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**Islamic Emirate of Afghanistan
Supreme Court
General Department of Secretariate
Correspondence Department
Circulars' Section**

S/No: 15

Date: May 23, 2022 -1443/10/22

To the Islamic Emirate of Afghanistan's appellate, divisional, and primary courts:

May Allah's mercy, blessings, and peace be upon you!

In letter No. 388J1, dated March 8, 2022 (1443/8/5), the leadership office of the Islamic Emirate of Afghanistan, pursuant to the decree of the Honorable Amirul Mominin Sheikh Sahib (May Allah Protect him), appointed a committee to establish a procedure for reviewing decisions made by the courts of the previous regime, when the convicted individuals seek revision. Under the esteemed guidance of the leadership authority, the committee has formulated a 17-article procedure, which was subsequently presented to the leader of the Islamic Emirate of Afghanistan, His Excellency Amirul Mominin Sheikh Sahib (May Allah Protect him). The following guidance was issued by Amirul Mominin Sheikh Sahib (May Allah Protect him):

"We have reviewed this procedure and approved the 17 articles developed by the aforementioned delegation. May Allah bless them all."

The Honorable Supreme Court received the procedure and issued the following directive: "The approved procedure, as endorsed by the leader of the Islamic Emirate of Afghanistan, His Excellency Amirul Mominin Sheikh Sahib (May Allah Protect him), shall be disseminated to all courts."

Hence, concerning the judgments of the previous administration's courts, for which the convicts request re-examination, the attached 5-page procedure is forwarded to Afghanistan's appellate, divisional, and primary courts to align their Sharia and principled actions accordingly.

**Regards
Mufti Abdul Rasheed Saeed
Chief of the Secretariat of the Supreme Court**

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May Allah's mercy, blessings, and peace be upon you!

All praise is due to Allah, and prayers be upon His messenger and his family!

In the letter from the leadership's office of the Islamic Emirate of Afghanistan, dated March 8, 2022 (1443/8/5 AH, No. 888 J1), a request was made to review the decisions of the courts of the previous administration, following the order of Amirul Momenin. A delegation was appointed under the leadership of the Chief of the Cassation Department of the Southwest zone of the Supreme Court, Sheikh Maulvi Sardar Mohammad, to establish the investigative procedure. This delegation includes Mowlawi Muhammad Ullah, a member of the Central Darul-Ifta; Sheikh Azizullah Mazhari, the Head of the Department of Darul-Ifta; and Sheikh Zafarani, the Vice-Chancellor of the Ulama Council of Kandahar Province. The opinion of the competent authority on the submitted case is presented as follows:

Just as the corrupt administrative judges of the past are referred to as the judges of the rebels, these judges can be dismissed and appointed the same as the rebels themselves. According to the statements of jurists, when insurgents gain control over a region, the justices and judges are not deposed unless the insurgents themselves are deposed, and other judges are appointed in their stead. The aforementioned sentence implies that the rebels are deposing just judges (Ahl al-Adl) and appointing their own judges. When the Ahl al-Adl regain power, the judges of the rebels are deposed because their dismissal and appointment were related to force and domination, unless the Imam chooses to reappoint them.

البحرالرافق شرح كنزالدقائق ج٦ ص٤٦٠ كتاب القضاء مكتبه دارالكتب الشرعية:
وأشار المُولف بصحة القليلد من الجائر غادلاً كان القاضي أو باغياً إلى صحة عزل الباغي للقضاة هل العدل وفي الفصول بمجرد استيلاء
الباغي لا تلغزل فضاء الغللي. ويضح عزل الباغي لهم حتى لو انهزم الباغي بَعْدَ لا تنفذ ضاياهم بعده ما لم يقلدهم سلطان العدل ثانياً إذا الاباغي
صار سلطاناً بالقهر والغلبة هـ

محيط البرهاني للامام برهان الدين ج١٢ ص١٦٢ كتاب القضاء مكتبه بيروت:
إذا وقع القضاء؛ في حادثة بحق؛ فامر السلطان القاضي ان يسمع تلك الحادثة ثانياً بحضرة فلان لا يفترض على القاضي ذلك، لأنه لا فائدة فيه.
اهل البغي اذا غلبوا على بلاد اهل العدل، فالقضاة قضاة على حالهم ما لم يعزلهم الباغي، فاذا عزلوهم خرجوا عن القضاء حتى لو انهزم البغاة بعد
ذلك، لا ينفذ قضاؤهم ما لم يقلدهم سلطان اهل العدل ثانياً، لان الباغي صار سلطاناً بحكم القهر الا ترى ان تقلد القضاء منه يجوزه فيصح
العزل منه.

الفتاوى الهندية (ص 315 ج3) مكتبه حبيبيه:
القاضي إذا قضى في حادثة في حق، ثم امر السلطان ان يسمع هذه الحادثة ثانياً بمشهد من العلماء لا يفترض على القاضي ذلك في الخلاصه.

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رد المختار على الدر المختار (ج ٤ ص ٤٤٣) مطلب في حكم تولية القضاء في بلاد تغلب عليها الكفار مكتبه رشيدية:
قوله (صح العزل) اذا ولي سلطان البغاة باغيا و عزل العدل ثم ظهر لا عليهم احتاج قاضي اهل العدل الى تجديد التولية نهر.

فتاوى هندية ص 307 ج 3 مكتبه حبيبية:

وذكر في الفتاوى: والتقليد من اهل البغي يصح وبمجرد استيلاء الباغي لا تعزل فضاء اهل العدل ويصح عزل الباغي لهم حتى لو انهزم
الباغي لا ننفذ فضاء باهم بغد ذلك ما لم يُقْلدهم السلطان العدل ثانيا.

Based on the information provided, it is understood that judges presiding over cases involving rebels are referred to as "judges." In instances where decisions made by judges from the prior corrupt administration have not yet been enforced, parties may bring their cases before the esteemed judges of the Islamic Emirate. One party may seek enforcement of the previous decision, while the convicted individual may contest the ruling and propose that the case be reevaluated.

In such situations, if the original decision was rendered by a primary court, the case should be forwarded to the Arbitration Court of the Islamic Emirate. The Arbitration Court should then assess whether the decision aligns with Sharia law. If it does, the decision should be confirmed; if not, the decision should be overturned and the case returned to the Islamic Emirate's primary court. Conversely, if the initial ruling was issued by the Arbitration Court of the Islamic Emirate, the case should be presented to the Cassation Court of the Islamic Emirate Court of Arbitration. The Cassation Court should also determine whether the decision complies with Sharia law, and either confirm or overturn the ruling accordingly.

If a decision from the previous administration has reached a final judgment after three trials, and the convicted party now seeks its enforcement, the case should be referred to the Supreme Court's Dar al-Ifta department. A qualified and trusted representative from Dar al-Ifta in each province should be granted jurisdiction to review the ruling. Upon investigation, if the order adheres to Sharia law, it should be executed; if not, further inquiry should be conducted. Ultimately, the decision must be made in accordance with the principles of the Islamic Emirate Courts. The finalized ruling, consistent with holy Sharia, should then be sent to both parties and the Supreme Court for implementation.

Please note: The head of the Supreme Court's Dar al-Ifta and a qualified, trusted representative from Dar al-Ifta in each province should be granted judicial authority to investigate and make a final decision on the matter. If jurisdiction is not granted, these individuals cannot independently review the decision. Consequently, if an order is made to restart the case proceedings, Muslims who have already endured lengthy legal battles under the previous corrupt administration may face further persecution.

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البيهر الرائق شرح كثر الدقائق ج ٦ ص ١٤٦ كتاب القضاء مكتبه دارالكتب الشرعية:
وتصريحه بجواز التقليد من الجائر يدل على ان البغاء اذا ولوا قاضيها، ثم جاء اهل العدل فرفعت قضاياه الى قاضي اهل العدل فانه يمضى حيث كان موافقا ومختلفا فيه كما في سائر القضاة، وهو مصرح به في فصول العمدى و يدل بمفهومه على ان القاضي لو كان من البغاء فان قضاياه تنفذ كسائر فساق اهل العدل: لان الفاسق يصلح قاضيا في الاصح، و ذكر في الفصول ثلثه اقول فيه. الاول ما ذكرناه، وهو المعتمد الثاني عدم النفاذ فاذا رفع الى العادل لا يصيحه الثالث حكمه حكم المحكم يعصمه لو وافق رانه و الا ابطله.

ردالمختار على الدرالمختار (ج ٤ ص ٣٤٣) مطلب في حكم ثولية القضاء في بلاد تغلب عليها الكفار مكتبه رشيدية:
قوله (نفذه) اي حيث كان موافقا او مختلفا فيه كما في سائر القضاة وهو مصرح به في فصول العمادي ويدل بمفهومه على ان القاضي لو كان من البغاء فان قضاياه تنفذ كسائر فساق اهل العدل لان الفاسق يصلح قاضيا في الاصح و ذكر في الفصول ثلاثة اقوال فيه الأول ما ذكرناه وهو المعتمد الثاني عدم النفاذ فاذا رفع الى العادل لا يمضيه الثالث حكمه حكم المحكم بمضيه لو وافق رايه والا ابطله ١ ه بحر قوله (وبه جزم الناصحي) لكن قد علمت ما هو المعتمد.

الهداية ج ٣ ص ١٤١ مكتبه رشيدية:
قا (واذا رفع الى القاضي حكم حاكم امضاء الا ان يُخالف الكتاب او السنة او الاجماع بان يكون قولا لا دليل علي، وي الجامع الصابر: (وما اختلف فيه الفقهاء فقضى به القاضي ثم جاء قاضي اخر يرى غنز ذلك امضاء) ولأصل ان القضاء متى لاقى فصلا مجتهدا فيه بنفذه ولا يردده غيره، لان اجتهاد الثاني كاجتهاد الاول، وقد يرجح الاول باتصال القضاء به فلا ينفذ بما هو دونه.

فتح القدير لكمال بن الهمام (٢ ٣٤٧ ج ٥) مكتبه حبيبه:
واذا ولي البغاء ناصيا في مكان غلبوا عليه فقضى ما شاء ثم ظهر اهل العدل فرفعت اقصيته الى قاضي اهل العدل تنفذ منها ما هو عدل و كذا ما قضاة برأى بعض المجتهدين، لان قضاء القاضي في المجتهد نافذ و ان كان مخالفا لرأى قاضي العدل.

الفتاوى الهندية (ص ٣٠٧ ج ٣) مكتبه حبيبه:
و يجوز تنفيذ القضاء من اهل البغي فانه ذكر في باب الخوارج من سميير الاصل اذا غلب: اهل البغي ععلى مدينه واستعملوا عليها قاضيا فقضى باشياء، ثم ظهر اهل العدل على تلك المدينه فرفعت قضاياه الى قاضي اهل العدل فانه ينفذ منها ما كان عدلا و كذلك لو قضى بشيء مما راه الفقهاء بمصيبه اذا كان مختلفا فيه كما في سائر القضاة.

درالحكام في شرح مجلة الاحكام ماده ١٨٣٧:
ما لم يكن حكم القاضي الاول مخالفا للسنة المشهوره او اجماع الامه وفي هذه الخاله يجب ابطال الحكم الاول ورده كما سيوضح آتينا. اذا كان الحكم موافقا للمذهب القاضي الاول و القاضي الثاني فالامر ظاهر اذا عرض حكم فاض على فاض اخر فلا يحلو الحكم من ان يكون احد الاقسام الثلاثة الاتيه: القسم الاول: ان يكون الحكم مخالفا للنص اي مخالفا للكتاب او السنة المشهوره او الاجماع وفي هذا الحال يرد الحكم ويبطل على كل حال لانه حسب ماده (١٤) من المجله (لا مساع للاجتهاد في مورد النص).

بدائع الصنائع في ترتيب الشرائع - (ص ١٣٠ ج ٦) مكتبه عثمانيه:
(واما) بيان حكم قضاياهم، فقول: الخوارج اذا ولوا قاضيا فالامر لا يحلو من احد وجهين: اما ان ولوا رجلا من اهل البغي، واما ان ولوا رجلا من اهل العدل فان ولوا رجلا من اهل البغي فقضى بقضاياه ثم رفعت قضاياه الى قاضي اهل العدل لا ينفذها، لانه لا يعلم كونها حقا: لانهم يستحلون

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دماءنا و امولنا، فاحتمل انه قضى بما هو باطل على راي الجاعه، فلا يجوز له تنفذه مع الحتمال، و ان كا لا يعلم لا ينفذه، لاله لا يعلم كوله حقا، فلا يجوز تنفيذه لقوله. تبارك وتعالى. (و لا تقف ما ليس لك به علم) وان ولو رجلا من اهل العدل فقضى فيما بينهم بقضايا، ثم رفعت قضاياها الى قاضي اهل العدل تنفذها، لان التوليه اياه قد صحت، ولانه يقدر على تنفيذ القضايا بمنعهم وقومهم، فصحت التوليه، والظاهر انه قضى على راي اهل العدلو فلا يملك ابطاله، كما اذا رفعت قضايا قاضي اهل العدل الى بعضو قضاه اهل العدل.

If the applicant is convicted and the decision has been decided in the previous corrupt administration, but the applicant is not satisfied with the decision and has an appeal, according to the opinion of Amir al-Mominin, the Supreme Court in the center and the judicial deputy in the southwest area, should send to the case to the relevant primary court.

Summary of Procedure:

1. Unimplemented decisions made by Primary Courts during the previous administration should be submitted to the Arbitration Courts of the Islamic Emirate of Afghanistan. If the deadline has passed, these decisions should be treated like any other.
2. Unimplemented decisions made by Arbitration Courts during the previous administration should be submitted to the Cassation Department of the Supreme Court. If the deadline has passed, these decisions should be treated like any other.
3. To reduce the caseload at the Darul-Ifta of the Supreme Court in each province, a qualified and trusted individual should be appointed as a judicial assistant for one year. This individual should review decisions made during the previous administration that have not been implemented, determine if they comply with Sharia law, and forward them to the relevant Cassation Department for implementation. If the decisions do not adhere to Sharia law, a final ruling should be made according to the principles of Sharia and Islamic Emirate courts.
4. The Dar al-Ifta of the Supreme Court should be granted jurisdiction to make the final Sharia decision after conducting an investigation.
5. If there is a request for proceedings in political matters and the convicted person has already served part of their imprisonment and punishment, the process should not be restarted; it should be terminated.

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6. To avoid increasing the number of disputes, final legal issues from the previous corrupt administration that have not been implemented should be submitted to the Dar al-Ifta of the Supreme Court. In the provinces, the designated individual granted judicial authority should receive these issues to conduct a Sharia investigation. If the previous decision adhered to Islamic Sharia, they should issue an order for its implementation and send it to the relevant Cassation department. If the decision did not follow Sharia, the individual should make their final decision and send it to the relevant Cassation department for implementation.
7. The jurisdiction of appeal should be exclusive to Amir al-Momineen (May God Protect him).
8. For non-implemented legal decisions from the previous administration that have been finalized and are now requesting a review (i.e., they seek a new beginning), these issues should be sent to the relevant primary court by the Supreme Court in the center and in the southwest by judicial assistantship, based on the opinion of Amir al-Momenin.
9. To facilitate this process, two committees should be appointed, one in the center and another in the western region, to review the files of the previous corrupt administration and provide a preliminary opinion. Cases tried by the primary court should be sent to the relevant Arbitration Court, while cases tried by the Arbitration Court should be sent to the relevant Cassation Department. This committee should separate finalized cases into criminal and legal categories. The responsible person should terminate criminal cases according to the decree of Amir al-Mu'minin (May Allah protect him), and Haq al-Abd cases should be referred to the relevant court like other Haq al-Abd rulings. Legal files should be sent to the relevant authority for investigation.
10. If the judge of the former corrupt administration decided, based on Hanafi jurisprudence, that the decision was valid in the abstract, the decision should not be overturned due to administrative defects but should be ordered to be implemented. If the decision was made according to another jurisprudence school, and Dar al-Ifta sees any advantages in terms of this decision, the decision should be referred to Amir al-Mu'minin or a higher judiciary authority.
11. For cases that arose during the previous corrupt administration where one of the parties is an Emirate, the related body must formally introduce its representative to

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the Dar al-Ifta directorate in the center and to the designated individual of a Dar al-Ifta in each province to proceed with the lawsuit. The relevant authority will decide on their presence.

12. If the judges of the corrupt administration had decided on imprisonment in criminal cases and the accused had already served part of the imprisonment, and the defendant requests that the convicted person serve the entire imprisonment, the case should be terminated according to the decree of Amirul Momenin (May God protect him).
13. If the judge's order from the former corrupt institution was based on a reason such as confession, oath, or denial, and there was no other Shariah prohibition, the decision should be implemented.
14. Decisions made by previous corrupt administrative judges based on the investigation or rights of the prosecutor should be submitted to the Supreme Court's Dar al-Ifta Department in the center and to the designated individual of a Dar al-Ifta in each province who has been granted judicial authority. These individuals should independently conduct their investigation and make a Sharia decision, not relying solely on the prosecutor's investigation and the law.
15. In cases where the order of the judges from the previous corrupt administration is based on an explicit confession, it should be sent to the Dar al-Ifta department of the Supreme Court in the center and the designated individual of the Dar al-Ifta in each province who has been granted judicial assistance. After reviewing and verifying the case, they should issue an order for implementation.
16. In legal and commercial matters, if there is a need to determine the aliases of traders involved in a case, the relevant authority should request information from competent and knowledgeable individuals from the chamber of commerce and make a decision accordingly.
17. For commercial issues that were settled amicably between the parties during the previous government and were presented to the court, but now one side opposes the implementation of the decision and the other is against the settlement, the case should be submitted to the relevant Primary Court like other matters.

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This procedure is established in the 17 articles of the delegation whose names have been mentioned above. (May Allah bless everyone) We also approve it; it should be implemented.

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