي قضاهما فرغ من عملهما والقضاء الحتم والأمر وقضى أي حكم ومنه القضاء والقدر وقوله تعالى وقضى ربك أن لا تعبدوا إلا إياه"¹

Ibn al-Sīrāfī said: Qaḍā' means to finish something completely, to order and to decide, from which Qaḍā' and Qadar comes.

Ibn Manzūr further said:

"قال أهل الحجاز القاضي معناه في اللغة الفاعل للأمر المحكم لها واستقضى فلان أي جعل قاضيا يحكم بين الناس وقضى الأمير قاضيا كما تقول أمر أميرا وتقول قضى بينهم قضية وقضايا والقضايا الأحكام واحدهما قضية وفي صلح الحديبية هذا ما قاضى عليه محمد هو فاعل من القضاء الفصل والحكم لأنه كان بينه وبين أهل مكة وقد تكرر في الحديث ذكر القضاء وأصله القطع والفصل يقال قضى يقضي قضاء فهو قاض إذا حكم وفصل"²

According to Ahl Hijāz, the dictionary meaning of القاضي is to have a decisive opinion in any matter and استقضى means that to decide among the people, Qāḍī has been made. As we say that the Hākīm ordered, similarly, we say that the 'Amīr decided to make the Qāḍī and in the same manner we say that he decided among them. القضاء is the name given to the orders and its singular is قضية and in Ṣūlah al-Ḥudaybiyah it was written that this decision was done by the Haḍrat Mūhammad. (صلى الله عليه وآله وسلم). It is subject from Qaḍā and in derogatory sense it means decisive speech. قضى يقضي قضاء when a person becomes حكم and gives orders, he is called Qāḍī.

Also in Tāj al-'Arūs:

"قَضَى، يَقْضِي، قَضَاءٌ وَقَضَاءٌ وَقَضِيَّةٌ أَي حَكَمَ عَلَيْهِ وَيُنْهَمُ فَهُوَ قَاضٍ، وَذَلِكَ مَقْضِيٌّ عَلَيْهِ"³
قَضَى means to decide, its Maṣḍar comes as قَضَاءٌ، قَضِيَّةٌ and قَضِيَّةٌ. The person who decides is called قَاضٍ and the person against whom a decision is carried out is called مَقْضِيٌّ عَلَيْهِ

In al-Nihāya fī Gharīb al-Athar

"وقال الزُّهري : القَضَاءُ في اللُّغة على وجوه مَرَّجَعها إلى انقطاع الشيء وتَمَامه . وكلُّ ما أَحْكَمَ عَمَلُه أو أتمَّ أو حُتِمَ أو أُدِّي أو أُوجِبَ أو أُعْلِمَ أو أنْفِذَ أو أَمْضِيَ . فقد قُضِيَ . وقد جاءت هذه الوجوه كلُّها في الحديث"⁴

According to Mukhtār al-Ṣiḥāḥ

¹ Ibid, 15/186

² Ibid, 15/186

³ Zubaydī, Moḥammad Murtaḍā, (n.d) Tāj al-'Arūs Min Jawāhir al-Qāmūs, Dār al-Hidāya, Bāb al-Qaḍā, 39/311

⁴ Ibn al-Athīr, Alī b. Moḥammad al-Jazarī. (1979) al-Nihāya fī Gharīb al-Athar, al-Maktabat al-'Ilmiyya, Beirut, Bāb al-Qāf Ma' al-Ḍād, 4/125

"الْقَضَاءُ الْحَكْمَ وَالْجَمْعَ الْأَفْضِيَّةُ وَالْقَضِيَّةُ مِثْلُهُ وَالدمع الْقَضَايَا وَ قَضَى يَقْضِي بِالْكَسْرِ قَضَاءً أَي حَكْمَ وَمِنْهُ قَوْلُهُ تَعَالَى وَقَضَى رَبُّكَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ"¹

In brief, according to lexicon, Qaḍā' is to make something essential, to decide and to complete some task in a virtuous manner.

The Use of the word "قَضَاءٌ" in Qur'ān Ḥakīm:

Here the use of word "قَضَاءٌ" in different meanings, some examples are mentioned below

● "قَضِيَ الْأَمْرَ الَّذِي فِيهِ تَسْتَفْتِيَانِ"²

"The matter about which you inquired has been decreed"

● "فَلَمَّا قَضَى مُوسَى الْأَجَلَ"³

"When Musa fulfilled his term"

● "فَإِذَا قَضَيْتُمْ مَنَاسِكَكُمْ"⁴

"Then when you have completed the acts of Haj"

● "فَإِذَا قُضِيَتِ الصَّلَاةُ"⁵

"Then, when the prayer is finished"

● "فَقَضَاهُنَّ سَبْعَ سَمَاوَاتٍ"⁶

"Then He completed them as seven heavens"

● "فَاقْضِ مَا أَنْتَ قَاضٍ"⁷

"Do whatever you have to do"

● "وَقَضَى رَبُّكَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ وَبِالْوَالِدَيْنِ إِحْسَانًا"⁸

"And your Lord Commanded that worship not any else excepts Him and does good to parents"

● "وَلَوْلَا كَلِمَةٌ سَبَقَتْ مِنْ رَبِّكَ إِلَى أَجَلٍ مُسَمًّى لَفُضِي بَيْنَهُمْ"⁹

"And had not a saying of your Lord gone forth for an appointed term, the matter. Would have been surely decided among them long ago"

● "فَلَمَّا قَضَيْنَا عَلَيْهِ الْمَوْتَ مَا دَلَّهُمْ عَلَى مَوْتِهِ إِلَّا دَابَّةُ الْأَرْضِ تَأْكُلُ مِنْسَأَتَهُ"¹⁰

¹ al-Rāzī, Muḥammad b. Abī Bakr b. Abd al-Qādir. (1995) Mukhtār al-Şiḥāh, Dār al-Kitāb al-‘Arabī, Beirut, Bāb al-Qāf, 1/560

² Sūrat al-Yūsuf, Āyat:41

³ Sūrat al-Qaşaş, Āyat:29

⁴ Sūrat al-Baqarah, Āyat:200

⁵ Sūrat al-Jum‘ah, Āyat:10

⁶ Sūrat al-Fuṣṣilāt, Āyat:12

⁷ Sūrat al-Tāhā, Āyat:72

⁸ Sūrat al-‘Isrā’, Āyat:23

⁹ Sūrat ash-Shūraá, Āyat:14

¹⁰ Sūrat al-Sabā’, Āyat:14

“Then when We decreed death for him. We informed not the jinns about his death but termite of the earth that used to eat his staff” “and when Allah decides to do something”

In short, as per Qur’ān Karīm Qaḍā’ is a practical or lingual final decision; it might be divine and or by human beings.

The Definition of the term Qaḍā’ (قضاء):

The term Qaḍā’ means in its technical sense to settle and decide the differences, claims and disputes of the people. Qaḍā’ is a trusted quality which makes Shar’ī Orders essential to be carried out in favour of the person to whom this is affiliated whether this order is to determine somebody just or unjust. Moreover, this quality should not be connected to the general state wisdoms. We observe the Ḥanafī point of view first.

Ḥanafī point of view:

As per Imām Sarakhasī (d.482 AH), the derogatory meaning of Qaḍā’ is to

"وقيل معناه اسمع كلام كل واحد من الخصمين وافهم مراده وبهذا يؤمر كل قاضي"¹

Imām Kāsānī (d.587 AH) said in this regard

"القضاء هو الحكم بين الناس بالحق والحكم بما أنزل الله عز وجل"²

Qaḍā’ means to settle the differences and decide between the two disputing parties according to the orders of الله عز وجل.

Furthermore Ibn Hamām (d.681 AH)³, ‘Alā al-Dīn al-Ḥaṣḥafī (d.1088 AH)⁴ and Ibn ‘Ābidīn Shāmī (d.1252 AH)⁵ also say, Qaḍā’ in its technical sense to resolve the quarrels and decide between the parties.

As per Majallat al-Ahkām al-‘Adaliyah,

"القضاء يأتي بمعنى الحكم والحاكمية"⁶

"The phrase administration of justice embrace the judgement and the duties of the judge"

Mālikī Jurists view point:

Ibn Farḥūn al-Mālikī (d. 799 AH) said

*"To act as a mediator between the Creator and the human being in order to implement the directives of ALLAH Almighty in accordance with the Qur’ān and Sunnah"*⁷

Muḥammad al-Ḥattāb al-Mālikī (d.954 AH) defined the term Qaḍā’ as

*"The declaration of the rules of Sharī‘ah in a obligatory mode"*⁸

Opinion of Shāfi‘ī Fuqahā’:

¹ Sarkhasī, Abū Bakr Muḥammad b. Aḥmad. (2000) al-Mabsūt, Ed. 1st, Dār al-Ma‘rifah, Beirut, 16/115

² al- Kāsānī, ‘Abu baker b. Masud.(1982) Badā’i‘al-Ṣanā’i‘,Dār al-Kitāb al-‘Arabī, Beirut, 7/02

³ Ibn Hammām, Kamāl al-Dīn Muḥammad b. ‘Abd al-Wāḥid (n.d) Faṭḥ al-Qaḍūr Sharḥ al-Hidāya, Dar al-Fikr, Beirut, 7/343

⁴ al-Ḥaṣḥafī, Muḥammad ‘Alā al-Dīn b. ‘Alī. (1420 AH) Al-Durr al-Mukhtār fī Sharḥ Tanwīr al-Abṣār, Dār al-Ma‘rifah, Beirut, 8/25

⁵ ibn ‘Ābidīn, Muḥammad b. Muḥammad Amīn. (n.d) Ḥāshiyah Radd al-Mukhtār ‘alā al-Durr al-Mukhtār, Aych Aym Sa‘īd Company, Karachi, 4/352

⁶ Majallat al-Ahkām al-‘Adaliyah (n.d) Nūr Muḥammad Kārkhānah Tijārat Kutub, Kirātishī, S.1784, P.364

⁷ Ibn Farḥūn, Ibrāhīm b. Abd Allah (1958) Tabṣirat al-Ḥukkām fī Uṣūl al-Aqḍiyah Wa Mināhij al-Aḥkām, Maṭba‘at Muṣṭafā al-Ḥalabī, 1/12

⁸ Al-Ḥattāb, Muḥammad b. Muḥammad al-Kiṭāb (1329H) Mawāhib al-Jalīl, Maṭba‘at al-Sa‘ādah, Egypt, 6/86

To clarify the Sharī Order in an incident, for that person on whom the Sharī Order of this matter is essential to be carried out. In this regard see point of view of Shāf'ī Fuqahā' 'Allāmah al-Sharbīnī (d.977 AH) said

*"The declaration of a rule of Sharī'ah, in the case of person upon whom the enforcement of such rule is obligatory"*¹

According to Shāf'ī al-Ṣaghīr (d.1004 AH)

Qaḍā' means to implement the law on the person on whom it is essential to be implemented according to Sharī'ah²

Views of Ḥanbalī Jurists:

As per Ibn Qudāmah Ḥanbalī (d.620 AH)

"وهو فرض كفاية يلزم الإمام نصب من يكتفى به في القضاء ويجب على من يصلح له إذا طلب منه ولم يوجد غيره الإجابة إليه وإن وجد غيره فالأفضل تركه ومن شروطه أن يكون رجلا حرا مسلما سميعا بصيرا متكلما عدلا عالما"³

Sayyid Sharīf (d. 816) said

To accept the compulsory right due to arguments and to show the proved right with orders⁴

The above-mentioned definitions clearly shows that the Fuqahā' has defined the Qaḍā' with different words; but the sense of all the definitions is the same. Finally, Qaḍā' means to advocate the Sharī Order on behalf of the Khalīfah because of the common conciliation. Furthermore, Qaḍā' means that institution which settles the disputing suits or we can say that to settle the disputes and to end the fights in a particular defined way.

Qaḍā' (قضاء) and Order (حكم):

In the Sharī'ah, the sense of the Qaḍā' and Order is the same. There is only the difference of the vastness of the power. In the Qur'ān and Sunnah, these words have been used in place of each other. Therefore, it is necessary to highlight Order (حكم).

The Dictionary Meaning of Order (حكم)

'Allāmah Ibn Manzūr says

"العلم والفقہ والقضاء بالعدل"⁵

"Ḥukam is the name given to 'Ilm and Fiqh as well as a just decision"

Definition of Ḥukm:

According to 'Ulmā' Usūl, Ḥukm is the name given to the words of "وحى" and other Nuṣūṣ Sharī'ah which are descendent in the Qur'ān Majīd.

"خطاب الشارع المتعلق بأفعال المكلفين بالافتضاء أو التخيير"⁶

¹ al-Sharbīnī, Muḥammad al-Khaṭīb. (1933) Mughnī al-Muḥtāj ilā Ma'rifa Ma'ānī Alfāz al-Minhāj, Dār Iḥyā' al-Turāth al-'Arabī, Beirut, 4/372

² Shāf'ī al-Ṣaghīr, Muḥammad b Abī al-Abbās Aḥmad (n.d) Nihāy al-Muḥtāj Ilā al-Minhāj, 8/89

³ Ibn Qudāmah, Abd Allah b Aḥmad, Abū Muḥammad (1425 AH) 'Umdat al-Fiqh, al-Maktabat al-'Aṣriyah, 1/147

⁴ al-Jurjānī, 'Alī b. Abī 'Alī. (1996) al-Ta'rīfāt, 'Ālam al-Kutub, Beirut, P.118

⁵ Ibn Manzūr, Moḥammad b. Mukarram. (n.d). Lisān al-'Arab, Ed. 1st, Dār Ṣādir, Beirut, Bāb al-Qaḍā, 15/186

⁶ Al-Āmadī, 'Alī b. Abī 'Alī (1404 AH), al-Aḥkām Fī Ūṣūl al-Aḥkām, Dār al-Kutab 'Arabī, Beirut, 1/135

Whereas, the definition offered by the Fuqahā', Ḥukm is not called to the words, rather it is called to the legal values which is proved from the words of "وحي" ¹

Qaḍā' and Ḥukm has the same sense:

The following verses of the Qur'an Karīm show that Qaḍā' and Ḥukm has the same sense.

• "وَأَنِ احْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ" ²

"And that O Muslim! Judge according to what Allah has sent down"

• "وَمَنْ لَمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ الْفَاسِقُونَ" ³

"And whoso judges not by what Allah has sent down, then it is they who are the iniquitous"

• "إِذَا قَضَى اللَّهُ وَرَسُولُهُ أَمْرًا" ⁴

"When Allah and His Messenger have decreed something"

• "فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّى يُحَكِّمُوكَ فِيمَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنْفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا" ⁵

"Then O beloved! By your Lord, they shall not be Muslims until they make you judge in all disputes among themselves, then they find not any impediment in their hearts concerning whatever you decide, and accept from the eve of their hearts"

To discover the reality of the matter, to listen to the statement of the two parties and understand them and to act accordingly is called Qaḍā'. And above mentioned verses of Qur'an Karīm clearly shows that sense of Qaḍā' and Ḥukm is the same.

Qaḍā' and 'Adl:

'Adl is the reflection of Qaḍā'. When Qaḍā' has the prefix (لاحقه) of Bil-Ḥaq (بالحق), it reflects the order which is based of justice. As it is appears from the Āyāt of the Qur'an Karīm.

So it is necessary to have a look on the 'Adl.

'Adl in its literal meaning and technical sense:

The word 'Adl (عَدْلٌ) has come seventeen times in the Qur'an Karīm. ⁶ It is actually a Maṣḍar (مَصْدَر). Many meanings of it are there Qur'an Karīm, for example, justice, to fulfill the need of somebody, the truthful, based on justice, balanced, Fidyah (فديه), determination, equity, and moderate. The most famous among all these meanings are that of "Justice" as in Lisān al-'Arab

"والعَدْلُ ، بالفتح : أَصْلُهُ مَصْدَرٌ قَوْلِكَ : عَدَلْتُ بِهَذَا عَدْلًا حَسَنًا" ⁷

If we read 'Adl using 'Fatah', it is a Maṣḍar (مَصْدَر) , as you say, I did a good justice with him.

¹ Ṣadr al-Sharī'ah, 'Abd Allah b Mas'ūd. (1400 AH), al-Tawḍīh, Maṭba' Tijārt Kutub, Karachi, 1/30

² Sūrat al-Mā'idah, Āyat:49

³ Sūrat al-Mā'idah, Āyat:47

⁴ Sūrat al-'Aḥzāb, Āyat:36

⁵ Sūrat an-Nisā', Āyat:65

⁶ Al-Qur'an, 2: 48, 282 ! 4: 3, 58, 135 ! 5: 8, 95,106 ! 6: 70, 152 ! 7:159, 181 ! 16: 76, 90 ! 42: 15 ! 49: 9

⁷ Ibn Manẓūr, Moḥammad b.Mukarram. (n.d). Lisān al-'Arab, Ed. 1st, Dār Ṣādir, Beirut, Bāb al-'Adl, 11/430 ! Zubaydī, Moḥammad Murtaḍā, (n.d) Tāj al-'Arūs Min Jawāhir al-Qāmūs, Dār al-Hidāya, 29/446

The Muslim Scholars have described the ‘Adl in its technical sense by using different words. But we would only mention a single definition.

"العدل عبارة عن الأمر المتوسط بين طرفي الإفراط والتفريط"¹

‘Adl is a point of equity between the enormity and decrease which maintains the two sides and stops on the right.

Qaḍā’ and Qiṣṭ:

Al-Qiṣṭ (القسط) is a Maṣḍar (مَصْدَر) . Its dictionary meaning is share and right.² It is used in alternation with the meanings of ‘Adl as the result of both is the same. It means to give the due right to the deserving person. In its general sense, the rights of both the Creator and the creatures are included. Another quality of Qiṣṭ is that it is the greatest grade of a just decision. Whereas, ‘Adl is the least grade of justice. Less than ‘Adl comes oppression. That is the reason, s concerned with ‘Adl is called the antonym of oppression. Qiṣṭ i³ "وهو ضد الجور"

Qiṣṭ is concerned with Qaḍā’ due to this meaning of it.

Conclusion:

The deduction of this discussion is that, Qaḍā’ and Ḥukm have the same sense, “to decide”. But Ḥukm has more general than that of Qaḍā’. The least grade of a just decision of the Ruler and Qaḍā’ of Qaḍī is ‘Adl and the greatest grade is Qiṣṭ. Moreover, Qiṣṭ is more general than ‘Adl.

1.3. The importance Of Qaḍā’ in Qur’ān and Sunnah:

ALLĀH (سُبْحَانَهُ وَتَعَالَى) has imposed the duty of justice on His Rasūl Akram (صلى الله عليه وآله وسلم) at the same time of preaching duties and this duty is also imposed on the followers of His Rasūl Akram (صلى الله عليه وآله وسلم). It is the requirement of the designation of Qaḍā’ to end the evils from the society and to provide a peaceful environment to the society. In this regard, many verses of the Qur’ān Karīm are accessible, some of them are listed below:-

● "قُلْ أَمَرَ رَبِّي بِالْقِسْطِ"⁴

“Say you, My Lord has commanded justice”

● "وَإِنْ حَكَمْتَ فَأَحْكُم بَيْنَهُم بِالْقِسْطِ"⁵

“And if you judge between them then judge with justice”

● "وَأَنِ احْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ"⁶

“And that O Muslim! Judge according to what Allah has sent down”

● "وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ"⁷

“And that when you judge amongst people, judge with justice”

¹ al-Jurjānī, ‘Ali b. Abī ‘Ali. (1405 AH) al-Ta‘rifāt, Ed. 1st, Dār al-Kitāb al-‘Arabī, Beirut, Kitāb al-‘Ayn, Faṣl al-Dāl P.191

² Ibn Manzūr, Moḥammad b. Mukarram. (n.d). Lisān al-‘Arab, al-Bāb al-Qiṣṭ, 7/377

³ Ibid, Bāb al-‘Adl, 11/430

⁴ Sūrat al- al-‘A‘rāf, Āyat:29

⁵ Sūrat al-Mā'idah, Āyat:42

⁶ Sūrat al-Mā'idah, Āyat:49

⁷ Sūrat al-Nisā’, Āyat:58

• "يَا دَاوُدُ إِنَّا جَعَلْنَاكَ خَلِيفَةً فِي الْأَرْضِ فَاحْكُم بَيْنَ النَّاسِ بِالْحَقِّ وَلَا تَتَّبِعِ الْهَوَىٰ فَيُضِلَّكَ عَنْ سَبِيلِ اللَّهِ إِنَّ الَّذِينَ يَضِلُّونَ عَنْ سَبِيلِ اللَّهِ لَهُمْ عَذَابٌ شَدِيدٌ"¹

“O Daud', Undoubtedly, We have made you a vicegerent in the earth, therefore order between mankind with truth, and follow not desire, otherwise it would cause you to go astray from the path of Allah. Verily, those who go astray from the path of Allah, there is for them a severe torment for that they have forgotten the Day of Reckoning”

• "إِنَّا أَنْزَلْنَا إِلَيْكَ الْكِتَابَ بِالْحَقِّ لِتَحْكُمَ بَيْنَ النَّاسِ بِمَا أَرَاكَ اللَّهُ وَلَا تَكُنْ لِلْخَائِبِينَ حَصِيمًا"²

“O beloved! (Prophet) undoubtedly, We have sent down to you the Book with truth that you may judge amongst people as you are shown by Allah. And quarrel not from the side of deceivers”

• "فَلَا وَرَبِّكَ لَا يُؤْمِنُونَ حَتَّىٰ يُحْكِمُوا فِي مَا شَجَرَ بَيْنَهُمْ ثُمَّ لَا يَجِدُوا فِي أَنفُسِهِمْ حَرَجًا مِمَّا قَضَيْتَ وَيُسَلِّمُوا تَسْلِيمًا"³

“Then O beloved! By your Lord, they shall not be Muslims until they make you judge in all disputes among themselves, then they find not any impediment in their hearts concerning whatever you decide, and accept from the eve of their hearts”

• "إِنَّمَا كَانَ قَوْلَ الْمُؤْمِنِينَ إِذَا دُعُوا إِلَى اللَّهِ وَرَسُولِهِ لِيَحْكُمَ بَيْنَهُمْ أَن يَفُولُوا سَمِعْنَا وَأَطَعْنَا وَأُولَٰئِكَ هُمُ الْمُفْلِحُونَ"⁴

“The saying of Muslims is only this, when they are called towards Allah and Messenger that the Messenger may decide between them then they say, 'we have heard and we obey and these are they who attained to their goals”

• "أَفَعَيِّرَ اللَّهُ أَتْبَغِي حَكْمًا وَهُوَ الَّذِي أَنْزَلَ إِلَيْكُمُ الْكِتَابَ مُفَصَّلًا وَالَّذِينَ آتَيْنَاهُمُ الْكِتَابَ يَعْلَمُونَ أَنَّهُ مُنَزَّلٌ مِّن رَّبِّكَ بِالْحَقِّ فَلَا تَكُونَنَّ مِنَ الْمُمْتَرِينَ - وَتَمَّتْ كَلِمَتُ رَبِّكَ صِدْقًا وَعَدْلًا لَا مُبَدِّلَ لِكَلِمَاتِهِ وَهُوَ السَّمِيعُ الْعَلِيمُ"⁵

“Then, shall I seek the judgment of someone other than Allah, when it is He who has sent down towards you this detailed Book? And those whom We have given the Book know that it is sent down by your Lord in truth; so O' Listener' be never then of the doubters. And Complete is the word of your Lord in veracity and justice. There is no one to change His words: and He is the Hearer, the Knower”

• "يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِن تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ إِن كُنتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ذَلِكَ خَيْرٌ وَأَحْسَنُ تَأْوِيلًا"⁶

“O believers! Obey Allah and Obey the messenger, and those who have power of command amongst you, then again if there may arise any difference amongst you, refers it to Allah and His messenger, if you have faith in Allah and the Last Day. This is better, and its end is best”

¹ Sūrat al-Şād, Āyat:26

² Sūrat al-Nisā', Āyat:105

³ Sūrat al-Nisā', Āyat:65

⁴ Sūrat al-Nūr, Āyat:51

⁵ Sūrat al-Ān 'ām, Āyat:115,116

⁶ Sūrat al-Nisā', Āyat:59

- "يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّامِينَ لِلَّهِ شُهَدَاءَ بِالْقِسْطِ وَلَا يَجْرِمَنَّكُمْ شَنَاَنُ قَوْمٍ عَلَىٰ أَلَّا تَعْدِلُوا اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ"¹

“O believers! Stand-up firmly by the Commandments of Allah, bearing witness with justice and let not the enmity of any people incite you that you should not do justice. Do justice that is nearer to piety and fear Allah, undoubtedly, Allah is aware of your doings”

Not only the verses of Qur’ān but also many Aḥādīth of Rasūl Akram (صلى الله عليه وآله وسلم) utters the importance and need of Qaḍā’. In this regard, few of Aḥādīth are mentioned below:-

- "حَدَّثَنَا شِهَابُ بْنُ عَبَّادٍ، حَدَّثَنَا إِبْرَاهِيمُ بْنُ حُمَيْدٍ، عَنْ إِسْمَاعِيلَ، عَنْ قَيْسٍ، عَنْ عَبْدِ اللَّهِ، قَالَ قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ " لَا حَسَدَ إِلَّا فِي اثْنَتَيْنِ، رَجُلٌ آتَاهُ اللَّهُ مَالًا فَسَلَّطَهُ عَلَىٰ هَلَكْتِهِ فِي الْحَقِّ، وَآخَرَ آتَاهُ اللَّهُ حِكْمَةً فَهُوَ يَفْضِي بِهَا وَيُعَلِّمُهَا"²

“Allah’s Messenger (ﷺ) said, "Do not wish to be like anyone, except in two cases: (1) A man whom Allah has given wealth and he spends it righteously. (2) A man whom Allah has given wisdom (knowledge of the Qur’an and the Hadith) and he acts according to it and teaches it to others."

- حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ، قَالَ حَدَّثَنَا يَحْيَى، عَنْ عُبَيْدِ اللَّهِ، قَالَ حَدَّثَنِي حُبَيْبُ بْنُ عَبْدِ الرَّحْمَنِ، عَنْ حَفْصِ بْنِ غَاصِمٍ، عَنْ أَبِي هُرَيْرَةَ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ " سَبْعَةٌ يُظِلُّهُمُ اللَّهُ فِي ظِلِّهِ يَوْمَ لَا ظِلَّ إِلَّا لِلَّهِ الْإِمَامُ الْعَادِلُ، وَشَابٌّ نَشَأَ فِي عِبَادَةِ رَبِّهِ، وَرَجُلٌ قَلْبُهُ مُعَلَّقٌ فِي الْمَسَاجِدِ، وَرَجُلَانِ تَحَابَّا فِي اللَّهِ اجْتَمَعَا عَلَيْهِ وَتَفَرَّقَا عَلَيْهِ، وَرَجُلٌ طَلَبْتُهُ امْرَأَةً ذَاتُ مَنْصِبٍ وَجَمَالٍ فَقَالَ إِنِّي أَخَافُ اللَّهَ. وَرَجُلٌ تَصَدَّقَ أَخْفَى حَتَّىٰ لَا تَعْلَمَ شِمَالُهُ مَا تُنْفِقُ يَمِينُهُ، وَرَجُلٌ ذَكَرَ اللَّهَ خَالِيًا فَفَاضَتْ عَيْنَاهُ"³

“The Prophet (ﷺ) said, ‘Allah will give shade, to seven, on the Day when there will be no shade but His. (These seven persons are) a just ruler, a youth who has been brought up in the worship of Allah (i.e. worships Allah sincerely from childhood), a man whose heart is attached to the mosques (i.e. to pray the compulsory prayers in the mosque in congregation), two persons who love each other only for Allah’s sake and they meet and part in Allah’s cause only, a man who refuses the call of a charming woman of noble birth for illicit intercourse with her and says: I am afraid of Allah, a man who gives charitable gifts so secretly that his left hand does not know what his right hand has given (i.e. nobody knows how much he has given in charity), and a person who remembers Allah in seclusion and his eyes are then flooded with tears.”

The importance of the administration of justice in Aḥādīth can also be predictable from the following

¹ Sūrat al-Mā'idah, Āyat:8

² al-Bukhari, Muḥammad b. Ismā'īl Abū 'Abd Allāh. (1422 AH) al-Jāmi' al-Ṣaḥīḥ, Ed. 1st, Dār Ṭaq al-Nijāt, Kitāb al-Āḥkām, Bāb ajar man Qaḍā bil-Hikmat(7141),9/62

³ al-Bukhari, Muḥammad b. Ismā'īl, al-Jāmi' al-Ṣaḥīḥ, Kitāb al-Adhān, Bāb man Jalasa Fī al-Masjid...(660),1/133

- إن المقسطين عند الله على منابرٍ من نورٍ عن يمين الرحمن عز وجل¹
- إِنَّ أَحَبَّ النَّاسِ إِلَى اللَّهِ يَوْمَ الْقِيَامَةِ²
- "حَدَّثَنَا مُحَمَّدُ بْنُ حَسَّانَ السَّمِّيُّ، حَدَّثَنَا حَلْفُ بْنُ خَلِيفَةَ، عَنْ أَبِي هَاشِمٍ، عَنْ ابْنِ بُرَيْدَةَ، عَنْ أَبِيهِ، عَنِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ " الْفُضَاءُ ثَلَاثَةٌ وَاحِدٌ فِي الْجَنَّةِ وَاثْنَانِ فِي النَّارِ فَأَمَّا الَّذِي فِي الْجَنَّةِ فَرَجُلٌ عَرَفَ الْحَقَّ فَقَضَى بِهِ وَرَجُلٌ عَرَفَ الْحَقَّ فَجَارَ فِي الْحُكْمِ فَهُوَ فِي النَّارِ وَرَجُلٌ قَضَى لِلنَّاسِ عَلَى جَهْلٍ فَهُوَ فِي النَّارِ³

"The Prophet (ﷺ) said: Judges are of three types, one of whom will go to Paradise and two to Hell. The one who will go to Paradise is a man who knows what is right and gives judgment accordingly; but a man who knows what is right and acts tyrannically in his judgment will go to Hell; and a man who gives judgment for people when he is ignorant will go to Hell"

- "حَدَّثَنَا حَفْصُ بْنُ عُمَرَ، عَنْ شُعْبَةَ، عَنْ أَبِي عَوْنٍ، عَنِ الْحَارِثِ بْنِ عَمْرٍو بْنِ أَحْيَى الْمُغِيرَةَ بْنِ شُعْبَةَ، عَنْ أَنَسٍ، مِنْ أَهْلِ جَمْعٍ مِنْ أَصْحَابِ مُعَاذِ بْنِ جَبَلٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَمَّا أَرَادَ أَنْ يَبْعَثَ مُعَاذًا إِلَى الْيَمَنِ قَالَ كَيْفَ تَقْضِي إِذَا عَرَضَ لَكَ قَضَاءٌ. قَالَ أَقْضِي بِكِتَابِ اللَّهِ قَالَ فَإِنْ لَمْ تَجِدْ فِي كِتَابِ اللَّهِ. قَالَ فَبِسُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ فَإِنْ لَمْ تَجِدْ فِي سُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَلَا فِي كِتَابِ اللَّهِ قَالَ أَجْتَهُدُ رَأْيِي وَلَا أَلُفْضِرَبَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ صَدْرَهُ وَقَالَ الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ رَسُولَ رَسُولِ اللَّهِ لِمَا يُرْضِي رَسُولَ اللَّهِ⁴

"When the Messenger of Allah (ﷺ) intended to send Mu'adh ibn Jabal to the Yemen, he asked: How will you judge when the occasion of deciding a case arises? He replied: I shall judge in accordance with Allah's Book. He asked: (What will you do) if you do not find any guidance in Allah's Book? He replied: (I shall act) in accordance with the Sunnah of the Messenger of Allah (ﷺ). He asked: (What will you do) if you do not find any guidance in the Sunnah of the Messenger of Allah (ﷺ) and in Allah's Book? He replied: I shall do my best to form an opinion and I shall spare no effort. The Messenger of Allah (ﷺ) then patted him on the breast and said: Praise be to Allah Who has helped the messenger of the Messenger of Allah to find something which pleases the Messenger of Allah"

¹ Muslim, Ibn al-Hajj aj b. Muslim, al-Jāmi' al-Ṣaḥīḥ, Kiāb al-'Imārat, Bāb Faḍīlat al-'Amīr al-'Ādil, (1827), 3/1458

² al-Tirmidhī, Muḥammad b. Īsā. (n. d) al-Jāmi', Iḥyā' al-Turāth al-'Arabī. Beirut, Abwāb al-Aḥkām, Bāb mā jā'a Fī al-Imām al-'Ādil (1329), 3/617

³ Abū Dāwūd, Sulaymān b. al-Ash'ath. (n.d) Al-Sunan, Dār al-Kitāb al-'Arabī, Beirut, Kitāb al-'Aqḍiyah, Bāb Fī al-Qaḍī Yukhḥī, (3575), 3/324

⁴ Abū Dāwūd, Sulaymān b. al-Ash'ath, Al-Sunan, Kitāb al-'Aqḍiyah, Bāb Ijtihād ar-Rā'yi Fī al-Qaḍā', (3594), 3/330

• ¹ "مَنْ سَأَلَ الْقَضَاءَ وَكَلَّ إِلَى نَفْسِهِ وَمَنْ جُبِرَ عَلَيْهِ نَزَلَ إِلَيْهِ مَلَكٌ فَسَدَّدَهُ "

“Whoever asks to be appointed a judge, will be entrusted to himself, but whoever is forced to accept position, an angel will come down to him and guide him.”

• ² "مَنْ وُلِيَ الْقَضَاءَ فَقَدْ ذُبِحَ بِعَيْرِ سِكِّينٍ

• القضاء جمره فادفع الجمر عنك بعودين" ³

“He who has been appointed a judge has been killed without a knife”

• "مامن حاكم يحكم بين الناس إلا جاء يوم القيامة وملك آخذ بقفاه ثم يرفع رأسه إلى السماء فإن قال ألقه

ألقاه في مهواة أربعين خريفا" ⁴

“There is no judge who judges between the people but on the Day of Resurrection an angel will come and take hold of the back of his head towards the sky and if it said: “Throw him, “he will throw into an abyss the depth of forty autumns (years)”

In short, administration of justice in Aḥādīth has been assigned a tremendous importance.

1.4. Importance of Qadā’: ‘Ulamā’ perspective:

The person who is assigned with the noble responsibility of the administration of justice is required to try his highest to arrive at a truthful and upright judgment. A Qādī, who performs his duty justly in accordance with the commands of the Qur’ān Karīm and the Sunnah of Rasūl ALLĀH (ﷺ), welfares the whole humanity.

But the position of Qādī / Judge is so crucial and delicate that he is answerable for his each act and exertion. That’s why our Ulmā’ did not accept this official post. Imām Abū Ḥanīfah⁵, Imām Mālik, Imām Shāfi‘ī⁶ and Imām Aḥmad b Ḥanbal⁷, they not ever agreed to accept any court of law post. Apart from these honourable jurists, many other names can easily be seen who were always reluctant to accept judicial positions. The renowned scholar Abū qilābah so afraid of being appointed a Qādī, it can be estimated from the following reference

"حدثنا ابن عليّة ، عن أيوب ، قال: لما توفي عبد الرحمن بن أذينة ذكر أبو قلابة للقضاء فهرب حتى

أتى الشام ، فوافق ذلك عزل صاحبها ، فهرب حتى أتى اليمامة فلقيته بعد ذلك فقال: ما وجدت مثل

القاضي إلا كمثل رجل سابح في بحر ، وكم عسى أن يسبح حتى يغرق" ⁸

¹ Ibn Mājah, Muḥammad b. Yazīd Qazwīnī. (n.d) Al-Sunan, Dār al-Fikr, Beirut, Kitāb al-’Aḥkām, Bāb Zikr al-Quḍāt (2309), 2/774

² Abū Dāwūd, Sulaymān b. al-Ash’ath, Al-Sunan, Kitāb al-’Aqḍiyah, Bāb Fī Ṭalb al-Qaḍā’, (3573), 3/323

³ Sarakhasī, Muḥammad b. Aḥmad. (1421 AH) al-Mabsūt, Dār al-Ma’rifah, Ed. 1st, Beirut, Kitāb al-Qaḍī, 16/123

⁴ Ibn Mājah, Muḥammad b. Yazīd Qazwīnī, Al-Sunan, Kitāb al-’Aḥkām, Bāb al-Taghlīz Fil al-Ḥayf wa al-Rishwat (2311), 2/774

⁵ al-Khatīb al-Bughdādī, Abū Bakr. (n.d) Tarikh Bughdād, Maktabat al-Salafīyah, Egypt, 13/326

⁶ al-Nāhī, Abū al-Ḥassan. (n.d), Tārīkhu Quḍāt al-Andalus, al-Maktab al-Tijārī, p.24

⁷ al-Jauzī, Abū al-Faraj. (1349 AH), Manāqib al-Imām Aḥmad b. Ḥanbal, Maṭba’at al-Sa’ādah, p.270

⁸ Ibn Abī Shayba, Abū Bakr ‘Abd Allāh b. Muḥammad (n.d) al-Muṣannaf, Dār al-Salfiyat al-Hindiyyah, Bāb Fī al-Qaḍā’ (23440), 7/238

Imām Thaurī escaped when he was required by the Abbasid caliph, al-Mahdī to take over the office by the judge in his town. Imām Thaurī did not return to avoid his appointment as judge and remained away until his death.¹

Imām Sarakhasī also said

"أعلم بأن القضاء بالحق من أقوى الفرائض بعد الإيمان بالله تعالى وهو من أشرف العبادات"²

Allāmah al-Ṭarabulāsī view point in this regard

"وَالوَاجِبُ تَعْظِيمُ هَذَا الْمَنْصِبِ وَمَعْرِفَةُ مَكَانَتِهِ مِنَ الدِّينِ ، فَبِهِ بُعِثَ الرُّسُلُ ، وَبِالْقِيَامِ بِهِ قَامَتِ السَّمَوَاتُ وَالْأَرْضُ ، وَجَعَلَهُ النَّبِيُّ عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ مِنَ التَّعَمُّ الْتِي يُبَاحُ الْحَسَدُ عَلَيْهَا"³

Imām Kāsānī said as, administration of justice is a part of religion in Islam.⁴

In short, the above mentioned words makes it very clear that importance of Qaḍā' is unanimously admitted by 'Ulmā'. It has been regarded so elevated and sacred duty that they avoided any offer to him for such unoccupied post.

1.5. Elements of Qaḍā' (اركان قضاء) :

- 1) Al-Qāḍī (القاضي)
- 2) Al-Maqḍiyyu Bih (المقضي به)
- 3) Al-Maqḍiyyu Lah (المقضي له)
- 4) Al-Maqḍiyyu Fīh (المقضي فيه)
- 5) Al-Maqḍiyyu 'Alayh (المقضي عليه)
- 6) Al-Ḥukm (الحكم)

1) Al-Qāḍī (القاضي) :

The word Qāḍī (قاضي) is derived from "قضى" verb. It is a subject, "قضى" means to decide and the person who decides is called Qāḍī. And the word "قضاء" is Maṣḍar (مصدر) of this verb.

As per Majallah al-Ahkām al-'Adalīyah

"القاضي هو الذات الذي نصب وعين من قبل السلطان لأجل فصل وحسم الدعوى والمخاصمة الواقعة بين الناس توفيقاً لأحكامها المشروعة"⁵.

"The Qāḍī is a person appointed by the Sovereign for the purpose of dealing with and settling actions and disputes arising between the people in accordance with the terms of law"

The person who is entrusted with the noble responsibility of the administration of justice is required to try his utmost to arrive at a correct and upright decision. So some conditions are necessary for this job. Āimah Arba'ah laid down certain conditions for Qāḍī. These conditions are:

¹ Ibn Ḥajar al-'Asqalānī, Aḥmad, al-talkhīs al-Habīr, 4/168

² al-Sarakhasī, Muḥammad b. Aḥmad, al-Mabsūt, Kitāb al-Qāḍī, 16/53

³ al-Ṭarabulāsī, 'Ala'uddin Abī al-Ḥasan 'Alī b. Khalīl, Mu'in al-Ḥukkām fī mā Yataraddudu bayna al-Khaṣamayn min al-Ahkām, 1/12, (<http://www.al-Islam.com>)

⁴ ! 53- Ibn Farḥūn, Burhānuddīn Ibrāhīm b. 'Alī, Tabṣarah al-Ḥukkām fī Uṣūl al-Aqḍiyah Wa Mināhij al-Ahkām, Bāb Fī al-Qaḍā', 1/16 (<http://www.al-Islam.com>)

⁵ al- Kāsānī, 'Abu baker b. Masud.(1982) Badā'i' al-Ṣanā'i', Dār al-Kitāb al-'Arabī, Beirut, 7/02,03

⁶ Majallah al-Ahkām al-'Adalīyah (n.d) Nūr Muḥammad Kārkhānah Tijārat Kutub, Kirātishī, S.1785, P.364

○ الصلاحية للقضاء لها شرائط منها العقل ومنها البلوغ ومنها الإسلام ومنها الحرية ومنها البصر ومنها النطق ومنها السلامة عن حد القذف لما قلنا في الشهادة فلا يجوز تقليد المجنون والصبي والكافر والعبد والأعمى والأخرس والمحدود في القذف لأن القضاء¹

According to Aḥnāf, it is necessary that the Qāḍī must be muslim, wise, adult, freeman, having the quality of listening, looking and speaking, do not to fix up Qadhaf and he is appointed by Ruler etc.

○ "فأما الصفات المشتركة في الجواز فأن يكون حرا مسلما بالغا ذكرا عاقلا عدل---"².

As per Mālikī, Qāḍī should be muslim, just, wise, mature, free, not sinful, intelligent, learned of 'Ilm Fiqh and has a listening, looking and speaking abilities etc.

○ Shawāfi' say, Qāḍī must be a muslim, free, man, adult, citizen of Dar as-Salām, upright, listener, viewer, talker and mujtahid etc.³

○ "قال أبو القاسم رحمه الله تعالى: ولا يولى قاض حتى يكون بالغا عاقلا مسلما حرا عدلا عالما فقيها ورعا"⁴

According to Ḥanbalī school of thought, Qāḍī should has the qualities of muslim, free, man, intelligent, fully-grown, unprejudiced, looker, hearer, talker and also a mujtahid etc.

Because most important element of suit hearing Qāḍī himself, therefore his some important relevancies are also listed below:-

i. Qāḍī can not demand post of Qaḍā'.⁵

ii. لا يُفْضِي الْقَاضِي وَهُوَ عَضْبَانٌ"⁶

Qāḍī should not pronounce the decision when he was in anger.

iii. Consultation can also be made for good decision.⁷

¹ Ibn Nujaym, Zayn b. Ibrāhīm b. Muḥammad Ḥanafī. (1420 AH) Al-Baḥr al-Rā'iq Sharḥ Kanz al-Daqā'iq, Koe'ta, 6/277,278

! al- Kāsānī, 'Abu baker b. Masud.(1982) Badā'i' al-Ṣanā'i', Dār al-Kitāb al-'Arabī, Beirut, 7/03

² Ibn Rushd, Abū al-Walīd Muḥammad b. Aḥmad al-Qurtūbī (1395 AH) Bidāyat al-Mujtahid, Ed.4th, Maṭba'at Muṣṭafā al-Bābī, 2/463

³ al-Sharbīnī, Muḥammad al-Khaṭīb. (n.d), Mughnī al-Muḥtāj ilā Ma'rifa Ma'ānī Alfāz alMinhāj, Dār al-Fikr, Beirut, 4/374,375

⁴ Ibn Qudāma. (1405 AH), al-Mughnī fī Fiqh al-Imām Aḥmad b. Ḥanbal alShaybānī, Dār al-Fikr, Beirut, 11/381

⁵ al-Bukhari, Muḥammad b. Ismā'īl, al-Jāmi' al-Ṣaḥīḥ, Kitāb al-Iymān, Bāb man intazar Ḥattā Tudfan (6622), 8/127

! al-Nasā'ī, Abū 'Abd al-Raḥmān Aḥmad b. Shu'ayb. (1406 AH), al-Sunan, Maktab al-Maṭbū'āt alIslāmiyya, Ḥalb (5384), 8/225

⁶ al-Bukhari, Muḥammad b. Ismā'īl, al-Jāmi' al-Ṣaḥīḥ, Kitāb al-Iymān, Bāb man Intazar Ḥatta Tudfan (7158), 9/65

! Muslim, Ibn al-Ḥajj āj b. Muslim b. Ward al-Qushayrī, al-Ṣaḥīḥ, Kitāb al-Aqdiyyah, Bab Karāhat Qaḍā' al-Qāḍī Wa Huwa

Ghaḍbān (1717), 3/134

⁷ al-Tirmidhī, Muḥammad b. Īsā, al-Jāmi', Abwāb al-Jihād, Bāb Mā Jā'a Fī al-Mashwarah (1714), 4/213

- iv. Judgement passed by a Qādī after detailed under consideration.¹
- v. Qādī should be watch staff of the court.²

2) Al-Maqḍiyyu Bih (المقضيّ به):

Qādī, while deciding a dispute should, primly looks into the Qur’ān Karīm for answer. If he finds no direction in the Qur’ān Karīm for solution he should consult the Sunnah. And if he find no guidance in this source then Mujtahid sould do his finest to form an opinion in the light of Qur’ān and Sunnah. Following Ḥadīth is an evidence of this fact:

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لَمَّا أَرَادَ أَنْ يَبْعَثَ مُعَاذًا إِلَى الْيَمَنِ قَالَ كَيْفَ تَقْضِي إِذَا عَرَضَ لَكَ قَضَاءٌ. قَالَ أَقْضِي بِكِتَابِ اللَّهِ قَالَ فَإِنْ لَمْ يَجِدْ فِي كِتَابِ اللَّهِ. قَالَ فَبِسُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ فَإِنْ لَمْ يَجِدْ فِي سُنَّةِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَلَا فِي كِتَابِ اللَّهِ قَالَ أَجْتَهِدُ رَأْيِي وَلَا أَلُوقَضِرَب رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ صَدْرُهُ وَقَالَ الْحَمْدُ لِلَّهِ الَّذِي وَفَّقَ رَسُولَ رَسُولِ اللَّهِ لِمَا يُرْضِي رَسُولَ اللَّهِ³

3) Al-Maqḍiyyu lah (المقضيّ له)

A general rule in this context is that Qādī must be heard all suits. After the completion of all steps of the suit trial, he pronounce the decision in favour or against any party. But, should not made such judgment which he personally involves.⁴

4) Al-Maqḍiyyu Fih (المقضيّ فيه)

Courts enjoy the unlimited jurisdiction over all suits of Ḥaḳūq ALLĀH and Ḥaḳūq al-‘Ibā.

In this regard see following text

"وأما فيما يحكم فاتفقوا أن القاضي يحكم في كل شيء من الحقوق كان حقا لله أو حقا للآدميين"⁵

5) Al-Maqḍiyyu ‘Alayh (المقضيّ عليه)

Qaḍā’ means to judge, its subject is Qādī and its object is Maqḍiyyu ‘Alayh. . It is obvious that judge will decide the suit after hearing view point of either parties, evidence or oath. The question is, in Sharī‘ah is it rightful of ex-parte decision in absence of defendant or not. There is a discord within muslin scholars. According to their opinion, Judge would not take any decision in the absence of any party unless any person come to represent absent person.⁶ Majority of Fuḳah view is that Ex-Party Proceedings is lawful. Only condition is that, such proceedings should be based on justice. In this regard see Fiḳh Mālikī⁷, Shāfi‘ī⁸ and Ḥanbalī⁹ works. We detail discuss Ex-Part Proceedings in chapter 3.

¹ al-Tirmidhī, Muḥammad b. Īsā, al-Jāmi‘, Abwāb al-Aḥkām, Bāb Mā Jā’a Fī al-Qāḍī Kayfa Yaḳḍī (1327), 3/616

² al-Ṣadar al-Shahīd, Ḥassām al-Dīn. (1968) Sharḥ Kitāb Adab al-Qāḍī, Maṭba‘at al-Irshad, Baghdad,3/S.616

³ al-Tirmidhī, Muḥammad b. Īsā, al-Jāmi‘, Abwāb al-Aḥkām, Bāb Mā Jā’a Fī al-Qāḍī Kayfa Yaḳḍī (1327), 3/616

⁴ al-Sharbīnī, Muḥammad al-Khaṭīb. (n.d), Mughnī al-Muḥtāj ilā Ma‘rifā Ma‘ānī Alfāz alMinhāj, Dār al-Fikr, Beirut, 4/393

⁵ Ibn Rushd, Abū al-Walīd Muḥammad b. Aḥmad al-Qurṭubī (1395 AH) Bidāyat al-Mujtahid, Ed.4th, Maṭba‘at Muṣṭafā al-Bābī, 2/461

⁶ al-Ḥaṣkafī, Muḥammad ‘Alā al-Dīn b. ‘Alī al- Ḥanafī, al-Durr al-Mukhtār fī Sharḥ Tanwīr al-Aḥsār, Kitāb al-Qāḍā’, 8/111,112

⁷ Ibn Farḥūn, Burhānuddīn Ibrāhīm b. ‘Ali, Tabṣarah al-Ḥukkām fī Uṣūl al-Aḳḳiyah Wa Mināhij al-Aḥkām, Bāb Fī al-Qaḍā’, 1/87

⁸ al-Sharbīnī, Shams al-Dīn al-Khaṭīb (1933) Mughnī al-Muḥtāj, Dār ihyā’ al-Ṭurāth al-‘Arabī, Beirut, 4/406

⁹ Ibn al-Najjār, Taqī al-Dīn. (n.d), Muntahā al-Irādāt, ‘Alām al-Kitāb, Beirut, 2/605

6) Al-Ḥukm (الحكم)

It is the last element of Qaḍā'. After hearing of suit and obtaining the evidence, Qāḍī will announce the decision, this is called Ḥukm. Some conditions for the validity of Ḥukm is listed below"-

- i. It must be the outcome of the decision of a dispute between clashing parties.¹
- ii. When the pronouncement of Ḥukm, parties to suit should be present in the court.²
- iii. It is essential condition for the validity of Ḥukm, it should be in a mandatory form.³
- iv. It is also a condition for the validity, the court must mention the ground of Ḥukm.⁴
- v. Ḥukm must be in accordance with the principles of Sharī'ah.⁵

Finally, there are six elements of Qaḍā', namely Al-Qāḍī, Al-Maqḍiyyu Bih, Al-Maqḍiyyu lah, Al-Maqḍiyyu Fīh, Al-Maqḍiyyu 'Alayh and Al-Ḥukm.

1.6. Adab al-Qāḍī / Islamic procedural law:

It is very important department of Islāmī Fiqh. Its literal meaning is 'manners of Qāḍī. It mean guidance for Qāḍī, procedure of the court etc. In technical sense, it is called Islamic Procedural Law or Islamic Judicial Procedure. Following are two significant departments of Adab al-Qāḍī

- I. Conventional Department.
- II. Aministrative Department

I. Conventional Department:

The discussion of first department are directly derived from Qur'ān and Sunnah. This conventionl department has six main discussion which are mentioned below:-

- i. What is Qaḍā'?
- ii. Da'wā and it's Aḥkām.
- iii. Procedure of suit hearing and its relevancies.
- iv. Law of Evidence.
- v. Abrā' and it's Aḥkām
- vi. Assisting judicial institutions

II. Aministrative Department:

This deparment exclusively based on administrative dealings. It contains four main discussion

- i. Art of conveyancing and pleading.
- ii. 'Ilm al-Shurūt,
- iii. 'Ilm al-Maḥāḍir
- iv. 'Ilm al-Sijillāt

These discussion already discussed in preface. Further discuss under coming concerned lines. Now, we discuss only some significant Ādāb Qāḍā'

Ādāb Qāḍā':

- 1) Qāḍī must be an honest and truthful person. For this purpose Taqwā i.e Fear of ALLĀH is compulsory. It is evident from the following Naṣūṣ Sharī'ah

¹ ibn 'Ābidīn, Muḥammad b. Muḥammad Amīn, Radd al-Mukhtār 'alā al-Durr al-Mukhtār, 5/42

² al- Kāsānī, 'Abu baker b. Masud, Badā'i' al-Ṣanā'i', 6/222

³ Ibn Farḥūn, Burhānuddīn Ibrāhīm b. 'Alī, Tabṣarah al-Ḥukkām fī Uṣūl al-Aqḍiyah Wa Mināhij al-Aḥkām, 1/116

⁴ Al-Shāfi'i, Muḥammad b. Idrīs (1968) Maṭba'at al-Sha'ab. Egypt, 6/224

⁵ Ibid, 6/208

• اَعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَى وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ خَبِيرٌ بِمَا تَعْمَلُونَ¹

• اتَّقُوا اللَّهَ فِيَمَا مَلَكَتْ أَيْمَانُكُمْ²

• اتَّقِ اللَّهَ حَيْثُمَا كُنْتَ وَأَتَّبِعِ السَّبِيلَ الْحَسَنَةَ تَمَحُّهَا وَخَالِقِ النَّاسَ بِخُلُقٍ حَسَنٍ³

2) When parties meet in the office of the Qādī, he must behave to both with an equal, it is obvious from following Aḥādīth

• من ابتلي بالقضاء بين المسلمين فليعدل بينهم في لحظته وإشارته ومقعده ومجلسه⁴

• من ابتلي بالقضاء بين الناس فليعدل بينهم في لحظه وإشارته ومقعده⁵

• من ابتلي بالقضاء بين المسلمين فليعدل بينهم في لحظه ، وإشارته ، ومقعده ، لا يرفعن صوته على أحد الخصمين ما لا يرفع على الآخر⁶

• قَضَى رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَنَّ الْخَصْمَيْنِ يَفْعَدَانِ بَيْنَ يَدَيْ الْحَكَمِ⁷

3) When the ‘Plaint’ is filled properly, its issues to frame completely and witnesses presented in the court then the declaration of decision should not be delay, otherwise Qādī will be a sinner.⁸

4) This is also a central point of Islamic Procedural Law, that the Qādī, who decides the suit, shall build his judgment on the basis of the apparent evidence.⁹

5) Another important procedure of Islamic Law is

أن رسول الله احتصم إليه رجلان بينهما دابة وليس لواحد منهما بينة فجعلها بينهما نصفين¹⁰

“Two men referred a dispute to the Messenger of Allah (ﷺ) concerning an animal, and neither of them had proof, so he ruled that it should be divided in halftwo men referred

¹Sūrat al-Mā'idah, Āyat:8

² Abū Dāwūd, Sulaymān b. al-Ash'ath, Al-Sunan, Kitāb al-'Aqdīyah, Bāb Fī Ṭalb al-Qaḍā', (5158), 4/504

³ al-Tirmidhī, Muḥammad b. Īsā, al-Jāmi', Abwāb al-Aḥkām, Bāb Mā Jā'a Fī al-Qaḍī Kayfa Yaqḍī (1987), 4/355

⁴ al-Ṭabarānī, Abū al-Qāsim Sulaymān b. Aḥmad b. Ayyūb. (1403 AH), al-Mu'jam al-Kabīr, Maktabat al-'Ulūm wal-Ḥikam, Mosul (19574), 23/284

⁵ al-Bayhaqī, Abū Bakr Aḥmad b. Ḥusayn b. 'Alī. (1344 AH), al-Sunan al-Kubrā, Majlis Dā'irat al-Ma'ārif al-Nizāmiyah, Ḥayder Ābād (20961) 10/135

⁶ al-Bayhaqī, Abū Bakr Aḥmad b. Ḥusayn b. 'Alī. (1344 AH), al-Sunan al-Kubrā, Majlis Dā'irat al-Ma'ārif al-Nizāmiyah, Ḥayder Ābād (20962) 10/135

⁷ al-Bayhaqī, Abū Bakr Aḥmad b. Ḥusayn b. 'Alī. (1322 AH), al-Sunan al-Sughrā, Maktabat al-Rushad, Riyāḍ (4179) 9/46

⁸ Abū Dāwūd, Sulaymān b. al-Ash'ath, Al-Sunan, Kitāb al-'Aqdīyah, Bāb al-Qaḍī Yaḍī Wa Huwa Ghaḍbān (3590), 3/330

⁹ Ibn Nujaym, Zayn b. Ibrāhīm b. Muḥammad Ḥanafī. (n.d) Al-Baḥr al-Rā'iq Sharḥ Kanz al-Daqā'iq, Ed. 2nd, Dār al-Ma'rifa, Beirut, 7/258

¹⁰ al-Bayhaqī, Abū Bakr Aḥmad b. Ḥusayn b. 'Alī. (1344 AH), al-Sunan al-Kubrā, Majlis Dā'irat al-Ma'ārif al-Nizāmiyah, Ḥayder Ābād 10/150

¹¹ Ibn Mājah, Muḥammad b. Yazīd Qazwīnī. (n.d) Al-Sunan, Dār al-Fikr, Beirut, Kitāb al-'Aḥkām, Bāb al-Rajulān Yad'iyān... (2330), 2/780

a dispute to the Messenger of Allah (ﷺ) concerning an animal, and neither of them had proof, so he ruled that it should be divided in half”

- 6) Who files the wrong suit, he is earn thin anger person in the eye of ALLĀH Subhānahu Wa Ta‘ālā. And who assist him, also becomes object of ALLĀH’s wrath. In this regard look following Āḥādīth

● "مَنْ حَالَتْ شَفَاعَتُهُ دُونَ حَدِّ مِنْ حُدُودِ اللَّهِ فَقَدْ ضَادَّ اللَّهَ وَمَنْ حَاصَمَ فِي بَاطِلٍ وَهُوَ يَعْلَمُهُ لَمْ يَزَلْ فِي سَخَطِ اللَّهِ حَتَّى يَنْزِعَ عَنْهُ وَمَنْ قَالَ فِي مُؤْمِنٍ مَا لَيْسَ فِيهِ أَسْكَنَهُ اللَّهُ رَدَعَةَ الْحَبَالِ حَتَّى يَخْرُجَ بِمَا قَالَ"¹

● "وَمَنْ أَعَانَ عَلَى خُصُومَةٍ بَاطِلٍ فَقَدْ بَاءَ بِعَضْبٍ مِنَ اللَّهِ عَزَّ وَجَلَّ"²

“He who assist in a dispute unjustly deserves the anger of Allah, Most High”

- 7) The voluntarily Admission of a defendant, whereby he admits the right of the plaintiff, is a valid and strongest kind of proof. An Admission is more reliable than a proof or other forms of evidence.
- 8) The voluntarily Admission of a defendant, whereby he admits the right of the plaintiff, is a valid and strongest kind of proof. ³ An Admission is more reliable than a proof or other forms of evidence.
- 9) The proof is owed from the plaintiff, and the oath is owed from the defendant. Following Ḥadīth is evident on this

"⁴ الْبَيِّنَةُ عَلَى الْمُدَّعِي وَالْيَمِينُ عَلَى الْمُدَّعَى عَلَيْهِ "

- 10) We know that, proof is of supreme importance for administration of justice. The civil cases can be proved by following direction

"نصاب الشهادة في حقوق العباد رجلان أو رجل وامرأتان لكن تقبل شهادة النساء وحدهن في حق المال فقط في المواضع التي لا يمكن اطلاع الرجال عليها"⁵

“In civil cases, evidence is only valid when given by two males, or one male and two females: but in places where males cannot be possessed of necessary information, the evidence of females alone will be accepted in respect to property”

- 11) It is better for a person that he himself should not peruse the suit personally as it is clear from the following tradition

¹ Abū Dāwūd, Sulaymān b. al-Ash‘ath, Al-Sunan, Kitāb al-‘Aqdīyah, Bāb al-Qāḍī Yaḥdī Wa Huwa Ghaḍbān (3599), 3/334

² Ibid, Kitāb al-‘Aqdīyah, Bāb al-Qāḍī Yaḥdī Wa Huwa Ghaḍbān (3600), 3/334

³ Muslim, Ibn al-Ḥajjāj b. Muslim, al-Jāmi al-Ṣaḥīḥ, Kitāb al-Ḥadūd, Bāb Man I‘tarafa ‘Alā Nafsihi Bil Zinā (1692), 3/1319

al-Ḥaṣkafī, Moḥammad ‘Alā al-Dīn b. ‘Alī al-Ḥanafī, al-Durr al-Mukhtār fī Sharḥ Tanwīr al-Abṣār, Kitāb al-Iqrār, 8/404

⁴ al-Tirmidhī, Muḥammad b. Īsā, al-Jāmi‘, Abwāb al-Aḥkām, Bāb Mā Jā’a Fī Ān al-Bayyanat ‘Alā al-Mudda‘ī (1341), 3/626

⁵ Majallat al-Aḥkām al-‘Adalīyah, (The Ottoman Courts Manual (Ḥanafī) S.1683

"عن عبد الله بن جعفر قال : كان على بن أبي طالب رضى الله عنه يكره الخصومة فكان إذا كانت له خصومة وكل فيها عقيل بن أبي طالب فلما كبر عقيل وكلني"¹.

12) Finally, Ḥaḍrat ‘Umar Fārūq (رضى الله عنه) in his famous judiciary letter wrote to one of the most responsible governors, Ḥaḍrat Abū Mūsā al-Ash‘arī (رضى الله عنه). This letter of judiciary has described the importance of the administration of justice i.e. Ādāb Qaḍā’. This letter covers almost all areas of Ādāb Qaḍā’. A complete text of this renowned letter of judiciary is mentioned below

"وأخبرنا أبو عبد الله الحافظ حدثنا أبو العباس محمد بن يعقوب حدثنا محمد بن إسحاق الصغاني حدثنا ابن كناسة حدثنا جعفر بن برقان عن معمر البصرى عن أبي العوام البصرى قال : كتب عمر إلى أبي موسى الأشعري رضى الله عنهما أن القضاء فريضة محكمة وسنة متبعة فافهم إذا أدلى إليك فإنه لا ينفع تكلم حق لا نفاذ له وآس بين الناس في وجهك ومجلسك وقضائك حتى لا يطمع شريف في حيفك ولا يئأس ضعيف من عدلك البينة على من ادعى واليمين على من أنكر والصلح جائز بين المسلمين إلا صلحا أحل حراما أو حرم حلالا ومن ادعى حقا غائبا أو بينة فاضرب له أmdا ينتهى إليه فإن جاء بينة أعطيته بحقه فإن أعجزه ذلك استحلت عليه القضية فإن ذلك أبلغ في العذر وأجلى للعمى ولا يمنعك من قضاء قضيته اليوم فراجعت فيه لرأيك وهديت فيه لرشدك أن تراجع الحق لأن الحق قديم لا يبطل الحق شيء ومراجعة الحق خير من التماذى في الباطل والمسلمون عدول بعضهم على بعض في الشهادة إلا مجلود في حد أو مجرب عليه شهادة الزور أو ظنين في ولاء أو قرابة فإن الله عز وجل تولى من العباد السرائر وستر عليهم الحدود إلا بالبينات والأيمان ثم الفهم الفهم فيما أدلى إليك مما ليس في قرآن ولا سنة ثم قاييس الأمور عند ذلك واعرف الأمثال والأشباه ثم اعمد إلى أحبها إلى الله فيما ترى وأشبهها بالحق وإياك والغضب والقلق والضجر والتأذى بالناس عند الخصومة والتنكر فإن القضاء في مواطن الحق يوجب الله له الأجر ويحسن به الذخر فمن خلصت نيته في الحق ولو كان على نفسه كفاه الله ما بينه وبين الناس ومن تزين لهم بما ليس في قلبه شاناه الله فإن الله تبارك وتعالى لا يقبل من العباد إلا ما كان له خالصا وما ظنك بثواب غير الله في عاجل رزقه وخزائن رحمته"².

In short, Qaḍā’ is a certain ordinance of ALLĀH (سُبْحَانَهُ وَتَعَالَى) and is a generally followed practice. The administration of justice is such a principled and distinguished duty that the finest of the human beings i.e. the Prophets (عليهم السلام) were chosen. The object of the administration of justice is to help a worried individual and to penalize the one who is involved in such coercion and falsification. That is why the office of a Qāḍī is regarded a trust and Qāḍī a trustee for the

¹ al-Bayhaqī, Abū Bakr Aḥmad b. Ḥusayn b. ‘Alī. (1344 AH), al-Sunan al-Kubrā, Majlis Dā’irat al-Ma‘ārif al-Nizāmiyah, Ḥayder Ābād, (11769), 6/81

² al-Bayhaqī, Abū Bakr Aḥmad b. Ḥusayn b. ‘Alī. (1344 AH), al-Sunan al-Kubrā, Majlis Dā’irat al-Ma‘ārif al-Nizāmiyah, Ḥayder

Ābād, Kitāb al-Shahādāt, Bāb Lā yaḥīl Ḥukm al-Qāḍī... (21042), 10 / 150

benefit of the public. It is an acknowledged fact that a trustee is severely asked for his responsibilities regarding the trust.

1.7. Difference between substantive law and procedural law:

Substantive law is based on written constitutional rules approved by legislature that govern how people obey the rules.

According to Black's Law Dictionary

*"That part of law which creates, defines, and regulates rights, as opposed to "adjective or remedial law," which prescribes method of enforcing the rights or obtaining redress for their invasion. That which creates duties, rights and obligations, while "procedural or remedial law" prescribes methods of enforcement of rights or obtaining redress"*¹

Furthermore,

*"The basic law of rights and duties (contract law, criminal law, tort law, law of wills, etc.) as opposed to procedural law (law of pleading, law of evidence, law of jurisdiction, etc.)"*²

It means the object of substantive law is to fix the rules for people norms.

While procedural law, mechanism of how a legal suit flows. Actually, Procedure means mechanics, technique to proceed, and manner of conducting the complete judicial trial.

As per Black's Law Dictionary

*"That which prescribes method of enforcing rights or obtaining redress for their invasion; machinery for carrying on procedural aspects of civil or criminal action; e.g. Rules of Civil, Criminal, and Appellate Procedure, as adopted by the Federal and most state courts."*³

Moreover

*"As a general rule, laws which fix duties, establish rights and responsibilities among and for persons, natural or otherwise, are "substantive laws" in character, while those which merely prescribe the manner in which such rights and responsibilities may be exercised and enforced in a court are "procedural laws" A procedure is a specific method or course of action"*⁴

In short, a procedure is the legal regulation or way for carrying on a civil case or criminal trial. The object of procedure is to realistic and foster the root of justice.

¹ Black, Henry Campbell. (1979) Black's Law Dictionary, Ed.5th, West Publishing Company. P.1281

² Black, Henry Campbell. (1979) Black's Law Dictionary, Ed.5th, West Publishing Company. P.1281

³ Ibid, p.1083

⁴ Ibid.