

The Jurisprudential Foundations of Judicial Governance in the Thought of Ayatollah Seyyed Mahmoud Hashemi Shahroudi: An Analysis of Modern Approaches in Judicial System Management

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Abstract:

The judicial system, as one of the essential pillars of governance, requires a framework that, while adhering to jurisprudential principles and justice-centeredness, is also capable of addressing contemporary managerial challenges. Ayatollah Hashemi Shahroudi, as one of the prominent jurists and judicial reformers of contemporary times, presented a model of "jurisprudence-based judicial governance," based on dynamic *ijtihad*, structural justice, and systematic pragmatism. This study, using an analytical-descriptive method, examines the jurisprudential foundations underlying his judicial thought and evaluates their impact on the judicial reforms during his presidency of the Judiciary. The analysis of the theoretical foundations reveals that, in Ayatollah Hashemi Shahroudi's thought, justice-centeredness is presented as the core principle of judicial governance. It is institutionalized in judicial processes through jurisprudential rules such as the "Rule of Justice," the "Rule of No Harm," and "Rights of Others." Additionally, the role of dynamic *ijtihad* in adapting the judicial system to the demands of time emphasizes the potential of governance jurisprudence in managing the legal system. His reformative actions, such as revising criminal and civil procedure laws, combating economic corruption through institutionalizing jurisprudential-legal oversight, and utilizing modern technologies in judicial processes, demonstrate efforts to create a balance between tradition and modernity within the Judiciary. The findings of this research indicate that the model of judicial governance based on governance jurisprudence not only ensures religious legitimacy but also enhances transparency, efficiency, and accountability in the management of the judicial system. In this context, developing a strategic document for judicial management based on governance jurisprudence and fostering interdisciplinary research between jurisprudence, law, and management could facilitate the transformation and modernization of the judicial system. This study, by providing practical solutions, emphasizes the necessity of strengthening the convergence between jurisprudential foundations and management principles to achieve just and efficient governance within the judicial system.

Keywords:

Judicial Jurisprudence, Judicial Governance, Dynamic *Ijtihad*, Ayatollah Hashemi Shahroudi, Strategic Judicial Management.

Extended Abstract

This article explores the jurisprudential foundations and managerial implications of "judicial governance" in Shi'i Islamic thought through the ideas and practical legacy of Ayatollah Seyyed Mahmoud Hashemi Shahroudi, former head of the Judiciary of

the Islamic Republic of Iran. It argues that his project represents a coherent model of *fiqh-based judicial governance* that seeks to reconcile fidelity to classical Islamic legal principles with the demands of a complex modern judicial system, especially in areas such as institutional design, human rights protection, anti-corruption policy, and the use of new technologies in adjudication .

The research problem addressed is the persistent gap between traditional *fiqh* of adjudication (*fiqh al-qaḍā'*) and contemporary expectations of rule of law, transparency, efficiency, and accountability. While Islamic legal theory offers rich normative resources—such as the principles of justice) *'adl* ,(no-harm) *lā ḍarar* ,(and the primacy of people's rights) *ḥuqūq al-nās*—(these are often not systematically translated into concrete structures, procedures, and management tools within modern judicial institutions. The study therefore asks: What are the key *fiqh*-based principles that should govern a contemporary Islamic judiciary? How are these principles operationalised in Shahroudi's thought and reforms? And to what extent can his approach provide a replicable model for other Muslim legal systems?

Methodologically, the article adopts a descriptive–analytical approach grounded in library research and content analysis. It examines primary Islamic sources (Qur'ān, hadith, and *usūl al-fiqh*), classical and contemporary Shi'i jurisprudence, constitutional and statutory texts (such as Articles 156–158 of the Iranian Constitution and procedural codes), and an extensive corpus of Shahroudi's books, lectures, policy speeches, and circulars as head of the Judiciary. This normative analysis is complemented by a case-oriented reading of major reforms during his tenure—such as the creation of specialised courts, reforms in criminal and civil procedure, and the gradual digitalisation of judicial services—to show how abstract *fiqh* principles were translated into institutional practice.

Conceptually, the article distinguishes between *judicial governance in Islam* and *judicial governance in public law theory* .In Islamic legal thought, judicial governance is rooted in the implementation of divine law and the protection of both *ḥaqq-Allāh* and *ḥaqq-al-nās* ,and is inextricably tied to ethical qualities such as piety, integrity, and service to the oppressed. In public law, it is primarily conceived as a framework of institutions and processes that safeguard the rule of law, separation of powers, judicial independence, and fundamental rights. The paper argues that in hybrid systems like Iran, these two paradigms can be mutually reinforcing if read through a dynamic jurisprudence of governance (*fiqh ḥukūmatī*)

that accepts managerial rationality and human rights discourse as compatible with, rather than hostile to, Islamic norms.

A central theoretical finding is that three fiqh principles structure Shahroudi's vision of judicial governance. First, justice (*'adl* and *qist*) is treated not merely as a moral exhortation but as a design principle for institutions, procedures, and resource allocation. Second, the no-harm rule (*lā ḍarar wa lā ḍirār*) underpins efforts to eliminate unnecessarily cumbersome procedures, reduce delays, and prevent both individual and systemic injustices, such as legal insecurity and economic corruption. Third, the centrality of people's rights (*ḥuqūq al-nās*) shifts the emphasis from a state-centred to a people-centred judiciary, prioritising restitution, dignity, and access to justice over purely punitive responses. These principles are then linked to modern governance values such as proportionality, due process, and protection of vulnerable groups.

The article further shows how *dynamic ijtihād* serves as the intellectual engine that allows this framework to respond to new realities, including cybercrime, economic and environmental offences, complex commercial transactions, and international legal commitments. Shahroudi's approach to *ijtihād* rejects both rigid textualism and unbounded pragmatism: it maintains loyalty to the established methodologies of Shi'i jurisprudence, while insisting that judges and policymakers must "know their time" and integrate changing social conditions, technological developments, and global legal trends into their reasoning. The concept of *maṣlaḥat al-nizām* (public interest of the Islamic polity) is used as a mediating device when primary rules appear to conflict with the requirements of social order, economic stability, or international engagement.

At the managerial level, the article identifies several pillars of Shahroudi's model. These include the institutional and personal independence of judges; specialisation of courts (for example in economic, family, or environmental matters); expansion of alternative dispute resolution and restorative justice institutions such as local conciliation councils; and the introduction of what he calls "judicial hygiene"—preventive policies aimed at reducing case generation by reforming front-end administrative bodies like municipalities, banks, tax authorities, and registries. Such measures are justified through a fiqh-social lens that treats mass litigation and pervasive disputes as "social pathogens" that threaten both justice and public trust.

A significant part of the analysis is devoted to ethics and professional formation. Drawing on Qur'anic and hadith sources, the article argues that Shahroudi places

judicial ethics—such as impartiality, humility, service orientation, and rigorous avoidance of corruption—at the heart of judicial reform. For him, judicial ethics are not secondary “soft” issues but conditions for the validity and legitimacy of adjudication in an Islamic system. Accordingly, he calls for systematic codification and teaching of judicial ethics, continuous training of judges in new legal fields and technologies, and the cultivation of a strong sense of social responsibility and citizens’ rights among all justice sector personnel.

The empirical–policy section synthesises how these jurisprudential and ethical commitments shaped concrete reforms. These include the streamlining of criminal and civil procedures to reduce delay and formalism; expansion of the right to counsel and safeguards against coerced confessions; intensified institutional responses to grand corruption, including specialised anti-corruption courts and asset recovery mechanisms; and the roll-out of electronic registration and tracking of cases to enhance transparency and reduce opportunities for manipulation. While the article recognises ongoing structural challenges—such as institutional resistance, resource constraints, and unresolved tensions with some international human rights standards—it contends that Shahroudi’s tenure marked a decisive step toward a more coherent and service-oriented judiciary.

In its final sections, the article draws out broader implications for theory and policy. Theoretically, it shows that Shi’i fiqh—when read through the lenses of dynamic *ijtihad*, public interest, and social fiqh—has the capacity to provide a sophisticated governance framework for modern judicial systems without sacrificing its theological foundations. Practically, it proposes several avenues for further development: drafting a national strategic document for judicial management based explicitly on governance fiqh; institutionalising interdisciplinary programs that combine fiqh, law, public administration, and technology; strengthening citizen-based oversight consistent with Islamic concepts of *hisba* and *amr bi-l-ma’rūf*; and deepening regional judicial cooperation among Muslim countries on the basis of shared jurisprudential principles.

The extended analysis thus concludes that “jurisprudence-based judicial governance” in Shahroudi’s sense is neither a nostalgic return to pre-modern institutions nor a mere Islamic veneer on imported models. Rather, it is an attempt to articulate an internally coherent, normatively rich, and practically minded paradigm in which divine law, human dignity, and managerial rationality are integrated into a single judicial project. If further developed and critically refined,

this paradigm can contribute both to the ongoing reform of Iran's judiciary and to wider debates on how Islamic legal systems can meet contemporary governance challenges while remaining rooted in their own intellectual and spiritual traditions.

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