

Wilayah yat al Ma'lim: Application of Siyasa Shar'iyah

* Ziaullah Rahmani

Abstract

Achieving justice is the main target of Islamic legal system. Hence Islam does not only depend upon the traditional judicial system for the administration of justice rather it has evolved certain unconventional ways for achieving this very important objective. *Wilayah yat al Ma'lim* is one of the ways to attain the goal of administration of justice in a non-traditional way. The present article is an effort to explain the concept, meaning, methodology of this department and to highlight the qualifications and jurisdiction of its custodian, and to distinguish it from other similar departments. Towards the end the legal status of the task of *Wilayah yat al Ma'lim* has been elaborated.

Meaning of *Wilayah yat al Ma'lim*:

It is a combination of two words; *wilayah* which means department and *Ma'lim*. The latter is plural of *ma'lim* which stems out of the root *l-m* and indicate "injustice".

Technically it is that department of the Islamic government which aims at redressing public grievances against public servants which may arise because of maladministration, mismanagement or abuse of public authority.

According to Al Mawardi, it is judicial investigation of wrongs or abuses and 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 in them.¹

According to Ibn Khaldun it is a mixed job of executive dominance and justice of judiciary and it needs a strict approach and a great capability of putting the cruel in fear.²

The above explanation of the term *Wilayah yat al Ma'lim* by the Muslim jurists show that the essence of this department of the government is dominance, hegemony and a capability to put the oppressor under the fear of law. It goes without saying that without such a characteristic the basic job of this department

* Assistant Professor, Faculty of Shariah & Law, International Islamic University, Islamabad.

cannot be carried out because it is the powerful among the public servants who oppress others or usurp the rights of others.

It also appears from the statements of the jurists that this is not purely a judicial job nor is it purely an executive post. It is a combination of both types of authorities. This is the quality which makes it a part a manifestation of *Siyah sah Shar'iyah*. The ultimate goal of *Siyah sah Shar'iyah* is to promote the basic objectives of *Shar'ah* and it is through normal judiciary, *Wilayah yat al 'isbah* and *Wilayah yat al Ma'lim* that these objectives can be taken care of by the government.

The evidence of the dual nature of this job is that the in charge of *Wilayah yat al Ma'lim* has got extensive powers including power of judges and those of executive branch of the government.³

Although it is a job which includes the authority of judges but it is more powerful than they are and has got a wider jurisdiction than judiciary.⁴

Most of the writers who mentioned this department of the government are of the opinion that it is more powerful than simple judicial courts but there is an opinion that it comes under judiciary and it resembles contemporary court of appeal where people can complain against the injustices of judges and other public officials.⁵

At an early stage in the development of Islamic institutions of the government *Ma'lim* came to denote the structure through which the temporal authorities took direct responsibility for dispensing justice.⁶

A contemporary scholar describes *Wilayah yat al Ma'lim* as a judicial authority superior to that of a judge and *Muhtasib* which looks into disputes which are out of the jurisdiction of judges. Thus it is a job that is a combination of the strength of the state and fairness of the judiciary, although in reality it comes under judiciary. Its incharge is called *Qadi 'ib al Ma'lim* who is presented with complaints of injustice done by officials or member of royal family or judges.⁷

Another contemporary scholar describes it as the highest category of courts. According to his view it deals with appellate matters as well as with those that are beyond the jurisdiction of the *Qadi*. All "rights of State" are adjudicated by these courts. The procedure followed by these courts is not restricted by the strict requirements for the court of the *Qadi* as regards the number and qualifications of witness and the type of admissible evidence. The matters of evidence and procedure are left to the *ijtihad* of the *imam*.⁸

This institution came into existence gradually through early phases of Islamic history. Its essence i.e. preventing cruelty and injustice and to call the oppressor to account was very much there from the very first day when Islamic state was founded in Medina by the Prophet (peace be upon him). Nevertheless, it was developed as an institution with the passage of time and with the development of other political and administrative institutions with the Islamic state. Primarily it was to perform the duties, which the judges failed to perform with respect to the implementation of the decisions. It also looked into the matters of evidence, punishments, circumstances of the offence, delay in deciding the case by judges, making the litigants reach to a mutual resolution of disputes and many other things pertinent of judicial system.⁹

Qualifications for *Wilayat al Ma'lim*:

According to al-Mawardi the job of *Wilayat al Ma'lim* 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. Therefore the qualities demanded of the *Wilayat al Ma'lim* is that he should be of imposing stature, that he ensures actions 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 scrupulousness¹⁰, he needs to have the strength of the law-enforcement officers and the firmness of *Qadi*s in their judicial tasks and to combine the qualifications of the two types of person, so that by the majesty of his bearing he is able to execute any command with respect to both parties.¹¹

It is not difficult to derive from the qualities stated for the *Wilayat al Ma'lim* by al-Mawardi, that the qualifications required are a level above than what is required for a *Qadi* in Islamic law. It goes without saying that initially he must have the qualifications of a *Qadi*. Those qualifications are as follow¹²:

- (a) **Islam:** To be a Muslim is pre-requisite for the post of *Qadi* as to be a judge is a public authority and non-Muslim can not have any authority over Muslims. Allah says in *Qur'an*.

وَلَنْ يَجْعَلَ اللَّهُ لِلْكَافِرِينَ عَلَى الْمُؤْمِنِينَ سَبِيلًا

“...and Allah will never let the non-believers to have authority over the faithful”.¹³

Judicial job is basically the application of *Shari'ah* rules and a non-believer has no knowledge of *Shari'ah*, so how can he implement it.

However, according to the opinion of Imam anafis a non-believer may be appointed Qadi for the non-believers because he can give evidence in their matter.

- (b) **Maturity and Sanity:** Qadi must be *Sui juris* because a minor and insane cannot comprehend the rules of *Shar'ah*. Only being *Sui juris* is not enough, rather he should be a man of distinction having enough wisdom to distinguish between truth and fabrication. According to al Mawardi he should be, "Distinguishing rightly, having excellent insight in affairs, far away from negligence and mistake, who reaches through his wisdom to the solution of any confusion"
- (c) **Freedom:** He should not be a slave. The Muslim jurists mentioned this condition in the old days but after the abolition of slavery according to the Vienna Convention 1815 and Geneva Agreement of 1956, endorsed by all the countries of the world now there is no need to mention this condition.
- (d) **Physical and Mental Health:** He should be physically fit; that is his faculties of hearing, sight and speech should properly work so that rights can be proven before him and so that he can distinguish between the plaintiff and defendant and the one who confesses and the one who denies.¹⁴
- (e) **'Adalah (Religious Probity):** It is a terminology used by the Muslim jurists for a characteristic in the character of a person who refrains from major sins and does not continue to commit minor sins. This is because he has to do justice so if he can not be just in his relation with the Creator, how can he be expected to do justice in people's matters¹⁵.
- (f) **Knowledge of the Rules of Shar'ah:** He should have requisite knowledge of the rules of *Shar'ah* and should be learned enough for deciding disputes otherwise he will be among the cruel because he will be deciding without knowledge.

The above mentioned conditions are agreed upon among almost all the schools of thought in Islamic *fiqh*. There are some other conditions which are disputed by some while some of the jurists consider them to be the basic conditions. Among those is the condition for Qadi to be a male and to be a *Mujtahid*. In short according to the opinion of Maliki, Shafi'i and Hanbali Schools of thought these two conditions are necessary for a Qadi while Imam Abu Hanifah

does not consider *ijtihād* to be a condition while he considers being male only in the matters where the evidence of women is not accepted like the cases of *ḥudūd* and *Qiyās*, otherwise in the matters where the evidence of women is valid, the women can be appointed *Qāḍī* for such matters.¹⁶

So it may be concluded that the qualifications of *Wilayat al Ma'lim* are same as a *Qāḍī* but in addition he should have an imposing stature, the strength of law-enforcing officer and firmness of *Qāḍī*, as described by al Mawardi.¹⁷

Jurisdiction and Powers of *Wilayat al Ma'lim*:

Muslim jurists have identified ten areas of the jurisdiction of *Wilayat al Ma'lim*. They are the following¹⁸:

- (a) He investigates any abuse of power by rulers towards their subjects and brings them to account for the injustice of their actions. This is necessary part of investigation and is not dependent upon a petition from a plaintiff; thus he examines the behaviour of officials and enquires after their state in order to strengthen their case if they are equitable, to restrain them if they go beyond the limits, and to replace them if they are unjust.
- (b) Extortions made by agent-collectors when exacting the taxes on wealth and property- in this case he should have recourse to the laws of justice contains in the *Dawāns* of the government. He should ensure that people are treated accordingly, and that the agents apply the directives accordingly, and that they investigate any overestimations, if these amounts have been paid to the treasury, they should be returned, and if the agents themselves have taken them, he makes them return the money to their owners.
- (c) Keeping records of the treasury officials: As they occupy positions of trust; in this way the wealth of the Muslims may be correctly administered, both in its collection and its distribution. Thus he has to investigate the nature of what has been entrusted to them, and if there is any excess or deficiency with respect to any incoming or outgoing funds, then he applies the corresponding laws and takes the necessary measures regarding all irregularities.¹⁹
- (d) Claims of deficiency, delay or negligence towards those receiving provision. In these cases, he should refer back to his *Dawān* in order to establish the obligation and justification of any payment. Also to see whether it continues to be paid to them; he should examine if officials

have made short payments in the past or have prevented payment; if the official incharge have taken the funds, he should recover the sum from them, if not, he meets the loss from the treasury.

- (e) Restitution of seized property²⁰ that may be divided into two types:
- (i) The first are things seized by the authorities that are those taken from its owner either out of greed or out of hostility towards its owner. As soon as the person responsible for putting a stop to abuses comes to learn of this during his investigation, he should order its restitution without waiting for anyone to lodge a complaint with him. If, however, he does not learn of anything in his investigation, his action is dependent on the owner lodging a complaint.²¹
 - (ii) The second kind of property seized by force is that is taken by powerful individuals who dispose of it with violence and coercion, as if they were the owners. Its restitution is dependent on a complaint on behalf of their true owners, but they may only be recovered from those who have seized them in one of four circumstances: **i.** by way of either an admission or confirmation by the one who took it; **ii.** Based on information possessed by the person responsible for setting right the abuse, in which case he may give judgment in accordance with what he knows **iii.** By means of witnesses who testify to the improper seizure or to the victim's right to ownership and **iv.** The corroboration of accounts, which exclude all possibility of collusion by the witnesses: as witnesses may testify to the ownership of goods, the person responsible for setting aright the abuse has all the more cause to base his judgment on a concordance of statements.²²
- (f) The surveillance of *Waqf* institutions²³ which are either of a general or of a particular kind:
- (i) As for the general, he should begin by examining these *waqfs* even if there has been no complaint against them in order that he might have them run in the manner appropriate to them, and so that they are administered in accordance with the conditions stipulated by the *waqf*-donors.
 - (ii) As for *waqfs* of a particular kind, his inspection of them is dependent upon receipt of a complaint from interested parties who have differences of opinion-given that these *waqfs* have been set up for the benefit of specific parties. In the case of dispute, he should proceed

according to the law before a judge in case of any establishment of rights;

- (g) The execution of those judgments which the *Qadis* have suspended because of their own weakness and incapacity in applying them to the party against whom judgment has been passed, because of the later's strength and power, or because of the superiority of his position and standing. As the person responsible for redressing the abuse is stronger and more capable of executing the order, he should carry out the judgment against the person in question either by taking away what he possesses or by coercing him into giving up what he owes.
- (h) The inspection of whatever the *muftasibs* have been unable to undertake in matters of public good. Thus concerning the open practice of something illicit which they are too weak to prevent and transgressions committed on public highways which they cannot stop. At the same time the violation of the rights which they do not have the means to put an end to, he applies Allah's judgment, may He be Exalted, to them, and orders that they be forced to respect this judgment.²⁴
- (i) He sees that the public acts of worship are respected, like the Friday prayer, the *Eids*, the Hajj, and the jihad, and that there is no deficiency or omission regarding any aspect of them, for the rights and obligation of Allah, the Exalted, have priority concerning their fulfillment and execution.
- (j) Among other things, which he is authorized to do, is arbitration between two disputing parties and judgment between two litigants, although he is not to depart from the demands of the law and its consequences in his investigation, and he may not pronounce judgment between them by other than that by which judges and *Qadis* judge. Many a time judgment in cases of abuse causes ambiguity for those responsible for their investigation, and so they in turn transgress in their judgments and go beyond the appropriate limits.²⁵

The officer in charge of *Ma'lims* had vast power and wide jurisdiction which made him superior to *Qadi*. He had power to intimidate a defendant if circumstances warranted. He could eliminate unnecessary evidence and short circuit the procedures for speedy justice. He could appoint arbitrators and administer oaths to witnesses if their veracity was doubtful and more than that, he

could summon any person to provide him with relevant information, a power which was denied to the officers presiding over the regular courts.²⁶

***Wilayah yat al Ma'lim* and other Similar Institutions of the government**

There is no doubt in the fact that all the institutions of Islamic state aim at one primary goal i.e. promoting virtue and elimination evil. The three departments; *Wilayah yat al Ma'lim*, judiciary and *al-Isbah*, all are particularly established for achieving this primary goal. Their goal is the same but every department has its own jurisdiction and therefore the experts draw lines of demarcation among them so that no institution should interfere in the domain of the other and so that the business of the government is run in a smooth way. In this respect we will try to have a comparison of *Wilayah yat al Ma'lim* both with Judiciary and *Al-Isbah*.²⁷

***Wilayah yat al Ma'lim* and Judiciary²⁸**

Wilayah yat al Ma'lim and Judiciary are similar in the sense that both aim at the protection of rights and both take corrective measures if there is a loss of rights or where lack of responsibility or abuse of power occurs. Both the departments may take *suo moto* action as well as an action on the complaint of aggrieved party. However there are some distinctions between the two. Those distinctions are as follow:²⁹

- (a) *Wilayah yat al Ma'lim* is based upon instilling fear into the cruel but in case of normal judiciary it is not done.
- (b) The jurisdiction of *Wilayah yat al Ma'lim* is much wider than that of judiciary.
- (c) Incharge of *Wilayah yat al Ma'lim* may use fear factor in his investigation to reach to the truth. He can also decide a case on the basis of circumstantial evidence and determine right or wrong in a dispute. That is not allowed for a judge.
- (d) The in charge *Wilayah yat al Ma'lim* punishes those who openly commit injustice and reprimands with disciplinary action and censure those whose hostility is manifest while that is not allowed for judges.
- (e) He can delay judgement when the matter involving the litigants is unresolved because of the ambiguity of their case and the uncertainty regarding their rights; this in order to make an examination of their

details and circumstances. In short, a judge may not do this if one of the litigants asks for a definitive judgement, while incharge *Wilḡ yat al Ma ḡ lim* can do this.

- (f) He can refer litigants to arbitration of trusted persons if they become troublesome in order that their differences may be resolved to their satisfaction. The judge, on the other hand, cannot do so unless agreed by both the parties.
- (g) He may place litigants under surveillance if there are clear indications that their mutual denials are inconsistent, and can authorize the obligation of surety or bail with respect to matters where such guarantees are allowed in order to compel the litigants to a mutual sense of justice and to make them avoid all mutual denials and mutual denigration. This is not allowed for judges.³⁰
- (h) He may hear testimonies from good and honest persons in circumstances where judges would not be able to hear them without breaching established practices in the case of upright citizens.
- (i) He may have the witnesses swear on oath when he is in doubt as to whether they are making their testimonies of their own accord; he may also demand that there be a number of them, so as to avoid any possibility of doubt and to remove any uncertainty he may feel. This is, however, not permitted for judges (who form their decision based on two witnesses except in case of fornication.)
- (j) Incharge *Wilḡ yat al Ma ḡ lim* is allowed to initiate the summoning of the witnesses and to ask them what they know of the dispute between the litigants, whereas the custom amongst the judges is to charge the plaintiff with producing witnesses who he does not hear until after questioning the plaintiff.

*Wilḡ yat al Ma ḡ lim and Al ḡ isbah:*³¹

As for comparison between the institution of *al ḡ isbah* and *Wilḡ yat al Ma ḡ lim*, there is a side of resemblance which joins them and a side of difference which separates them.³²As for the resemblance which joins those, both have two aspects.

- (a) Activity of both the institutions is based on intimidation applied with force of authority and with energetic severity;

- (b) Activity of both the institutions may be concerned with matters of public interest and with seeing that manifest acts of wrong doing are denounced.

As for the distinction between the two, it also has two aspects.

Wilayah yat al Ma'lim carries out the investigation in cases of complaints where the judges fail to do so (because of the accused being very powerful and influential person). While investigation in the realm of *al-Isbah* is carried out because the judges disdain to do so; for this reason the rank of in charge *Wilayah yat al Ma'lim* is higher and that of the *Muhtasib* is lower. Incharge *Wilayah yat al Ma'lim* may make a signed order both to the judge and to the *Muhtasib*, while the judge can not make such an order to the incharge *Wilayah yat al Ma'lim* but he may issue such order to the *Muhtasib*. Anyway the *Muhtasib* can neither make such an order to the judge nor can he do so in case of incharge *Wilayah yat al Ma'lim*.

- (a) The person incharge of *Wilayah yat al Ma'lim* may pronounce a judgement but that is not the domain of *Muhtasib*.³³

Legal Status of *Wilayah yat al Ma'lim* in *Shar'ah*

Wilayah yat al Ma'lim means the institution of the government which works for the elimination of injustice/ cruelty (ظلم). Qur'an and Sunnah have frequently used this word in many different forms to highlight a particular behaviour that is condemned.

There are many sayings of the Prophet (peace be upon him) (peace be upon him) too which lay emphasis on the same theme.

For example in a *Qudsi Hadith*, it is narrated that Allah said:

- “يا عبادي إني حرمت الظلم على نفسي وجعلته بينكم محرماً، فلا تظالموا”
- “O my servants, indeed I have prohibited injustice for myself and have banned it among you too, so do not oppress each other”³⁴

Moreover all the injunctions of *Qur'an* and *Sunnah* which make enjoining virtue and forbidding evil (*al-amr bil ma'ruf wa'l-nahy 'ani'l-munkar*) an obligation upon the *Ummah*, are indirectly emphasising the obligation of establishing the institution of *Wilayah yat al Ma'lim* because that is the best form of *Nahy 'ani'l-Munkar* (forbidding evil) at the government level.

Same is the case with the injunctions which focus upon values like standing for Truth, 'Adl, Qis'as, Birr etc. All those indirectly prove the obligation of grievance redress too.

Allah has commanded His Prophet (peace be upon him) to decide among people with justice so the same command is true for the believers too. The above mentioned many verses and ahadith prove that it is the primary duty of Islamic government to have a stable system of the administration of justice where *Amr bil ma'ruf wa l'nahy 'ani 'l munkar* (enjoining virtue and forbidding evil) is ensured. This is not possible until it is done on government level and for that purpose there has to be a mechanism. That mechanism has been proven to be the department of grievance redress or *Wilayat al Ma'lim* and the department of *Fiqh isbah*. Something that is the duty of the government or the *Ummah* is called in the language of *Fiqh* as communal obligation (*Faraf kifayah*). Thus the conclusion is that grievance redress is a communal obligation of the *Ummah*.

Conclusion:

To conclude this discussion, the main points are summed up in the following:

- *Wilayat al Ma'lim* is the department of the government that aims at redressing public grievances against public servants, which may arise because of maladministration, mismanagement, or abuse of public authority. It is a mixed job of executive dominance and justice of judiciary and it needs a strict approach and a great capability of putting the cruel in fear.
- The essence of the institution i.e. grievance redress has been there from the earliest period of the Messenger of Allah (peace be upon him) but it took its formal shape through different phases of Islamic history.
- All three institution of the Islamic state namely; *Wilayat al Ma'lim*, Judiciary and *Fiqh isbah* has a common goal of enjoining virtue and forbidding evil though the three have separate and distinguished jurisdiction.
- Injustice is *haram* or prohibited in the strictest terms according to the injunctions of *Qur'an* and *Sunnah* and it is the obligation of the *Ummah* to remove *haram* from the society. On the other hand the establishment of a society based on justice and fairness is an obligation of the *Ummah* collectively. So the conclusion is that the establishment of *Wilayat al Ma'lim* is a communal obligation of the *Ummah*.

End Notes

¹Al Mḡ wardi, *Al Aḡkḡ m al Sultḡ niyyah*, , trans. Dr. Asadullah Yate, (London: Ta Ha Publications, 1996) p.58

² George Sordon, *Ikhtiyḡ r al fuḡḡ l fi al Aḡkḡ m al Sultḡ niyyah wa 'ilm al Mujtama' min Muqaddimah ibn Khaldḡ n*, (Algeria: Al Ma'ba'ah al Rasmiyyah, 1951)

³ Abdul Karim Zaydan, *Ni'ḡ m al Qaḡḡ f al Sharḡ 'ah al Islḡ miyyah* (Baghdad: Ma'ba'ah al 'Lni, 1984) pp. 300-299

⁴Burḡ nuddḡ n Abḡ al Wafḡ Ibrḡ hḡ m b. al Imḡ m Shamsuddin Abi 'Abdullah Muḡ ammad b. Farḡḡ n al Ya'mari al Mḡ liki, *Tabḡ irat al ḡḡḡḡ m fḡ Uḡḡ l al 'Aqdiyyah wa Manḡ hij al Aḡkḡ m* (Beirut: Dḡ r al Kutub al 'Illmiyyah 1301 A.H.) 1/20-21

⁵ Jurji Zaydḡ n, *Tḡ rḡ kh al Tamaddun al Islḡ mi*, (Egypt: Ma'ba'h al Hilḡ 1, 1902) 1/187

⁶ *Encyclopedia of Islam*, 6/933

⁷ M. Salam Madkooḡ as quoted by Farḡḡ Nabḡḡ n, *Ni'ḡ m al ḡḡḡḡ al Islḡ m*, p.667

⁸ Imran A. Khan Niazi, *Outlines of Islamic Jurisprudence*, op. cit. p.335

⁹ See: Ibn Khaldḡ n, *Ikhtiyḡ r al fuḡḡ l fi al Aḡkḡ m al Sultḡ niyyah wa 'ilm al Mujtama' min Muqaddimah ibn Khaldḡ n*, ed. George Sordon, op. cit. p. 58, and Suleman Al ḡḡ amḡ wi, , *Al Sulḡ at al Thalath*, p. 447

¹⁰It means conformity to high standards of ethics or excellence and strict attention to minute details.

¹¹ Abḡ al ḡḡ asan 'Ali b. Muhammad b. ḡḡ abḡ b al Mḡ wardi, *al Aḡkḡ m al Sulḡḡ niyyah*, trns. Asadullah Yate, op. cit. p. 116

¹² Generally all the classical books of Islamic law contains "Kitḡ b al Qaḡḡ" i.e. the Chapter on Judiciary wherein among other things, the qualifications of Qḡḡḡ are discussed. See for these conditions: Abḡ Bakr Muhammad b. Ahmad b. Abi Sahl al Sarakhsi, *Al Mabsḡḡ* (Karachi: Idarat al Qur'an wa al 'Ulḡ m al Islḡ miyyah, 1987) vol. 16, Abḡ Bakr Aḡmad b. 'Umar al Shaybḡ ni al Khassḡ f, *Kitḡ b Adab al Qḡḡḡ*, (Cairo: Al Awqaf, 1904), 'Alḡ uddḡ n Abḡ Bakr b. Masḡḡ d al Kḡ ḡḡ ni al ḡḡ anafi, *Badḡ 'i' al ḡḡ anḡ 'i' fḡ Tartḡ b al Sharḡ 'i'* (Beirut: Dar al Fikr, 1996) Vol.7, Ibn Farḡḡ n: *Tabḡ irat al ḡḡḡḡ m*, op. cit. 1/17, Ibn al Qayyim al Jawziyyah, *Iḡḡ m al Muwaqqi'ḡ n*, op. cit. 1/105, Al Mḡ wardi, *al Aḡkḡ m al Sulḡḡ niyyah*, op. cit. p. 62, Qḡḡḡ i Muḡ ammad al-ḡḡ usayn Abḡ Ya'ḡḡ al-ḡḡ anbali, *al Aḡkḡ m al Sulḡḡ niyyah* (Cairo, 1937) p. 55-56

¹³ Al Qur'ḡ n: 4: 141

¹⁴ Qṭībī Muḥammad al-Usayn Abū Ya'qūb al-Anbālī, *al-Aḥkām al-Sulṭaniyyah* (Cairo, 1937) p. 57 and Abū Bakr Muḥammad b. Aḥmad b. Abī Sahl al-Sarakhsī, *al-Mabāsūt* (Karachi: Idarat al-Qur'ān wa al-'Ulūm al-Islāmiyyah, 1987) 16/61,

¹⁵ According to the ḥanafī opinion a person lacking probity (i.e. sinful person) may be appointed as Qṭībī, as probity is a condition for perfection i.e. not a pre-requisite. So the ruler should not appoint such a person but if he does appoint one, his appointment is legal and his decisions shall be enforceable at law if they do not exceed the limits of *Sharḥ 'ah*. Al-Kātibī, *al-Bad' 'i' wa 'l-ḥanī 'i'*, as quoted by Muḥammad Muḥammad ṭāfi al-Zuḥaylī, *al-Tanẓīm al-Qaḍā' fi 'l-Fiqh al-Islāmī* (Damascus: Dār al-Fikr, 1980) p.56

¹⁶ Ibid. pp.57,58

¹⁷ Al-Muḥawwidi, *al-Aḥkām al-Sulṭaniyyah*, trns. Asadullah Yate, op. cit. p.116

¹⁸ Ibid. pp.121-125

¹⁹ Qṭībī Muḥammad al-Usayn Abū Ya'qūb al-Anbālī, *al-Aḥkām al-Sulṭaniyyah* (Cairo, 1937) p. 60, Al-Muḥawwidi, *al-Aḥkām al-Sulṭaniyyah, al-Aḥkām al-Sulṭaniyyah*, trns. Asadullah Yate, op. cit. p.116

²⁰ For a comparative study of the issues in seizure of property see: Kitāb al-Ghaḥb in Abū Muḥammad 'Abdullah b. Aḥmad b. Muḥammad b. Qudḥāmah al-Maqḍasī, *al-Mughnī*, ed. 'Abdullah b. 'Abdul Muḥsin al-Turkī and 'Abdul Fattāḥ Muḥammad al-Ḥilwī (Cairo: Hijr li 'l-Ḥaḥā'ah wa 'l-Nashr, 1992) 7/ 362-434

²¹ Qṭībī Muḥammad al-Usayn Abū Ya'qūb al-Anbālī, *al-Aḥkām al-Sulṭaniyyah* (Cairo, 1937) p. 61, Abū 'Alī Ḥasan 'Alī b. Muḥammad b. Ḥabīb al-Mawardi, *al-Aḥkām al-Sulṭaniyyah* trns. Asadullah Yate, op. cit. p.118

²² Ibid. p.127

²³ For a comprehensive discussion on *Waqf* property in *Sharḥ 'ah* see: Abū Muḥammad 'Abdullah b. Aḥmad b. Muḥammad b. Qudḥāmah al-Maqḍasī, *al-Mughnī* (Beirut: al-Lam al-Kutub, n.d) 5/600-648

²⁴ Qṭībī Muḥammad al-Usayn Abū Ya'qūb al-Anbālī, *al-Aḥkām al-Sulṭaniyyah* (Cairo, 1937) p. 61, Abū 'Alī Ḥasan 'Alī b. Muḥammad b. Ḥabīb al-Mawardi, *al-Aḥkām al-Sulṭaniyyah* trns. Asadullah Yate, op. cit. p.118

²⁵ Ibid. p.119

²⁶ Dr. Liaqat Ali Khan Niazi, *The Institution of Muḥtasib (Ombudsman)* (Lahore: Diyal Singh Trust Library, 1994) p.163

²⁷ For the working of various administrative organs of the government according to Islamic principles see: 'Abdul Ḥayy b. 'Abdul Kabīr al-Kattānī, *Niẓām al-Ḥukūmah al-Nabawiyyah al-Musammā' al-Tarīqah al-Idāriyyah* (Cairo: Dar Iḥyā' al-Turath al-'Arabī, no date) 2 volumes.

²⁸ A good discussion on the jurisdiction and other issues related to judiciary can be found in 'Alī uddīn al-Samarqandī, *Tuḥfat al-Fuqahā'* (Beirut: Dār al-Kutub al-'Ilmiyyah, 1984) 3/ 369-374

²⁹ Al-Muḥawwidi, *al-Aḥkām al-Sulṭaniyyah*, p. 126,127, trans. Dr. Asadullah Yate, Abū Ya'qūb, *al-Aḥkām al-Sulṭaniyyah* p. 63,64

³⁰ Qadi Muḥammad al-Ḥusaynī Abu Yaʿlā al-Ḥanbalī, *al-Aḥkām al-Sulṭaniyyah* (Cairo, 1937) p. 63

³¹ *Al-Ḥisbah* is the department of government which is charged with the task of enjoining virtue and forbidding evil in the society, particularly its work include supervision of market places to check any cheating or other illegal practices there. For a detailed discussion on the department of *al-Ḥisbah* see: Taqiyyuddin Abu ʿAlī ʿAbbas al-Ḥafḥāfi, *Al-Ḥisbah fī ʿIlm al-Islām*, (Medina: Al-Jamʿiyyah al-Islāmiyyah, no date), Muḥammad b. ʿAbd al-Bāṣit, *Nihāyat al-Rutbah fī ʿIlm al-Ḥisbah* ed. ʿUṣayd al-Muḥḥiḍīn (Baghdad: Maʿbaʿat al-Maʿrifah, 1968) and *al-Aḥkām al-Sulṭaniyyah* both by al-Muḥḥiḍīn and Abu Yaʿlā

³² Al-Muḥḥiḍīn, *al-Aḥkām al-Sulṭaniyyah*, p. 340, trans. Dr. Asadullah Yate, Abu Yaʿlā, *al-Aḥkām al-Sulṭaniyyah* p. 65

³³ Al-Muḥḥiḍīn, *al-Aḥkām al-Sulṭaniyyah*, p. 340, trans. Dr. Asadullah Yate, Abu Yaʿlā, *al-Aḥkām al-Sulṭaniyyah* p. 65

³⁴ *Kitāb al-Birr wa ʿIlm al-Ilāh wa ʿIlm al-ʿAdl*, Bāb: *Taʿrīf al-ʿUlūm*, *al-Adl* th No. 4674