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MUZAFFAR IQBAL

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See also: DAY OF JUDGEMENT; EXPIATION; FAREWELL PILGRIMAGE; HAJJ; PRAYER; REMEMBRANCE AND REMINDER OF ALLAH; RESURRECTION; SUPPLICATION AND ANSWER; ‘UMRA.

ARBITRATION

TAḤKĪM

The process by which parties to a dispute agree to settle their dispute through arbiter(s) and abide by the decision of the arbiter(s). In legal terminology, arbitration (*taḥkīm*) is distinguished from the settlement of a dispute by an official judge (*qāḍī*) whose decision (*ḥukm*) is implemented by state authority (see below and JUDGMENT).

The primary meaning of the root *h-k-m* is “to restrain,” its predominant usage being in the context of judgment (*ḥukm*); for true judgment “restrains” from iniquity (*ẓulm*) (Ibn Fāris; Rāghib). The one who passes judgment is called the *ḥākim*, for he prevents the oppressor from oppression (Azharī, *Tahdhīb*). Other meanings of the root include wisdom (*ḥikma*), justice (*‘adl*), knowledge (*‘ilm*), forbearance (*ḥilm*), and understanding (*fiqh*). The Prophet Yahyā son of Zakariyyā (*q.v.*), upon them both peace, was granted wisdom (*ḥukm*) (*q.v.*) while he was yet a child (Q 19:12). *Al-Ḥakam* is one of the Names of Allah Most High (see BEAUTIFUL NAMES OF ALLAH); He is the Wisest of Judges (*aḥkam al-ḥākīmīn*) (Q 95:8).

Legally, arbitration comprises appointment of a mutually acceptable arbiter by the disputing parties, with the expressed agreement to accept the verdict given by the arbiter as well as full acceptance of that role by the arbiter (Ibn Nuḥaym, *al-Baḥr al-rā’iq* 7:24). The legal validity of arbitration is well-established in the Qur’ān, Prophetic practice (Sunna), and scholarly consensus (*ijmā‘*) (Samarqandī; Qurṭubī, *sub* Q 4:35). Only the early sect of the Khawārij denied the validity of arbitration by their interpretation of Q 6:114 (*Shall I seek a judge other than Allah, when He it is Who has sent down this Book unto you, clearly spelling out the truth...?*) and Q 40:12 (*Judgment belongs to Allah alone, the Exalted, the Great*). They proclaimed the slogan “No judgment but that of Allah!” (*Iā ḥukma illā li-Llāh*), to which ‘Alī b. Abī Ṭālib (13BH-40/609-660), Allah be well-pleased with him, replied: “A true statement (*kalimat ḥaqq*), but used for falsehood (*wrīda bi-hā l-bāṭil*)” (‘Abd al-Razzāq, *sub* Q 40:12; al-Suyūṭī, *al-Iklīl*, p. 121; Ibn Nuḥaym, *al-Baḥr al-rā’iq* 7:24). Al-Nawawī (631-676/1234-1277) cites the precedent of the Prophet appointing Sa’d b. Mu’adh (d. 5/627) arbiter in the case of Banū Qurayza (*cf.* Muslim,

Jihād, jawāz qitāl man naqaḍ al-‘ahd...) as proof for the validity of arbitration (Nawawī, *Sharḥ Muslim* 12:92).

Jurists differentiate between arbitration and a judgment (*al-qaḍāʾ*) passed by a state-appointed judge (*qāḍī*), for which the consent of the disputing parties is not a condition for the judgment to take effect. The legal schools differ on the scope of matters subject to discretionary arbitration, but generally exclude matters for which the Qurʾān and the Sunna provide specific legal punishments (*ḥudūd*, *taʿzīr*) (*q.v.*). These exclusions include matters related to blood money (*q.v.*; see also RETALIATION), slander (*qadhf*), and others which fall under the “Boundaries of Allah” (*ḥudūd Allah*) (*q.v.*) and so require a judge appointed by the ruler or state (Ibn al-ʿArabī, *Aḥkām* 2:125; al-Nawawī, *al-Majmūʿ* 20:127; al-Kharshī, *Sharḥ Mukhtaṣar Khalīl* 1:145; Ibn Qudāma, *al-Kāfī* 4:224; Ibn Qudāma, *Sharḥ al-kabīr* 11:393).

The Qurʾān mentions arbitration in four contexts: (i) willing acceptance of Prophetic arbitration being a condition of true belief (Q 4:65); (ii) Prophetic arbitration confirming the punishment for adultery in the Torah (*q.v.*) (Q 5:41-45); (iii) marital disputes (4:35); and (iv) determining the expiation necessary for killing game during pilgrimage (Q 5:95). The word “arbitrer” (*ḥakam*, from the root *ḥ-k-m*) appears three times in the Qurʾān, referring once (Q 6:114) to Allah and twice (Q 4:35) to humans.

Acceptance of Prophetic Arbitration as a Condition of True Belief

Q 4:65 makes the willing acceptance of the Prophet’s arbitration a condition of true faith: *But no, by your Sustainer, they are not true believers until they make you arbitrer (yuhakkimūka) in what they dispute among themselves, and then do not find the least vexation in their hearts on what you decide (qaḍayta), and accept it in complete submission.* Exegetes, based on reports from Companions or Successors, offer as the “occasion of revelation” (*q.v.*) of this verse that it was revealed (*cf. Tafṣīr*s of Ibn Kathīr, Ṭabarī, Samʿānī; Ibn ʿAtiyya, *Muḥarrar*):

- i. Generally concerning those hypocrites who would seek a diviner (*kāhīn*) (see SOOTHSAYER) to settle their disputes, according to the opinion of the Successors Muḥāhid b. Jabr (21-104/642-722) and ʿAṭāʾ b. Abī Rabāḥ (27-114/647-732);
- ii. specifically concerning a Jewish leader and a hypocrite: the former had sought to bring their dispute to the Prophet, upon him blessings and peace, because he knew that it would

be settled justly, while the hypocrite preferred to take it to a pagan diviner (*kāhīn*);

- iii. concerning Ḥaṭīb b. Abī Baltaʿ, one of the Anṣār, in his dispute over irrigation with the Prophet’s cousin al-Zubayr b. al-ʿAwwām, according to ʿAbd Allāh b. al-Zubayr, ʿUrwa b. al-Zubayr, and other Companions; and
- iv. concerning a complainant who, displeased at a verdict passed by the Prophet, sought another judgment from ʿUmar b. al-Khaṭṭāb—but Ibn Kathīr points out weaknesses in this report.

Ibn Ḥajar (773-852/1371-1449) says that these different occasions are not mutually exclusive, as a verse may be relevant to more than one event (*Fath al-bārī* 5:38) and as the second explanation can be understood as a specific instance of the first.

The third of these four occasions is reported by al-Zubayr himself, who related that he and one of the Anṣār disputed concerning the use of water passing through Ḥarra (a locality near Madina), water to which al-Zubayr had right of access but which they both used to irrigate their crops (see AGRICULTURE). They took the dispute to the Prophet, upon him peace and blessings, who told al-Zubayr, “Use the water and then let it go to your neighbor”—that is, the Prophet spoke as an arbitrer, with generous consideration for both parties. Upon this, the Anṣārī became vexed, for he deemed he had exclusive right to that water, and he exclaimed to the Prophet, “This [judgment] is so because he (al-Zubayr) is your paternal cousin!” At this, the color of the Prophet’s face changed, and he said to al-Zubayr, “Irrigate your land and then hold the water until it reaches the dam”—meaning, do not let it reach the other’s land, speaking as a judge and affirming al-Zubayr’s exclusive right to the water. Al-Zubayr would later observe, “It is my considered opinion (*wa-Ilāh mā aḥsibu*) that this verse (Q 4:65) was revealed about this very matter” (Bukhārī, Ṣullḥ, *idhā ashār al-imām bil-ṣullḥ fa-abā, ḥakama ʿalayhi bil-ḥukm al-bayyin*). Al-Ṭabarī considers the case of the Jewish leader and the hypocrite to be the primary context of the verse and its relevance to the irrigation dispute secondary (Ṭabarī, *sub* Q 4:65). Ibn ʿAṭiyya (d. 546/ca.1151) prefers al-Zubayr’s context on the basis of al-Zubayr’s own statement that the verse was revealed concerning his dispute (*Muḥarrar*).

Even though the Qurʾān uses the word “arbitration” (*yuhakkimūka*) rather than judgment, the Prophet’s final decision in this case has the nature of a ruler’s binding