

# SEEKING THE POSITION OF JUDICIARY: A COMPARATIVE ANALYSIS OF SEEKING JUDICIAL APPOINTMENTS IN ISLAMIC LAW

**IYAD MOHAMMAD DHEIF ALLAH ALSHYAB**

Mutah University, Jordan. Email: eyadsheab@gmail.com

**Dr. ABDUL-NASER MOHAMMAD SALEH JABER**

Mutah University, Jordan. Email: Jaberabd1970@yahoo.com

## **Abstract**

This research aims to elucidate the ruling on assuming a judicial position in Islamic law using a comparative approach, with a specific focus on the opinions of Al-Baqqini. The nature of the study necessitated the use of the inductive method, which involves collecting and examining scientific material from its original sources, as well as the analytical method, which involves analyzing legal texts from the Quran and Sunnah to clarify their implications. Additionally, the comparative method is employed to present various jurisprudential opinions on contentious issues, attributing them to their respective proponents, providing evidence, and detailing discussions between different viewpoints. The study concludes that Al-Baqqini made multiple choices in his book on judiciary from his work "Al-Tadrib," deviating from his own school of thought. Among his choices regarding the judiciary is the obligation of seeking and accepting judicial appointments outside the region where the judge resides if there are qualified individuals for the position. The research asserts that judiciary is sanctioned in Islamic legislation based on evidence from the Quran, Sunnah, and consensus, aiming to resolve disputes, adjudicate people's cases to prevent harm, and uphold their interests.

**Keywords:** Judiciary, Comparison, Study, Assuming, Position.

## **THEORETICAL FRAMEWORK AND LITERATURE VIEW**

### **Introduction**

Praise be to Allah, the Lord of all worlds, and blessings and peace upon our master Muhammad ibn Abdullah and upon his family and all his companions. After this, it is well-known that assuming a judicial position is one of the most important and significant pillars of governance in a state. It is a function that traces its roots to the duties of the prophets and messengers, who govern in accordance with Islamic law. Allah, the Most High, says, "Mankind was [of] one religion [before their deviation], but then Allah sent the prophets as bringers of good tidings and warners and sent down with them the Scripture in truth to judge between the people concerning that in which they differed" (Al-Baqarah: 213). Also, addressing the Prophet David (peace be upon him), Allah says, "O David, indeed We have made you a successor upon the earth, so judge between the people in truth and do not follow [your own] desire, as it will lead you astray from the way of Allah" (Sad: 26). Furthermore, Allah addresses His messenger, Muhammad (peace be upon him), saying, "And judge, [O Muhammad], between them by what Allah has revealed, and do not follow their inclinations and beware of them, lest they tempt you away from some of what Allah has revealed to you" (Al-Ma'idah: 49).

Allah Almighty created humankind to be His successors on Earth, to inhabit and cultivate it. He completed this religion for His servants, making it the seal of all religions. He appointed His Prophet Muhammad (peace be upon him) as the seal of the prophets and messengers, and He established His comprehensive and complete Sharia from all aspects. Allah, the Most High, stated, "This day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as a religion" (Al-Ma'idah: 3).

The continuation of this religion is due to its vitality, ease, tolerance, and justice, as well as its governance in societies. The justice of Islam in judiciary matters is one of the most crucial fields of Islamic jurisprudence. It holds a distinguished place among all sciences due to its significance and nobility. This is because the judiciary touches the lives of all people without exception, influencing and distinguishing between the permissible (halal) and the forbidden (haram). Undoubtedly, when a judge assumes his position with competence and righteousness, adhering to truth and justice, the welfare of society lies in his hands. Security, tranquility, and stability prevail. However, if he is unjust and oppressive, chaos, corruption, and turmoil spread across the land. In the present era, the judiciary in courts derives its principles from the fulfillment of the conditions and requirements of assuming the position of a judge, as dictated by the wise Sharia. The judiciary is urged to follow its path and not succumb to personal desires. This comparative study aims to elucidate the ruling on assuming a judicial position in Islamic law.

### **Significance of The Research**

The significance of this study lies in addressing a vital issue within the domain of judiciary, as it pertains to matters that establish the foundations of governance and justice in the country. These issues safeguard the rights of individuals and contribute to the stability of society through the competence of its judiciary. Additionally, the importance of the research extends to educating Muslims on the principles of assuming judicial positions in Islamic law, emphasizing the vitality of Islamic jurisprudence in addressing various societal issues. The research holds importance due to its direct relevance to reality and the people's need to investigate and study its details. This is particularly relevant because the religious rulings are not legislated arbitrarily; each aspect of religious rulings is deemed important and necessary.

### **Research Problem**

The research problem revolves around determining the ruling on assuming a judicial position in Islamic law, examining the perspectives of Islamic jurists and the stance of Al-Baquni, who deviated from his Shafi'i school in this matter. Consequently, the central question the research seeks to answer is: What is the ruling on seeking to assume judicial positions in Islamic law? This question gives rise to the following inquiries:

1. What is the meaning of judiciary in both linguistic and technical terms?
2. What are the legal evidences supporting the legitimacy of the judiciary?
3. What is the significance of the judiciary in managing the affairs of people?

## Research Objectives

The research aims to elucidate the following:

1. Identify the ruling on assuming a judicial position in Islamic law.
2. Define the concept of judiciary in both linguistic and technical terms.
3. Highlight the significance of judiciary in Islamic law.
4. Examine the legal evidences supporting the legitimacy of the judiciary.
5. Clarify the flexibility of Islamic Sharia in considering the opinions of reputable scholars from various jurisprudential schools regarding assuming judicial positions, without bias towards a specific school or opinion.
6. Contribute to the Islamic library with a specialized study and research focusing on assuming judicial positions.
7. Demonstrate that Islamic Sharia is applicable and suitable for every time and place.

## Previous Studies on The Topic

Upon reviewing previous studies in the field of judiciary, numerous studies were found addressing various aspects of this domain. However, there was a gap regarding a comprehensive comparative study that specifically focuses on the ruling of assuming a judicial position in Islamic law, with a central emphasis on the opinion of Imam Al-Baqqini. This study aims to fill this gap. Notable previous studies that discussed the ruling of assuming a judicial position, its importance in contemporary life, and their findings can be employed and leveraged in this study.

### First Study:

- Author: Saleh Khaled Al-Shuqayrat (2012)
- Title: "The Request for Judiciary in Islamic Law"
- Journal: Faculty of Sharia and Law, Tanta University
- This study discussed the request for judiciary in Islamic law but did not specifically address the opinion of Imam Al-Baqqini or his choice in this matter. My study differs from this one by specifically highlighting Al-Baqqini's stance and his deviation from the Shafi'i school in this regard.

### Second Study:

- Author: Abdel Fattah Mohamed Idris (2016)
- Title: "Seeking Judicial Appointment: A Jurisprudential Study"
- Journal: Journal of Sharia Research and Studies, Egypt
- Volume 6, Number 60

- This study explored the definitions of "request," "appointment," and "judiciary" linguistically and technically. It discussed the legitimacy of judiciary, the ruling on seeking it, and the consequences of pursuing a judicial position. Similar to the first study, it did not specifically address the opinion of Imam Al-Baqqini and his choice in this matter. My study aligns with this one in defining judiciary and discussing its legitimacy and the ruling on seeking it, but it differs by focusing on Al-Baqqini's choice and his deviation from the Shafi'i school.

### **Scientific Contribution of The Research**

The research contributes scientifically by elucidating the ruling on assuming a judicial position in Islamic law through a comparative methodology that explores the opinions of the four Islamic jurisprudential schools. The emphasis is placed on the perspective of Imam Al-Baqqini in this matter. This approach aims to provide a comprehensive understanding of the diverse opinions within Islamic jurisprudence regarding the appointment to judicial positions, with a particular focus on the distinctive viewpoint of Imam Al-Baqqini.

### **RESEARCH METHODOLOGY**

The nature of the research necessitated the use of the following methodologies:

#### **1. Inductive Method:**

- This method involves collecting and extrapolating scientific material from its original sources. It facilitates the extraction of key insights and foundational knowledge from various Islamic legal texts.

#### **2. Analytical Method:**

1. The analytical approach entails scrutinizing and dissecting legal texts from the Quran and Sunnah to highlight the nuances and implications within. It aims to elucidate the guiding principles and the depth of legal reasoning embedded in these texts.

#### **3. Comparative Method:**

- The comparative methodology involves presenting the legal opinions of the four jurisprudential schools on the contentious issue of assuming judicial positions. The study attributes these opinions to their respective founders, provides supporting evidence, and details discussions between the various opinions and their associated evidence. The research prioritizes what is believed to be the strongest evidence and the closest to fulfilling the objectives of Islamic law.

By employing these methodologies, the research endeavors to offer a comprehensive and nuanced exploration of the topic, shedding light on the diversity of opinions within Islamic jurisprudence and emphasizing the unique stance of Imam Al-Baqqini on the matter.

## Research Plan:

My research plan for this study is as follows:

- **Introduction:**  
This section encompasses the literature review and theoretical framework.
- **Chapter One: Definition of Judiciary in Language and Terminology, and Clarification of its Legitimacy and Significance:**
  - Subtopic One: Judiciary in Language and Terminology.
  - Subtopic Two: Legal Evidences of the Legitimacy of Judiciary.
  - Subtopic Three: The Significance of Assuming Judicial Positions.
- **Chapter Two: Ruling on Assuming a Judicial Position in Islamic Law:**
  - Subtopic One: Presenting the Issue in Jurisprudential Schools.
  - Subtopic Two: Jurists' Evidences on the Matter, Discussing Them, and Clarifying the Preponderant View.
- **Conclusion:**
  - This section includes the research findings and recommendations.
- **Sources and References**

## **Chapter One: Definition of Judiciary in Language and Terminology, And Clarification of Its Legitimacy and Significance**

It serves as the tongue conveying the legal rulings, representing one of the noble positions that ensure justice, prevent injustice, and establish truth. Given its lofty status, the prophets undertook the responsibility of judgment, settling disputes among people and assigning others to this significant role. The subject of judiciary is crucial in the lives of individuals, communities, nations, as it serves as a means to achieve justice through people, support the oppressed, restore rights to their rightful owners, and provide justice for the wronged. At this chapter, the researcher delves into defining the judiciary, elucidating its legitimacy, and highlighting the wisdom behind its legitimacy.

### **Subtopic One: Judiciary in Language and Terminology**

**First: Judiciary in Language:** This encompasses various meanings such as making a decision, passing judgment, and settling a matter. Additionally, is used to denote a legal ruling, the act of delivering a judgment, or the overall function and duties of a judge. It embodies the concepts of judgment, decision, and resolution.<sup>1</sup>

In language, "القضاء" refers to judgments, enforcement, and implementing decisions. Ibn Faris stated that the root letters Qaf, Dhad, and the weak letter Ha have a valid origin, indicating the firmness, mastery, and enforcement of a matter in its direction. For this reason, a judge is called a "قاضي" because they pass judgments and enforce them.<sup>2</sup>

**Secondly, the terminological meaning of judicially:** The term "justice" has been defined in various definitions that do not deviate from the linguistic meaning, among the most important of which are:

- The Hanafis defined it as the resolution of disputes and the settlement of conflicts in a specific manner.<sup>3</sup>
- The Maliki definition is the announcement of a legal ruling as a means of compulsion.<sup>4</sup>
- The Shafi'is defined it as the manifestation of the legal ruling in a situation where someone is obliged to implement it.<sup>5</sup>
- The Hanbalis defined it as the clarification of the legal ruling, its enforcement, and the separation of governments.<sup>6</sup>

From these definitions, it is evident that justice is defined as the resolution of disputes, conflicts, and differences, decisively ending contention with legal judgments derived from the Quran and Sunnah. These judgments may occur between people at any time and place, as long as there is someone with authority or a judicial position, namely a judge. According to the Islamic Sharia, which has established the jurisdiction's authority, the judge's ruling aims to establish justice, prevent injustice, protect people's rights, and prevent the oppressor from committing injustice.<sup>7</sup>

This definition emphasizes two main points:

- The Sharia purpose of having a judicial system, which is established to resolve disputes and settle conflicts in accordance with Sharia rulings regulated by the presence of a judge.
- The application of Allah's rulings revealed in the Quran and Sunnah, through explicit legal texts or scholarly reasoning, for the individual and societal reform and the preservation of people's rights.

### **Subtopic Two: Evidence for The Legitimacy of Judicature**

Judicature is sanctioned in the Quran, Sunnah, consensus, and reason:

#### **A. The legitimacy of judicature is explicitly mentioned in numerous Quranic verses:**

- Allah says, "O David, indeed We have made you a successor upon the earth, so judge between the people with truth and do not follow [your own] desire, as it will lead you astray from the way of Allah" (Quran, Sad 38:26).
  - Significance: This verse signifies Allah's command to the rulers to judge with truth and justice as revealed by Him, without deviating from His path.<sup>8</sup>
- Allah says, "Indeed, Allah commands you to render trusts to whom they are due and when you judge between the people, to judge with justice. Excellent is that which Allah instructs you. Indeed, Allah is ever Hearing and Seeing" (Quran, An-Nisa 4:58).
  - Significance: This verse directs the rulers to fulfill their responsibilities by returning trusts to their rightful owners and emphasizing the need to judge with justice when resolving

disputes among people. These verses provide clear evidence at the divine legitimacy of judicature as an essential aspect on governance, emphasizing the importance of ruling with justice and upholding the trust placed in the rulers.<sup>9</sup>

- Allah's saying: "But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], judge concerning that over which they dispute among themselves and then find within themselves no discomfort from what you have judged and submit in [full, willing] submission." (Quran, Surah An-Nisa, 4:65).

The indication: In this verse, Allah swears that people will not be considered believers until they accept the Prophet Muhammad (peace be upon him) as a judge in all their disputes, willingly comply with his decisions, and do not feel any discomfort within themselves about his judgments.<sup>10</sup>

- Allah's saying: "And We revealed to you, [O Muhammad], the Book in truth, confirming that which preceded it of the Scripture and as a criterion over it. So judge between them by what Allah has revealed and do not follow their inclinations away from what has come to you of the truth." (Quran, Surah Al-Ma'idah, 5:48).

The indication: In this verse, Allah instructs the Prophet Muhammad (peace be upon him) to judge between people based on what Allah has revealed to him, not following their desires or deviating from the truth revealed to him.<sup>11</sup>

- Allah, says: "And if you judge, judge between them with justice. Indeed, Allah loves those who act justly" (Quran, 5:42).

The significance: In this verse, Allah commands the judgment between disputants with justice and fairness, even if they are wrongdoers.<sup>12</sup>

The researcher sees that these preceding verses clearly indicate the legitimacy of judgment and adjudication among people according to the methodology of Allah. They emphasize the importance of maintaining justice and not exceeding the limits or inclining towards falsehood when resolving disputes among people. Additionally, these verses highlight the importance and elevated status of the judiciary in Islam.

## **B. Legitimacy of Judiciary in the Sunnah:**

Legitimacy of judiciary is mentioned in many Hadiths, and here are some texts that indicate this:

- The first evidence: The saying of the Prophet (peace be upon him): "(When) a judge gives a decision and strives to know the truth, and if he is correct, then he will receive a double reward; and if he gave a judgment (knowing that it is wrong), then he will receive only one sin."<sup>13</sup>

Explanation: Al-Nawawi, may Allah have mercy on him, stated that scholars unanimously agree that this Hadith refers to a knowledgeable and qualified judge. If the judge makes a correct decision, he is rewarded twice—once for his diligence and once for the correctness of his judgment. If he makes an error, he is still rewarded for his effort.<sup>14</sup>

- The second evidence: The saying of the Prophet (peace be upon him) narrated by Ali (may Allah be pleased with him): "The Messenger of Allah (peace be upon him) sent me as a judge to Yemen, and I said, Messenger of Allah! You are sending me, and I am a young man, and I have no knowledge of legal judgments.' The Prophet Mohammed (peace be upon him) said, 'Allah will guide your heart and keep your tongue firm. When two litigants sit in front of you, do not decide until you hear what the other has to say just as you have heard what the first has to say, for it is more appropriate that you should be able to judge fairly.'"<sup>15</sup>  
Explanation: This clear Hadith emphasizes the appointment of judges and provides guidance on the conduct of legal proceedings. It underscores the importance of a judge listening to both parties before making a judgment, even highlighting the wisdom in withholding judgment until all arguments are heard.<sup>16</sup>
- Third evidence: The saying of the Prophet, peace be upon him: "Judges are of three types: one in paradise and two in the Fire. As for the one in paradise, he is a man who knew the truth and judged accordingly. As for the one who knew the truth but deviated in his judgment, he is in the Fire. And as for the one who judged for the people out of ignorance, he is in the Fire."<sup>17</sup>

Significance: The Prophet's categorization of judges is evidence of the legitimacy of appointing judges. This hadith serves as a warning to judges against ruling unjustly or ignorantly, as doing so constitutes a major sin, leading to the oppression of people and violating the covenant with Allah.<sup>18</sup>

- Fourth evidence: The saying of the Prophet, peace be upon him: "There is no envy except in two: a man to whom Allah has given wealth, and he spends it righteously, and a man to whom Allah has given wisdom, and he judges by it and teaches it."<sup>19</sup>

Significance: Ibn Hajar commented that this hadith encourages the appointment of judges who possess the necessary qualifications, are capable of implementing justice, and have support. This is because appointing such judges contributes to promoting good, supporting the oppressed, ensuring the delivery of rights, preventing the hand of the oppressor, and reconciling among people. All of these actions are considered acts of worship, making the appointment of qualified judges an obligation for the well-being of society.<sup>20</sup>

### C. Legitimacy of Judiciary by Consensus:

Muslims have unanimously agreed, both in ancient and modern times, on the legitimacy of establishing a judiciary and issuing judgments among people.<sup>21</sup> Ibn Taymiyyah stated, "Muslims have unanimously agreed on the legitimacy of establishing a judiciary and passing judgments among people. The judiciary is among the obligatory communal duties because the affairs of people cannot be rectified without it. Thus, it is incumbent upon them, similar to jihad and leadership. Ahmad ibn Hanbal asserted that people must have a ruler, as it is essential for upholding people's rights."<sup>22</sup>



#### **D. The Legitimacy of Jurisdiction from the Rational Perspective**

- Due to the inherent tendencies of humans toward injustice, conflict, and the decrease of equity among them, necessity calls for someone to judge between them with justice and fairness.<sup>23</sup>
- Because the customs of nations involve it, and all legislations address it.<sup>24</sup>
- Due to the multitude of differences in the judgments derived from scholarly reasoning, and it is not feasible to act upon the divergent opinions except through decisive judgment and conclusive adjudication.<sup>25</sup>

#### **Subtopic Three: The Significance of Assuming Judicial Positions**

Without any doubt, the importance of the role of the judiciary for prosperity and happiness of nations leading to a good life, helping those who suffer, taming those who are fierce, deciding disputes, securing everybody's rights, encouraging morality and opposing immorality, Justice is not simply applied upon a single individual but on the entire society as a whole. Therefore, the judiciary works towards protecting the lives, property, dignity, and freewill of everyone in the society. Thus, development of states, evolution of civilizations and progress, and opportunities to work on the worldly as well as spiritual matters occur.

Such justice that the judiciary dispenses guards people's rights, holds sacrilegious, saves the life and develops an honourable living. Such environment encourages interaction amongst people having different languages, ethnic groups and beliefs which builds confidence, love and trust which bind people together in society hence a stronger society.

It is certain that all human communities, regardless of their era or location, have experienced conflicts and disputes and therefore, there must be the judiciary for solving conflicts, settling up disputes, protecting the underdogs, stopping the exploiters as well as ensuring justice, equity among

Judges aim at fighting anarchy, listening to people's complaints, crushing tyranny, protecting the weak, settling disputes, doing all good through avoiding any evil ones.

The wisdom behind the judiciary is to eliminate disorder, prevent wrongs, suppress tyranny, support the oppressed, resolve disputes, enjoin what is right, and forbid what is wrong.<sup>26</sup>

The legislation on the judiciary was a sublime forest aimed at achieving the judgment between disputants among justice and fairness, embodied in the divine law that Allah, Almighty, deposited in His Noble Book and at the Sunnah of His Prophet Muhammad, peace be upon him. The purpose is to restore situations and relationships to their proper status, obliging all parties to adhere to the conditions that their Creator is pleased with. Thus, it becomes a response to the call of Allah Almighty to them, as He said: "O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refering it to Allah and the Messenger if should believe in Allah and the Last Day. That is the best [way] and best in result." (Quran, 4:59).

Furthermore, the wisdom of Allah, Almighty, ordained in this universe that people live in safety and stability, aiding one another, cooperating to ward off harm and achieve common benefits. Through this collaboration, some may unjustly oppress others, while others strive for justice and fulfill their duties. The weak, unable to contribute, may appear, and conflicts may arise among them in sharing the rights obtained through this cooperation. Therefore, legislation and laws are necessary to regulate this matter. If people were left without a regulator to adjudicate disputes and safeguard their rights, the world would descend into chaos and corruption, altering the conditions of the world. People would seek a savior from this situation. Hence, the idea of establishing courts and appointing judges to settle people's disputes and organize their affairs before they escalate and get out of control emerged.<sup>27</sup>

The researcher believes that establishing fair judiciary among people has an impact on achieving justice, preserving rights, restoring security, safeguarding lives and property, preventing injustice and tyranny, establishing boundaries and judgments, and holding criminals accountable for their actions. This aims to prevent them from returning to wrongdoing and deter others from committing similar acts. The wise person learns from the experiences of others, and the judiciary exists to preserve people's rights, prevent aggression against them, protect them from encroachment, ensure the return of their rights if unjustly taken, compensate them for what they lost, and, as Ibn Taymiyyah states, "The purpose of the judiciary is to deliver rights to their owners and settle disputes. Delivering rights is for the sake of benefit, and settling disputes is for the removal of harm. The goal is to bring about that benefit and eliminate this harm. Delivering rights is an act of justice that is established by the heavens and the earth, and settling disputes is a means of preventing injustice and harm, both of which can be categorized as preserving what exists and preventing loss."<sup>28</sup>

## **Chapter Two: The Ruling on Assuming the Position of Judiciary in Islamic Law**

Islamic Sharia came to safeguard people's rights, protect them from aggression, and establish justice among them. It legislated for them the judiciary to resolve disputes, settle conflicts, give each rightful claimant their due, and undoubtedly, the judiciary holds great importance for human societies. Anyone who examines history will find that the judiciary has been a necessary requirement in order to resolving disputes among people, preserving rights, give each person their due, stopping the oppressor from committing injustice, taking their right from them, give this right to the oppressed, resolving conflicts, ensuring the safety of these societies, and preserving them. Thus, fair judiciary is one of the key factors in the success, progress, and spread of peace and stability in nations. In this section, we will explore the ruling on seeking the position of judiciary in Islamic law and clarify the predominant view on this matter.

### **Subtopic One: Explanation of The Matter in Jurisprudential Schools**

**Statement of the Issue:** What is the ruling on seeking the position of judiciary and accepting it in a jurisdiction where the judge resides and there are others who are qualified for the judiciary?

**Choice of Al-Bulqini:** It is obligatory to seek the position of judiciary and accept it in a jurisdiction where the judge resides and there are others who are qualified for the judiciary.<sup>29</sup>

**This is evidenced by Al-Bulqini's choice:** "The affirmation is strengthened here, especially if those matters are lacking in the judiciary."<sup>30</sup>

**The Predominant View in the School:** There is no obligation to seek the position of judiciary and accept it in a jurisdiction other than the one assigned to the judge, even if there are others who are qualified for the judiciary. Al-Ramli explicitly mentioned this, saying, "It is not obligatory for someone appointed to the judiciary to seek it or accept it in a place other than his hometown."<sup>31</sup>

Scholars differ in opinions regarding the obligation of seeking and accepting a judicial position in areas other than the one in which the judge is currently appointed when there is someone else suitable for the judiciary. The two main opinions are outlined as follows:

- The first opinion, endorsed by the Shafi'i, Hanafi, and Hanbali schools, asserts that it is not obligatory for the one appointed to seek a judicial position in a field other than their current one, even if there is someone else suitable for the role<sup>32</sup>
- The second opinion, supported by the Maliki school and articulated by al-Bulqini, holds that it is obligatory for the one appointed to seek and accept a judicial position in an area other than their current one when there is someone else suitable for the judiciary<sup>33</sup>

These divergent opinions reflect nuanced perspectives on the communal obligation and individual duties regarding seeking and accepting judicial positions in various circumstances.

### **Subtopic Two: The Evidence of Jurists on This Matter, Their Discussion, And Clarification of The Prevalent Opinion**

The first group, who argue that it is not obligatory to seek and accept the role of a judge in a different jurisdiction from the one the judge resides in and that someone else suitable for judging is available, find support for their position in the Quran, the Sunnah, and rational reasoning.

#### **First Evidence**

**The verse from the Quran:** "O David, indeed We have made you a successor upon the earth, so judge between the people in truth and do not follow [your own] desire as it will lead you astray from the way of Allah." (Surah Sad, 38:26).

**The indication from this verse** is that it contains a command from Allah to the rulers to judge among people with justice and fairness, following the guidance sent down by Allah, and not deviating from it, lest they go astray from the path of Allah.<sup>34</sup>

**Discussion of the Indication:** Al-Balqini believes that judiciary is a responsibility that requires those who assume it to rule with justice among people and to avoid inclining towards desires. This is because such inclinations lead to misguidance. The position of judiciary and seeking it are considered obligatory duties, and they are among the critical positions that people tend to avoid due to their dangers and significant impact on the individual's soul when deviating from justice and oppressing others and inclining towards falsehood<sup>35</sup>

**The indication from the hadith** is clear in not appointing someone who actively seeks a position of authority or judgeship, willingly leaving their hometown for that purpose. Prophet Muhammad (peace be upon him) asserted that the leadership is a general responsibility for all Muslims. The wisdom lies in not appointing someone who actively seeks authority, as revealed in the hadith of Abdul Rahman ibn Samurah, and if the person is not assisted, they are not qualified.<sup>36</sup>

**Discussion of the Indication:** According to Al-Balqini, administering justice is not an easy task, and it is not permissible to appoint someone who is not capable in fulfilling the requirements of the judiciary. There is no indication against seeking a judicial role for someone who is capable of carrying out the responsibilities of justice and judgment impartially<sup>37</sup>. The third evidence is the saying on the Prophet Muhammad (peace be upon him): "Whoever is given the responsibility of judging has been slaughtered without a knife."<sup>38</sup>

### **Reason for the Dispute in the Issue**

The reason for the disagreement among jurists on this issue stems from their differing opinions on the ruling regarding seeking legal judgment in different situations. This divergence is based on variations between the ruling of absolute necessity and, in some cases, sufficiency. These situations vary depending on the nature of the circumstance. In this context, there are individuals within the country who are qualified to assume judicial positions, eliminating the need to bring in a judge from outside the country and burdening them beyond their capabilities.<sup>39</sup>

### **The prevailing view**

The researcher, after examining jurists' opinions and the evidence they presented, concludes that the predominant opinion is the first one, which argues against the mandatory requirement for seeking legal judgment for those appointed in non-judicial roles. The argument is based on the availability of qualified individuals for the judiciary within the country, eliminating the need to bring in judges from outside, except in cases of urgent necessity. However, seeking a judgeship for personal gain, such as through bribery, is condemned. Historical examples, like those of Ibn Umar, Al-Shafi'i, and Imam Abu Hanifa, refusing judicial appointments, are cited to support this viewpoint.

## **RESULTS AND RECOMMENDATION**

### **The research yielded the following results:**

- Al-Balqini had multiple choices in his book on judiciary from his work "Al-Tadrib," where he deviated from his school of thought. Among his choices in the chapter on judiciary was the obligation of seeking and accepting the judiciary in a region where the judge resides, even if there are others qualified for the position.
- The judiciary is legislatively permissible in Islamic law, supported by evidence from the Quran, Sunnah, and consensus. It serves to resolve disputes, adjudicate people's cases, prevent harm, and uphold their interests.

## Recommendation

Based on these findings, the researcher recommends the continuous exploration and study of choices made by other Shafi'i scholars such as Imam al-Nawawi, al-Shirazi, al-Ramli, and others. This would significantly contribute to enriching the Islamic jurisprudential journey, revealing the methodologies of these scholars in preference, examining the reasons for disagreements, and intensifying lectures and academic courses for specialized students and researchers in Islamic studies. Moreover, addressing numerous contemporary issues related to disputes, regularly encountered by people, would equip students to effectively research and form well-founded opinions based on scholars' views, evidence, discussions, and arrive at a sound understanding.

## Notes

- 1) Ibn Manzur, "Lisan al-Arab," under the entry for "ى ض ق" (QaDa), Volume 15, page 186. Al-Razi, "Mukhtar al-Sahah," Ibn al-Athir, "Al-Nihayah fi Gharib al-Hadith," Volume 4, page 78.
- 2) Ibn Faris, "Mu'jam Maqayis al-Lughah," entry for "ى ض ق," Volume 5, page 99.)
- 3) Ibn 'Abidin, "Radd al-Muhtar 'ala al-Durr al-Mukhtar," Dar al-Fikr, Beirut, 1st edition, 1412 AH, Vol. 5, p. 352.
- 4) Ibn Farhun, "Tubasirat al-Hukam fi Usul al-Aqdiyah wa Minahij al-Ahkam," Dar al-Kutub al-Ilmiyya, Beirut, 1st edition, 1416 AH, Vol. 1, p. 9.
- 5) Al-Shirbini, Muhammad ibn Ahmad al-Khatib, "Mughni al-Muhtaj ila Ma'rifat Ma'anii Alfadh al-Minhaj," Dar al-Kutub al-Ilmiyya, Beirut, 1st edition, 1994, Vol. 6, p. 257.
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- 7) Ibn Farhun, "Tubasirat al-Hukam fi Usul al-Aqadiyah wa Manahij al-Ahkam," Vol. 1, p. 12.
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- 13) Reported by Al-Bukhari in his Sahih, Book of Adhering to the Book and the Sunnah, under the chapter of the reward of a judge when he exerts effort and is correct or makes a mistake. Hadith number 7352, Volume 6, page 2676. Also reported by Muslim in his Sahih, Book of Judgments, under the chapter explaining the reward of a judge when he makes a mistake. Hadith number 1716, Volume 5, page 131.
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  - 32) Al-Balqini, Training in the Shafi'i School, p. 323.
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  - 35) The narration was reported by Abu Dawood in his Sunan in the Book of Judgments, Volume 3, pages 298-299, Hadith numbers 3571 and 3572. It was also narrated by Al-Tirmidhi in his Sunan in the Book of Legal Judgments. Al-Tirmidhi commented that this hadith is "hasan gharib," Sunan Al-Tirmidhi, Volume 2, page 393, Hadith number 1340. Ibn Majah also reported it in his Sunan, Volume 2, page 774, Hadith number 2308. Ahmad reported it in his Musnad with the number 6551. Al-Hakim mentioned it in *Al-Mustadrak* in the Book of Legal Judgments, stating that it has a "sahih" chain, and Adh-Dhahabi concurred. Moreover, Ad-Darqutni

included it in his Sunan, and Ahmad in his Musnad. Al-Zaila'i, in Nasb al-Raya, categorized the hadith as authentic. Ibn Hajar, in Al-Talkhis, referenced the hadith "Whoever assumes a position of authority has slaughtered without a knife," and Ibn Al-Jawzi cited it, stating that it is adequately supported by Al-Nasai's authentication. Al-Hakim reported it and authenticated it, and Adh-Dhahabi agreed, as mentioned in Volume 4, page 233.

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