95366 - Trying to avoid being appointed as a judge

the question

Why do many scholars, past and present, try to avoid being appointed as judges, even though they are qualified for that? Is there any text or report concerning that?.

Detailed answer

Praise be to Allah.

Firstly:

The position of judge is a noble position, which brings great virtue for the one who is able to undertake that role. The Prophets (peace be upon them), some of the senior Sahaabah (may Allaah be pleased with them) and some of the prominent Tabi'een and others who came after them took on this role. By judging justly one is enjoining what is good and forbidding what is evil, and supporting those who have been wronged.

Muhammad al-Khaadimi (may Allaah have mercy on him) said:

Knowledge of judicial matters is one of the noblest and most sublime branches of knowledge, because it is a high position and prophetic role. Through it blood may be protected or shed; it may determine which marriages are valid and invalid; it may confirm ownership or loss of wealth; and it may show which dealings are permissible or forbidden, disliked or recommended. The evidence that knowledge of judicial matters is not like other (branches of knowledge) is the verse (interpretation of the meaning): "And (remember) Dawood (David) and Sulaymaan (Solomon), when they gave judgement in the case of the field…" [al-Anbiya' 21:78]. For that reason the Messengers were sent and on the foundation of justice the heavens and the earth are established. The Prophet (peace and blessings of Allaah be upon him) described it as one of the blessings for which envy (hasad) is permitted, as he said: "There should be no envy except in two cases: a man to whom Allaah has given wealth and granted him the authority to spend it in a rightful manner

and a man to whom Allaah has given wisdom and he judges and acts on the basis of it." And it was narrated from Ibn Mas'ood (may Allaah be pleased with him): "If I were to judge for one day, that would be dearer to me than worshipping for seventy years." Hence judging justly between people is one of the best of righteous deeds that brings the highest status in the Hereafter. Allaah says (interpretation of the meaning): "And if you judge, judge with justice between them. Verily, Allaah loves those who act justly" [al-Maa'idah 5:42]. And what can be better than the love of Allaah?

Bareeqah Mahmoodiyyah fi Sharh Tareeqah Muhammadiyyah wa Sharee'ah Nabawiyyah (4/2,3).

Ibn Qudaamah (may Allaah be pleased with him) said:

There is a great deal of virtue in it for the one who is able to do it properly, hence Allaah has decreed reward for it even if one errs, and has forgiven him for passing a wrong judgement. It is also enjoining what is good, supporting the one who is wronged, giving rights to those who are entitled to them, deterring the wrongdoer from doing wrong, reconciling between people, settling disputes between them, and these are among the best means of drawing close to Allaah.

Hence the Prophet (peace and blessings of Allaah be upon him) and the other Prophets before him assumed the position of judge and they judged their nations.

The Prophet (peace and blessings of Allaah be upon him) sent 'Ali to Yemen as a judge, and he sent Mu'aadh as a judge.

It was narrated from Ibn Mas'ood that he said: To sit between two people as a judge is dearer to me than worshipping for seventy years.

Al-Mughni (11/376).

In al-Mawsoo'ah al-Fiqhiyyah (33/289) it says:

Because of its high status and great virtue, Allaah has decreed reward for it even if one errs, and has forgiven him for passing a wrong judgement. The Messenger of Allaah (peace and blessings of Allaah be upon him) said: "If the judge rules and strives his utmost to work it out and gets it right,

he will have two rewards, and if he rules and strives his utmost to work it out and gets it wrong, he will have one reward." (Agreed upon) He is rewarded for his ijtihaad and efforts, not for his mistake. End quote.

Secondly:

Taking up a position as a judge may be obligatory, or it may be permissible, or it may be haraam. It is haraam for the one who takes up such a position when he is ignorant of the rulings of sharee'ah. It is permissible for the one who can judge well but there are others who can also do it. And it is obligatory for the one who can judge well when there is no one else who can judge between people.

Ibn Qudaamah (may Allaah have mercy on him) said:

People fall into three categories with regard to judging:

1.The one for whom it is not permissible to get involved with it. He is the one who is not qualified for it and does not fulfil all its conditions. It was narrated that the Prophet (peace and blessings of Allaah be upon him) said: "Judges are of three types," and he mentioned among them a man who judges between people on the basis of ignorance, and he will be in Hell. And because the one who is not qualified for it cannot be just, so he will take rights from the one who is entitled to them and give them to someone else.

2.The one for whom it is permissible, but not obligatory. This is the one who is of good character and is able to engage in ijtihaad, but there are others who are like him. So he may take up a position as a judge based on his situation and suitability for the post, but it is not obligatory for him, because he is not the only one who can do it. According to one view of Ahmad, it is not recommended for him to enter into it, because of the dangers and risks involved, whereas there is safety in not doing it, and because of the reports which speak sternly about it, and because the way of the salaf was to avoid it. 'Uthmaan (may Allaah be pleased with him) wanted to appoint Ibn 'Umar as a judge but he refused. Abu 'Abd-Allaah ibn Haamid said: If a man is unknown and people do not refer to him concerning the rulings of sharee'ah, and he is not known, then it is

better for him to accept this post so that the people may refer to him concerning the rules of sharee'ah and the truth may be established by means of his rulings and the Muslims may benefit from him. But if he is famous among the people for his knowledge, and people refer to him for knowledge and fatwas, then it is better for him to keep busy with that, because of the benefit involved, and because it is also safe from risks. Something similar was said by the companions of al-Shaafa'i. They said: If he is in need, and can earn a living from working as a judge, then it is better for him to do that, and it may be better than other ways of earning a living because it is an act of worship and obedience.

3.The one for whom it is obligatory. This is the one who is suited to be a judge, and there is no one apart from him. In this case it is an individual obligation, because it is a communal obligation that no one else is able to undertake, so it becomes an individual obligation for him, like washing and shrouding the deceased [which becomes an individual obligation for the one who knows how to do it when no one else knows that].

There is a report narrated from Ahmad which indicates that it is not an individual obligation in this case. He was asked: Is the judge sinning (by refraining from judging) if there is no one else (who can judge)? He said: He is not sinning.

This may be understood according to its apparent meaning, that it is not obligatory for him, because of the danger that it brings to him, so he does not have to harm himself in order to benefit others. Hence Abu Qilaabah refused it, although it was said to him, There is no one else. Or it may be understood as referring to one who cannot do what is required because of injustice on the part of the ruler and so on, because Ahmad said: The people need a judge; we cannot let the people's rights be lost?

Al-Mughni (11/376).

Some scholars stated that the issue of working as a judge is subject to the five rulings and it may be either prohibited, obligatory, recommended, disliked or permissibley.

See: Mu'een al-Hukkaam fima yataraddadu bayna al-Khasmayni min al-Ahkaam by Shaykh 'Ala al-

Deen al-Taraabulsi (may Allaah have mercy on him) (p. 10).

Thirdly:

Some of the imams warned against being appointed as a judge and warned of the danger of this post. For example:

1-

It was narrated that ‘Ali ibn Abi Taalib (may Allaah have mercy on him) said: If the people knew what is involved in judging they would not judge concerning the price of a piece of camel dung. But the people need judges and rulers, whether they are righteous or immoral.

Akhbaar al-Qudaah by Abu Bakr al-Dabbi who is known as al-Wakee’ (p. 21).

2-

It was narrated that Mu’alla ibn Rawbah said: Raja’ ibn Haywah said to me: Today the ruler appointed ‘Abd-Allaah ibn Mawhab as a judge. If I had a choice between being carried to my grave or being appointed to that to which Ibn Mawhab has been appointed, I would (choose to) be carried to my grave. I said to him: The people say that you nominated him. He said: They are speaking the truth, because I was thinking about the people and not thinking about him.

Akhbaar al-Qudaah (p. 23, 24).

3-

It was narrated that Mak-hool said: To go forth and have my neck struck is dearer to me than being appointed as a judge.

4-

It was narrated from Raafi’ that ‘Umar ibn Hubayrah summoned him to appoint him as a judge, and he said: I would not like to be appointed as a judge, even if the pillars of this mosque were

turned into gold for me.

5-

al-Fudayl ibn ‘Iyaad said: If a man is appointed as a judge, let him allocate one day for judging and one day for weeping.

6-

It was narrated that Ibn Shubrumah said: Do not dare to assume the position of judge until you dare to be exposed to the sword.

Akhbaar al-Qudaah (p. 24).

Fourthly:

Many of the imams sought to avoid being appointed as judges, and some of them even accepted beatings and imprisonment instead of being appointed, and some fled from their homelands in order to avoid being appointed as judges. The reasons why these imams avoided being appointed as judges may be summed up as follows:

1-

He (the imam) thought that he was not qualified to be a judge. It is well known that acting as a judge requires a great deal of patience, intelligence and astuteness, and the imam who turned down an appointment as a judge may have thought that he did not fulfil these conditions.

Shaykh ‘Ala al-Deen al-Taraabulsi (may Allaah have mercy on him) said:

One of the imams said: The sign of the pious is that they avoid this and flee from it. A number of exemplary imams endured hardship in order to keep away from this and they bore it with patience.

Look at the case of Abu Haneefah (may Allaah have mercy on him) and how he refused it and bore

the hardship with patience until he was relieved of that, as did other imams.

Abu Qilaabah fled to Egypt when he was asked to become a judge, where he was met by Ayyoob who tried to encourage him to do it by saying: If you get it right you will attain a great reward. Abu Qilaabah said to him: The one who is drowning in the sea, how long can he swim?

These words of Abu Qilaabah and other imams, which speak of warnings and fear, are the words of one who acknowledges his own weakness and inability to fulfil the necessary conditions. The same applies to one who thinks he is qualified to act as a judge but other people do not think he is qualified for that.

One of the scholars said: There is nothing good in a person who thinks that he is qualified for something for which the people do not think he is qualified.

What is meant by the people here is the scholars. It is obligatory for such a person to avoid being appointed as a judge, and seeking to protect himself is essential.

Mu'een al-Hukkaam fima yataraddadu bayna al-Khasmayni min al-Ahkaam by Shaykh 'Ala al-Deen al-Taraabulsi (may Allaah have mercy on him) (p. 9)

2-

He thought that it was not obligatory or mustahabb for him. Indeed, a comment by Imam Ahmad may be understood as meaning that it is not obligatory for him even if it becomes unavoidable for him and there is no one else [who is qualified for it].

3-

There is the danger of passing an incorrect judgement and the scholars fear being appointed as a judge because of that.

Ibn Qudaamah (may Allaah have mercy on him) said:

In acting as a judge there is grave danger and a huge burden for the one who does not do it

properly. Hence the salaf (may Allaah have mercy on them) would refuse it emphatically, fearing its dangers.

Al-Mughni (11/376)

In al-Mawsoo'ah al-Fiqhiyyah (33/289, 290) it says:

Many of the righteous salaf avoided being appointed as judges and refused it emphatically, even if they were harmed as a result, because they feared its grave danger, as is indicated in many ahaadeeth, in which a stern warning is issued to the one who is appointed as a judge and does not do the job properly, such as the hadeeth, "Allaah is with the judge so long as he is not unjust, but once he becomes unjust He forsakes him and the shaytaan stays with him" [narrated by al-Tirmidhi and Ibn Majaah; classed as hasan by al-Albaani] and "Whoever is appointed as a judge or is made a judge has been slaughtered without a knife" [narrated by Abu Dawood, al-Tirmidhi and Ibn Majaah; classed as saheeh by al-Albaani] and "Judges are of three types, two of whom will be in Hell and one in Paradise: a man who judges unjustly and knowingly, who will be in Hell; a judge who has no knowledge and destroys people's rights, who will be in Hell; and a judge who judges in accordance with the truth, who will be in Paradise" [Narrated by al-Tirmidhi (3/604) and al-Haakim (904) from the hadeeth of Buraydah; this version was narrated by al-Tirmidhi and classed as saheeh by al-Haakim, and al-Dhahabi agreed with him.]. End quote.

4-

Not being able to put up with the trials of judging.

Shaykh Abu'l-Hasan al-Nabaahi (may Allaah have mercy on him) said:

Because of the trials involved in being a judge, many virtuous people fled from it and avoided it until they were no longer asked to do it, and others were imprisoned for their refusal, such as Abu Haneefah, whose name was al-Nu'maan ibn Thaabit. 'Umar ibn Hubayrah summoned him to become a judge, but he refused, so he imprisoned him and had him beaten for several days, ten lashes every day, but he persisted in refusing it, until he let him off.

Tareekh Qudaat al-Andalus (p. 7)

5-

They were preoccupied with things that were more important, such as travelling in pursuit of knowledge, or teaching people.

Finally, although the four imams refused to be appointed as judges – as was narrated from them – the noble Prophets (peace be upon them) and the four Rightly-Guided Caliphs did take on this task, but those who want to err on the side of caution may do so.

In al-Mawsoo'ah al-Fiqhiyyah (33/290) it says:

After the time of the Prophet (peace and blessings of Allaah be upon him) the Rightly-Guided Caliphs also acted as judges; they were the leaders of the Muslims, and they judged between people on the basis of truth and their involvement in it is indicative of the high status of this post and the great reward that may be attained thereby, because they are example for the Muslims to follow, and after them many prominent Muslims and senior Taabi'een also took on this role.

The fact that some of the scholars refused to become involved in it, despite the fact that they were virtuous, qualified for the post and pious, may be understood as taking extreme precautions in order to protect themselves and erring on the side of caution. Perhaps they thought that they were lacking in some way or they were afraid that it would distract them from acquiring more knowledge. End quote.

And Allaah knows best.