IN THIS ISSUE:

SOME ASPECTS OF THE RELATIONSHIPS BETWEEN CENTRAL AND EASTERN BILAD AL-SUDAN
Yusuf Fadl Hasn

The Genesis of Islamic Law in the Sinnar Sultanate 1504 - 1821
Abdul-Rahman Ibrahim Elkhalifa
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Before the 16th century the concept of a national state was non-existent. A few Shaykhdoms developed in the Sudan and applied Customary Law and a very rudimentary form of Islamic Law. There was no judicial machinery. The Shaykh was the arbitrator and was uncontested to settle disputes. The Shaykh combined judicial and executive powers and had to be, to some extent, vested in Islamic Law and learned in Customary Law.

During the 16th century, an alliance between the Funj chief and the Shaykhdom of Abdallah (attributed to its founder, a certain Abdallah Jamma) contributed to the establishment of the Sinnar Sultanate. Because of the ignorance of the people and lack of learned men, Islamic Law was not strictly observed at the beginning of Sinnar Sultanate. It was said that a man would divorce his wife and she would remarry the same day, without going through the three month probation period, 'iddah as prescribed by Qur'an and as established fiqh rule. Some learned scholars, primarily Islamic Law teachers from Baghdad, Egypt and Morocco, enlightened the people of Sinnar Sultanate, taught them rules of Islamic Law and endeavored to bring their tribal usages and customs into conformity with the Sharfah. Such scholars were referred to as Fakis a colloquial term derived from the classical Arabic Fuqaha, meaning jurists, a term which was attached indiscriminately to those men who played leading roles in moulding Sudanese life and who had a distinctive legal, social and political influence over the society. They used to teach people, supervise marriage ceremonies and funerals and assume the role of judges to settle disputes.

By and large, at this time intellectual activity throughout most of the Islamic world was at a low ebb and Islamic Law revolved around the different schools of fiqh each of which carried the name of its founder jurist. Given such a fact, it is hardly surprising that these scholars brought with

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them and introduced the part of Islamic Law that they knew and the school of fiqh with which they identified themselves, viz., the Maliki school of fiqh. The sharp drop in critical intellectual activity and these jurists confined themselves to the glossies, compendiums and commentaries of the Maliki school. Two standard text-books, al-Risalah of Abi Zayd al-Qayrawani, a Muslim faqih who died in 996 (Hijra) and al-Mukhtasar of Khalil Ibn Ishag who died in 1365 (Hijra), a compendia of Islamic Law according to the Maliki school of fiqh, became the staple of legal education in the Sudan.

The second half of the 16th century was marked by the beginning of a formal reception of Islamic Law in Sinnar Sultanate, when four judges were officially appointed, each with a territorial jurisdiction. The most outstanding of these four judges followed the Shafi'i school of fiqh; despite his different approach he was very popular and best known as Qadi al-‘adalah, (the judge of justice). Upon their appointment, these judges were instructed to adhere to the Qur’an and Sunnah (precept of prophet Muhammad) when they dispensed justice.

This official establishment co-existed side by side with the simple judicial mechanism in the Sinnar Sultanate. It consisted of the fuqaha, scholars who were well versed in Islamic Law. They were a very significant factor in settling disputes in remote areas outside the jurisdiction of the officially appointed judges. Usually their decisions would bind the parties who consented to consult them, but if for any reason either party to the dispute was dissatisfied with the decision of the fuqaha, he could ignore such a decision and take his case to an officially appointed judge. The opinions of the fuqaha were respected, and observed more often than not. Some people would seek such an opinion on a purely hypothetical issue.

Some of the fuqaha would go beyond declaring their opinions, and would pass a sentence and execute the judgement. The best example was the case of one lady who came to a certain Shaykh Hamad Al-Mashiakhii and complained that another woman defamed and accused her of being morally loose. The Shaykh found the accused lady guilty of unsupported slanderous accusation of unchastity, (qadhfi), and sentenced her to eighty lashes. The judgement was executed by some of his followers.
Indigenous customs were already giving way to Islamic Law. The officially appointed judges and the *fuqaha* took positive regulatory actions against those customs and never hesitated to reject any custom which they deemed repugnant to and inconsistent with established rules of Islamic Law. A very controversial issue that sparked a heated debate among both the *fuqaha* and the officially appointed judges was the question of whether it was Islamically lawful to smoke; the issue was referred to Al-Azhar in Cairo for a conclusive opinion.

**Judicial Organization in Sinnar Sultanate**

The judicial organization in Sinnar Sultanate developed to a sophisticated form when a Supreme Court was established under the supervision of the all-Sinnar Judge, appointed by the Sultan. Under this Supreme Court there were many minor courts, each one administered by one judge and sometimes more.

A more simple form of settling disputes was known as the "Bright Sharī'ah Judiciary". It was an informal establishment. Usually the parties to a dispute would agree to resort to any learned man to settle their dispute. The whole procedure would be verbal, and if either party was unhappy with the decree, the learned man would enter his finding and pass a sentence in a written form to be submitted by the contesting party to the officially appointed judge under whose jurisdiction the case might fall. The judge would uphold the ruling whenever it conferred with Islamic Law and when upheld, the ruling would become enforceable. This can be assimilated to appeal and cassation. Usually this informal method of settling disputes was used in remote areas where officially appointed judges were not available.

A third procedure to settle disputes was mediation. The mediators were often a group of elderly people known as the "*ajawid", who had a wide jurisdiction from rather petty disputes to murder cases, provided that the parties would consent to their decrees. Especially in serious offenses such as murder, if the mediators failed to acquit the accused, or convicted him and passed a *diyyah* sentence, then the case should be submitted to the all-Sinnar Supreme Court that had original jurisdiction to look into such cases according to the rules and procedure of Islamic Law.
A judicial system based on Islamic Law started to evolve in the Sinnar Sultanate. A judge of the Supreme Court had deputies who formed part of the court. This Supreme Court judge would examine the plaintiff, his witnesses and the defendant and his witnesses or the complainant, accused and witnesses as the case might be; administration by any of the deputies would be through the presiding judge. Written records were maintained by a court clerk. Any judgement had been supported by reference to and citations from Islamic Law. The winning party to the suit or case would keep the only available copy of the judgement for the purpose of executing the decree. Usually there was no filing system in the court. A judgement would be executed immediately after passing the sentence, but capital punishment could only be inflicted by the ruler.

There was a simple system of advocacy in the court of the Manjil, the ruler of the Abdallah. The complainant and accused would each choose his own advocate from amongst the people present, the advocates would submit their verbal pleading each on behalf of the party they represented, the ruler and supreme judicial authority would listen attentively and then pass his unappealable judgement. If someone other than the Sultan was sitting in such a court, then his decision would be appealable to the court of justice presided over by the Sultan.

The pleadings were in public and jurists and learned men were entitled to attend the court and object to any irregularity or a point of law. If the judge was not convinced, he would refer the controversial issue to a jurist in Egypt for a conclusive opinion. Imam Aghoury of Al-Azhar was frequently referred to for a conclusive opinion. He was the law teacher for most of the jurists of Sinnar Sultanate.

The Sultan was in charge of the administration of justice and would sometimes personally sit in a court of justice in cases of gross injustice and sometimes delegate his power to one of the judges to consider such a case.

The minor courts would try petty cases: agricultural disputes and civil suits and questions of marriage, divorce, succession, gifts, custody and trust, *waqf*. Their procedure was similar to that of the major courts in that they were
verbal and only the judgements were reduced to a written form and were subject to appeal. Contempt of court was punished at all judicial levels.

The fiscal regulations were drawn according to the rules of Islamic Law. Zakat was collected and distributed in accordance with Islamic Law. Liquor was prohibited throughout the Sinnar Sultanate.

**Characteristics of the Sinnar Era**

By and large, the Sinnar era was characterized by the following:-

a) The polarization of the schools of Islamic Law, as each jurist would echo Islamic Law according to the school he followed, but in most areas the Maliki school as embodied in the Mukhtasar, compendium, of Khalil and the Risalah of Abi Zayd reigned supreme. Qur'an and Sunnah were neglected by most of the jurists of Sinnar Sultanate.

b) A profound knowledge of Islamic Law and general enlightenment were lacking because of the general backwardness and impact of non-Islamic social usages and superstitions.

c) There was a very close link between the Sudanese fuqaha, jurists, and those of the Cairo Azhar, whose opinions were taken for granted and would settle all legal disputes. The number of Sudanese Islamic Law students at Al-Azhar was so large that they had what was known as the Sinnar cloister.

d) Despite the influential role of the fuqaha, some customs and social usages, especially in remote areas, survived all efforts to dispense with them.

e) The establishment of an Islamic state in the heart of Africa attracted some sufis who dominated Sudanese life. Some sufis at times ignored Islamic Law, and that earned them the wrath of the legal establishment whose objective was to maintain uniformity in public morality. The best example was the case of a certain sufi, Shaykh Al-Hamim, who married more than four wives, two of whom
were sisters. Dushayn, known as the judge of justice, strongly objected to this gross violation of Islamic Law and rendered such marriages void.

f) The Sinnar era albeit naive, was a significant milestone in the process of the reception of Islamic Law in the Sudan at the beginning of the 16th century, and can be described as a formative era.

g) The *fugaha* were very influential and were allowed access to the Sultan’s court. They could always intercede with the Sultan. Some of them were Sudanese men who received their training within the Sinnar Sultanate. These *fugaha* endeavoured to bring social usages and customs into conformity with Islamic Law.

h) Education was geared towards the study of Islamic Law, which, it was firmly believed, was the only subject of true learning.
NOTES


2. This probation period is to check whether a marriage conditionally dissolved is likely to result in issue or not; it also checks hasty decisions by the divorced woman and keeps the door open for reconciliation. A. Yusuf Ali, *The Holy Qur'an* Text, Translation and commentary. Amana Corp. 1983, p. 90.


5. The founder of this school was Malik Ibn Anas the *faqih* of Medinah (93-179 Hijra) who adamantly refused to impose his contribution collected in a text book best known as *Al-Muwatta* on the Muslims of his time.


10. Muhammad Dayf Allah, op. cit, p.68.


12. *Diyyah* is a fusion of punishment and compensation. It is bloodmoney to be paid by accused to the family of deceased in unintentional and mistaken killing (culpable homicide not amounting to murder), and all injuries. In pre-mediated and intentional murder it is subject to the forgiveness of the deceased’s family and their consent to release accused upon payment of diyyah. It is a Qur’anic rule that helps settle blood feuds, confines ill feelings and bitterness, encourages and fosters tolerance and forgiveness, saves the accused from the death sentence in murder cases, and serves a host of other social and personal purposes which go beyond the topic of this paper.


15. Notice the striking similarity between such a proceeding and Rule 13.2 of the Ontario Rules of Civil Procedure 1984, which provides that, "any person may, with leave of a judge or at the invitation of the presiding judge or master, and without becoming a party to the proceeding, intervene as a friend of the court for the purpose..."
rendering assistance to the court by way of argument".


