

## Pathology of Judges from the Perspective of Islamic Taught

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### Abstract

One of the main judicial pillars of the government is the judges, who interact with the people and are exposed to some harm due to their position in the government. The most important examples of such harms that have been emphasized in the doctrine of Islam are: the corruption of lands and dissatisfaction of people regard the government, the creation of greed in the owner of power to change the court vote in their favor, the despair of the weak and vulnerable part of people of the society from Justice and realization of their rights.

These injuries and the effective factors in their occurrence and the consequences and social, economic and cultural anomalies caused by them have been taken into account in Islamic ideology. Recognizing these damages is useful in adopting the appropriate approach by judges.

**Keywords:** Pathology, Judges, Islamic Doctrine, Government

### Statement of the Problem

The concept of harm in the field of political and social issues is the emergence of defects, incompetence and departure from the natural state, and finally the destruction.<sup>1</sup> This word has been interpreted as "calamity" in Islamic taught, which means a destructive which strikes something.<sup>2</sup>

In fact, pathology is the identification of those important and effective factors whose existence or continuity can stop or noticeably slow down the realization process of any system.<sup>3</sup>

Adjudication is the most important pillar of the judicial system, which is in contact with the people directly, and its performance effects gaining people's satisfaction. The dignity and position of a judge is the same as the dignity of a governor and ruler and in

teachings of infallible Imams, judging is considered one of the positions of prophets and divine saints.<sup>4</sup>

The most important harm in the relationship between judges and people is due to their injustice in ruling and how they deal with people, and this injustice leads to many disasters.

This article considers the pathology of judges.

Some of the most important questions about judges' harms are:

1. What are the main and harmful components in the interaction of judges with people in doctrine of Islam?
2. What are the most important signs of judges' injustice from the point of view of authentic Islamic sources?
3. What are the harms caused by bribery of judges and what is the way to deal with it?
4. What solutions does Islamic doctrine offer to prevent and deal with the harms of judges?

Therefore, in the present study harmful factors, disasters caused by it, and its unfortunate social, political, and economic consequences are considered with regard to doctrine of Islam.

<sup>1</sup> Faegh, Mojtaba, *Pathology of political ethics of government officials from the perspective of Nahjolbalaghe, Nahj*, .(2014). فائق. آسیب شناسی اخلاق سیاسی کارگزاران حکومت از دیدگاه نهج البلاغه. پژوهش های نهج البلاغه، 43(13)، 143-160

<sup>2</sup> Farahidi, n.d., v.8, p410

<sup>3</sup> Dorkheim, 1994, p74

<sup>4</sup> Kulayni, 1986, v.7, p4046; Ibn Babawayh, 1994, (al-Muqna), p395; Qutb al-Din Rawandi, 1984, (Fiqh al-Qur'an), v.2, p8

One of the most important types of justice that leads to reform, hope, and encouragement of people to the government is judicial justice.<sup>5</sup>

The Holy Prophet of Islam (PBUH) emphasized on the necessity of judicial justice in his order to Imam Ali (AS) and said:

"Pay attention to the subject of judgment between people, like a person who is knowledgeable about verdict and judgment before God. Verdict and judgment is the standard and measure of God's justice, which is established on earth in order to realizing the just right of the oppressed from the oppressor, and to take the right of the weak from the strong, and to establish divine laws based on the divine tradition. The affairs of people and lands cannot be reformed except by establishing these boundaries."<sup>6</sup>

### Signs of injustice of judge

The most important sign of injustice of judge is the prevalence of bribery among them, which causes some harms. Another sign is the high level of dissatisfaction of people with the performance of judges, which has also been confirmed openly and secretly by the government's supervisory officials.

### Bribery

Bribery is one of the most important economic harms that judges are exposed to and one of the obvious signs of their injustice, which leads to many disasters if it spreads.

### The concept of bribery

Bribery means what a person gives to a ruler or a judge to verdict in his favor or as he wants.<sup>7</sup> In some dictionary books, it has been mentioned that bribery is used in cases where right is turned into wrong or wrong continues on its way.<sup>8</sup>

Bribery is called "Saht" in the term of the Holy Qur'an, which means a sin that causes disgrace and shame for its perpetrator, and "Akalon li Soht" means eaters of much forbidden, therefore bribery is called "Saht" because it is haram and forbidden.<sup>9</sup>

Bribery is strictly forbidden in Islamic taught, and it is considered one of the types of forbidden property.<sup>10</sup>

It is stated in a narration from the Holy Prophet (PBUH):

"God curse the bribe-giver and the bribe-taker, and whoever is the intermediary between them."<sup>11</sup>

In addition, the Messenger of God (PBUH) in a clear statement cursed the person who asks for a bribe to provide people's needs.<sup>12</sup>

It seems that the words of the Holy Prophet of Islam (PBUH) can be applied to government officials because they have certain rights and should not directly ask money from the people for the services they provide.

Imam Ali (AS) said regarding the ugliness and taboo of bribery:

"If a governor is unaware of the needs of the people, God Almighty will be indifferent to him and his needs on the Day of Judgment, and if he takes a gift (in return for his service), he has betrayed, and if he takes a bribe, he is a polytheist."<sup>13</sup>

In addition, in the traditions of the infallible Imams (AS)<sup>14</sup>, especially the teachings of Imam Ali (AS), taking bribes has been considered strict infidelity.<sup>15</sup> Based on these narrations, the jurists have deduced that bribery is forbidden for the judge, the ruler, and in general, all the agents of the Islamic government.<sup>16</sup>

### Harms caused by bribery

Bribery is taken to trample of a right or revive a wrong, and oppression and violation of the rights of the owners of right and the prevalence of injustice is the consequence of it, as it is stated in Nahj al-Balagha:

"...you know that the ruler on the honor, life, property, verdicts, and Imamate of Muslims... should not be a bribe-taker in verdict and judgment, in order to destroy people's rights and stop delivering the right to its owner..."<sup>17</sup>

When Ash'ath ibn Qays brought a container of sweat to the house of Imam (AS) at night in order to change his opinion about him, Imam Ali (AS) refused to accept it, and called his action a bribe, and said:

"I swear by God, if they give me the seven climates with what is under their skies, so that I sin against God by stealing the barleycorn from the mouth of an ant, I will not do such a thing..."<sup>18</sup>

In some commentaries of Nahj al-Balagha about this sermon, it is said that the speech of Imam Ali (AS) is a proof of the perfection of his justice and that he is free from oppression and violation of the rights of others.<sup>19</sup>

Therefore, the most important consequence of bribery is the violation of people's rights, oppression and infringement, and the prevalence of injustice in the government, which leads to people's dissatisfaction.

### 3-3-2- Effective factors in the injustice of judges

<sup>13</sup> Ibn Babuya, 1985, (*Thawab al-A'amal and Iqab al-A'amal*) p261

<sup>14</sup> *Fiqh al- Mansub ila al-Imam al-Ridha*, 253; Hurr Amili, 1988, (*Wasail al-Shia*) v.27, p222

<sup>15</sup> Shuayri, n.d., p156

<sup>16</sup> Ibn Idris, 1989, v.2, p166; Tusi, 1967, (*al-Mabsut Fi Fiqh al-Imamiyya*) v.8, p151; Majlisi, 1983, (*Mir'at al-Uqul Fi Sharh Akhbar Al al-Rasul*), p411

<sup>17</sup> *Nahj al-Balagha, Sermon 131*, p407

<sup>18</sup> *Ibid, Sermon 215*, p714

<sup>19</sup> Hashemi Khui, 1979, v14, p296

<sup>5</sup> Nouri, 1987, v.13, p151; Johari Basri, n.d, p140; Tabari Amoli Saghir, 1992, p113

<sup>6</sup> Nouri, 1987, v.13, p151

<sup>7</sup> Askari, n.d., p166; Fayyumi, n.d., v.2, p228

<sup>8</sup> Al-Hamiri, n.d., v.4, p2507; Tarihi, 1996, v.1, p184

<sup>9</sup> Raghayb Isfahani, n.d., p400

<sup>10</sup> Ayyashi, 1964, v.1, p322; Qomi, 1988, v.1, p170

<sup>11</sup> Ibn Abi Jumhur, 1984, v.1, p266

<sup>12</sup> Kulayni, 1986, v.5, p559

In the occurrence of judges' injustice, internal factors such as Weak personality, lack of knowledge and expertise, haste, greed, impatience, and boredom are effective, and the rulers' approach in wrong selection, lack of attention to needs, and lack of supervision in judges' performance is the most important external factors of causing this harm.<sup>20</sup>

### A) Internal factors:

The most important internal factors of judges' injustice are:

#### 1- Weak personality;

One of the most important internal factors of the injustice of judges is the weak personality that has some harms such as Being in a tight and difficult spot, stubbornness with the parties of case, discourage to return from a mistake, selfishness, and deviating from the right as a result of the flattery of others, irritability due to the inspiration of the parties of case and laxity in realizing rights.<sup>21</sup>

#### 2- Lack of knowledge and expertise of judge;

Another internal factor of judges' injustice is lack of enough knowledge and expertise in understanding judicial rulings and how to adapt them to Islamic rulings. If the judge does not have the necessary knowledge and awareness, he will rule based on his personal opinions, which will result in roar the blood of the innocent and the shout of those whose heritage has been destroyed.<sup>22</sup>

#### 3--Haste in issuing verdict;

Haste is one of the other internal factors that cause injustice in judgment. In some cases, the judge hastens to issue a verdict without a complete and comprehensive investigation and he is satisfied with a little understanding of the issue, or when faced with doubts, instead of delaying, he hastens, which results in the harm of committing forbidden and falling into destruction.<sup>23</sup>

#### 4-Greed;

Greed is another internal factor of judge's injustice. Imam Ali (AS) says in this regard:

"Greed is the plague of judges is."<sup>24</sup>

Greed for money and position takes away the necessary freedom to recognize the truth and judge justly<sup>25</sup>, and it creates the causes of ruin and destruction and brings oppression.<sup>26</sup>

#### 5- Impatience and boredom in identifying evidences;

<sup>20</sup> Sharifi, M. and Faegh, M., *A Pathological Study of Morality among Authorities of Theocratic Regimes Based on Nahj al-Balagha, Quarterly Journal of Nahj al-balagha*, v.4, Num15, Fall 2016. شریفی، محمد، و فایق، (2016). آسیب‌شناسی اخلاقی کارگزاران حکومت دینی. بر نهج‌البلاغه. فصلنامه پژوهشنامه نهج‌البلاغه، 4(15)، 1-20.

<sup>21</sup> Nahj al-Balagha, Letter 53, pp1009, 1010

<sup>22</sup> Ibid, Sermon 17, p72

<sup>23</sup> Ibid, Letter 53, p1009; Kulayni, 1986, v.1, p68; Jilani, 2008, v.1, p96

<sup>24</sup> Amadi, 1987, p335

<sup>25</sup> Nahj al-Balagha, wisdom 171, p170; Amadi, 1987, p298

<sup>26</sup> Nahj al-Balagha, Letter 31, p929; Ibn Fahad Hilli, 1986, p313;

Deylami, 1987, (A'lam al-Din), p340

Patience is one of the important qualities of judges; the lack of patient causes many damages. In some cases, the judge get in difficulty with the coming and going of the litigants and their conflicting opinions and gets into trouble; the most important factor of such situation is impatience and boredom. The Imam Ali (AS) said about this in the covenant of Malik Ashtar:

"Let him be less bored by the comings and goings of brawler, and be more patient in discovering matters."<sup>27</sup>

### b) External factors:

The most important external factors of judges' injustice include the following:

#### 1- Incorrect choice;

The first external cause of harm in the relationship between judges with people is due to the selection of unworthy people to judge between the people by the rulers and governors. Therefore, Imam Ali (AS) ordered Malik Ashtar to select the most worthy people for judging in his government regulation, saying:

"Choose the best person for you to judge among people."<sup>28</sup>

#### 2- Failure to attend to the needs of judges;

Failure to take care of judges' financial affairs makes them need people and opens the way for bribery and betrayal; it is stated in letter 53 of Nahj al-Balagha:

"Be liberal in paying him (the judge) the amount that will satisfy his needs so his need for people will decrease."<sup>29</sup>

This investigation is not limited to financial and economic affairs; if the judges do not have a special position with the rulers and governors, it is possible that the political and social leaders and the relatives of the rulers and officials are greedy for influencing them or make accusations against them.<sup>30</sup>

#### 3- Lack of supervision and inspection of judges' performance;

After considering the economic and social affairs of the judges and creating a safe social and political environment for them, it is necessary for the rulers to openly and secretly inspect the performance of the judges. If the rulers ignore the issued verdicts and the way judges deal with the people, the judges may be harmed by their performance, and as a result, people will dissatisfy; therefore, Imam Ali (AS) asked his governors to handle and supervise the affairs of the judges, and said:

"Check the judgment of the judge as much as possible."<sup>31</sup>

### Harms caused by injustice of judge

<sup>27</sup> Nahj al-Balagha, Letter 53, pp1009-1010

<sup>28</sup> Ibid

<sup>29</sup> Ibid, p1010. In some interpretations of Nahj al-Balagha, it is mentioned about the reason of abundant grant to the judges; So that he does not have an excuse to take bribes and to rule truthfully and correctly in matters. (Feydh al-Islam, 2000, v.5, p1011)

<sup>30</sup> Ibid

<sup>31</sup> Ibid

The meaning of the injustice of the judges is injustice in the verdict and the way of dealing with people in speech, behavior, how to look and pay attention, the place and dignity of judgment.

Injustice in verdict causes corruption of lands and people's dissatisfaction with the government.<sup>32</sup>

The injustice of the judge in his speech and behavior with the litigants on the one hand has caused greed among the elders and those in power to change the court's verdict in their own favor, and on the other hand, it has led to the despair of the weak and vulnerable part of the society from justice and realizing their rights. In a letter to Muhammad ibn Abi Bakr, Imam Ali (AS) paid attention to how the judge looked at the parties to of dispute and said:

"And be humble and open-minded towards them when you sit in judgment among people and do not differentiate between parties of the dispute in your attention as well as looking, so that the elders do not get greedy to oppress the weak, and the weak do not despair of your justice."<sup>33</sup>

In this letter, injustice in view and attention is taken into consideration in general, and its consequence is considered to be the greed of the elders and the despair of the weak from the justice of the government. In another statement of Imam Ali (AS), the greed of his relatives and friends and the despair of his enemies about the his justice is considered as the consequence of his injustice in his speech, look and attention to the dispute parties, that is, in the justice-oriented government of Imam Ali (AS), even the enemies' despair about the judges' justice Is taken into consideration.<sup>34</sup>

How the judge talks to the parties of dispute is one of the other harms. Imam Ali (AS) dismissed Abu al-Aswad Du'ali from the position of judge because of bad words and shouting at the parties of dispute, which indicates the importance of the position of justice in the speech of judges.<sup>35</sup>

The place designated for the judge's judgment is another harm to the relationship between judges and people is. If the judge be in a place where it is difficult for the dispute's parties to go, on the one hand, it prevents people from going to the court to resolve disputes and judicial problems, and on the other hand, this action may be attributed to the judge's weakness.

When Shurayh made his house the place of handling claims, Imam Ali (AS) forbade him from this action and ordered him to judge people in the mosque so that he would be closer to justice and away from weakness and indolence.<sup>36</sup>

## Strategies to prevent the injustice of judges

<sup>32</sup> Nouri, 1987, v.13, p151; Ahmadi Mianji, 1998, (Makatib al-Rasul), v.2, pp232-233

<sup>33</sup> Ibn Shayba Harrani, 1983, p177

<sup>34</sup> Kulayni, 1986, v.7, p413

<sup>35</sup> Ibn Abi Jumhur, 1984, v.2, p343

<sup>36</sup> Ibn Hayyun, 1965, (Da'a'im al-Islam), v.2, p534; Majlisi, 1985, (Malaz al-Akhyar), v.10, p28

The most important way to prevent damage to the relationship between judges and people depends on the true orientation of rulers and governors. The rulers must first make their utmost attention and effort in selection, and appoint competent, righteous, scholarly, and expert persons in the position of judge.<sup>37</sup>

In the next step, the rulers must fully satisfy the needs of the judges. These economic, political, and social needs should be met in such a way that it does not create any dependence and reliance on the judge; Imam Ali (AS) says in this regard:

"No choice but to have a judge and his rights, and it is abominable that the salary of a judge be in the responsibility of the people for whom he judges, and it should be paid from the public treasury."<sup>38</sup>

In addition, three solutions to prevent bribery of judges are presented in this research:

### 1- Rulers' full attention to the livelihood and essential needs of judges;

In the first step, the rulers and officials should take proper approach to solve the financial needs of their employees and subordinates so that they do not need to betray and take bribes, as Imam Ali (AS) emphasized the necessity of paying salaries to government officials.<sup>39</sup> In his advice to Malik Ashtar, he considered paying sufficient salaries and completely solving the financial needs of agents as an important factor in preventing their economic deviation, and they ask him to be kind, needless, and unflinching in handling the affairs of his subordinates as parents handling the affairs of their children:

"So attend to their affairs as a parent attends to the affairs of their child, and the thing by which you make them strong should not be magnified in your eyes, and the favor that you have committed towards them should not be considered small, even if it is small; because your kindness makes them benevolent and having good suspicion towards you."<sup>40</sup>

### 2- The steady emphasis of rulers and managers on avoiding bribery;

Rulers and senior managers should be a worthy model in avoiding and fighting strongly against bribery for their subordinates with proper orientation in speech and behavior, as Imam Ali (AS) emphasized on fighting against bribery in his speech and behavior during his reign. He had emphasized on the necessity of avoiding bribery and warned the agents of its sinister consequences in many occasions in his statements. It is stated in a narration from him:

"Avoid bribery, which is strict infidelity, and the bribe-taker does not smell the fragrance of heaven."<sup>41</sup>

In practice, Imam Ali (AS) also fought against bribery, and in cases where he was suspected of bribery, he scandalized the bribe-

<sup>37</sup> Nahj al-Balagha, letter 53, p999; Ibn Abi Jumhur, 1984, v.2, p342

<sup>38</sup> Ibn Hayyun, 1965, (Da'a'im al-Islam), v.2, p538

<sup>39</sup> Ibn Hayyun, 1965, v.2, p538

<sup>40</sup> Nahj al-Balagha, Letter 53, pp1005-1006

<sup>41</sup> Shuayri, n.d., p156



giver with a firm confrontation, such as in the case of Ash'ath, Imam Ali (AS) disclosed the secret of pretending the sweet as a gift, and reprimanded him.<sup>42</sup>

So ruler, governor, judge, and all managers as a model for their subordinates should deal with this evil economic harm in speech and action.

### 3- Rulers' supervision to performance of judge;

Another way to deal with bribery is to closely monitor the performance of government officials, as Imam Ali (AS) said in his order to Malik Ashtar:

"So take care of their affairs and appoint honest and faithful people to inspect them, because your secret inspection will make them trustee and cause them to treat people with kindness and gentleness."<sup>43</sup>

### Ways to deal with judges' injustice

After choosing the judges properly and taking full care of their needs, the rulers should closely monitor their performance and in case of any injustice, remove them from their position with decisiveness, as Imam Ali (AS) dismissed Abu Aswad him from the position of judge while he shouted at the parties of the dispute.<sup>44</sup>

In addition, the Imam (AS) in an order to the Shurayh, asked to inform him (AS) before issuing any verdict:

"Don't execute a verdict about retribution or one of Hadd from divine punishment or a right of Muslim rights until you inform me before implementing it."<sup>45</sup>

This approach indicates the strict supervision of the Imam (AS) on the performance of the judges.

### Conclusion:

The following results are obtained from the research, the:

1. The most important sign of judges' injustice is the prevalence of bribery among them, and another sign is vast people's dissatisfaction with their performance.
2. The most important internal harmful factors for judges are Weakness of personality, lack of knowledge and expertise, haste, greed, impatience, and boredom.
3. The most important external factors of judges' injustice are lack of proper selection, lack of attending to their needs, and lack of supervision of their performance.
4. The most important ways to prevent harms of judges are: rulers' full attention to judges' livelihood and essential needs, rulers' and managers' continues emphasis on avoiding bribery, and rulers' supervision of judges' performance.

5. The most important way to deal with the injustice of judges is to dismiss and judge them.

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<sup>42</sup> Nahj al-Balagha, Sermon 215

<sup>43</sup> Ibid, Letter 53, pp1011-1012

<sup>44</sup> Ibn Abi Jumhur, 1984, v.2, p343

<sup>45</sup> Kulayni, 1986, v.7, p413; Majlisi, 1984, (Mir'at al-Uqul), v24, p277

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