

Tribal Law in Bir al-Sabe'*



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umerous Arab tribes with large clans and families dwell in southern Palestine. These tribes once owned half the total area of Palestine, namely the entire Bir al-Sabe' District and the Naqab. Geographically, the Naqab has a triangular shape, the point of which is located at Boq'at al-Mrashrash on the Gulf of Aqaba. It includes the Gaza Strip, the mountains of Hebron, the Sinai Peninsula, eastern Jordan, the area south of the Dead Sea, and Wadi Araba. Many Arab tribes used to live in the middle of Al-Naqab in the eternal city of Bir al-Sabe', considered the metropolis of the south, the capital of Arabian tribes, and the bride of the desert. It is located between Gaza and Hebron, around 50 kilometers from each town.

Bedouins resided in Bir al-Sabe' for centuries. The city used to be home to a community of Bedouins until they were expelled to the surrounding areas in 1948. To this day, it holds a special place at the core of their hearts as their home and meeting place. Here, they held their markets and carried out trade. The people of Bir al-Sabe' were distinguished by the simplicity of their lives and the harsh conditions imposed on them by the desert.

As people in any society live their lives and continuously interact, it is natural that conflicts arise. Therefore, it has been necessary to find basic mediation methods for situations that require arbitration, litigation, and dispute settlement. While the

most basic code of rules and primary source of Bedouin legislation is their great religion, tribal conventions have frequently proven stronger than religious doctrine. This is due to the average person's lack of detailed religious knowledge, on the one hand, and the traditional tribalist ways that tend to steer proceedings, on the other. Thus, conventional judges were found to reconcile people by using knowledge passed on orally from generation to generation. These wise men and women have become a reference point in cases of conflict.

In Ottoman times, no formal court existed for the tribes living in Bir al-Sabe'. People had to rely on a governing council that consisted of two employees and a sheikh

British Mandate colonialists changed their approach.

After the collapse of the Ottoman Islamic Caliphate, the British authorities set up tribal courts with judges that based their ruling on tribal law. This maneuver not only alleviated the British Mandate government from the burden of having to follow up on issues related to the Naqab but also created an atmosphere of satisfaction and acceptance of the new colonists among Bedouin community leaders because rulings were passed according to their conventions and traditions.

These courts, however, lacked organization. For example, all those who claimed to be sheikhs could



who was replaced every few years. The Turkish government ruled the country according to civil and Islamic laws and Turkish conventions and traditions, which created an atmosphere of hostility towards the Turks. Aware of this resentment, the

become involved and become members, which rendered the government unable to set things right because of the court's immaturity and lack of knowledge regarding current realities. Chaos reigned until 1920, at which time the government removed

all sheikhs except those who had been selected by their tribes. The members of these tribal courts were not paid for their work, nor did the government grant them official status, nor did the sheikhs have to take the customary oath of office in which they swore to be fair in their judgments.

Between 1919 and 1920, in addition to the tribal courts, a “blood council” was formed and tasked with ending bloody conflicts between tribes that had arisen due to cases of murder and the ensuing revenge. During the two years of its operation, the council solved over 150 violent cases and was able to stop bloodshed numerous times. The meetings of this council were presided over by a district general, also known as major general, and the members were paid three pence for every case. By 1922, the blood council had solved all, or at least most of the cases assigned to it and was dissolved, leaving the tribal courts on their own.

As stated in the Palestinian constitution, the British governor ordered the high commissioner: “Establish separate courts for Bir al-Sabe’ and any other tribal areas as you deem appropriate. These courts are allowed to apply tribal traditions unless they are inconsistent with natural justice and morals.” Based on this order, a tribal court of 16 officers was formed that included members of Al-Tiaha, Al-Trabeen, Al-Azazmeh, Al-Hanajreh, and Al-Jbarat tribes. In 1923, Sir Herbert Samuel, the British high commissioner, asked these members to take the following oath: “I swear by the Almighty God that I will well and truly do right to all manner of people without fear or favor, affection, or ill will.” Furthermore, he gave the order to pay every member 20 pence for each session. In 1930, their pay was raised to 50 pence, and the

British commissioner was authorized to cancel the membership of any judge or authority of this and any similar court.

In 1924, Sir Gilbert Clayton, the British governor of Palestine, issued an order that provided for setting up one or more tribal courts in the Bir al-Sabe’ District, each formed by at least three sheikhs. They were responsible for cases referred to them by the district court president or the district governor. The governor had to inform the high commissioner about every case audited by the tribal court, clarifying the reason for the ruling that was obtained.

These courts prevailed until the Zionist occupation of Palestine in 1948. The newly established Israeli government canceled these courts and made litigation through civil and Israeli laws mandatory. These laws run counter to the local population’s religion, conventions, and traditions, but take into consideration reconciliation issues that take place apart from courts and that have alleviated honor issues that Bedouins call “disgrace.” This abolition of tribal courts, however, did not stop the Bedouins from litigation according to their conventions and traditions, even though it is considered illegal under Israeli law. Bedouins fail to acknowledge the ruling establishment and ignore the official judiciary and its rulings. However, they are very disciplined in implementing the decisions taken by their tribal judges and commit the parties to them. Bedouins consider judges to be men on whom Arabs depend to solve their conflicts according to their conventions and traditions, apart from the existing law. While conditions may vary in different places, this article focuses on the Bedouins in Bir al-Sabe’.

In Bir al-Sabe’, there are two types of judges: Arab judges, called *makhattett*, make legislation. These are the judges to whom people turn apart from tribal courts, and they play this role even today due to the abolition of formal tribal courts. Governmental judges of tribal courts, called *lahasit al-khutoom* (*stamp lickers*), were the official judges designated by the British high

Al-malam (the gatherer) brings together two opposing groups for the first time in order to identify their case, assigns competent mediators who are specialized in the particular type of case, and determines on which day the hearing is to be held. If the parties agree on the names of the mediators who should deal with this case, they proceed and turn to them. Otherwise, they go to *al-kibar* (the elders).



commissioner whose role officially ended with the Israeli occupation of the country in 1948.

There are several well-known types of judges to whom Bedouins turn when a conflict breaks out. Here, the Israeli government does not interfere. Every type is distinct, and they differ in terms of point of view and in their treatment of issues according to how they understand the conventions and types of cases before them.

Al-kibar have the right to select the mediators to whom the two opposing groups have to turn for litigation, based on the elders’ assessment of the type of case. These mediators are like investigative judges and usually assigned by the two groups. Each one of them buries a pebble in *al-malam*’s house once they have identified the type of conflict. This so-called “pebble burying” leads to the next stage of litigation. Considering the importance

of the elders' roles and authorities, they are also called *mu'ammirat al-seereh* (the rebuilders) and have the right to reconcile the two disputing parties without turning to any other mediator.

Ahel al-dyar (property judges) deal with conflicts related to land, properties, borders, buying and selling, and foreclosure. These conflicts are the most complicated for Bedouins because they consider land to be equal to honor. Usually, these people are selected among landowners who own vast territories and are known for their honesty and broad knowledge concerning land, inheritance, and borders.

Ahel al-risan (lit. people of halters, meaning horse breeders) deal with issues related to purebred Arabian horses and their breeds. They write identification documents of blood and kinship for every horse and mare. Bedouins traditionally love horses and hold their breeds in high regard. What's more, a conflict takes place if someone curses someone else's horse or claims that it is not a purebred Arabian. Other disputes happen over the ownership of horses, their breeds, the selling, buying, or lending of a horse, and any harm that might have been done while the horse was lent to someone, especially if it was sold in violation of an agreement or a tradition.

Al-munashid (the implorer) pleads for innocence, the restitutions of honor, and *taqtee' al-wajh* (lit. cutting a face), which refers to an attack by the offending party while the victim was protected by another tribe. Similarly, *al-dakhaleh* (intermediator) refers to the one who seeks protection of a criminal who has committed a crime or attacked a home, the latter being one of the most difficult cases if a girl

has lost her honor because this could stigmatize an entire clan.

Daribiyye (taxation) and *al-ziyood* (surplus) judges deal with financial issues such as conflicts over the trade and theft of sheep and camels, or the feeding of a guest with another person's sheep. This is usually solved by an agreement between the two parties with the interference of reputable tribe members. Here, someone who possesses money may relieve the thief by contributing a partial amount of money in hopes of being repaid once the thief is able to pay. *Daribiyye* and *al-ziyood* differ in terms of authority and sternness: *daribiyye* tend to be less judgmental and carry less authority than *al-ziyood*. *Al-ziyood* are deemed to be first-rate judges.

Manaqi' al-dumoom (lit. blood drops) or *qassasseen* (evaluators) deal with cases of major crimes that involve the shedding of blood, such as injury, murder, and the payment of blood money. Bedouins require *manaqi' al-dumoom* to be extremely pious and religious because of the importance of the cases they deal with. They are thus selected by consensus, unlike the other judges.

Precedents conventions are considered the main but not the sole resource for the formulation of legal rules in a tribal community. They play an important role and are considered a reference for the majority of legal rules that relate to life within the community and its statutes when a conflict breaks out. Therefore, the Bedouin conventions are memorized by the tribe's sheikhs, also called *awarif*. Tribal judges base their judgment on what they are told by the senior sheikhs who declare their provisions by stating, "This is what I told you and what I was told

by my elders" to emphasize that the convention is stable and longstanding.

The convention is considered the tribe's point of reference based on the oral transmission of precedent cases, and the tribe adheres to it wherever it goes. It is not associated with a piece of land because the tribe does not settle in one place throughout the year as it travels in search of pasture and water. Every tribe used to have a primitive lifestyle with the power of convention prevailing. It cannot be employed anywhere else, however, because conventions differ from one tribe to another.

A convention differs from a tradition in that convention is legally binding, whereas a tradition is less binding. Not aware of this difference, Bedouins tend to use these terms interchangeably, referring to them as tribe traditions.

Bedouin judicial norms aim to control the behavior of individuals to ensure that the members of a Bedouin community interact harmoniously, which is why they should achieve the following four goals: First, conventions aim to bring about security at the individual and tribal levels. This can be achieved by using the required means to prevent assault between individuals and groups and by providing means to compensate for damages caused when an attack has taken place. Second, conventions aim to ensure justice and equality, which helps balance differences among Bedouin society members and prevent violence. Third, conventions aim to ensure social stability as every individual and group is committed to following the provisions of the

conventions that should not be violated. Any deviation is considered a crime and should be penalized. And finally, Bedouin conventions contribute to reconciliation after conflict and in court proceedings, which is an advantage of the tribal law. This aspect is lacking in civil laws such as Islamic law and conventional law. Tribal judges not only judge between people but also gather the two parties in one house in order to end the conflict, a practice that is called *al-jaha* (reconciliation). Sometimes this can be part of a judgment and penalty. Here, the perpetrator must apologize to the victim.

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* The Israeli name of this ancient settlement is Beersheva.