

The Importance and Rule of the Judiciary and Its Auxiliary Institutions until the End of the Abbasid Era

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Introduction

Judiciary is extremely important to human societies; And that the degrees of progress and advancement of nations depend on the existence of the judiciary; Because if the judiciary is found in a nation, it spreads security, safety and stability in it. A just judiciary would implement the Sharia and the law. It implements this Sharia in organizing people's lives and determining their rights. The judiciary gives everyone who has the right his right, and stops the oppressor from committing injustice, and takes the right from him. Giving this right to the oppressed, ending disputes, ensuring safety for these societies, and preserving them, for it is in the hands of the weak a solid weapon, with which he fends off the tyranny of the strong, breaks his power and severity, reduces his tyranny, and prevents his domination, and in the hand of the strong it is a lamp that lights the path of truth. If you try to dissuade him from going ahead.

Islam has confirmed it with peremptory evidence from the Holy Qur'an and the frequent Sunnah with many verses, except for its importance and danger at the same time. It is a dangerous position, a high and important position, and it is dangerous and high in stature as much as it bears the weight of responsibility, great responsibility and reprimanding the conscience; The judge is that supreme judge, and the supreme authority, who sits on the lofty platform of judgment; So that the oppressed from his oppressor and the oppressed from his oppressor may seek help from him, and he represents the dear with the humiliated, and we see how the opponents stand in the hands of the judge as equal as the teeth of a comb, for he is a divine position for the prophets, and one of the tasks entrusted to them.

God Almighty said: (*O David, We made you a steward over this land, so judge between the people with justice, and do not follow the desire, not it diverts you from Allah's path. Those who stray from Allah's path will have a severe punishment, for having ignored the Day of Account*”). God made the caliphate's guardianship over

the king in the land to rule among its people, and the Messenger (peace and blessings of God be upon him) himself took charge of judging between people, so there is no judge but him in the city, and he is the one who judges and supervises the implementation in compliance with no other. God Almighty has decreed: (***We revealed to you the Book, in truth***)⁽¹⁾ and the Almighty said: (***So judge between them according to what Allah revealed***)⁽²⁾ and the Messenger (peace be upon him) appointed judges for some regions and specified the sources of judgment for them.

Therefore, it was the Messenger (peace and blessings of God be upon him) who assumed that position despite the greatness of his responsibilities at the beginning of the call. The Holy Qur'an commanded litigation to the Prophet (peace be upon him) so that his ruling would be mandatory and it would become a judiciary exercised by the state with known legitimate sources and a philosophy in the ruling for verification. The Almighty said: (***But no, by your Lord, they will not believe, until they call you to arbitrate in their disputes, and then find within themselves no resentment regarding your decisions, and submit themselves completely***)⁽³⁾.

He used to sit for the judiciary and settle disputes and lay down the general basic rules for the nature of the ruling so that it would be the first building block of the basic system for the judicial authority. He (may God bless him and his family and grant them peace) used to rule based on the evidence, and this is confirmed by Messenger of Allah (peace be upon him) said: (***Verily, I am only a human and the claimants bring to me (their disputes); perhaps some of them are more eloquent than others. I judge according to what I hear from them***). ***So, he whom I, by my judgment, (give the undue share) out of the right of a Muslim, I in fact give him a portion of (Hell) Fire***")⁽⁴⁾. He sends judges to the states of the Islamic State and takes a clerk to judge him⁽⁵⁾ and instructs the importance of the judiciary and the greatness of its responsibilities. In his time (peace be upon him) he said to Ali bin Abi Talib (peace be upon him): (***Look at judging between people a look of knowledge of the status of judgment with God, for judgment is the balance of God's justice that was placed on earth to do justice to the oppressed from the oppressor, to take the weak from the strong, and to establish God's limits on its laws and its platform that the servants and the country are not reformed except upon them***)⁽⁶⁾. He also points out the danger

¹ Women: 105.

² The Table: 48.

³ Women: 65.

⁴ Al-Hurr Al-Amili, Wasa'il Al-Shi'ah, 27/233.

⁵ Al-Mawardi, Literature of the Judge 2/58.

⁶ Al-Nouri, Mustadrak Al-Wasail, 2/443.

of assuming the judiciary for someone who is not worthy of him, so he (peace be upon him) said: (*“He who has been appointed a qadi among the people has been killed without a knife”*)⁽⁷⁾.

Therefore, the judicial organization evolved with the expansion of the Islamic state and diversified according to the requirements of the need until it became a judicial organization and an authority independent of the caliphate, to be headed by the judge of judges, which today is like the (Supreme Judicial Council) and communicates directly with the caliph without mediation.

Research Objectives

(The importance and rule of the judiciary and its auxiliary institutions) to know how the judiciary and its judicial rulings work, and how the judiciary developed in the era of the first message through the development and modernization of judicial systems, which drew from all its provisions the Holy Qur’an and the Prophet (peace be upon him), and how it cast a shadow over the Rashidi era and features of its development in The cities of Basra and Kufa, and the developments in the judiciary in the Umayyad era, highlighting the great transformation of the judiciary in the Abbasid era.

One of the reasons for choosing this topic is that Islam has a judicial organization and a judicial institution that has progressed throughout the ages, and it does not need to borrow and quote the alleged with flimsy pretexts and it will appear through the research, because foreign systems are far from the Islamic judicial system, and when we follow the steps of the research it becomes clear to us the depth and Islamic theorizing in This field also shows us that the foundations of this organization emanated from the Holy Qur’an, and we have mentioned that the verses that were exposed to the judicial system are many.

The judicial organization is integrated in Islam and enjoys legitimacy and structure as is the case law, whose owners claim that they have a leading role in this, considering that the Islamic judicial organization in their view is nothing but scattered teachings and texts subject in its organization and opposition to individual whims, which is similar to the teachings of the catechesis in contrast. Sophisticated systematic teaching, and the judiciary enjoyed independence from the authority of the political ruler except in some periods that were subject to the control of the ruling authority. Does the ruler have the authority to dismiss the judge or does he enjoy immunity and the nation has a role in that, and that the conditions required in the judge are a foregone conclusion or the situation changes Can it create a legality to act on these

⁷ Al-Hur Al-Amili, Wasa’il Al-Shi’ah 27/19.

conditions, such as the enactment of legitimate laws or the establishment of a legitimate religious government?

I divided my research into an introduction and three sections that dealt with in the first topic: the importance of the judiciary, and the second topic was entitled: Judicial judgment and its implementation, and the third topic was: Auxiliary judicial institutions.

This study relied on a large number of various sources and references. Those sources and references provided me with information that woven their axes, and I will address here the most important ones, classified according to the types of dates, including:

- 1- The major classes: Abu Muhammad bin Saad Al-Zuhri, who died in (230 AH), who reported great benefits in the research.
- 2- The layers of Khalifa bin Khayat: Abu Amr Al-Basri (240 A.H.)
- 3- Akhbar al-Qada': Waki' al-Qadi (306 AH), and the Book of Judges' News is the oldest judicial encyclopedia and one of the oldest that we have come to in the news of judges. Its publication is located in three volumes, and it includes the translations of judges in all Islamic countries, in the first three centuries, with a mention of their doctrines in their jurisdiction And verifying their lineages, tribes and methods, and who narrated the hadith from them, with mentioning a part of the narration of those who were not well-known among them, and it included important official documents, on the cases and cases that topped the topics of the first Islamic judiciary, and the first judges to translate for them: Imam Ali bin Abi Talib (Peace be upon him), and Waki' Adiba was a poet, and he is the grandfather of the famous poet (Ibn Waki' Al-Tanisi), the author of the book (Al-Munsef) on the thefts of Al-Mutanabbi, I benefited from it in all chapters.
- 4- Layers of Jurists by Shirazi Abu Ishaq Ibrahim bin Ali (476 AH), this is a brief book on the mention of the jurists, judges and their lineage, the amount of their ages and the time of their death, and what evidenced their knowledge of the praise of the virtuous upon them, and mentioned those who took knowledge from them from their followers and companions, and began with the scholars of the Companions about them, Then after them from the followers and the followers of the followers.
- 5- The Book of Royal Judgments: Abu Al-Hasan Al-Mawardi (d. 458 AH), as it contained the required article related to the nature of judgments issued by judges, as well as mentioning the functions of the judge, the conditions for his selection and his jurisprudence that were focused in the context of achieving justice, as it was one of the main sources that influenced the research in all its chapters.

The First Topic: The Importance of the Judiciary

The development of mankind and its transition to civilized stages as the urgent circumstances of the judicial institution increased, and all societies needed it without exception, whether it was an Islamic or non-Islamic society. That is why the judiciary and its institution were one of the pillars upon which Islam relied in establishing its state through the judiciary, and it became a necessity for society ⁽⁸⁾. The Almighty said (*So judge between them according to what Allah revealed*) ⁽⁹⁾. That is because the system of the human race depends on it, so there must be a judge who takes care of the oppressed from the unjust by forbidding what is wrong and enjoining what is right ⁽¹⁰⁾, stopping bloodshed, protecting honor and wealth, and respecting rights in and through God. Therefore, we find that the judiciary in Islam occupied a prominent position and assumed a high position in order to achieve the noblest goals, which is to establish the balance of justice on earth and to implement the principles of truth in it ⁽¹¹⁾.

Therefore, Islam concerned itself with great care and guarantees for the one who performs this trust in Paradise, in order to preserve it from being spoiled, rights lost, the weak being digested, and injustice spreading. 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*) ⁽¹²⁾. Thus, in order to establish justice among people and spread it in all their affairs, he made the judiciary, so that the adherence of nations to this matter became the title of their happiness and the mark of their power and sovereignty, and it is the origin and basis in setting the systems and legislation governing all their conditions in their dealings and interactions of their lives ⁽¹³⁾.

Therefore, it is considered one of the most dangerous and most important positions, in which it was the establishment of truth, the achievement of justice, the maintenance of rights, the protection of the weak, and the rescue of people from injustice and aggression.

⁸ Zaidan, The Judicial System, p. 13.

⁹ The Table: 48.

¹⁰ Al-Qurashi, Baqir Sharif, Government and State Administration, p. 333

¹¹ Al-Kubaisi, Hamad Obaid, and others, Al-Madkhal, p. 232; Amara, Muhammad, Islam and Human Rights, p. 55.

¹² Ibn Dawood, Sunan 3/299.

¹³ Ibn Majah, Sunan 2/ 776.

That is why we find the Prophet (peace be upon him) when Imam Ali (peace be upon him) was sent to Yemen to judge and that he struck the chest of Imam Ali, so Imam Ali said from that day that I never doubted the judiciary ⁽¹⁴⁾.

The Messenger (may God bless him and grant him peace) took over the judiciary himself and was interested in the judiciary and laying down its principles, and he was the reference in disputes and settling disputes. The texts of the Shariah explained the pillars of governance and its controls, as in what he (peace be upon him) said during his reign to Ali bin Abi Talib (peace be upon him): (***Look at judging between people a look of knowledge of the status of judgment with God, for judgment is the balance of God's justice that was placed on earth to do justice to the oppressed from the oppressor, to take the weak from the strong, and to establish God's limits on its laws and its platform that the servants and the country are not reformed except upon them***) ⁽¹⁵⁾. He Also, (peace be upon him) said: (***Verily, I am only a human and the claims bring to me (their disputes); perhaps some of them are more eloquent than others. I judge according to what I hear from them***)). So, he whom I, by my judgment, (give the undue share) out of the right of a Muslim, I in fact give him a portion of (Hell) Fire" ⁽¹⁶⁾. In compliance with the command of God Almighty, His decree was (***We revealed to you the Book, in truth, so that you judge between people according to what God has shown you. And do not be an advocate for the traitors***) ⁽¹⁷⁾.

Their concern was that it was the clear field of application of Islamic law, so this covenant was a consolidation, rehabilitation, and establishment of the districts and rulings. They have independence, they are not subject to anything but the authority of heaven, so no claim is taken away from him, and his ruling is not reversed except in the event that it violates the legal provisions. Detailing in this area will come in its place, in addition to what has been left of them from a practical year of application in the judiciary. The Imam, the Commander of the Faithful, Ali (peace be upon him), devoted his life to live alongside the Caliphs to correct the deviation that is occurring and what the young state and religion needs him to establish for him on the basis of the Qur'an and the Sunnah that he lived moment by moment and what the Prophet prepared for him for this task. His experience in those years was rich and varied in judicial methods, in pleading, investigation, methods of judgment, appointment,

¹⁴ Al-Qurashi, Government and State Administration, p. 335.

¹⁵ Al-Hurr Al-Amili, Al-Wasail, 27/233.

¹⁶ Al-Hurr Al-Amili, Al-Wasail, 27/235.

¹⁷ Women: 105

dismissal and follow-up, and fairness to the oppressed even with himself, but even in formal and psychological matters in pleading ⁽¹⁸⁾.

This interest was not confined to the era of the Prophet or the Rightly Guided Caliphate, but rather we find it in the ages that followed it in terms of reality, achieving justice and the independence of the judiciary. We find that interest has become in terms of form, and it has become a well-developed judicial system, and mechanisms have been formed to appoint, dismiss, distribute, and pay judges ⁽¹⁹⁾.

Even their dress and their judicial uniform ⁽²⁰⁾ and the place of the judiciary, which is called today the court or the house of justice, and the time of the judiciary, as well as became clearer in the separation of powers. Authority The Hisba Judiciary was an independent judicial institution, and from the manifestations of development in those eras, it had a bureau and records, and the legal aid system appeared.

The great role of the judiciary in any society and the sensitive position depends on the safety of society, the establishment of security, the spread of justice and the maintenance of rights, freedoms and sanctities. It is the basis of social balance and by which people are secure in their lives, money and honor if its goal is to establish justice.

Also, there is a lot of warning against assuming this honorable position for those who are not qualified is to pay attention to the judiciary, the correct judiciary from ranks and positions like the emirate, as it is a branch from the tree of the general presidency of the Prophet (may God bless him and grant him peace) and his successors ⁽²¹⁾. Which is what is meant by the Almighty's saying: (*O David, We made you a steward over this land, so judge between the people with justice, and do not follow the desire, not it diverts you from Allah's path. Those who stray from Allah's path will have a severe punishment, for having ignored the Day of Account*) ⁽²²⁾. Also, from the judgment in the Almighty's saying: (*O, John! Hold firmly to the Scripture!*) *And We gave him wisdom from childhood*) ⁽²³⁾.

¹⁸ Al-Hurr Al-Amili, Al-Wasail, 1/201.

¹⁹ Al-Zuhaili, Islamic Jurisprudence and its Evidence/8/5928-5929.

²⁰ See: Al-Tusi, Al-Mabsout 8/84-85; Al-Tusi, end p. 367; Ibn Qudamah, al-Mughni 10/90-91; Ibn Abi al-Dam, Judgment Literature 1/315; Al-Mohaqiq Al-Hilli, The Laws of Islam 4/68; The Second Martyr, Al-Rawdah Al-Bahiya 3/217; Jewels of speech 40/51.

²¹ Najafi, Jawahir al-Kalam, p. 123.

²² Saad: 26

²³ Merry: 12

Imam Ali (peace be upon him) says to Shureh his judge on Kufa, warning him of the danger of this position: (*O Shureh, you have sat in an assembly that only a prophet or a prophet's successor or a wretch can sit on*)⁽²⁴⁾.

Also, the saying of Imam al-Sadiq (peace be upon him): (*Fear the government, but it is the imam who knows the just judge among Muslims, as a prophet or an Imam*)⁽²⁵⁾.

It is not permissible for him to take this position from someone who is not qualified to judge, and there is no lesson for him only because of the people's belief in him, but the lesson is also for his knowledge of himself. The thing that the jurists emphasize are the eligibility controls that are directly related to the validity of the judicial work, which is diligence and justice. Al-Yazdi stated: (*If he knows from himself that there is no justice or lack of ijihad, it is forbidden for him to oppose him, even if the people in his justice and ijihad*)⁽²⁶⁾.

Thus, everyone who is appointed as ruler among Muslims, whether it is an Emir, a judge, or a policeman, is in control, and everything that was in their punishment of death, and who is within one of the limits of God Almighty, and disciplines the truth, is lost; What came from injustice, famous, certified, he lute in the baptized, and the mind in wrong deeds, as well as intentionally from the destruction of money unlawfully, not compromised, it is in the money, it takes him oppressed willing it, or convict him by⁽²⁷⁾.

So, in view of the high danger of the judiciary, the scholars stipulated in his undertaking, among the conditions of health and perfection, what was established in their books, and ruled out the occurrence of a group of imams who were followed, as it was reported from Malik bin Anas: (I don't see her meeting anyone today; If there are two qualities of it in a man, knowledge and piety). The mind is questioned, and through it all good qualities are obtained, and with piety he pardons; And if he seeks knowledge, he finds it; And if he seeks reason, if he does not have it, he will not find it⁽²⁸⁾.

And what indicates the encouragement to rule for those who are able to be just in it is the saying of the Messenger of God (peace be upon him) that on the Day of Resurrection, those who are just in the sight of God will be on pulpits of light on the

²⁴ Al-Tusi, Al-Tahdheeb, 6/217; Al-Har Al-Amili, Al-Wasail, 27/17.

²⁵ Al-Hur Al-Amili, means 27/17.

²⁶ Al-Sayyid Al-Yazdi, complementing the most trustworthy handhold, 2/3.

²⁷ Al-Nabahi, The History of Andalusian Judges, p. 9.

²⁸ Al-Nabahi, The History of the Judges of Andalusia, p. 11.

right hand of the Most Gracious, and both of his hands are the right hand of those who are just in their judgment, their families and his followers. It was reported on the authority of Ibn Shihab, that the Messenger of God (peace be upon him) said: *(The one who will be dearest to God and nearest to Him in station of the day of resurrection will be a just imam.)* And he narrated that the Prophet (peace be upon him) said: *God is with the qadi as long as he is not tyrannical* ⁽²⁹⁾, *(When a judge gives a decision having tried his best to decide correctly and is right, he will have a double reward; and when he gives a decision having tried his best to decide correctly and is wrong, he will have a single reward)* ⁽³⁰⁾.

This hadeeth was quoted as evidence by those who believe that every mujtahid is right, because he (peace and blessings of God be upon him) granted him a reward, and in the hadith of Muadh bin Jabal that the Prophet (peace and blessings of God be upon him) permitted him to strive with his opinion in what was not in the Book and the Sunnah, and it was reported: There is no judge who judges the truth except that he is To his right is an angel and to his left is an angel ⁽³¹⁾.

The sources mentioned ten conditions for the judiciary: Islam, reason, masculinity, freedom, puberty, justice, knowledge, and soundness of hearing and sight. or a corrupt object, and then a ruling has been executed from it, then it is not valid and rejected; These are the first five: Islam; and mind; adulthood; masculinity; and freedom. As for the other five, the rulings of those who do not have what is in agreement with the truth are implemented, except for the ignorant who judges according to his opinion. As for the immoral, there is a difference of opinion, and the conditions for perfection are ten as well: five descriptions that are negligible, and five that are not negated; of them to be unlimited; He is not challenged in his lineage with the birth of cursing and fornication; and not poor; and illiterate; and not vulnerable; And to be clever, honest, majestic, forbearing, consulting with the people of knowledge and opinion, as the judge Abu Al-Asbagh bin Sahl said: The rulers at whose hands the rulings are carried out have six plans: the judiciary, the police, the grievances, the response, the city, and the market ⁽³²⁾.

Ali bin Yahya said: The judge's consideration includes ten rulings: One of them: cutting quarrels and quarrels among the disputants, either by reconciliation by mutual

²⁹ Same source, pg.

³⁰ Muslim, 2/62.

³¹ Al-Nabahi, The History of the Judges of Andalusia, p. 14.

³² Al-Nabahi, The History of the Judges of Andalusia, p. 14.

consent intended to be permissible, or by compulsion by a verse in which it is considered obligatory.

The second: fulfilling the right of the one who requested it, and delivering it to his hand, either by acknowledgment or by evidence. The Third: Obligating guardianship for the foolish and the insane, and confining the bankrupt, in order to preserve the money. The Fourth: Looking into the confinement, standing up and inspecting its conditions and the conditions of the beholder. The Fifth: Executing the wills on the conditions of the benefactor if they agree with the Sharia; In the specific, the execution is by contract, and in the unknown, the one who is entitled to it must be done by diligence. The Sixth: Marry the aunts if they do not have guardians and they want to marry. The Seventh: Establishing the frontiers; If it is one of the rights of God Almighty, it is unique in establishing it, either by a declaration related to the establishment of the limit punishment, or by evidence or the appearance of a pregnancy without a husband; and if it is the rights of humans, then it is entitled to request it. The Eighth: Considering public interests, from stopping trespassing in roads and courtyards. And take out what is not worth from the wings and courtyards. The Ninth: It liquidates the witnesses, inspects the trustees, and chooses whomever he likes for that. The Tenth: The aspects of compromise in governance between the strong and the weak, and the pursuit of justice between the honorable and the honorable ⁽³³⁾.

He stated (that the judges have the right to establish the hadd punishments, and to consider all things, from establishing rights, changing vices, and looking into interests, he did that standing, or he was limited to the right of God, and his ruling for them is the rule of the guardian who has absolute hand in everything, except for what is specialized in preparing armies, and collecting abscess), and everyone who is appointed as ruler among Muslims, whether he is a prince, a judge, or a policeman, is in control. Everything that was in their punishment of death, and that was within one of the limits of God Almighty, and proper etiquette, is a waste; And what came of injustice is clear, well-known, and reliable, then he has to repent in his intentions, and reason is in his mistakes. Likewise, what he deliberately destroys money without right or suspicion, that is in his money, the wronged one takes it if he wishes from him, or from the one who is sentenced to it ⁽³⁴⁾.

The Second Topic: The Judicial Ruling and its Implementation:

Assuming the judiciary was a duty in relation to the ruling of the judiciary in general. As for the ruling on entering into it for individuals, it differs according to their different cases. A person is obligated if it is appointed for him and there is no one to

³³ Al-Nabahi, *The History of Andalusian Judges*, p. 15.

³⁴ Same source, pg.

fix another, and it is disliked if it is valid with the presence of someone who is more fit than him, and forbidden if he knows himself incapable. And the lack of fairness in him due to his inclination to whims and desires, and it is permissible for him to choose between accepting and rejecting it if he and others are equal in the validity and fulfillment of it. Malik was asked: (Is a man forced to take over the judiciary? He said yes if there is no compensation from him. He was told by beating and imprisonment? He said yes) ⁽³⁵⁾.

As the jurists agreed that the judiciary is an obligation of sufficiency, if some of the nation performs it, the obligation falls from the rest, and if none of them performs it, the entire nation is sinning. It is an obligation in kind ⁽³⁶⁾.

He also stated: (The judiciary is one of the obligations of sufficiency, because people's affairs are not right without it, so it was a duty on them like jihad and imam, Ahmed said: People must have a ruler) ⁽³⁷⁾.

There are other types of judgment, such as desirability, hatred, or prohibition ⁽³⁸⁾.

It may be desirable in the event that he is one of his family and he is in need of money for his living, or he is not well-known for his generosity, and it may be disliked for those who have sufficiency in his livelihood, even if he is worthy of him with the presence of someone else who can deal with that ⁽³⁹⁾, and it may be prohibited, and this is for the ignorant even if he is trustworthy and the just is not trust.

It is obligatory if it is confined to a trustworthy person from among the people of knowledge and the imam cannot find anyone else but him or there is more, but they were not able to suffice among the people, so it is obligatory for others who are qualified to do that in kind, and if they are more, then they must have the obligation of my sufficiency. If it is sufficient to do so, it falls from the rest and becomes desirable according to the opinion of ⁽⁴⁰⁾ and disliked according to another opinion ⁽⁴¹⁾, due to the severity of its danger.

³⁵ Zaidan, Judicial System, p. 15.

³⁶ Al-Mohaqqiq Al-Hilli, Sharia Laws of Islam, 4/68; The second martyr, Al-Rawdah Al-Bahiya, 3/62; Al-Amili, Miftah al-Karama, 5/10; Al-Ardabili, Complex of Interest and Proof, 12/19; Al-Iraqi, Dia Al-Din, The Judiciary, p. 7; Al-Zuhaili, Islamic jurisprudence and its evidence, 8/5936.

³⁷ Ibn Qudamah, Al-Mughni, 11/372.

³⁸ Ibn Abi al-Dam, Literature of Judgment, 129-130; Al-Ardabili, Jurisprudence of the Judiciary, 1/149-150.

³⁹ See: Al-Mohaqqiq Al-Hilli, Sharia Laws of Islam, 4/68.

⁴⁰ See, Al-Mohaqqiq Al-Hilli, Shariah of Islam, 4/68; Jawahir, Jawahir al-Kalam, 40/39.

There were many hadiths confirming the seriousness of the position of the judiciary, including: What was narrated from the Prophet (peace and blessings of God be upon him) that he said: “Whoever is appointed as a judge has been slaughtered without a knife, so it was said: O Messenger of God, what is the slaughter? He said: The fire of Hell”⁽⁴²⁾. He also said: “The just judge will be brought on the Day of Resurrection, and he will receive a severe account of what he wishes that he had never judged between two people for a date”⁽⁴³⁾. What was narrated on the authority of Imam al-Sadiq (peace be upon him): (The nawawis⁽⁴⁴⁾ complained to God Almighty of the severity of her heat, and the Almighty said to her: Be still, for the positions of judges are hotter than you)⁽⁴⁵⁾.

The scholars have inferred that it is a sufficient duty as follows: What was narrated on the authority of the Prophet (peace be upon him) that he said: “There is no envy except in two cases: a man whom God has given wealth and the authority over his doom in truth, and a man whom God has given wisdom and he judges with it and teaches it to the people.”⁽⁴⁶⁾.

And what was narrated on the authority of Imam Ali (peace be upon him) in his will to Shurayh (Beware of boredom and hurt in the court council, in which God enjoined treasure for those who judged with truth)⁽⁴⁷⁾. What was narrated on the authority of Ibn Masoud that he said: “Because I sit for a day and judge between people is more beloved to me than seventy years of worship”⁽⁴⁸⁾. Also, the consensus: as was reported by some of the Twelver Imams⁽⁴⁹⁾, Sheikh Al-Tusi says in this regard (and upon him is the consensus of the nation, except for Abu Qilabah, he asked for the judiciary, so he joined the Levant and stayed for a time, so Ayyoub Al-Sijistani met him and said to him: If you were appointed to the judiciary and were fair among the people, I would hope that you will be rewarded for that. O Ayyub, the swimmer, if he falls into the sea, how many may he swim, except that Abu Qilabah is a man of the followers who does not undermine a caliphate in the consensus of the Companions, and we have clarified

⁴¹ See: Ibn Abi al-Dam, Literature of Judgment, 1/130; The First Martyr, Legal Lessons, 2/66, Al-Ardebili, Jurisprudence of the Judiciary 1/151.

⁴² Al-Bayhaqi, Al-Sunan Al-Kubra, 10/69; Al-Sanaani, Subul Al-Salam, 4/123; Al-Hurr Al-Amili, Wasa'il Al-Shi'ah, 80/18.

⁴³ Al-Bayhaqi, Al-Sunan Al-Kubra, 10/96.

⁴⁴ Al-Nawawis: A place in Hell

⁴⁵ Al-Saduq, Who Doesn't Attend the Faqih, 3/4; Al Hur Al Ameli, Shiite Media, 27, 219.

⁴⁶ Al-Hurr Al-Amili, Wasa'il Al-Shi'ah, 27/212.

⁴⁷ Al-Kulayni, Al-Kafi, 7/413.

⁴⁸ Al-Bayhaqi, Al-Sunan Al-Kubra, 10/280.

⁴⁹ Al-Tusi, Al-Mabsout, 8/38

that they are unanimous and does not prevent that his abstention was because he felt himself helpless because he was one of the people of hadith and was not a jurist) ⁽⁵⁰⁾.

The system of the human race depends on the judiciary, because injustice is a part of the soul, so there must be a ruler who takes justice from the oppressor for the oppressed ⁽⁵¹⁾, and that he fulfills the order with good and forbidding evil, and they are both duties that are sufficient ⁽⁵²⁾.

The Third Topic: Auxiliary Judicial Institutions

Historians and researchers interested in judicial affairs have stated that the legal aid system requires the judge to include some people who are related to his judgment and to settle disputes. We will address this in the following points:

Arbitrators

It seems that this type of judiciary was discussed a long time ago in the Islamic judicial system, and it is meant to be the judiciary and the settlement of disputes by more than one judge.

Also, it came to mind, is it correct for more than one judge to be appointed to consider one case in which they deliberate their opinion collectively when the court convenes, so the jurists discussed the origin of its legitimacy, that is, if their opinions agreed, they ruled in it. Otherwise, the ruling in it is considered according to the majority. Adopting the opinion of the minority, and they were of the opinion in this regard, including the permissibility of this as an agency or a will, where it is permissible to multiply clients and trustees and restrict their work based on the nature of the power of attorney or will, as it is subject to restriction and release ⁽⁵³⁾.

Al-Mohaqq Al-Hilli said: "It is permissible to appoint two judges in the same country, each of them having an authority separately.

The point is permissibility, because the judiciary is a proxy that follows the choice of the representative) ⁽⁵⁴⁾.

Al-Zuhaili says: (If it is stipulated that they agree in a ruling, the closest is permissibility) ⁽⁵⁵⁾.

⁵⁰ Same source 8/81.

⁵¹ Najafi, Jawahir al-Kalam, 9/40

⁵² Dia Al-Din Al-Iraqi, The Judiciary, p. 7.

⁵³ See: Al-Mohaqq Al-Hilli, Sharia Laws 4/70; Najafi, Jawahir al-Kalam 4/70; Al-Zuhaili, Islamic jurisprudence and its evidence, 6/754. Al-Kasani, Badaa' Al-Sana'i, 1/126.

⁵⁴ The laws of Islam 4/70.

Another mentioned after he conveyed the two aspects of the issue with (that it is more precise and more reliable in the ruling, especially in our view that the correct one is the same, and accordingly if their jurisprudence differs on the issue, the ruling is suspended, but they implement what their jurisprudence agrees on) ⁽⁵⁶⁾.

Consultants

Scholars have researched the Islamic judicial organization from an early age. The principle of shura is a general Islamic principle that includes most areas of public life ⁽⁵⁷⁾. As for the area in which the judge is allowed to consult others who are fit to judge, it is in matters that are not apparent in it, so it needs the judge's judgment. Scientist. Omar Ibn Al-Khattab was consulting with senior companions and their scholars, such as Ali Ibn Abi Talib (peace be upon him) and Abdullah Ibn Abbas, and the purpose of the consultation was to alert the judge to what he might have missed or forgotten, related to the case or affecting the ruling, with an explanation of their opinion on the appropriate ruling. They stipulated that they should be people of diligence and justice so that they could indicate the legal ruling on the case. Imam Ali (peace be upon him) says: (I said: O Messenger of God, if a matter is presented to me in which no judgment or Sunnah has been revealed, how do you order me? He said: You make it a consultation between the people of jurisprudence and the worshipers of the believers, and do not judge it by opinion) ⁽⁵⁸⁾.

This is to avoid falling into error, especially in matters where there is no text in which the judge relies on the general rules governing in his field, and it is not intended to imitate them in the matter ⁽⁵⁹⁾. The second martyr confirms that the purpose of their presence is to consult, due to the fact that (Judiciary is a suspicion of dividing the mind and dividing the thought, and the details of the rulings contained therein, some of which include accuracy and difficulty perceiving, so perhaps he neglected, through this, some of the perceptions of the issue, so they alert him to it so that he can rely on what is more likely than it) ⁽⁶⁰⁾.

Another added: Consultation is desirable, not that he imitates them, for imitating them is not permissible. Al-Muhaqqiq al-Hilli considered it a desirable etiquette, by saying: The second consideration of etiquette, and it is two parts desirable and disliked. And

⁵⁵ Islamic jurisprudence and its evidence, p. 212.

⁵⁶ The second martyr, Masalaq Al-Afham 13/355.

⁵⁷ Based on the Almighty's saying: (And their command is a consultation among themselves).

⁵⁸ Ashour, Ali, Document of Imam Ali bin Abi Talib 74/1717.

⁵⁹ The Second Martyr, tract, 13/373.

⁶⁰ The second martyr, tract, 13/373.

he negotiates with them regarding theoretical issues that they suspect so that the fatwa is established ⁽⁶¹⁾, as for the judge who holds the qualifications of the judiciary - with the exception of jurisprudence - either he is appointed by the mujtahid imam, he does not rule except with his opinion and advice, or he is appointed by a legal ruling judicial authority, he has no one but The application of the law decreed for it, as for what needs a discretionary authority, it thus requires the consultation of the opinion-makers - the mujtahids in this field - and judicial consultation, in principle, is not among the litigants' rights, but rather it is among the rights of the judge. The error, especially when there is no text in it ⁽⁶²⁾.

As for the specialized person who has the qualifications of a judge or more, who presents consultation to the judge in terms of adjusting the facts and ruling them, he is (the advisors), and he was often part of the ruling body ⁽⁶³⁾, in the judiciary's literature: (and his advisors sit with him - that is, the judge - in the Governing Council) ⁽⁶⁴⁾.

And he stated: (That a group of people of jurisprudence sit with him and consult with them and seek the assistance of their opinion in matters of rulings he is ignorant of, and God Almighty - His Messenger - upon him be peace and blessings be upon him) delegated consultation by saying: And he consulted them in the matter ⁽⁶⁵⁾ with the opening of the door of revelation, so other than it is better) ⁽⁶⁶⁾.

Among the controls of the consultation system is that the jurists did not specify a specific number of advisors, but rather that is due to the difference in time and place, the type of case and what is required by the interest.

Also, that in a specific place and time, they are satisfied with the condition of consulting a specific scholar well-known for his knowledge. While in another time they stipulated four counselors based on what was narrated by Imam Malik (may God be pleased with him) on the authority of Othman bin Affan (may God be pleased with him): When Uthman sat for the judiciary, he brought four of the companions and then consulted them, and if they saw what he saw; He signed it and said: These have passed, not I who have judged it ⁽⁶⁷⁾.

⁶¹ The laws of Islam, 75.

⁶² Ibn Abi al-Dam, Literature of Judgment, 1/328.

⁶³ Al-Tijkani, The General Theory of the Judiciary, p. 142.

⁶⁴ Ibn Abi al-Dam, Literature of the Judiciary, 1/136.

⁶⁵ Surah Al Imran, 159.

⁶⁶ Al-Kasani, Badaa' Al-Sana'i, 1/126.

⁶⁷ Al-Tijkani, The General Theory of Judgment and Evidence, pp. 149-150

Translators

The judge interpreter just or two translators or more take the not when the judge special interpreter translated him when needed safe and translators confidence better than one and may be translated women justice when needed, and does these translators translate the statements of the plaintiffs or defendants or witnesses if the judge does not know the language Since the Islamic conquests and the entry of new peoples into the Islamic religion, it is necessary that the task of the judge in the judicial process in general does not concern a people without others, nor a language without another. Unless the dispute is exclusively between them and has nothing to do with general social affairs, public order or morals.

Some of its subjects may speak other than the language of the people of the country, but rather some of its citizens who do not speak the common language in the country. There are many dialects where they are not understood among the people of the country, especially in the vast countries or border ones.

If the judge does not know the language of one or both of the opponents, or they or one of them do not know his language, then in this case the judge must make one or more translators as required by the need. The satisfaction of one or both of the disputing parties is achieved, and all of this is among the matters agreed upon ⁽⁶⁸⁾.

The Book of Righteousness

He is the person who writes before the judge according to what the judge dictates to him and records the facts of the people that the judge wants to rule on. It also records all allegations, defenses and proofs that occur in the Judicial Council between the litigants ⁽⁶⁹⁾. A position that is not specialized in the judiciary, but it is old and it seems that with its development it has become a special position and has become one of the assistants in the judiciary and one of the texts that spoke to us about the position of the writer in Islam and was presented by what Al-Mawardi mentioned in this section. The Messenger of God (peace be upon him) had a writer among them, Ali bin Abi Talib, and he was the one who wrote the case between the Messenger of God and the Quraish in the year of Al-Hudaybiyah, and among them was Zaid bin Thabit, and Ibn Abbas narrated: The Prophet had a scribe called (Al-Sijl), and the four caliphs had a scribe. are well-known, and so are those who come after them) ⁽⁷⁰⁾.

The work of the clerk is one of the positions of the judicial system in Islam, as the judge takes a special official clerk for him to set the case, a matter that was not known

⁶⁸ See: Al-Tusi, Al-Mabsout 8/103; Al-Mawardi, Adab Al-Qadi, 1/698; Ibn Qudamah, Al-Mughni, 19/132.

⁶⁹ Al-Mawardi, Adab Al-Qadi, 2/55.; Al-Tijjani, The General Theory of Judgment and Evidence, p. 141.

⁷⁰ The literature of the judge, 2/58.

before the judgment of Abu Musa Al-Ash'ari in the days of the caliphate of Omar Ibn Al-Khattab (may God be pleased with him) ⁽⁷¹⁾, as it was mentioned in the Book of Judges' News (Omar wrote to Abi Musa: Your scribe who wrote to me composed melodies, so strike him with a whip) ⁽⁷²⁾.

It seems that this position was known before this date, as the Prophet (peace be upon him) took a special scribe, and he was called the writer of revelation and he was of Imam Ali (peace be upon him).

The Messenger (may God bless him and grant him peace) is the first judge of the Muslims. Sheikh al-Tusi says: (The judge should take a scribe in his hands, with whom he writes affirmations, denials, and other things. They write for me, and I do not like for everyone to read my books, so he learned Syriac, Zaid said: I learned it in half a month, so I used to read what was answered and write the answer about it: It was narrated on the authority of Ibn Abbas that he said: The Prophet had a writer called (Al-Sijl)" ⁽⁷³⁾.

The scholars mentioned () the specifications that the judge's clerk should have, including:

1- Sanity

The jurists cited this condition without mentioning puberty, meaning that it does not mean the mind to which the assignment is related.

2- Justice

What scholars affirm in this aspect is that he is entrusted with proving statements, evidence and executing judgments.

3- To be a jurist.

Al-Manasiq from the words of the jurists in this condition appears from them to be familiar with fiqh, not to be a mujtahid, i.e., knowledge of fiqh, as al-Kasani pointed out to that ⁽⁷⁴⁾, because when they explained their description of it to know the words to which the rulings are related, he does not change them because the non-faqih does not differentiate between obligatory and permissible ⁽⁷⁵⁾.

⁷¹ Samir Aley, Judiciary and Custom, p. 86.

⁷² Wakee, Judges News, 1/86.

⁷³ Al-Tusi, Al-Mabsoot, 8/112.

⁷⁴ Al-Mawardi, Adab Al-Qadi, 2/60; Al-Tusi, Al-Mabsoot, 8/112; The First Martyr, Legal Lessons, 2/72; Najafi,

⁷⁵ Jawahir al-Kalam, 40/109.

Some of them said: ((to know the correctness of what he writes from his corruption))⁽⁷⁶⁾ or ((because he needs abbreviations and omissions from the words of the two opponents and transfer from one language to another))⁽⁷⁷⁾.

4- To be honest in order to believe that he will be bribed in favor of him.

5- He must not be an infidel, a dhimmi, or a slave.

Imam Ali (peace be upon him) confirmed the selection of writers as they are faithful in their work, in his book for his ruler over Egypt Malik al-Ashtar (Then look at the state of your writers, take care of their affairs, then do not choose them based on your prudence, sympathy, and good faith, for they will not be predisposed to you. By making them and serving them well, and there is nothing beyond that of advice and trust, but test them with what they have been given to the righteous before you, and build for the best of them. There was a defect in your book, so you ignored it and stuck to it)⁽⁷⁸⁾.

In order to document people's transactions, as it depends on documenting it officially when needed, there must be a person appointed by the judicial authority who is a notary. The origin of this designation is what is stated in the Almighty's saying: (You who believe! When you contract a debt with one another for a term appointed, write it down. And have a scribe write in your presence)⁽⁷⁹⁾. Other names have been given to him (such as the documenter and the documentary)⁽⁸⁰⁾.

Also, that the Islamic East did not know much about writing documents as an official act of the state, rather it was known in Morocco and in the countries of Andalusia in particular, and what was mentioned in the book (Judges of Cordoba) by Al-Khashni when it was translated for a judge named (Al-Nadr bin Salamah Al-Kalabi): Missteps from it, shackles and betrayal in it, the jurists depend on this, and they acknowledge his injury and acknowledge him thanks to the awareness)⁽⁸¹⁾.

It seems that this work (authentication) was one of the judge's works, but the expansion and the multiplicity of the judge's tasks called for his dismissal with an independent work and the creation of a new position for him. Bin Thabet, two judges

⁷⁶ Al-Mawardi, Literature of the Judge 2/60.

⁷⁷ Same source 2/60.

⁷⁸ Badaa' al-Sana'i 9/128.

⁷⁹ Al-Tusi, Al-Mabsoot, 8/112.

⁸⁰ Al-Maroudi, Adab Al-Qadi 2/16.

⁸¹ Al-Kasani, Badaa' Al-Sana'i, 9/128.

in their time (they ask a fatwa, and the people come to their sayings, and they divide the inheritances among its people, and they write documents for the people) ⁽⁸²⁾.

Veils or Doormen:

He is the person who stands at the head of the judge if he sits down for the judiciary to present the litigants and delay them according to their priority in attendance or according to the order of seeing their cases, and informing the people of the time of the judge's sitting for judgment, informing them of the time of his rest, and informing the judge who he wants to enter on him and the purpose of that even if the judge permits him. By entering, enter it, otherwise he does not enter it, and the jurists have differed in the legality of taking this type of work for the judge, as some see its legitimacy and approval, while others see its dislike. He makes him comfortable and prevents people from him. He informs the ruler or the attendant of the coming of someone who responds to him from the wrongdoers, to honor him if he enters him. It is desirable for the ruler to honor witnesses and people of authority if they come for visitors ⁽⁸³⁾. The gatekeeper has the right to inquire about the situation from every person who comes to the ruler's door and asks him what he has come for, then he ends with the ruler what he mentioned that he came for him ⁽⁸⁴⁾.

The Police:

They are not part of the original court formation. They have no knowledge of the principles of the dispute, and their mission is to bring what is required to the court to hear the plaintiff's claim and to present his defenses if he wants ⁽⁸⁵⁾, and they stand before the judge in honor of him so that his council is majestic and the rebel submits to the truth ⁽⁸⁶⁾.

Prison Owner or Jailer:

Among his duties is to report to the judge every day the conditions of the prisoners and what is happening in prison until he removes the injustice, and releases those who do not deserve to remain in prison, as well as those whose prison term has expired. Witnesses, including those appointed by the ruler or the emir, such as the clerk, the janitor and the doorman, and the judiciary's assistants receive sustenance from the

⁸² Muhammad Abduh, *Sharh Nahj al-Balagha*, 3/98-99.

⁸³ *Surah Al-Baqarah*, 82.

⁸⁴ *Al-Maroudi, Adab Al-Qadi*, 2/65.

⁸⁵ Samir Aley, *Judiciary and Custom*, p. 93.

⁸⁶ *ibid.* p. 101

treasury in return for their work, each according to his specialization and the quality of his work ⁽⁸⁷⁾.

Herald:

To the litigants' call, when they are requested by the judge or their agent's request, to appoint the caller, which is what the courts are doing today. It was stated in the Judges' News Book: (The porters have a right over the Caliph Al-Mansur, so they brought a lawsuit against him before his judge Muhammad bin Imran, and he said to him: What do I call for? Is the caliphate? Or in his name? The judge said to him: In his name. So, he called him, and he came to him and he judged him" ⁽⁸⁸⁾, and this role is performed in practice today by the simple employee who sits at the judge's door, so his role is a gatekeeper and a herald.

Listener:

The court brings a person called (the listener) when one of the two opponents or the judge is hard of hearing, so he hears only in a loud voice, so the speech is transmitted to the person concerned with a loud voice, near his ears, or in a special way. Given the importance of this work and the possibility of its distortion, they stipulated in its specifications as they stipulated in the translator because it is guaranteed Their work is one ⁽⁸⁹⁾.

Judicial Guard:

He is the one who stands at the head of the judge and evaluates the litigants if the litigation ends so that they leave the Judicial Council, and he represents the police that maintains security in the court. It is not part of the original formation of the court ⁽⁹⁰⁾, and this was confirmed by al-Kasani by saying: "He has a jelwaz, who is called the owner of the council in the custom of our lands. And in his hand is a whip that disciplines the hypocrite and warns the believer with it) ⁽⁹¹⁾.

⁸⁷ Al-Tijkani, *The General Theory of Judgment and Evidence*, p. 142.

⁸⁸ Al-Kasani, *Badaa' Al-Sana'a*, 9/127.

⁸⁹ Al-Maroudi, *Adab Al-Qadi*, 2/65.

⁹⁰ See: Wakee, *Akhbar Al-Qadaa*, 1/108 and 192, Samir Alia, *Al-Qada' and Al-Urf*, p. 88.

⁹¹ Ibn Abi al-Dam, *Literature of Judgment*, 1/330-311.

Freebies:

Their job is to bring opponents to the Judicial Council if the rights holders assaulted them, and they should be religious, honest, and far from greed. These also represent part of the court police ⁽⁹²⁾.

Reprimands:

These are a group of competent men who are in the judiciary council to reprimand those who should be reprimanded from the quarrels or others if they abuse manners in the judiciary council, and they have the right to remove them from the council if they do not stop their abuse. These also belong to the police of the courts ⁽⁹³⁾.

Conclusion

We dealt with: (the mechanism of the work of the Islamic judicial institution until the end of the Abbasid era) and through the research I found that the judiciary in Islam went through historical stages, it developed according to the political and social conditions that the Islamic caliphate passed through, starting from the era of the Messenger (PBUH), in which the judiciary was characterized by simplicity and in line with the simplicity of the Islamic society, and the lack of complexity of social and political life, even cultural, and despite the simplicity of that covenant, we see that the Messenger and the Rightly Guided Caliphs after him were keen to implement social and religious justice.

Therefore, they set conditions, provisions and specifications for those who assume the position of the judiciary, in addition to giving advice and commandments to establish justice and equity, and with the advent of the Umayyad Caliphate, and although the judiciary followed the same approach that the judiciary had in the Rashidun era, the caliphs such as Abdul-Malik bin Marwan and Omar bin Al-Aziz realized the complexity of life. For this reason, they gave the judiciary a great importance, represented in the emergence of the Board of Review of Grievances, Hesba and the Police. Rather, they allotted certain days to consider the grievances that came to them and return them to their owners. To the judge's house in many cases, and the judiciary became more organized and made changes to it such as recording judgments, trial procedures and witnesses. In fact, judges had special clothes, and the caliphs' interest in judges stemmed from the function of the religious caliphate, which is the establishment of justice, the application of the limits of Islamic law, and justice for the oppressed. The first Abbasid caliph, because of its religious and worldly importance.

⁹² Samir Alia, Judiciary and Custom, p. 92.

⁹³ Badaa' Al-Sana'i 9/127.

And it appeared that the cases increased and their types varied, and the regions of the state expanded and their parts and outskirts diverged, there was an urgent need to allocate judicial work in type and place, in order to achieve the interest of litigants and their cases. Adopting this specialized approach, whether in type or place.

And if the number of judges in Muslim countries increased throughout their history, it was necessary to arrange and form this number, and to find a reference to which matters of the judiciary and judges would devolve and have a type of supervision over their work. Therefore, those concerned with the order of the judiciary, in the foregoing, have been concerned with monitoring, recording and recording the occurrence of judgments and cases in archives and documents according to controls and restrictions that suggest an accurate perception of this work, its documents, and the conditions of whoever performs it.

The foundations of this organization emerged from the Noble Qur'an and the Sunnah of the Prophet and developed at the hands of the Companions and their followers, and then the systems of the successive Islamic countries.

It has been found that the origin in the method of appointing judges is appointment by the imam, which was prevalent in the early days of Islam. As for the harsh political conditions of the Shiites, which they experienced in successive ages, and their exclusion from participating in the affairs of the state and dealing with them with a narrow sectarian view, their imams (peace be upon them) resorted to the method of inauguration. The general rule of judges, which is called (appointment), as they set general specifications in confronting the judiciary for everyone to whom these controls apply and define the culture of ruling by right so that its judiciary is legitimate without the need for appointment or appointment from a special authority.

Also, that the method of determination (general accusation) was the necessity behind it - as it seems - so it is subject to the demise of the cause and the slightest of it is that the secondary ruling is judged on it for the reasons mentioned by the research in its place and the evidence on which it relied, this method is not taken at all, and restrictions must be placed on it.

The idea of the specialization of judges and the diversity of courts, and it is one of the organizational matters outside the essence of the legal ruling, and therefore it is outside the interference of the Islamic legislator, but it is left to the authority of the one who has the command to be subject to the requirements of the situation with the change of time and its development.

In addition, that the Islamic legislator granted the judge immunity, so his removal is not a personal right of the jurist or the judicial authority, except for special reasons that call for that. Rather, the right of the nation is related to him, since the contract that

took place between the judge and the imam or the head of the authority is only for the benefit of the nation. He has the right to dismissal, and this is one of the important guarantees for the judge in his work.

It turned out that the legal aid system appeared early in the Islamic judicial organization, and the judicial system preceded the modern judicial system by many centuries with its accuracy and control, which made legal jurists dependent on it in many matters. Under the title of judiciary ethics.

Based on the findings of the research, the following recommendations can be made:

First- The great interest in the judiciary and giving it priority in research and investigation, whether at the level of preliminary or graduate studies, research studies or seminary, we find clear neglect on all these levels with the importance of the judiciary.

Second - Calling for the preparation of a specialized judicial cadre that combines in-depth religious (semiological) studies with the methodology and professionalism of modern judicial studies in order to have the authority to implement the rules and laws established for this purpose and to avoid the prohibitions of requiring diligence in the judge.

Third - To enact consensual laws in accordance with various jurisprudence and in the light of modern man-made laws with the use of appropriate terminology and an understanding of society without transgressing the constants and foundations laid down by the glorious Sharia, while noting the facilitation aspects that exist in them as much as possible.

Fourth - Presenting many important issues that were not researched in the books of the ancients that were produced by the developments of time on the research table and presented to the rules and legal evidence and their settlement, formulation and fusion in the topics and titles of jurisprudence to give them the status of legitimacy because of their importance to the men of law and the judiciary. order or fall into the danger of resorting to man-made laws that the Islamic legislator deems illegal.