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RIAZATIN TIRIDUNALIS
BETWEEN THE EXECUTIVE POWER OF THE SULTAN AND
THE LEGAL AUTHORITY OF THE QADI
A QUEST FOR JUDICIAL INDEPENDENCE IN
ISLAMIC LAW

A THESIS SUBMITTED TO THE INTERNATIONAL
INSTITUTE OF ISLAMIC THOUGHT AND CIVILIZATION
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يُؤْتِيهِمُ اللَّهُ مِنْ فَضْلِهِ يُغْنِيهِمْ
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MAZĀLIM TRIBUNALS

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To my beloved brother Ahmad Bah for his guardianship

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ABSTRACT

This study examines the relationship between the *mazālim* and the *qāḍī* courts within the context of judicial independence in Islamic law. In particular, it discusses the question whether *mazālim* was an institution for administration of justice or an instrument used by the executive to interfere with the affairs of the judiciary.

The research begins with the examination of the conceptual analysis and historical background of *mazālim* courts. Then it moves to the analysis of some important characteristics of *mazālim* i.e., its natural phenomenon of good governance and its role in administration of justice. The discussion on the jurisdiction of *mazālim* courts focuses on its classification, on the basis of its subject matter i.e., dealing with oppressions and officials mistreatment against the citizens; the administrative function and preservation of public interest (*maṣlahah ʿāmmah*). Furthermore, the place of *mazālim* in Islamic judicial system was discussed in connection with the differences and similarities between *mazālim* and *qadāʾ* on the one hand, and in relation to *mazālim* and *siyāsah sharʿiyyah* on the other.

The study concludes that the institution of *mazālim* performed special justice for all citizens under the Islamic judicial system regardless of their social, economic and political status. Its relationship with *qadāʾ* can be best described as *complementary* rather than conflicts and tensions. Thus, *mazālim* was an institution of justice rather than a tool for the executive to influence the judiciary.

In addition, it was also suggested that judicial independence in Islamic law is more eminent in practice than in theory. Practically, the judiciary enjoyed a great deal of independence throughout Islamic history. Nevertheless, the degree of independence

depended on the personality of the *qāḍī* rather than on an effective mechanism. The lack of a framework to guarantee the independence of the judiciary in Islamic legal system, is not inherent in the nature of the *Shari'ah*. It is due to the lack of intellectual energy dedicated to the issue by contemporary Muslim legal theorists.

INTRODUCTION

Implementation of justice has been the central focus in the Islamic civilization. Therefore, Muslims endeavor throughout history to achieve justice at all levels of the society could not be denied,¹ and it is apparent in the development of a justice system at the early stage in the Islamic civilization. Headed by the *Qur'ān* and the *Sunnah*, Muslims developed many institutions in order to achieve a just society. The institution of *qaḍā'* (judiciary), for example, headed by a *qāḍī* (judge) emerged as the most outstanding symbol of justice in society to present days. Therefore, the ability of *qaḍā'* to carry out its duty, impartially regardless of the status of the parties involved, has been a core value in the Muslim's struggle for a just society.

Some scholars argue that a just society is achievable when the institution of *qaḍā'* is independent from the executive power of the ruler. Nevertheless, others hold that the Islamic political system does not entertain an independence of any branch of the government from the ruler of the Muslim community in view of the fact that he is responsible for the well being of the society and achieving justice, respectively.

Whatever is the case, it is a fact that whenever the merit of independence of the judiciary in Islam is discussed, *maḥālim* appears at the center of the debate because unlike *qaḍā'*, in the words of Ibn Khaldūn (d. 808/1405), *maḥālim* has both judicial and executive aspects, which have to be addressed respectively. Such approach will address what power should be allocated to certain part of government, an issue constituting the core of constitutional law. How much power is allocated to certain branch of the government plays a vital role in the process of check and balance among different departments of the state. Some departments of the state need more

¹ Majid Khadduri, *The Islamic Conception of Justice* (Maryland: The Johns Hopkins University Press, 1984), 2-3.

power than others, since it is important in the process of achieving the goals of the society for which the state was established in the first place. Likewise, some departments of the state may need to be closely checked in order to avoid an abuse of the power allocated to them. Thus, the dynamism of check and balance in government affairs may pose a problem for a modern Islamic state in understanding the appropriate way for a country to regulate the relationship between its people and its government. The level of checks and balances between different departments of the government may determine the status of justice in a particular state.

It is significant to point out that the studies on *mazālim* has been classified by authors into two categories. First, it is based on juristic approach, which looks at the nominal aspects of *mazālim*, i.e. "what ought to be." This approach was represented in the work of al-Māwardī (d. 450/1058). Second, it is based on its function as an institution of government and other judicial and administrative departments such as *qaḍā'*, (the Islamic judiciary) *ḥisbah* (market inspection or public duty) *shurṭah* (police) and *waqf*(religious endowment). The latter approach has been represented by some orientalist and their followers among Muslim intellectuals and administrative theorists.

Thus, the concept of *mazālim* has to be clarified particularly regarding its justification and its relation with other concepts which combine both political and judicial aspects such as *siyāsah shar'iyyah* (government policies) and, more specifically, its relation to the notion of judicial independence. Since the concept of *mazālim* has been differently perceived, it produced two different views. On one hand, many orientalist conceive *mazālim* as the institution through which the executive interferes in the judiciary. On the other hand, many Muslim scholars do not agree with this definition and argue that *mazālim* is an institution for justice. As such,

a study on *mazālim* in relation to the notion of judicial independence appears to be promising.

Secular political and legal systems emerged as a result of the creation of which implied that the state existed before the law. On the other hand, the Muslims' law (*Shari'ah*) preceded the existence of the state therefore, the main task of the ruler in Islamic societies is to preserve and implement the law (*Shari'ah*). In this light, the research attempts to answer the following questions: 1) does the obligation to preserve and implement the law justify the ruler's involvement in the activities of the judiciary and the legislative branches of government? If the answer is affirmative, then 2) does judiciary have the independence while the executive can appoint himself as a judge? 3) To what extent it is true that *mazālim* was an abusive institution in the hands of the executive? 4) How does the existence of *mazālim* side by side with *qādā'* can be justified? 5) If one of the main functions of *mazālim* is to implement the cases which the *qādi* (judge) is unable to carry out, then why the executive has to sit himself as *qādi* instead of using the institutions of the state to implements the decisions of the *qādi*? 6) To what extent is *mazālim* relevant to modern Muslim Judicial and administrative system? 7) In what form(s) *mazālim* acts can be reflected in modern Muslim societies? In other word, what are the modern judicial and administrative institutions that can be drawn from the concept of *mazālim*? (see conclusion).

Concerning the methodology, this study uses a *descriptive and analytical approach* combined. This approach is quite adequate because the research deals with textual presentation as well as analysis. Emphasis will be on secondary sources where the research will be carried out based on books, journals and periodical publications. However, besides the descriptive and critical analysis approach, the researcher undertake partly comparative analysis, where different opinions are brought together

and analyzed in a comparative manner in order to shed more light on the subject. Current events and information concerning *mazālim* relation with *qaḍā'* will be incorporated to make a systematic contribution to the study.

Chapter One

1. *Mazālim* Tribunals: Conceptual Analysis and Historical Background

A. Conceptual Analysis

The word *mazālim* is plural whose singular is *mazlimah*, meaning an injustice or wrongful deed and oppressive action. It is the verbal noun (*maṣdar*) of its verb *zalama*. In this sense, it is the opposite of ('*adl*') justice.² In its wider meaning, *mazālim* refers to putting things in a place which is not their own. *Mazālim* as an Islamic institution of government and justice refers to the "structure through which the temporal authorities took direct responsibility for dispersing justice."³ It implies that the ruler's main responsibility in an Islamic state is to ensure that justice prevails. One way of achieving that is by "making himself accessible to his subjects so that they could appeal directly to him against injustice in general and the usurpation of government officials in particular."⁴

Both al-Māwardī and Abū Ya'la al-Farrā' (d. 458/1065), define *mazālim* as an institution which is concerned with "leading those who have committed wrongs to just behavior by installing fear in them, and with dissuading litigants from undue obstinacy in their disputes by installing a feeling of respect."⁵ Furthermore, it is also understood as the institution which deals with "an important matter in which the wronged is given redress against wrongs, the truthful is protected from the liar, the weak is helped against the strong, and the law of justice (*qawānīn al-'adl*) are kept in

² See, Ibn Manzūr, *Lisān al-'Arab*, 16 vols. (Beirut: Dār al-Ṣādir, 1968), 3:3441; and Jorgen S. Nielsen, *Secular Justice in an Islamic State: Mazalim under the Bahri Mamluks, 662/1264-789/1387* (Istanbul: Uitgaren Van Het, Nederlands Historisch-Archaeologisch Instituut Te Istanbul 1985), 1, hereafter cited as *Secular Justice*.

³ Jorgen S. Nielsen, "Mazālim", in *The Encyclopaedia of Islam*, new ed. (1981), 6: 933.

⁴ Nielsen, *Secular Justice*, 2.

⁵ Al-Māwardī, *al-Aḥkām as-Sultāniyyah* (Cairo: Markaz al-Nashr-Maktab al-I'lām al-Islāmī, 1996), 77, hereafter cited as *al-Aḥkām as-Sultāniyyah*, {trans. Asadullah Yate, *Al-Aḥkām as-Sultāniyyah: The laws of Islamic Governance* (London: Ṭa-Hā Publishers Ltd, 1996), 116,

force throughout the realm."⁶ In addition, it is argued that *mazālim* is committed when the Sultan acts as "judge and gives the wronged redress against the wrongs."⁷ A similar conception of *mazālim* was expressed by Ibn Taghrī Birdī's (d. 874/1470) who hold that when the *Sulṭān* "judges among the people, look into the community's affairs, gives the wronged redress, supports rights, and favors the weak against the strong."⁸ The role of the *Sulṭān* or the Caliph in *mazālim* seems to be well understood and accepted among people, for instance, in 699/1299 the Muslim Mongol leader Qāzān Khān, asked the people of Damascus to surrender to him and informed them that "he loves justice, the well-being of the community, [and] giving redress against the wrongs."⁹

The above quotation suggests that *mazālim* institution is a disputed institution. Its identity remains obscure between the executive authority i.e., the *Caliph* and his ministers (*veizirs*), and the judiciary i.e., the office of *qāḍī*. As Ibn Khaldūn painstakingly observed "the office of *mazālim* is a combination of the firmness of the ruler and the fairness of the judge."¹⁰ According to him,

This is a position that combines both of governmental power and judicial discretion. It needs a strong hand and much authority to subdue the wrong doer and to restrain the aggressor among two litigants. In a way it serves to do what the judges and others are unable to do. It is concerned with the examination of evidence with punishment not foreseen by religious law, with the use of direct and circumstantial evidence, with the postponement of judgment until the legal situations have been clarified with attempt to bring about

hereafter cited as *The Laws* }; and Abū Ya'lā al-Farrā', *al-Aḥkām as-Sulṭāniyyah* (London: Ṭa-Hā Publishers Ltd, 1996), 73, hereafter cited as *al-Aḥkām as-Sulṭāniyyah*.

⁶ Al-Qalqashandī, *Subḥ al-'A'shā fī Ṣinā'at al-Inshā'*, 17 vols. (Cairo: Dār al-Kutub al-Khadiwiyyah, 1913), 14: 380; and Jorgen S. Nielson, "Mazālim and Dār al-'Adl under the Early Mamluks," *The Muslim World* 66 (1976): 117.

⁷ Jorgen S. Nielson, "Mazālim and Dār al-'Adl," 117. He quoted from Ismā'il Ibn 'Umar Ibn Kathir, *al-Bidayah wa al-Nihāyah*, 25 vols. (Beirut: Maktabat al-Ma'arif, 1966), 13: 294.

⁸ Ibn Taghrī Birdī, *al-Nujūm al-Zāhirah fī Mulūk Miṣra wa al-Qāhirah*, 9 vols. (Cairo: Dār al-Kutub al-Misriyyah, 1929), 6: 163, hereafter cited as *al-Nujūm*.

⁹ Jorgen, "Mazālim and Dār al-'Adl," 117; and Birdī, *al-Nujūm*, 6: 125.

¹⁰ Ibn Khaldūn, *al-Muqaddimah*, trans. Franz Rosenthal 3 vol. (New York: Princeton University Press, 1980), 1: 456.

reconciliation between litigants and with swearing in of witnesses. This is a wider field than that with which the judges are concerned.¹¹

Some later writers on *mazālim* endorse Ibn Khaldūn's conception of *mazālim* as a combination of the judiciary and the executive.¹² However, Fārūq al-Nabhān asserts that the notion of *mazālim* as understood from the history of Islamic judicial and administrative system, seems closer to 'High Court' in modern judicial language.¹³ His observation is based on the facts that both *mazālim* in history and high court in modern time aim at achieving justice at the highest level, especially when the defendant is a powerful person in the society or a government official, where normal judges are unable to achieve justice. This, in his opinion, justifies the fact that historically, only the caliph or the *veiazir* or their deputies took the task of *mazālim* hearings.¹⁴ Professor Muḥammad Hāshim Kamālī however, strongly declares that the historical *mazālim* constitutes the bases for the modern time of appellate jurisdiction. He argues that:

The *mazālim* was first and foremost an administrative tribunal which looked into disputes between the citizen and state. But it was also a high court of appeal which entertained appeal against the decisions of the *Shari'ah* courts. It is therefore not surprising that many observers have considered the *mazālim* as a high court of appeal (*maḥkamat al-isti'nāf*) and an integral part of the judiciary.¹⁵

¹¹ Ibid.

¹² 'Abd al-Mun'im Hamdi, *Dīwān al-Mazālim*, (Cairo: Dar al-Shurūq, 1983), 35.

¹³ Muhammad Fārūq al-Nabhān, *Nizām al-Hukm fī al-Islām* (Rabat: Mu'assasat al-Risālah, n.d), 598-599.

¹⁴ This view is shared by many modern Muslim jurists and political philosophy such as Muḥammad Abū Zahrah, "Wilayat al-Mazālim fī al-Islām," *The Circle of Law and Political Sciences*, (Cairo, October 23-27, 1960); and Husayn Fawzi al-Najjar, *al-Islām wa al-Siyāsah* (Cairo: Dar al-Ma'ārif, n.d), 219-221.; and Sulaymān Muḥammad al-Ṭamāwī, *al-Sulṭat al-Thalāthah fī al-Dasātir al-'Arabiyyah al-Ḥadīthah wa fī al-Fikr al-Siyāsī al-Islāmī*, 4th ed. (Cairo: Dar al-Fikr al-'Arabi, 1975), 313.

¹⁵ Muḥammad Hāshim Kamālī, "Appellate Review and Judicial Independence in Islamic Law," in *Islam and Public Law: Classical and Contemporary Studies*, ed. Chibli Mallat (London: Graham & Trotman, 1993), 62.

However, it is difficult to find out how *mazālim* can be described as a court of appeal, except in the loose sense of being a place where the subject could appeal to the highest executive power i.e. the caliph. In the technical sense of court of appeal in modern judicial system of being an instance to which the decisions of lower courts could be referred to, for possible revision, it could be hard to substantiate. It is also certain that an appeal court does not initiate looking at the cases; rather it looks at the cases which have been decided by a lower court. In fact, court of appeal only reviews the cases which have been claimed unjust. In contrary, *mazālim* looks at the cases in the first place. Thus, a closer look at the Islamic judicial system seems to suggest that the office of *qāḍī al-quḍāt* (chief judge) which existed in Islamic history, comes closer to high court in modern judicial system rather than *mazālim*. Muhammad Wāsil, in addition, looks at *mazālim* from its jurisdiction and concludes that it should be considered as penal courts (*maḥākīm ta'dībiyyah*) in modern judicial language.¹⁶

The above discussion has shown that *mazālim* initially represents a disputed institution between the executive and the judiciary, in view of the fact that it has both judicial and executive elements in its functional aspect. It seems that the cause of variety of definitions of *mazālim* among scholars lies on the fact that it is an old institution which combined many functions during the early period in the Islamic Civilization. These definitions vary according to the angle from which one looks at *mazālim* functions. Those who consider it as a higher court probably looked at it from the perspective of modern judicial system where one can appeal against lower court decisions to a higher court. That is because the citizens used to address their cases directly to the *Sulṭān* or his deputies through *mazālim*.

¹⁶ Farīd Muḥammad Wāsil, *al-Sulṭah al-Qaḍā'iyyah wa Niẓām al-Qaḍā' fi al-Islām* (Cairo: Maṭba'at al-Amānah, 1983), 88.

However, it has been shown that, *mazālim* was more than just an institution of appeal. In contrary, the *wālī al-mazālim* initiated his own investigation and decided on cases in the first place rather than waiting for an appeal. Thus, it is fair to state that *mazālim* included some elements that can be related to court of appeal rather than being restricted to it. Considering the main reasons of the existence of *mazālim* in the first place and to the modern development of administration of justice, one may conclude that *mazālim* is the institution which is concerned with the relations between the state and its citizens. The following discussion would examine the different views on why *mazālim* existed and how it has grown from a simple task of redressing injustices committed by governments official against their subjects and later included a wide variety of issues related to the administration of justice. This may explain why contemporary writers have different conception of *mazālim*. Likewise, it would illustrate on the fact of why *mazālim* should be restricted in the area of administration of justice which regulates the state and its citizens.

B. Historical Background

It is argued that neither Prophet Muḥammad, nor the first four caliphs sought themselves the office of *mazālim*.¹⁷ In fact, Al-Māwardī suggests that, the arrangement of especial day for a regular hearing of *mazālim* cases was initiated by *Umayyad Caliph* 'Abd al-Malik Ibn Marwān, who himself did not act upon the cases but rather referred them to his judge Abū Idrīs al-'Awdī.¹⁸ However, the seeds of *mazālim* were already evident in the practice of the Prophet and his immediate successors. It is reported that the case involving dispute between the companion

¹⁷ Ibid.

¹⁸ Al-Māwardī, *al-Aḥkām al-Sulṭāniyyah*, 78; and al-Farrā', *al-Aḥkām al-Sulṭāniyyah*, 75.

Zubayr Ibn al-'Awwām and a man from the Anṣār (the indigenous people of Madīnah) is precedent. Al-Māwardī reports that:

The Messenger of Allah may the peace and blessings of Allah be upon him, investigated the dispute about irrigation between Zubayr Ibn al-'Awwām and a man from the Anṣār. He came personally and said to Zubayr: "You water, O Zubayr and then the Anṣārī," to which the latter said: "Surely he is the son of your maternal aunt, O Messenger of Allah." The Prophet became angry and said: "O Zubayr, cause it to flow over his stomach until the water reaches the ankles." He told him to have it flow over his stomach as a reprimand for his audacity.¹⁹

The significance of the case lies on the fact that, Prophet acted as a judge when he decided on the case. Subsequently, he acted as an executive in order to reprimand the party who refused to comply. Thus, Prophet laid the foundation of redressing injustice and it continued during Abū Bakr's period without significant changes. This was evident in Abū Bakr's policy speech, which contained a paragraph on the importance of addressing the injustice, inflicted on the weak segment of the society²⁰.

During the reign of the second *Caliph* 'Umar Ibn al-Khaṭṭāb a significant development took place in the administration of justice which was naturally reflected on the activities of *mazālim*. As mentioned earlier, the Prophet had initiated the establishment of the investigation office which was further developed by 'Umar. He named Muhammad Ibn Maslamah al-Anṣārī as the person who is responsible to this position.²¹ Under this office, investigations were made on the complaints of the people lodged against the governors and other high ranking officers posted from different provinces of the state. On receipt of a complaint the head of the investigation department, Muhammad Ibn Maslamah, was ordered by 'Umar to proceed to the

¹⁹ Al-Māwardī, *al-Ahkām al-Sultāniyyah*, 74; and al-Farrā', *al-Ahkām al-Sultāniyyah*, 77.

²⁰ Hamdi, *Diwān al-Mazālim*, 55.

provincial capital concerned and hold inquiry. According to the procedure of investigation, he held general meetings in the great mosque of the capital after prayer and inquired about the complaint in public gatherings. Every citizen was allowed to express his opinion and give his arguments against or in favor of the matter.²²

'Umar gave priority to the facility and convenience of complainants and the aggrieved as well as removed any imaginable obstacle which in his opinion, could cause them difficulty. In this regard, he considers delay in accepting and receiving complains by the authorities and prolonging decisions as a defeat to the very idea of justice. Likewise, quick and correct decision is the basic and fundamental criterion for judging the efficiency and sophistication as well as development of any judicial system.²³ 'Alī Ibn Abī Ṭālib continued to practice this approach and introduced more practical cases.²⁴

During the Umayyad period, although 'Abd al-Malik Ibn Marwān was the first who arranged a special day for *mazālim* hearing, its practice extended during the reign of 'Umar Ibn 'Abd al-'Azīz who was more strict in handling cases related of *mazālim*.²⁵ In this connection, it is important to note that 'Abd al-Malik was aware of the cases but made no decisions but referred them to the judge. On the other hand,

²¹ Muḥammad Yūsuf Guraya, "Judicial System under 'Umar the Great," *Islamic Culture* April 1984): 108-120.

²² Guraya, *Judicial System*, 12.

²³ Perhaps, the best representative example of such matter is the case of the governor Kūfa. It is reported that in 17 A.H., the city of Kūfah was founded and Sa'd Ibn Abī Waqqās was appointed as its governor. A governor's house was constructed for him and a gate was put before his office. The background of the gate was that the governor's house was situated in the middle of the city, which was heavily populated. Commercial markets and trade centers were situated around the governor's house. Due to the noise outside the house, he could not do his official works peacefully and quietly. Thus, he ordered the construction of a gate in front of his office. A complain was lodge to 'Umar that the governor has constructed a gate in front of his house which resulted in preventing the complainants to appear in his office directly. On receiving of the complaint, 'Umar immediately ordered Muḥammad Ibn Maslamah to proceed to Kūfa and investigate the matter. The result of the investigation was that the governor had to remove the gate in order to allow easy access to the complainants. See Guraya, *Judicial System*, 109.

²⁴ Al-Māwardī, *al-Aḥkām al-Sultāniyyah*, 78; al-Farrā', *al-Aḥkām al-Sultāniyyah*, 74.

²⁵ See Hamdi, *Diwān al-Mazālim*, 72-78; and Al-Māwardī, *al-Aḥkām al-Sultāniyyah*, 78; and al-Farrā', *al-Aḥkām al-Sultāniyyah*, 74.

'Umar Ibn 'Abd al-'Azīz decided on the cases himself. Thus, in the same dynasty the procedure and application of *mazālim* differed. These differences could be understood in the context of the level of corruption and the commitment of the executive to root it out. During the reign of 'Abd al-Malik, for instance, corruption was less eminent; therefore he made no decisions himself on the cases. Then, during the reign of 'Umar, the executive was more committed and the judge wasn't able to handle the cases. Therefore, 'Umar had to decide on the cases himself. As such, this can not be considered as intervention of the executive on the judiciary. It should be viewed in the broader perspective on how to achieve justice by putting things in their proper place. Whether the executive or the judiciary handle the cases of *mazālim* both aimed at achieving the justice in Muslim society.

The central figure in development of the *mazālim* institution under the early 'Abbāsids was the *veizir*. In spite the fact that the tradition of petitioning to the caliph seems to have continued, the office of the *veizir* took the function of *mazālim*. For example, during al-Rashīd period, the office of *veizir* was filled from the Barmakī family who became solely responsible for *mazālim* for the first time. The judiciary, represented by the office of the *qādfī*, were not happy with that and even the chief jurists of the time Abū Yūsuf (d.182/798) used to advice the Caliph to take charge of *mazālim* personally.²⁶ This was practiced in view of the fact that the office of the *veizir* became powerful during this period and the bureaucracy expanded rapidly. Furthermore, the office of the Caliphate tended to become gradually ceremonial. The *veizir* would often delegate the supervision of *mazālim* to an official known as *nāzīr al-mazālim* or *ṣāhib al-mazālim*.²⁷

²⁶ Abū Yūsuf Ya'qūb Ibn Ibrāhīm, *Kitāb al-Kharāj* (Cairo: al-Maktabah al-Azhāriyyah, 1933), 111.; and Jorgen, *Secular Justice*, 5.

²⁷ Jorgen, *Secular Justice*, 4.

However, due to the fall of the Barmakī family and the degradation of the office of *mazālim*, it was placed under the supervision of the judiciary. The Caliph al-Amīn Ibn al-Rashīd placed a *qāḍī* in charge of *mazālim* and made it independent from the office of *veizir* held by Faḍl al-Rabī'.²⁸ The supervision of *mazālim* continued to be under the judiciary until the end of the civil war between the sons of the Caliph al-Rashīd. After the victory of al-Ma'mūn Ibn al-Rashīd, a major reorganization of the government took place, in which the supervision of *mazālim* became the direct responsibility of the caliph. Although al-Ma'mūn sometimes delegates the responsibility of *mazālim* to some of his officials but he never appointed a *veizir as nāzir al-mazālim*.²⁹

The practice of appointment of *nāzir al-mazālim* changed during the period in which the Mu'tazilite thought was adopted as the official ideology of the government. This was the time when judges were supposed to hold the views of the Mu'tazilites. During this period, *mazālim* was placed again under the judiciary. This was particularly the case when the Mu'tazilite theologian Aḥmad Ibn Abī Du'ād was chief *qāḍī*. He held *mazālim* until he became paralyzed at the beginning of the reign of al-Mutawakkil and he was succeeded by his son Muhammad and latter by another chief *qāḍī*.³⁰

However, after the Mu'tazilite influence was broken, the supervision of *mazālim* was placed again under the office of *veizir*. The Caliph al-Mutawakkil entrusted his *veizir* 'Ubaydallah Ibn Yahyā Ibn Khāqān, and authorized him to decide all the official appointments including *qaḍā'* and *mazālim*. The *veizir* first appointed

²⁸ Ibid.

²⁹ Birdi, *al-Nujūm*, 6: 227; and Jorgen, *Secular Justice*, 4.

³⁰ Jorgen, *Secular Justice*, 5.

his father and then his uncle, until it became close to hereditary system.³¹ This shows that during this period the office of the *veizir* was fully in control of *mazālim* to the extent that the *veizir* could even appoint his closest relatives to the office. Therefore, it is important to note that the office of *mazālim* represented the symbol of power for the executive in this period. In other words, the supervision of *mazālim* indicated the center of the actual power in the government. For example, when the caliph is strongly in control, he usually retains the office of *mazālim* under his direct supervision or he would place it under the office of *qādī al-quḍāt*. However, if the *veizir* is in control of the affairs of the government, he would retain *mazālim* under his immediate supervision. Thus, the location of office of *mazālim* depends on the shifting of power in the government. To sum up, it seems evident that the supervision of *mazālim* continued to shift between the *qādī*, the *veizir* and the caliph depending of the shift in the bureaucratic or political balance of power. In other words, the authority to appoint a *nazīr al-mazālim* or to supervise it, remained with the more powerful person between the *veizir* and the caliph.

The above historical account suggests that *mazālim* is an institution of later development in the history of Islamic judicial and administrative institutions. Hence, the question arises why the office of *mazālim* existed side by side with the office of the *qādī*? In other words, why the executive has to decide on the *mazālim* cases rather than using the machinery of the state to strengthen the judiciary? There are various and sometimes conflicting explanations justifying the existence of *mazālim* as an institution, generally supervised by the executive. While some argue that the development of an institution of such as *mazālim*, indicates an administrative maturity and a sign of good governance and just society; others argue that it was the window

³¹ *Ibid.*, 5.

from the executive to penetrate the judiciary in order to influence the outcome of its decisions. It is significant, therefore, to examine three different explanations namely, *mazālim* as a symbol of good governance in all mature societies, *mazālim* as an institution of justice and *mazālim* as an abusive or contributing institution to the executive against the judiciary.

C. Characteristics of *Mazālim*

I. *Mazālim* as Natural Phenomenon of Good Governance

Nielsen argues that any mature bureaucratic system would produce an institution similar to the institution of *mazālim* in the Islamic administrative system. Accordingly, emergence of the institution of *mazālim* in Islamic judicial system, is but a natural phenomenon of governance, which regularly appears in the historical process in all societies. Consequently, the Islamic society is not an exception from that general rule. The supporters of this view often draw examples from the practice of the Sasanids, the Byzantines, Chinese and the Pre-Islamic Arabs.³² It is, therefore, the opinion of some scholars that "the precedent of *mazālim* institution can be found in Byzantium and, more particularly, in the Sasanid bureaucratic office which functioned as jurisdiction parallel to the ordinary judiciary headed by the *mobedh-mobedhan*."³³ Furthermore, it is argued that "there is a long tradition in the Middle East of the king having judicial functions."³⁴ This tradition is further complemented and strengthened by "the strong relationship between kinship and priesthood."³⁵ Such evidence could be found in the Old Testament, which shows that

³² Ibid., 16.

³³ Jorgen, "Mazālim", 933.

³⁴ Jorgen, *Secular Justice*, 1.

³⁵ Ibid.