PalArch's Journal of Archaeology of Egypt / Egyptology

Juristic theorizing of the provisions of Islamic law (the draftJaafari Status Law, as a model)

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Inst. Dr. Rafid Hasan Majeed, Juristic theorizing of the provisions of Islamic law (the draftJaafari Status Law, as a model)-Palarch's Journal Of Archaeology Of Egypt/Egyptology 18(1), ISSN 1567-214x

Abstract

Several questions come to mind when the subject of jurisprudential theory and theorizing is defined and studied, including what is the position of Islamic law on this theorizing ?What rulings in Sharia can be theorized and which cannot? The call for a jurisprudential theorizing of the provisions of Islamic law is a call consistent with the goals and objectives of the Sharia calling for the negation of embarrassment, as it contains an orientalism for the future of Islamic law.I have decided, after seeking the help of God Almighty, to tackle the subject of jurisprudential theorizing of the provisions of Islamic law .This is because the call for jurisprudential theorizing came in response to a renewal in the contemporary jurisprudence movement, and is linked to life and the era in which we live.

And the importance of the topic stems from

1. The necessity of finding a comprehensive integrated theory for the jurisprudential theorizing of the provisions of Islamic law in a modern way, and a correct methodical method
2. The need to clarify the jurisprudential opinion on the emerging issue.

Keywords:-Jurisprudence theory - Jurisprudential theorizing methodology - Effects of jurisprudential theorizing - Sources of jurisprudential theorizing .

Introduction

Praise be to God, and for Him we seek help, and blessings and peace be upon Abu Al-Qasim, his pure family and his chosen companions , and after:Those who contemplate the reality of Muslims today are taken by grief and sorrow over this bitter reality, until they have become dependent on other nations in everything, even in their laws, even though they possess a peaceful law that contains lofty legal theories and principles, Sharia that is considered a unique system in its perceptions, goals and objectives, that regulate The life of the individual and society, showing rights and duties.The call for a jurisprudential theorizing of the provisions of Islamic law is a call consistent with the

goals and objectives of the Sharia calling for the negation of embarrassment, as it contains an orientalism for the future of Islamic law.I have decided, after seeking the help of God Almighty, to tackle the subject of jurisprudential theorizing of the provisions of Islamic law .This is because the call for jurisprudential theorizing came in response to a renewal in the contemporary jurisprudence movement, and is linked to life and the era in which we live.

Importance of the topic

1. The necessity of finding a comprehensive integrated theory for the jurisprudential theorizing of the provisions of Islamic law in a modern way, and a correct methodical method
2. The issue of jurisprudential theorizing of the rulings of Islamic law is considered one of the important issues of this age .The official and popular calls for a return to Sharia law, and the drafting of laws based on it.
3. The need to clarify the jurisprudential opinion on the emerging issue.
4. Explaining the ability of Islamic law to respond to the requirements of the times and building a law that derives its provisions from the glorious Sharia.

The first requirement: in explaining the search terms

Understanding search terms is a major key to understanding a researcher's goals and objectives. Because these terms are mostly the words of the University of Ibtani on many research issues and topics, and in this application the application will explain the concepts of the term data search, as follows:

The first branch: theorizing in language and idiomatically,and speaking about it in two matters:

The first thing: theorizing is a language

Endoscopy is derived from Allen JT, and is called in Arabic with three meanings: The first meaning: Sight. The second meaning: to wait. And the third meaning: contemplation and contemplation of matters, looking at their facts, and Farahidi (he said d. 170 AH): ((The given is looked at, and its effect on the general term may be reduced in the sources, as you say. He looked at such and such he looked at the eyes of the heart and said :) And I did not see him on the word (which does not show mercy to them. And the Arabs say: I looked at you, that is, I ask from you what I have, God Almighty said): Do not look at them, so he did not say: Do not look for them in the sense of forgiveness) [1]. Al-Azhari (d.: 370 AH) said: ((Fur said: The Arabs said: Yes, advise me: Do not wait for me for a while)) [2]. IbnManzur (d.: 711 AH) said: ((And the lesson: thinking about what you estimate and measure)) [3]. And the third meaning is the intended meaning of what we are in.

The second thing: theorize as a treaty

Theorizing is a set of concepts, definitions, and suggestions that give us an organized view of a phenomenon through its definition of the different relationships between the variables of the phenomenon [4]. Accordingly, we move to the meaning of the term jurisprudential theorizing. As for contemporary jurists, they used the term theory in their research until the term (jurisprudential theory) became a meaningful term, and the following are the most important definitions with an analysis of these definitions:

1. Sheikh Zarqa Mustafa (d .: 1420 AH) defined it as: ((Those constitutions and basic concepts that each constitute an objective legal system that stems from Islamic jurisprudence ... and the elements of that system govern everything related to it. 5))
2. Dr. Al-DeriniFathi defined it as: ((a holistic concept consisting of pillars, strings, and general provisions related to a specific topic, so that all of them consist of a system of binding laws that includes: the provisions of everything that is achieved with the subject)) [6].
3. Sheikh Abu Sunna defined it as: ((The main rule that all of them are subject to similar topics in the pillars, conditions and general provisions, even if each topic has its pillars, conditions and provisions) [7].
4. Dr. Al-Zuhaili knew and gave: ((The general concept that composes a judicial system that includes the jurisprudential parts distributed in the various sections of jurisprudence)) [8]
5. The doctor knew him. Attia Jamal al-Din said: ((The abstract and comprehensive concept of general rules for controlling partial rulings)) [9].
6. 6- BaqerBerri defined it as: ((The general framework for interpretation, which is a basic necessity for every concept with multiple vocabularies, so when we have a concept with multiple vocabularies, we must have a comprehensive framework that protects these vocabulary from dispersion and conflict, and maintains harmony within it)) [10].

It is noted from the previous definitions that there are three approaches to defining jurisprudential theorizing: The first entry: the name of jurisprudential theorizing in the collection of common issues in any of its aspects, so that a general judgment is extracted from them. The second method: Launching the name of jurisprudential theorizing for general rulings that include partial jurisprudential rulings. The third entry: the name of jurisprudential theorizing in the jurisprudential study of legal and judicial issues, and on this approach, jurisprudential theorizing can be considered the legal rulings for legal titles that have many jurisprudential branches from different sections, and this means that the researcher tends to. Because the first curriculum is not intended for those who wrote about this science and the second curriculum is a definition of jurisprudential judgment that differs from fiqh theorizing.

The second branch: the concept of jurisprudence in language and idiom, and an explanation of its divisions

First: Defining jurisprudence in language and idiomatically

1. Jurisprudence of the language: The term jurisprudence is useful for understanding and knowledge in the language of the Arabs [11]. Al-Ragheb Al-Isfahani (T.: 502 AH) said: ((Jurisprudence is aware of the provisions of Sharia)) [12].
2. Thus, the term jurisprudence in the language indicates understanding.
3. Definition of jurisprudence idiomatically: The science of jurisprudence is the science from which we know the legal ruling in every incident and determine the position and practicality of the taxpayer, to remove the ambiguity around him, and it becomes clear to the taxpayer how to act in it. You are thus obedient and loyal to the law. Hence it can be said: The science of jurisprudence: ((It is the science of deducing legal rulings, or it is the science of inference)) [13]. Or it is: ((The science of legal rulings is the process of inference. Thus, jurisprudence is the knowledge of the rulings of God Almighty in actions those charged, whether they are obligatory, forbidden, desirable or disliked, or permitted.

Second: sections of jurisprudence

Sections of jurisprudential rulings must be explained. Because some sections of jurisprudence are not subject to jurisprudential theorizing, and some are subject to theorizing, and therefore the most important sections of jurisprudence:

1. Rulings related to the worship of God, such as prayer, fasting, Hajj, Zakat, etc., and it is called worship, and this section is not subject to jurisprudential theorizing.
2. Rulings related to the family, such as marriage, divorce, parentage, alimony and the like, and they are called personal status.
3. Provisions related to the behavior of taxpayers and their dealings with each other in money and rights, and they are called transactions.
4. Provisions related to crimes and criminals are called penalties. The three sections are subject to jurisprudential theorizing, unlike the first chapter.

The third branch: the definition of Sharia in language and terminology and its divisions

First: The concept of Sharia in language and idiomatically

1- The concept of Sharia is a languagethe word Sharia is mentioned in the language in various meanings, the most important of which are:

A. The places: Sharia in the words of the Arabs is the source of the drink that people have legalized, so they drink from it and extract from it [15].
B. Appearance, clarification and clarity: legal meaning revealed: The Almighty said: (Or they legislated for them from a religion that God did not authorize) that is: He showed them ... between the law and the clear [16].
C. Omar: Sharia is what God has commanded and commanded of religion, such as fasting, prayer, zakat and Hajj [17].

2- Definition of Sharia as a term:As for Sharia, it is, in the terminology, rulings that God Almighty and His Majesty made to His servants from one of His messengers, including beliefs, worship, morals, dealings and life systems. For the purpose of achieving the happiness of peoples in this world and the hereafter [18], which in this sense includes all the divine laws, it is said: the Mosaic Law, the Christian Law and the Islamic Law.But upon launching the word Sharia, it was called Islamic law, for the following:

1. It is the end of all heavenly laws. The Almighty said: Today I completed your religion for your sake, completed my blessing on you, and became Muslim to you. [19].
2. It contained the best provisions of previous laws and increased them from provisions.

Second: Sections of Sharia: Islamic law is divided into the following sections because they are provisions:

1. The jurisprudential rulings that relate to the essence of God Almighty, his attributes, belief in him, his books and his messengers.
2. Moral judgments: They relate to the discipline and reform of souls, such as the provisions of the statement of virtues.

3. Rulings of jurisprudence: It is related to explaining people's actions and organizing their relationship with their Creator, such as the provisions of prayer, fasting, Hajj and Zakat, and organizing their relationship with each other, such as the provisions of marriage. And divorce.

The fourth branch: governance in language and idiom

First: The ruling is the language, and the judgment is the source of your saying: the ruling, which is the prohibition. Therefore, the judiciary decided to detain a person in a cell called al-Hakam, and the primary (verse: 393 AH) says: ((The verdict: The source of your word is a judgment against them, that is, they have been judged. ((Continued (doubt) in preventing speech, the first of that ruling, which is preventing injustice)) [21]. ManzoorIbn (T: 711 AH), quoting from Ibn Master: ((Ruling: judging, collecting judgments, and not revoked otherwise, as he was ruled by a matter ruled by a ruling government and ruled over them also (Accordingly) [22]. Guardians of Al-Fayrouzabadi (T: 817 AH) explained the ruling: (The verdict by annexation: the judiciary and the collection of its rulings, and the matter is ruled by a ruler and a government, and from them also)) [23] It follows from the previous linguistic assumptions that if we say the rule of God Almighty in the issue of holiness, then this means that God Almighty has ruled with immunity, and forbade the obligation to actually come.

Second: the verdict in terms: the fundamentalists knew it in terms of Taftazani (d .: 792 AH) and said: ((The ruling in the matter of attribution is called custom to another, meaning: it is attributed positively or negatively to it)) [24] If the method of proof or negation is the reason, then the judgment is considered Rationally, half of the two, and if the path is the rule of the Sharia: the obligation of prayer and the prohibition of drinking wine, then it is a legal ruling. And Sayyid Al-Sadr (d.: 1400 AH) introduced him to the ruling: ((Legislation issued by God Almighty to regulate a person’s life, whether in his actions, himself, or other matters in his life)) [25]. This definition includes all types of human behavior. It includes social behavior in terms of transactions and human relationships that govern the relationships of individuals among them, and human subjective behavior, which is a person's relationship with his Lord, including matters of belief and transactions.

The first requirement: an explanation of the history of jurisprudential theorizing, its sources, its methodology, and its effects on Islamic jurisprudence.The approach to studying jurisprudential theorizing requires following up the history of jurisprudence and knowing its sources, methodology and effects in Islamic jurisprudence, so the discourse is in four branches:

The first topic: In explaining the history of jurisprudential theorizing

It cannot be denied that the history of jurisprudential theorizing has often been linked to political, economic and religious factors. However, it is not surprising that the trend towards codifying the provisions of Sharia is pure, intended to please God Almighty. We will talk about the history of jurisprudential theorizing of the provisions of Islamic law, by examining two of the most important historical monuments, as the research does not expand on the entire history. The first stop: Jurisprudence theorizing in the Ottoman era: The Ottoman era witnessed a wide and effective movement in the field of jurisprudential theorizing, as the Sultans of the Ottoman Empire issued legislation and laws known during that period as "firmana", which is a good thing. afavour. That the

Ottoman Empire adopted the Abu Hanifa school of thought as the official creed of the Ottoman Sultanate after the Sultanate was subject to Islamic law without restrictions on a specific belief, then Sultan Selim I (died 1520 CE) saw adherence to the Hanafi. And a royal decree (firmana) was issued declaring that the Hanafi School is the Ottoman Sultanate's school of jurisprudence and fatwa issues, and it was the first stage in the history of legalizing jurisprudence in the Ottoman era. Likewise, Sultan Suleiman the First (d .: 1566 CE) issued around the year 1550 CE, the Law of Grace, which also includes a list of public and administrative matters, as well as some crimes and their penalties [27]. . Historians have praised the effects of Abu Al-Saud (d.: 982 AH), his diligence, and his active role in the harmony of the Ottoman Sharia with Islamic law and in the organization of religious affairs and state affairs. [28] Then it is noticed that the jurisprudential theorizing has become far from Islamic law - especially during the reign of Sultan Mehmed the Conqueror - under the pretext of interest and security necessity due to the increase in crimes at that time. Something is the tension that occurred between Ansar al-Sharia and the law, as scholars and judges were facing attempts to break the law from the provisions of Sharia. A good example of this is the position of Mufti Ali Jamal Effendi (1525 AD) towards Sultan Selim I, and his prohibition of the practice of the Sultanate's custom. As for penalties, when he wanted to punish a group of criminals, he exceeded the limits stipulated in Sharia [30].

The second station: the jurisprudential theorizing of the martyr Muhammad Baqir al-Sadr

We note, starting with Professor Jamal al-Din al-Afghani (d .: 1897 CE), the emergence of the ability to introduce Islamic thought into Quranic concepts related to society and history, and the ability to link society, politics and culture. The status of the nation in the language of the Noble Qur'an, then the Islamic thought developed to another level, where it began to deal directly with social and political doctrines from a Qur'an perspective, and began to monitor verses and ideas. . Extracting its implications to discover a framework for social, political and Islamic belief. In this context, the writings of Sayyid Muhammad Baqir al-Sadr express a new stage in the development of Islamic thought and its transition from general principles and ideas to the level of theorizing, defining concepts and criticizing Western social and political theories and doctrines. [31]. Here, the thought of the martyr appears as an Islamic thought in the legal sense of the word, as it is a thought that differs from the currents that tried to formulate an Islamic thought by relying on non-Islamic intellectual approaches. These currents justify reality in the name of reconciling Islam with contemporary times. As for the thought of the martyr, it is a thought that rejects any interpretation that differs with the aims and contents of Islam. The martyr was keen not to fall into the trap of reconciliation that the ancient Muslim philosophers and modernists in the Islamic world fell into in our time, and based on this reservation based on piety, the martyr Muhammad Baqir al-Sadr tried to invent the Qur'an. Concepts that have been framed and guided to theorize social, political and Islamic thought and fragmentation, and the master of these concepts is the classification that emphasizes unity, solidarity and complementarity, and avoids the fragmented view to avoid excessive interpretation and impulsive conclusion. The political and social construction has a part of everything. Separate from the general layout revolving around the Islamic faith. The universe and man. The martyr believes that our understanding and theorizing of social life depends on the general perception of the Holy Qur'an and the Sunnah of the Prophet is not selective [32]

The second branch: Explaining the sources of jurisprudential theorizing

A nation cannot live without a law that governs it, and this law must have reliable sources. Islamic law relied on the sources that earned it prestige and respect, so Muslims followed its provisions and adhered to them.In our study of jurisprudential theorizing, it is necessary to clarify the sources on which the Islamic Sharia and the principles that followed it are based, so we say that our sources are the Qur'an, Sunnah, consensus and reason, while the phenomena. It is limited to sources. To three books: The Sunnah and the Consensus, and Al-Shafi'i added to them two other sources: Al-Qiyas and Al-Sahb. Al-Hanafi added to the five sources: the acknowledgment and custom, and the Hanbalis are the additions to the previous five. Interests and withholding excuses. Either the owners have many evidences that amount to ten: the Qur'an, the Sunnah, the consensus, the work of the people of Medina, the analogy, the satisfaction, the interests sent, the excuses, the custom, and the pursuit. In this section we confine ourselves to explaining the meaning of the Noble Qur'an and the Sunnah of the Noble Prophet and their validity as a source for jurisprudence theorizing. This is the most important thing for us.

First: The Wise Qur'an: The Noble Qur'an - as one of the sources of Islamic legislation - includes doctrinal, ethical and practical rulings related to the financier's actions, words, contracts and actions, as well as family relationships. Civil and criminal judgments of various degrees, and thus the Holy Quran includes a statement that I am full of Sharia rulings, but the statement of the Qur'an is directly related to the statement and interpretation of the Sunnah. If: The Qur'an was the origin of the first legislation, but it did not refer to the provisions of jurisprudence in most cases except in general, general and not partial, and it did not rule except in some cases. Matters whose rulings do not change with the change of time, such as family rulings and inheritance rulings, and this is from God Almighty's mercy on His servants that He left these changing matters for scholars to place them at every time and place. wh in proportion to their age but in light of the general limits set by the Holy Quran for them. For example, the Qur'an stipulated the establishment of justice among people in a general text, and it did not specify the method of judging every time and place to suit it. It may be appropriate for the judge to be an individual and the final judgment may be a group or subject to a higher point of control, so the Holy Qur'an is considered Its general principles are the main reference in jurisprudential theorizing. And from it the rulings were extracted, and depending on the foundations and principles that the Qur'an brought, laws must be formulated in this age and in every age.

Second: The Prophet's Sunnah: The Sunnah is a second source of Islamic legislation. You must obey its rulings and act upon them as soon as they prove them to the infallible, peace be upon him. The noble Prophet's Sunnah included hadiths that clarify matters of law, the most important of which are:

1. Belief in God and His attributes, and what is related to the messengers and revelation, and what is related to the return.
2. Ethics: Hadiths came with a lot of morals and praised them.
3. Practical provisions related to controlling acts of worship and organizing transactions.

In the last section, a large number of hadiths were taken by scholars as a second source of legislation after the Holy Qur'an, and the Sunnah in this regard is an integral part of the original Islamic law (the Holy Qur'an). Al-Ani), and both of them must be followed

and acted upon, and this guides us that the noble Sunnah has included its provisions. Muslims organize their affairs in their lives, so that they are suitable for jurisprudential theorizing of the provisions of Islamic law, and Muslims do not dispute that, and most of the rulings for which jurisprudential theorizing is requested falls in Chapter Three.

The third branch:a statement of the theorizing methodology and its stages

The source of jurisprudential theorizing is the Noble Qur'an and the Noble Prophet's Sunnah and their interpretations from what the jurists of Islamic schools have mentioned, and from here the issue of the jurisprudential theory appeared in jurisprudential theorizing, which is one of the issues. Scholars asked. She observed the methodology of jurisprudence. While others see the possibility of limiting it to a specific belief in countries that follow one sect. The owners of the first approach believed that adhering to a certain doctrine is a restriction of the broad circle of jurisprudence, and not benefiting from the wealth of jurisprudence. It resulted from various fatwas and interpretations [33]. Sheikh Ahmed Shaker (d.: 1377 AH) called for a systematic plan to theorize and codify the provisions of Islamic law through a joint committee between Sharia scholars and law committees, where he said: "The practical plan, as I see it, is: choosing a strong committee of senior jurists and scholars. Establishing the rules of the new legislation is limited to the opinion or imitation of a belief other than the texts of the Qur'an and the Sunnah and before it the sayings of the imams and the rules of fundamentals and principles. And you will see that what you dreamed of in terms of obstacles in the way of Islamic legislation was weak and slaves.)) [34] Formulation of jurisprudential theorizing: The technical formulation of articles that the jurists consider has a great scientific impact in showing the strength or weakness of the method, so the rulings are formulated in an accurate legal form with their arrangement and classification In a modern artistic way The way in which the term expresses a single meaning and is not opposed by Sharia or custom, but rather is what the conditions of time and interest dictate. The issue is related to form and not content [35]. Jurisprudence scheduling: Tables in the theory of jurisprudence have an important role in fatigue it reflects on the sound scientific method that theorists use to clarify the legal content to be presented, to make it easier for them because of dealing with codified rulings. Muhammad ZakiAbd al-Barr ((The logical order required in the theory of jurisprudence must be coherent, because logical scheduling helps a lot in understanding jurisprudence theorizing and reviewing it, and the logical order required in non-scientific notation. What we find in books of jurisprudence, because the requirements of codification are not requirements for jurisprudence research) (36)

For the sake of the correct scientific and logical classification according to Abd al-Razzaq Ahmad al-Sanhuri, it is necessary to take into account the division of the material to be theorized into chapters and jurisprudential chapters that clarify the general legal provisions, while avoiding setting definitions and chapters. Generalizations and that these chapters and chapters are related to each other in a logical and tight manner. Drafting a general legal process formulated [37]. The method of jurisprudential theorizing: the method is how to formulate rulings and choose them in accordance with the provisions of Sharia, and the best method in jurisprudential theorizing is to avoid contradiction and repetition except for necessity. Not to increase the text from one text to another except in case of necessity, and thus the referral makes the legislation vague and dyslexic [38].

The fourth branch: The effects of jurisprudential theorizing in Islamic jurisprudence

Jurisprudence theorizing has many implications, including:

1. Ease of referencing rulings in the form of laws, such as books of jurists in which there are many jurisprudential sayings of scholars of the same sect, in addition to the multiplicity of sayings of scholars of that school of thought. . What about the opinions of scholars of other Islamic schools?
2. Controlling rulings and clarifying them according to the most correct, so the legislator or the jurist chose from these multiple theoretical sayings what he deems most appropriate.
3. The unity of the judgments of judges in one state, so the multiplicity of judgments from one state to another, and their variation from one person to another, and at the same time and the case. It leads to confusion and contestation of Islamic law, and many who have nothing to do with Sharia sciences and do not know the judge's document may question the judges 'claims, due to their ignorance of what the judge relied on in his ruling.
4. Protecting the judiciary from external influences. It is imperative for the judge to rule with legal articles drawn from Islamic jurisprudence.
5. The Personal Status Law works to fill the gaps that lead to social disintegration.
6. Juristic theorizing is the best way to apply the rulings of Islamic law, because people are accustomed to the way of the obligatory guardian.

After this presentation of the advantages and advantages of jurisprudential theorizing, it becomes clear to us that the process of jurisprudential theorizing is a continuation of the Islamic jurisprudential construction in line with the style of the era, and in line with that. The changing problems of the age, perhaps on a daily basis, especially as we are in an era of development and speed, without deviating from the provisions of Islamic law. Based on the above, it is clear that the interest requires theorizing jurisprudence - especially in light of the large number of cases before the judiciary and helping judges to find the ruling of Islamic law to be applied without effort by referring to the many references that may not take time to read it, or difficult to understand.

The second requirement:jurisprudential theorizing in the Ja`fari Personal Status Law

Every nation strives to enact laws and create systems that are derived from the environment of societies and are compatible with the prevailing culture in those societies .If this is the case, then there is no contradiction between the law and the culture of society .Because from her he was taken .And since these societies evolve with the evolution of time in all aspects of their political, economic, social and intellectual life ;the legislator reviews these legal articles between different periods, so he adjusts what is necessary from them, or in addition to and renewal of them. The law is the course of societies, and its articles must be free from ambiguity, hence it is permissible to say that the law does not protect those who are not aware of it.What distinguishes Islamic law is its durability and validity, and God Almighty addressed its affiliates with the necessity of referring to it, for it is the summary of regulations and the summit of laws .No era in the Islamic era was devoid of diligent jurists or imitators, and the evidence for that is this tremendous jurisprudential wealth, and the crowding of jurisprudential volumes that number in the thousands or more crowding out this jurisprudential wealth on the Islamic library, explanations, narratives and abbreviations,

containing thousands of the sayings of mujtahids and imitators, which are Sayings and jurisprudential opinions, regardless of the strength of the evidence, many of them .And since these sayings do not deviate from the truth, except that they are transmitted in the various books of jurists and many of them are difficult to reach for specialists in Islamic sciences ,as well as the general public with other specialties .These sayings are a number of them that may not be commensurate with the age, even if they were clear in ancient times .The saying in a bygone era may be abandoned or anomalous, but today it may become a valid saying.The failure to activate many of the doors of Islamic jurisprudence leads to Rcn and rigidity of those doors, not only for activating a number of them only bit g seen as appropriate age, through drafting in legal templates and easy reference materials.Law in Islamic countries derives from Islamic jurisprudence .Because it addresses the people of the Islamic religion and culture, and fits with their requirements, and is the closest to solving their problems .The call to codify jurisprudence is to serve it, and to encourage people to do so, and to take it out of the stomachs of books into a wide space.The multiplicity of jurisprudential sayings in one issue is a healthy phenomenon that allows the rulers of the matter, after consulting with specialists, to choose the most appropriate sayings with the times, and the closest to the spirit of Sharia, so that people become to it when quarreling instead of becoming articles and systems unrelated to the reality of Islamic societies and the culture of the environment.And on the foregoing, the issue of jurisprudence theorizing of Islamic jurisprudence is one of the issues worthy of discussion, and it is one of the new and controversial issues among the legal scholars themselves, like many contemporary issues that are raised at the beginning of their emergence, and then people soon accept them with good acceptance.

The first branch:the meaning of personal status law

What is meant by the Personal Status Law is the phrase: (About a group of natural or familial characteristics that a person is distinguished by the law and whose legal effect on his social life, whether male or female, the law has a legal effect on, his insanity or his absolute capacity or restricted by one of his legitimate reasons). [39] It is mentioned that Article 41 of the Iraqi constitution stipulates that Iraqis “have the freedom to adhere to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law”) [40].

The second branch: jurisprudential theorizing in the Jaafari jurisprudence project

The Jaafari Personal Status Bill consists of (253) articles, divided into six chapters, containing (22) chapters. The law covered five main topics:

1. The will.
2. Marriage.
3. Divorce.
4. Legacy.
5. Waqf.

We will look at a number of provisions of the bill, including the following:

The Jaafari Personal Status Bill defines the marriage contract and called it a marriage and defined it in Article (42) as: ((a bond that arises between a man and a woman who is

legally permissible for him)). The definition focuses on sexual legitimacy by calling it a marriage in addition to saying: (it is legally permissible for him.)

1. The Ja`fari Personal Status Bill allowed a man to marry four women at the will of the man without any restrictions or conditions, in Article 62 of the draft law.
2. The Ja`fari Personal Status Bill does not criminalize marriage outside the court, nor is it punished for it.
3. The Ja`fari Personal Status Bill did not specify the age for marriage, but rather the age of puberty.
4. Approved the draft personal status law Ja'fari marriage of minors ,provided the sole legal guardian is the will of the father and grandfather of the father ones and this it finds a clear text of Article of 126 of the bill.
5. The Jaafari Personal Status Bill, according to Article (47) thereof, the marriage contract is considered null if coercion occurs on the parties to the contract or one of them, regardless of whether or not the wife entered into with her.
6. In the Jaafari Personal Status Bill, in the event that the dowry is not named, then she is only entitled to what the husband gives her in a way that suits his situation in the event that she divorces before entering her (Article 92) of the draft law.
7. The codification was proven especially with regard to divorce and inheritance agreed upon in the ImamiSchool, except that he did not want the violator to be bound by these provisions if he did not accept them.
8. The Jaafari Personal Status Law bill permits the will to non-Muslims in absolute terms, unless the description of aid to the oppressors is applied to the will and the like, then the will is not valid according to what is stipulated in Article (32) thereof.
9. The Jaafari Personal Status Bill considered custody and upbringing of the child and the interest related to it in terms of preservation and care from his birth until he reaches seven years of age, male or female, to which his parents are entitled to the same together according to Article 116 of it.
10. The Jaafari Personal Status Bill stipulated that the fee for breastfeeding a young child - according to Article 115 of it - would be in the small's own money if he had money, otherwise it is from his father's money, otherwise it is from his grandfather's wealthy wealth and if it is higher, otherwise the mother must breastfeed her child for free, either by herself or by rent Another nurse from her money.
11. In the draft of the Jaafari Personal Status Law, the wife's alimony is linked to the husband's enjoyment of her. If there is enjoyment, she has alimony. Otherwise, there is no alimony for her, even if the lack of enjoyment is for a reason related to him, such as being young on having sex, as Article (126) of the draft law states: (No The husband is obligated to spend on his wife in one of the following cases: First: If the wife is disobedient (and the wife is considered disobedient if she prevents her husband from enjoying her or she leaves his home without his permission.) Second: If the wife is young and is not able to enjoy her husband. Third: If the wife was old and her husband was young and he could not enjoy it)
12. The Jaafari Personal Status Bill allows the husband to authorize someone else to divorce his wife, whether he is present or absent, according to Article 145 thereof.
13. The Jaafari Personal Status Bill sets the custody and education of the parents equally as long as they are together (Article 116 of the draft law), but if they separate - before the child reaches two years of age - the mother's custody is not forfeited, and the parents must agree to exercise their common right by rotation or any other method .According to Article 117 of the draft law.

14. The Jaafari Personal Status Bill is equal to the disobedience between husband and wife, both of which may be considered a discord, with great reservations about the causes of the wife's disobedience, and with great reservations about the effects of disobedience.
15. The Jaafari codification avoids referring or including in the law articles that have nothing to do with what is customary in the Iraqi Muslim community .For example, when he spoke about the marriage contract, he did not mention the punishment of those who did not register the contract or inform the court of any of that, in contrast to the personal status laws whose articles include fines and prison penalties for those who did not register the marriage contract .Because prevalent in Iraqi society, the marriage contract is merely an agreement between the two families without the need to register or inform someone, and without there being specific people who do the marriage contract .Rather, the husband or wife's family choose whoever they deem appropriate to perform the marriage contract from someone who has knowledge of the method of contracting, and this is the method known in the early Islamic eras.
16. The Ja`fari codification deliberately omits some matters related to the family, in which there is a sectarian difference, such as: temporary marriage ;Despite the fact that the Imamate gave fatwas to the permissibility of temporary marriage, the codified did not want to refer to it, and this may be due to the codified's attempt not to give the subject a sectarian color .This is because the majority of Muslim sects still believe that the legitimacy of temporary marriage is not valid, and this saying is practically applied by the followers of these schools of thought in some countries of the Islamic world.

The third branch: the Jaafari law of jurisprudence between acceptance and rejection

The Jaafari Personal Status Law sparked a wide debate in the Iraqi street between its supporters and opponents. There are those who see that the law does not deal with everyone, but rather deals with a specific group, and there are those who see that it is a result of a constitutional article, but more. It emphasizes the freedom of people to arrange their personal status according to their adoption. And there are those who believe that the timing of the issuance of the law may be used against the general trends of the leader of this law, and thus be used as electoral propaganda. Experts believe that we have not reached an advanced stage in thinking about the passage of a sectarian law. With this continuous controversy, we try to find out the merits of the case to reach the facts. In 1923, the Ja`fari courts were formed, and the Jaafari Sharia Discrimination Council was established headed by the enlightened scholar Hiba Al-Ali. Al-Din Al-Shahristani (d. 1967), then Sheikh Ali Al-Sharqi (d. 1964). With its implementation, Article (77) of the Iraqi Basic Law of 1925 was enacted: ((Ruling in Sharia courts shall be in accordance with the provisions of Sharia law for each of the Islamic sects, in accordance with the provisions of a special law, and a judge shall be from the majority of the population in the place designated for him, while Sunni judges remain) And the Jaafariites in the cities of Baghdad and Basra) [41]. The Jaafari Personal Status Law is dictated by several reasons, the first of which is that it came as a result of a constitutional article, but more than that, it affirms the freedom of people to arrange their personal status according to their religions or personal status. Ideological adoption and their complete freedom to maintain their privacy.

Second: The religious, sectarian and ethnic difference is an effect that has existed and is rooted for hundreds of years, but it is noticeable that it is rare for there to be a law that

does justice to these components and recognizes pluralism. Therefore, this law came in order to give pluralism a legal character. The first characteristic of democracy is that people are free in their choices and the ideas and systems they elect. It is illogical to consider the majority's claim to friction with its anti-democracy law. As for the question that the proposed law will contribute to widening the division in the sectarian crisis and dividing national ranks, it is answered:

1. The difference between the Iraqi people of religions and sects is a matter that exists along the line, and it is known that they rule on the basis of those religions and sects, so the division they are talking about exists whether we like us. Or not.
2. The constitution guarantees the rights of minorities and takes into account their peculiarities at the level of language, culture, and other matters. No one said that this divides the country into sects and nationalities.

The law is optional, and citizens can resort to it or refer to the applicable law.

Yes, the law must be presented to the scholars of the Jaafari sect to express their opinion, and the most important thing is the approval of honest religious scholars.

Conclusion

Praise is to God for His grace, praise and thanks are to Him. My success and success are only in God. On Him I trust and repent to Him. After this praise, I have completed this humble research, concluding it by mentioning the most important results that I have reached, which are as follows:

1. The jurisprudential theorizing of the provisions of Islamic law, a legal obligation and a social necessity, as it is a guide to civilized awareness, and a popular demand required by the interest to implement the rulings of God Almighty.
2. The process of theorizing jurisprudence is the duty of the entire ummah, starting with the ruler, for he is the one who has the power to issue orders to do so, and after him the groups and individuals, to work together to make this project a success.
3. The juristic theorizing movement of the provisions of Islamic law was linked to political, economic, religious and intellectual factors, and the effect of this on the process of jurisprudential theorizing is clear.
4. By studying the characteristics of Islamic law, it became apparent to me that the Sharia is capable of the jurisprudential counterpart in a way that goes beyond man-made laws, as it is the most capable and fittest to govern human life.
5. The juristic theorizing movement has clear implications and interactive echoes in the renewal of jurisprudence and the development of its movement, and the emergence of comparative studies and jurisprudence encyclopedias.

Recommendations

Teaching jurisprudential theorizing of the provisions of Islamic law, as a scientific subject in universities and institutes.These are the most important results that I concluded through my research on the subject of the jurisprudential theorizing of the rulings of Islamic law, and they are the results of a humble vision.

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