

Al-Ahkam As-Sultaniyyah

The Laws of Islamic Governance

**Abu'l Hasan 'Ali ibn Muhammad ibn Habib
al-Basri al-Baghdadi al-Mawardi (d. 450AH)**

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Foreword



Al-Ahkam as-Sultaniyyah of ‘Ali ibn Muhammad al-Mawardi is an important handbook written in the fifth century AH covering all the various aspects of the *deen* of Islam which are the concern and responsibility of the *Khalifah*, his *amirs*, his *wazirs* (ministers) and deputies. The rights and duties of these persons are expounded in detail – both as a reminder to persons already active in such capacities and as a guide to those who are new to such offices.

This work affords insights into aspects of the *deen* that have all but vanished in the twenty-first century of the Christian Era – matters, for example, concerning the collection and distribution of *zakah*, the payment of *jizyah*, the management of markets, the inspection of weights and measures and the overseeing of the minting of gold and silver, the organisation of the army, its provisioning, the distribution of booty, the management of the frontier *ribats*, the management of natural resources, penal law and the appointment of judges empowered to deal not only with marriages and inheritance but with all aspects of Islamic law, including the regulation of fiscal, financial and mercantile matters mentioned above.

Each chapter and section of the work is amply illustrated by quotations from the Qur’an, the *hadith* and the *Sunnah* of the Prophet, may the peace and blessings of Allah be upon him, and further testimony and support is given by examples of legal and political precedent from the lives of leading figures in the history of Islam. This work will provide a refreshing antidote to the teaching of modernists who, perceiving the *deen* of Islam to be threatened, insist on a radical rewriting of its parameters – rather than a return to the sources – as the only way forward.

It should be noted, however, that the work (written in the first half of the fifth century AH) depicts a stage in the development of Islam which, even at this early date, is manifesting a strong tendency towards empire with all its connotations of central government and extended, at times complicated, bureaucracy: to take but two examples, the divine order to, “**command the good and forbid the evil**” (Qur’an 3:104), which at the time of the Prophet, may the peace and blessings of Allah be upon him, was understood as

a responsibility of each and every man, has now become institutionalised into the concept of *hisbah* and the obligation upon all to maintain law and order has now become the domain of the ‘forces of law and order’, i.e. the state police.

Words such as *Dar al-Islam*, *Dar al-Harb*, *bait al-mal*, *mushrik*, *kafir* and the like which have no satisfactory equivalents in English and which are quickly gaining currency amongst English-speaking Muslims globally, are used throughout the translation. For in-depth definitions of their meanings, recourse should be had to the writings of Shaykh ‘Abdal Qadir al-Murabit and to the works of translation undertaken under his guidance, especially, for example, his *Root Islamic Education* and the translations of Aisha at-Tarjumana Bewley (Imam Malik’s *Muwatta* and Qadi ‘Iyad’s *Ash-Shifa*). A simple glossary of terms is, however, appended to this work.

Dr Asadullah Yate

The Court of Redress for Grievances, Injustices and Misdeeds



Judicial investigation of wrongs or abuses is concerned with leading those who have committed wrongs to just behaviour by instilling fear in them, and with dissuading litigants from undue obstinacy in their disputes by instilling a feeling of respect. Thus among the qualities demanded of the judicial investigator is that he be of imposing stature, that he ensures action follows his words, that he commands great respect, is manifestly correct in his keeping within moral bounds, restrained in his appetites, and possessed of great scrupulousness: he needs to have the strength of the law-enforcement officers, and the firmness of the *qadi* in their judicial tasks and to combine the qualities of these two types of person, so that by the majesty of his bearing he is able to execute any command with respect to both parties. If he is among those who have control over the generality of affairs, like ministers and *amirs*, he does not need to have a specific appointment to this office, since the general nature of his authority gives him jurisdiction in this; if, however, he is not of those to whom general jurisdiction has been delegated, he does need to be appointed and entrusted with this specific task, as long, that is, as all the above-mentioned qualities are to be found in him. Such a task should be assigned, in the case of general jurisdiction over cases of redress and abuse, to those who may be chosen as hereditary successors, or ministers authorised by delegation, or *amirs* of provinces; if, however, this office is restricted to carrying out whatever the *qadis* are incapable of carrying out and to the execution of whatever their power does not permit them to execute, then a person below this rank in influence and importance may be chosen, as long as he is blameless regarding his respect for the truth, and greed does not fill him with such longing that he accepts bribes. The Messenger of Allah, may the peace and blessings of Allah be upon him, investigated the dispute about irrigation between az-Zubayr ibn al-‘Awwam, may Allah be pleased with him, and a man from the Ansar. He

came personally and said to az-Zubayr, “You water, O Zubayr, and then the Ansari,” to which the latter said, “Surely he is the son of your maternal aunt, O Messenger of Allah.” The Prophet became angry at his words and said, “O Zubayr, cause it to flow over his stomach until the water reaches the ankles.” He told him to have it flow over his stomach as a reprimand for his audacity. There is a difference of opinion regarding why he ordered him to have the water flow up to the ankles, that is, whether it was to affirm a right in the form of a judgement between them, or whether to merely affirm that it was permitted – but delivered as a reprimand to the two parties.

No one sought redress for a wrong from any of the four *khulafa* as they were at the very beginning of the affair when the *deen* had just appeared among them – among men who willingly allowed themselves to be guided to the truth and who desisted from wrong action by mere admonition; any disputes occurring between them were confined to dubious matters, which judicial judgement then explained to them; if a brutish bedouin committed an injustice, admonition alone sufficed to make him renounce it, and rough treatment made him act correctly. The *khulafa* of the first generations restricted themselves to settling disputes between them by way of judicial decisions, that is, by applying the yardstick of Truth to these disputes, aware as they were of the people’s complete acceptance of the necessity of this Truth.

‘Ali, however, at a time when his *Imamate* was weakening as a result of people’s interference and their headstrong and excessively individualistic political action, found himself obliged to make great efforts to arrive at solutions to obscure points of law. He was the first to pursue this path and he achieved mastery in it, although he did not end up by devoting his attention solely to cases of redress and abuse, as he was able to do without such cases: thus in the matter which came to be known as the *Mimbariyyah* case (as he was questioned about it on the *mimbar*), he replied, “The eighth part (of the inheritance) has become the ninth part,” or in the case where a young girl pinched another she was carrying on her back, with the result that the latter fell and broke her neck, he judged that the blood price be divided in three parts; or when he decided regarding a baby claimed by two women.

After him, however, such cases became more frequent – so much so that people would openly act unjustly towards each other and try to get the better of each other; admonition and exhortation were not sufficient to prevent them from mutual hostilities and recriminations. There was thus a need for a judiciary – which combined the power of authority with the fairness of the legal system – to investigate cases of wrongdoing and abuse in order to prevent people from taking advantage of each other, and to see that justice was done for those taken advantage of. The first in assigning a specific day for the investigation of claims by those who had suffered wrong actions – without actually taking part directly himself – was ‘Abd al-Malik ibn Marwan. If the latter had to deal with some

problem, or if he needed an executory judgement, he would hand it over to his Qadi Abu Idris al-Awdi; the litigants would accept his judgements out of fear of ‘Abd al-Malik ibn Marwan who was aware of the circumstances and reasons for the decision. Thus Abu Idris was actually conducting the cases and ‘Abd al-Malik was giving the orders.

Thereafter the injustice of officers and the oppressive conduct of the haughty increased to such a point that only the most powerful authority and most strict of commands could restrain them. ‘Umar ibn ‘Abd al-‘Aziz, may Allah have mercy on him, was the first person to undertake judicial investigation of wrong actions and abuse: he would reject all such wrongdoing and would maintain respect for just and fair practices, or re-establish such practices if necessary; he reinstated goods seized unlawfully by the Bani Umayyah to their owners with such force and roughness that it was said, “We fear the consequences of such repression for you,” to which he replied, “I am at pains to guard my actions before Allah and fear Him every day on account of them – but my fear for the Day of Raising Up, from which there is no protection, is still greater.” Later, several of the Abbasid *khulafa* sat in judgement, the first of these being al-Mahdi, then al-Hadi, al-Rashid, al-Ma’mun and finally al-Muhtadi, with the result that goods and property were returned to their rightful owners.

The kings of Persia had considered this to be amongst the fundamental practises of sovereignty and the rules of justice: correct behaviour and equity amongst the general population could only be established by observing such practices.

During the *Jahiliyyah*, at a time when those claiming leadership multiplied, when those behaving like chiefs became widespread, when people tried to get the better of each other, and when they acted unjustly towards each other, such that no authority was able to resolve this state of affairs, the Quraysh made an oath to do away with these abuses and to see that justice was given to those suffering at the hands of the wrongdoers. The reason for this, according to Zubayr ibn Bakkar, was that a Yemeni man from the Banu Zubayd came to Makkah to perform the ‘*Umrah* with merchandise, and a man from the Banu Sahn, said to be al-‘As ibn Wa’il, bought it from him; the latter refused to acknowledge what he owed the other who in turn demanded his money or return of the goods. When he still refused his demand, he got up on the wall surrounding the Ka’bah and declaimed the following at the top of his voice:

O Banu Qusayy, help someone who has been unjustly deprived of his goods in the middle of Makkah, far from his home and his people, his hair dishevelled, in the state of pilgrimage, still within the sanctity of the station of Ibrahim and the surrounding wall and the Black Stone; is the wealth of someone on ‘Umrah to be respected by the Banu Sahn or is it to be left as lost?