

Right n. 38: The Right of the Adversary

The Right of the Adversary who has a claim against you

حق الخصم المدعي عليك

وَأَمَّا حَقُّ الْخَصْمِ الْمُدَّعِي عَلَيْكَ، فَإِنْ كَانَ مَا يَدَّعِي عَلَيْكَ حَقًّا لَمْ تَنْفَسِخْ فِي حُجَّتِهِ وَلَمْ تَعْمَلْ فِي إِبْطَالِ دَعْوَتِهِ وَكُنْتَ خَصِمَ نَفْسِكَ لَهُ وَالْحَاكِمَ عَلَيْهَا وَالشَّاهِدَ لَهُ بِحَقِّهِ دُونَ شَهَادَةِ الشُّهُودِ، فَإِنَّ ذَلِكَ حَقُّ اللَّهِ عَلَيْكَ، وَإِنْ كَانَ مَا يَدَّعِيهِ بَاطِلًا رَفَقْتَ بِهِ وَرَوَّعْتَهُ وَنَاشَدْتَهُ بِدِينِهِ وَكَسَرْتَ حَدَّتَهُ عَنْكَ بِذِكْرِ اللَّهِ وَالْقَيْتَ حَشْوَةَ الْكَلَامِ وَلَغَطَهُ الَّذِي لَا يَرُدُّ عَنْكَ عَادِيَةَ عَدُوِّكَ بَلْ تَبُوءُ بِإِثْمِهِ وَبِهِ يَشْحَذُ عَلَيْكَ سَيْفَ عَدَاوَتِهِ لِأَنَّ لَفْظَةَ السُّوءِ تَبْعَتْ الشَّرَّ. وَالْخَيْرُ مُقْمَعَةٌ لِلشَّرِّ. وَلَا قُوَّةَ إِلَّا بِاللَّهِ.

And the right of the adversary who has a claim against you is that if his claim against you is true,¹ you should not nullify his proof or abolish his claim. And you should dispute against yourself on his behalf and be a fair judge against yourself, and give witness to his right against you without the witnessing of any witnesses. This is the right of God that is made incumbent upon you. But if what he claims against you is false, treat him with gentleness and remind him to fear God, and implore him by his religion.

And by reminding him of God, you should help reduce his fury against you. Avoid using indecent words and yelling at him since this will not eliminate the animosity of your enemy, but it will result in your suffering from the sin he commits against you. And it will also result in his sharpening of the sword of animosity towards you, since indecent words will cause evil, but

good words will eradicate evil. And there is no power but in God.

The Right of the Adversary against whom you have a claim

حق الخصم المدعى عليه

وَأَمَّا حَقُّ الْخَصْمِ الْمُدَّعَى عَلَيْهِ فَإِنْ كَانَ مَا تَدَّعِيهِ حَقًّا أَجْمَلْتَ فِي مَقَاوَلَتِهِ
بِمَخْرَجِ الدَّعْوَى، فَإِنَّ لِلدَّعْوَى غِلْظَةً فِي سَمْعِ الْمُدَّعَى عَلَيْهِ. وَقَصَدْتَ قَصْدَ
حُجَّتِكَ بِالرَّفْقِ وَأَمَهَلَ الْمُهْلَةَ وَأَبَيَّنَ الْبَيَانَ وَاللُّطْفَ اللَّطْفَ وَلَمْ تَتَشَاغَلْ عَنْ
حُجَّتِكَ بِمُنَازَعَتِهِ بِالْقِيلِ وَالْقَالَ فَتَذْهَبَ عَنْكَ حُجَّتُكَ وَلَا يَكُونَ لَكَ فِي ذَلِكَ دَرَكٌ.
وَلَا قُوَّةَ إِلَّا بِاللَّهِ.

And the right of the adversary against whom you have a claim is that if your claim against him is true,² you should use pleasant words while you are filing your claim, since hearing the claim is harsh for the defendant. And you should provide your evidence with lenience, and respite, and with the clearest statements, and with absolute gentleness. And you should not dispute with him over gossip lest your proofs will be voided and you will lose the opportunity to prove them. And there is no power but in God.

Sources of Quarrelling

One of the fundamental desires of man in this short life is to have peace and security. Man wishes to have a life filled with love and peace and free of quarrelling. On the other hand, man is also subject to his whims. He is greedy, selfish, lazy and haughty. These factors drive him to not be pleased with what is rightly his, and violate other people's rights.

It is obvious that the more the crowd in one place, the more quarrelling there will be among them. It is not possible for both sides of a quarrel to be right. Usually one side is the one who is transgressing. Thus, we need a judge in the society to handle these cases to resolve the quarrels and establish justice between them. This is one of the major reasons for the appointment of Prophets in the different eras in history.

Islam Invites Man to Destroy the Roots of Quarrels

The illuminating teachings of Islam invite man to love and friendship, and even forgiving and self-sacrifice. These instructions lead man to eliminate the roots of problems in the society so that quarrels do not even start. We read the following verse in the Holy Qur'an regarding the followers of Islam after those who accepted Islam and migrated to Medina, and those who already lived in Medina and helped the Prophet and his followers:

وَالَّذِينَ جَاءُوا مِنْ بَعْدِهِمْ يَقُولُونَ رَبَّنَا اغْفِرْ لَنَا وَلِإِخْوَانِنَا الَّذِينَ سَبَقُونَا بِالْإِيمَانِ
وَلَا تَجْعَلْ فِي قُلُوبِنَا غِلًّا لِلَّذِينَ آمَنُوا رَبَّنَا إِنَّكَ رَؤُوفٌ رَحِيمٌ

“And those who came after them say: “Our Lord! Forgive us, and our brethren who came before us into the Faith, and leave not, in our hearts, rancor (or sense of injury) against those who have believed. Our Lord! Thou art indeed Full of Kindness, Most Merciful.” [The Holy Qur'an, al-Hashr 59: 10]

In this verse, we see the spirit of love in the Muslims that can eliminate quarrels. The same holds true for the life of the Hereafter. We read the following in the Holy Qur'an:

وَنَزَعْنَا مَا فِي صُدُورِهِمْ مِنْ غِلٍّ

“And We shall remove from their hearts any lurking sense of injury.” [The Holy Qur'an, al-A`raaf 7:43]

God has promised us the peaceful life we desire but cannot find in this world in the Hereafter. Thus, Islam has instructed man to abandon fighting in life. If there is quarrelling between people, Islam has given certain instructions to eliminate the fight.

Resolving the Differences

There is a chapter in *Usul al-Kafi* on resolving the differences between the people. Muslims are invited to help resolve the differences between other Muslims. This is considered a form of worshipping. Habib al-Ahwal narrated that he heard Imam Sadiq had said:

صَدَقَهُ يَحِبُّهَا اللَّهُ إِصْلَاحُ بَيْنِ النَّاسِ إِذَا تَفَاسَدُوا وَتَقَارُبُ بَيْنَهُمْ إِذَا تَبَاعَدُوا.

“The charity God likes is resolving the differences between the people who have problems with each other; and helping them get closer to each other when their discord has caused them to become separated.”³

In another tradition, we read that Imam Sadiq said:

لَأَنَّ أُصْلِحَ بَيْنَ اثْنَيْنِ أَحَبُّ إِلَيَّ مِنْ أَنْ أُتَصَدَّقَ بِدِينَارَيْنِ.

“Helping resolve the differences between two people is more desirable to me than giving two Dinars in charity.”⁴

However, if the differences do not get resolved this way their case has to be settled in court. Islam has the best judicial system in order to give everybody his or her due rights. The judge must be a just person, and consider the two sides of the agreement in the same manner. He should also try to please God in his ruling on the case.

Islam’s Judicial Rules

The most important steps implemented in European countries regarding judges are as follows:

- 1 A judge must be independent and immune and be able to prosecute anyone no matter what his rank or position of power is.
- 2 A judge must be paid a high enough salary to meet his financial needs so that he does not give in to a rich man and rule unjustly. It is said that the British government has dealt nicely with this issue.
- 3 All should be treated equally in court.

These issues, which are highly respected in European courts, are all parts of the teachings of Islam.

The Power of the Judge

The judge is granted so much power in Islam that even none of the members of the Islamic government can surpass that power. Only the ruler and his representative possess a higher degree of power. The Commander of the Faithful wrote the following in his letter to Malik al-Ashtar when he appointed him as his representative in Egypt:

ثُمَّ اخْتَرْتُ لِلْحُكْمِ بَيْنَ النَّاسِ أَفْضَلَ رَعِيَّتِكَ فِي نَفْسِكَ... وَأَعْطَاهُ مِنَ الْمَنْزِلَةِ لَدَيْكَ مَا لَا يَطْمَعُ فِيهِ غَيْرُهُ مِنْ خَاصَّتِكَ، لِيَأْمَنَ بِذَلِكَ أَغْتِيَالَ الرَّجَالَ لَهُ عِنْدَكَ.

“Choose for the administration of justice among people one who is, in your view, the best of your subjects.... Grant him the rank near you to which none of your special companions may aspire, so that by it he may be safe from people slandering him before you”⁵

Financial Independence of the Judge

Islam has granted the highest degree of financial independence to the judge. Imam Ali ordered Malik to give the judge as much money as he needs so that his financial needs do not affect the way he makes judgments.

The Duties of the Judge in the Court

The stress Islam has placed on equal treatment for both sides in the court is so much that even the current practice in Europe does not meet these high standards. It may even be that men cannot implement these standards for many more centuries. The judge should treat both sides equally in the court. Both parties should sit in the same place even if one side of the case is the ruler and the other party is a simple peasant. No privilege should be established for either party. Consider the following case.

Haroon Choosing a Judge

It is recorded in history that when the Abbasid Caliph Haroon ul-Rashid finished his pilgrimage he entered Medina. The people asked him to appoint a just judge since the judge had passed away. They introduced two men to him as candidates. In order to establish their degree of suitability for this position, Haroon called one of them to enter. The prime minister was standing in front of Haroon.

When the man entered, Haroon told him that there was some disagreement related to an estate between him and the prime minister. In addition, Haroon asked the man to resolve the case. The man thought for a while after hearing the reasons for the disagreement and said that Haroon is right. Haroon asked him to leave, and called in the other man. He repeated the same fictitious story again and asked the man to judge between them.

The man said: “I cannot judge between you since one side of the argument is sitting in the highest position of power while the other side is standing up in front of him. According to Islam you should both be in the same position before I can judge between you.” Haroon ul-Rashid enjoyed the man’s reply and appointed him as the judge immediately.

A judge is even supposed to treat the two sides equally in the way that he looks or points at them. He should also talk to each of them for about the same time. He should treat them both in the same way. Imam Ali said:

فَاخْفِضْ لَهُمْ جَنَاحَكَ وَأَلِنْ لَهُمْ جَانِبَكَ وَابْسُطْ لَهُمْ وَجْهَكَ وَأَسْ بَيْنَهُمْ فِي اللَّحْظَةِ
وَالنَّظَرَةِ حَتَّى لَا يَطْمَعَ الْعُظْمَاءُ فِي حَيْفِكَ لَهُمْ وَلَا يَيْأَسَ الضُّعَفَاءُ مِنْ عَدْلِكَ
عَلَيْهِمْ.

“Humble yourself to them, be gentle with them and meet with them in a friendly, cheerful manner. Treat them equally in your regard and consideration of them, so that the strong do not hope for your acting unjustly (in their favour), while the weak do not despair of your justice to them.”⁶

The Words of Shahid al-Awwal About the Duties of the Judge

In Al-Lum'ah Al-Dimishqiyah the words of Shahid al-Awwal about the duties of the judge are recorded as follows: “It is incumbent upon the judge to treat the two sides equally in talking, looking, greeting, respecting, listening and being just. If one of the parties is a Muslim and the other one is a pagan, the judge can let the Muslim man sit down while the pagan one stands up.

The judge does not have to be whole-heartedly inclined to both sides in this case. This is the jurisprudents' view on the duties of the judge. Regarding the way the judge should act in the court we read in Al-Lum'ah al-Dimishqiyah: “If one side of the fight starts to talk, the judge should listen to him. If both sides do so, the judge should listen to the one on the right. If both remain silent the judge should say that either one can present his claim, or they can both talk.”⁷

The Plaintiff and the Defendant

What is the difference between the plaintiff and the defendant? Shahid al-Awwal said: “The plaintiff is the side whose abandoning of the claim shall end the dispute. However, the defendant is the other side of the dispute. He cannot end the dispute. There are three possible responses by the defendant. He accepts the claim, rejects it or remains silent. Each form of response is different as viewed by the judge.

Evidence and Oath

We read in Wasa'il al-Sh`ah that the evidence is to be provided by the plaintiff, and oath is for the defendant.⁸ This has been quoted from Imam Sadiq on the authority of God's Prophet . Abi Basir quoted on the authority of Imam Sadiq :

إِنَّ اللَّهَ حَكَمَ فِي دِمَائِكُمْ بِغَيْرِ مَا حَكَمَ فِي أَمْوَالِكُمْ؛ حَكَمَ فِي أَمْوَالِكُمْ أَنَّ الْبَيِّنَةَ
عَلَى الْمُدْعَى وَالْيَمِينِ عَلَى الْمُدْعَى عَلَيْهِ، وَحَكَمَ فِي دِمَائِكُمْ أَنَّ الْبَيِّنَةَ عَلَى مَنْ
أُدْعِيَ عَلَيْهِ وَالْيَمِينِ عَلَى مَنْ أَدْعَى لِئَلَّا يَبْطُلَ دَمُ امْرِئٍ مُسْلِمٍ.

“God’s ruling regarding your blood (that has been shed) is different from His ruling on your property. God has ruled that, regarding your property, the evidence is incumbent on the plaintiff and the oath on defendant, but regarding your blood (that has been shed) the evidence is incumbent on the defendant and the oath on the plaintiff, so that the blood of a Muslim may not be shed without compensation.”⁹

Imam Ridha provided the following in response to a question asked:

وَالْعَلَّةُ فِي أَنَّ الْبَيِّنَةَ فِي جَمِيعِ الْحُقُوقِ عَلَى الْمُدَّعِي وَالْيَمِينِ عَلَى الْمُدَّعَى عَلَيْهِ مَا
خَلَا الدَّمَ لِأَنَّ الْمُدَّعَى عَلَيْهِ جَاهِدٌ وَلَا يُمْكِنُهُ إِقَامَةُ الْبَيِّنَةِ عَلَى الْجُحُودِ لِأَنَّهُ مَجْهُولٌ
وَصَارَتْ الْبَيِّنَةُ فِي الدَّمِ عَلَى الْمُدَّعَى عَلَيْهِ وَالْيَمِينُ عَلَى الْمُدَّعَى لِأَنَّهُ حَوَظٌ
يَحْتَاطُ بِهِ الْمُسْلِمُونَ لِئَلَّا يَبْطُلَ دَمُ امْرِئٍ مُسْلِمٍ وَلِيَكُونَ ذَلِكَ زَاجِرًا وَنَاهِيًا لِلْقَاتِلِ
لِشِدَّةِ إِقَامَةِ الْبَيِّنَةِ عَلَى الْجُحُودِ عَلَيْهِ لِأَنَّ مَنْ يَشْهَدُ عَلَى أَنَّهُ لَمْ يَفْعَلْ قَلِيلٌ.

“The reason why evidence, in all cases other than that of bloodshed, is incumbent on the plaintiff and the oath on the defendant is that the defendant denies the claim and it is not possible to establish evidence for denial.

However, in case of bloodshed, the evidence is due from the defendant and the oath from the plaintiff. This is because it is a safeguard which protects the Muslims, so that the blood of a Muslim may not go uncompensated, and so that it may be a restraint and a deterrent for the murderer, because of the difficulty of establishing the evidence for denial, for there will be few who will testify that he has not done it.”¹⁰

We learned from the above the jurists’ view on the claiming side and the claimant’s side. Imam Sajjad presented the moral aspects of this issue. He reminded both sides of their moral duties. He invites both sides to the truth and admonishes them against pursuing falsehood. Thus, it is better for both sides of any dispute to remember the recommendations of Imam Sajjad and take their case to a just judge – not an oppressive one. Many traditions exist to support this.

1. In the other version it continues: “you give witness to it against yourself. You do not wrong him and you give him his full due. If what he claims against you is false, you act with kindness toward him and you show nothing in his affair other than kindness; you do not displease your Lord in his affair. And there is no strength save in God.”

2. In the other version, it continues: “you maintain polite moderation in speaking to him and you do not deny him his right. If your claim is false, you fear god, repent to Him and abandon your claim.”

3. Usul al-Kafi, v.2, p.209.

4. Ibid.

5. Nahjul Balaghah,

6. Nahjul Balaghah.

7. Al-Lum'ah al-Dimishqiyah, Book of al-Qada.
8. Wasa'il al-Shi'ah, v. 18, pp. 170–173.
9. Ibid.
10. Wasa'il al-Shi'ah, v. 18, pp. 170–173.

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