

ISSUES OF CODIFICATION OF NORMS OF ISLAMIC LAW

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ABSTRACT

The article describes the implementation of the process of codification of Islamic law norms in the European style and the essence of the first code of Islamic law "Majallai ahkomi adliya" that emerged as a result of it. Also, the opinions of scientists regarding this legal document and its significance today are highlighted.

KEYWORDS: *Manners, Morals, Behavior, Religion, Islamic Religion, Islamic Law, Education, Hadith, Path Of Perfection, Family, Neighborhood, Value, Duty, Legal Culture, Responsibility.*

INTRODUCTION

As one of the world religions, Islam has been an integral part of the spiritual outlook of many peoples for centuries. The fact that religion, including Islam, has existed stably for thousands of years indicates that it has left a deep mark on human nature and that it fulfills a number of unique tasks.

It is the honorable duty of each of us to preserve and appreciate our sacred religion, which embodies our age-old values and moral virtues. Islam means understanding the truth, it encourages people to do good deeds, calls each of us to goodness and peace, teaches to be a real person. [1, p. 123].

The peculiarity of Islam is that it embodies both religious and worldly power at the same time [2, p. 103]. a single book defined faith, customs, and even law, and the fixed will of the creator was also expressed in a single book. [3, p. 169].

Islam is not only a religion, but it is an independent legal culture that is expressed in various spheres of social life, including regulating various relations in society. This legal culture is one of the great achievements of human development and is an integral part of the world legal map.

Islamic law followed its own path of development, and the 19th century was an important turning point in the development of Islam. During this period, the judicial system and the Islamic legal system, which existed in the Middle Ages, underwent serious changes. The reason for this was the gradual introduction of signs characteristic of secular legal systems into the legal systems of relatively developed Muslim countries. This process is also observed in the Ottoman Empire, which influenced many countries, including most of the Arab countries. As a result of the first codification process, in 1869-1876, "Majallai ahkomi adliya" consisting of 1851 articles

regulating the right of property and obligations was developed and adopted. This legal document, by its essence, embodies the areas related to the property rights of the great works written on *furu'ul fiqh*, preserves the principles of *fiqh* and continues the traditions of the *fiqh* works created over the centuries, and also meets the socio-political requirements of the time of its acceptance, the main sources of Islamic law (the Qur'an), hadith, *ijma'* and *qiyas*), which gives a wide place to customary law, is an important source related to the *muamalat* (legal) part of *fiqh*.

The peculiarity and advantage of "*Majallai ahkomi adliya*" is that it is a jurisprudential code in a systematic form. It was created using the European codification method.

The code "*Majallai ahkomi adliya*" consists of a preface, 16 books, 60 chapters and 1851 articles. The introduction consists of two articles: the first is article 1, in which the essence and branches of jurisprudence are described.

The second covers 2-100-articles, which are 99 general *fiqh* rules.

The sixteen books that make up the main part of "*Majallai ahkomi adliya*" are the following: the Book of Trade, the Book of Rent, the Book of Guarantee, the Book of Transfer, the Book of Pledge, the Book of Deposit, the Book of Gift, the Book of *Ghasb* (encroachment on property), *Hajz* (limitation of legal capacity, coercion), Book of Companies, Book of Authority, Book of Release from Agreements and Obligations, Book of Confession, Book of Claims, Book of Evidence and Oath, Book of *Gaza* (judgment), Each book is divided into introduction and chapters.

A special feature of the structure of "*Majallai Ahkomi Adliya*" is that after each article, examples from a collection of fatwas are given in accordance with the rule in that article, sometimes the controversial opinions of Abu Hanifa and his two great students, Imam Abu Yusuf and Imam Muhammad Ibn Hasan al-Shaybani, in relation to this rule. is also attached. For example, if a pile of wheat is sold on the basis of a certain soum per kilogram, according to Imam Azam Abu Hanifa, the contract is valid only for one kilogram of wheat. Imam Abu Yusuf and Imam Muhammad Ibn Hasan al-Shaybani believe that the heap was sold in full, and money should be paid according to the number of kilograms that came out. In "*Majallai ahkomi adliya*" the second opinion was taken into account and expressed as follows in Article 220: "It is valid to sell to the quantities alone and according to its parts." Scientist A. Tsvetkov, who translated "*Judicial Commentaries of Majallai Ahkomi*" has a positive attitude towards this and believes that the articles will be understandable through these examples and arguments. [4, 1-7b.].

However, according to the authors of the book "*Law in Islam*", they give a critical opinion that "if we refer to the debates on the topics and the terms used in each chapter, the "*Majalla*" is like a textbook" [5, p. 328].

Although the European method of codification was used in the structure of "*Majallai ahkomi adliya*", the rules reflected in it are within the framework of the Hanafi *madhhab*. In it, from among the thoughts of the great imams of the Hanafis, understandable, human needs, customs, worldviews, and situations suitable for this era were selected and included in "*Majallai ahkomi adliya*". For example, according to Article 205, it is said that "it is impossible to sell something that does not exist." However, in many cases, some parts of flowers, plants, and fruits are not formed, and another part is formed, and it is customary to sell them separately, and Imam

Muhammad ibn Hasan al-Shaybani allowed the addition of unready products to the existing goods. . Imam Fazli, Shamsul-aimma Halwani and Abu Bakr ibn Fazl issued fatwas according to his opinion. According to the authors of "Majallai Ahkomi Adliya", it is impossible to ban such traditions of people. After all, it is more correct to direct people's treatment to health as much as possible than to attribute it to corruption [6, p. 17].

For this reason, the opinion of Imam Muhammad ash-Shaybani was relied on in Article 207 of "Majallai Ahkomi Adliya". This type of trade is called "Salam" trade in Islamic law. "Salam" trade is described in detail in Chapter 7, Part 3 of the "Book of Trade". It is known that salam is selling an uncooked thing, for example, cotton or wheat, for cash, and handing it over to the person who bought it after cooking [7, p. 129]. According to Article 380 of the "Journal of Laws of Justice", salam, like other types of commercial transactions, is concluded through acceptance and acceptance. It should not be replaced with an order, because in an order, money can be paid in advance and a certain period for the delivery of the item can be set, but in this case, the subject of sale is an item that does not exist at all. In Salam, the item may be available at the time of the transaction, for example, the wheat being purchased may already be in the warehouse.

Salam can only be applied to items whose quantity and quality can be determined to be high or low.

As noted above, the legal norms included in "Majallai ahkomi adliya" do not deviate from the scope of the Hanafi madhhab. Therefore, the sources used in "Majallai ahkomi adliya" were extremely limited. From this point of view, this fiqh code has sometimes been criticized. For example, according to the authors of the book "Law in Islam", the weakest point of "Majallai Ahkomi Adliya" was its strictness. Because its articles were based on sectarian rules. Although the authors of "Majallai Ahkomi Adliya" tried to harmonize its rules with the needs of people, they did not have the opportunity to use the theories of other legal schools because they could not leave the scope of Hanafi laws. [8, p. 329].

Nevertheless, at the time of the adoption of "Majallai ahkomi adliya", it was received with high respect in the world of law, especially in Egypt, Syria and other Islamic countries. Many books of scientific and legal value have been published. It was used as a source of regulation of civil legal relations for many years in the Kingdom of Bulgaria, Egypt, Hijaz, Iraq, Syria, Jordan and Palestine. It is worth noting that Israel is among the countries where "Majallai ahkomi adliya" is implemented, and we can find some of its articles in today's Israeli laws. It was in force in Bosnia and Herzegovina until 1928 and in Kuwait until 1984.

In Afghanistan, until the adoption of the "Cultural Law" (Civil Law) in 1977, the "Majallai Ahkomi Adliya" served as the main source for handling civil cases. included. For example, Article 498 of the Afghan "Cultural Law" of 1977 stipulates that every movable or immovable property can be the object of a contract when concluding a contract for all types of ownership (trade, gift), or a specific case according to Articles 501 and 502. it is possible to conclude a contract for performance or service, and the conditions for concluding a contract are as follows: the existence of two subjects, the use of special expressions related to the contract, the existence of the object of the contract. For the proper construction of the contract, the subjects should have legal capacity, the object should be suitable for the content of the contract, and should not be contrary to general decency. Also, according to Article 505, for the correct construction of the

contract, the subjects must not be forced, and according to Article 506, the contract is concluded through the consent and acceptance of the two parties, and consent and acceptance are the main words used in the conclusion of the contract. All these provisions provided for in the "Cultural Law" are expressed in "Majallai ahkomi adliya", because it was used as a source in the adoption of the "Cultural Law".

Although the sources of Islamic law cannot be fully implemented in practice today, its main aspects can serve as a basis for improving modern legislation.

REFERENCES:

1. Мирзиёев Ш.М. Миллий тараққиёт йўлимизни қатият билан давом эттириб, янги босқичга кўтарамиз. – Т.: Ўзбекистон, 2017. – Б. 30.
2. Дози Р. Очерки истории ислама. – Санкт-Петербург. 1904. - С.169.
3. Мусулманское право. Шариат и суд. Перевод применуемого в Оттаманской империи гражданского Свода (Мэджеллэ) / Пер. с тур. Ташкент, 1911-1912. Т. 1-3. Т.1. - Б.7.
4. Ислонда ҳуқуқ. / Мажид Наддурий, Нерберт Либесни ва б. - Техрон-Нуу-Йорк. 1955, - Б.328.
5. Жўзжоний А.Ш. Ислон ҳуқуқшунослиги, ҳанафий мазҳаби ва Ўрта Осиё фақиҳлари. - Т.:Тошкент ислон университети, 2002, - Б.129.
6. Ислонда ҳуқуқ. / Мажид Наддурий, Нерберт Либесни ва б. - Техрон-Нью-Йорк, 1955. - Б.329.
7. Otaboevich, K. M. (2021). Model of Developing Ideological Competence in Students. *Annals of the Romanian Society for Cell Biology*, 1284-1292.
8. Xo'jayev, M. O. (2020). The role of theory and practice in the development of ideological competence in students. *Theoretical & Applied Science*, (9), 18-20.