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The Jurisprudence of Clans in the Balance of Social Jurisprudence (Criticism and Analysis)

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Abstract

It is known that the science of jurisprudence is one of the most important Islamic sciences. Because it is a science that regulates the life of man and society and provides them with happiness in this world and the hereafter, if they follow its provisions with precision and care. The importance of this topic lies in the fact that it represents an urgent social need to show the compatibility of tribal customs with social jurisprudence. The job of the jurists was and still is to clarify the legal rulings according to what the Holy Qur'an has shown, and what has been reported on the authority of the Great Prophet (ﷺ) and the pure imams (عليه السلام). It is no secret to everyone that the Islamic civilization is (the civilization of jurisprudence), just as the Greek civilization is (the civilization of philosophy); Therefore, the jurists or researchers in the field of jurisprudence did not call small or large unless they were written about it.

Keywords: *jurisprudence, clans, sociology, criticism, analysis*

The First Topic: Defining the Contents of the Research

The first requirement: the concept of social jurisprudence

Before we explain the concept of "social jurisprudence", we must know what it is composed of two terms, namely: "jurisprudence" and "social"; To make it easier for us to define the scientific term for it (Kamaluddin, 2023).

First: the concept of (jurisprudence)

Jurisprudence in language: it is the knowledge of something and the understanding of it, i.e.: what we know or understand (Mackey et al., 2023), from Almighty saying (They said, "O Shu'ayb, we do not understand much of what you say). That is, what we know and what we understand.

Ibn Manzoor said: "Jurisprudence: knowledge of a thing and understanding of it, and it prevailed over the knowledge of religion due to its supremacy, honor and superiority over all kinds of knowledge and jurisprudence is basically understanding. He said: So-and-so has been given a jurisprudence in the religion, that is, an understanding of it.

In some of the jurisprudential and jurisprudential principles, the (subsidiary legal rulings) were called (practical legal rulings); Because the Shariah rulings related to the foundations of religion are

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subject to consideration, and the subsidiary Shariah rulings are subject to action (Achdiat et al., 2022). And the restriction to “on its evidence” brings out the knowledge of God Almighty, and the knowledge of the Prophet (ﷺ) of subsidiary legal rulings; Because their knowledge was not evidence, rather the knowledge of God Almighty is His essence, and the knowledge of the Great Prophet is derived from revelation, Almighty saying (Nor does he speak from) (3) It is not but a revelation revealed).

And the restriction to “from its evidence” brings out the knowledge of God Almighty, and the knowledge of the Prophet (ﷺ) of subsidiary legal rulings; As their knowledge was not based on evidence, but rather that the knowledge of God Almighty appointed Himself, and the knowledge of the Great Prophet benefited from revelation.

And restricting the "evidence" to being detailed, to bring out the knowledge of the non-judgemental rulings of Shari'a; As his knowledge of legal rulings is a comprehensive knowledge (Appiahene-Gyamfi, 2022). In other words: the imitator knows the legal rulings in order to act upon them, and his evidence for every issue is a comprehensive evidence, which is: that this ruling was fatwa by my imitators of the just mujtahid, and everything that my imitators gave fatwa is an argument in my right (Radif, 2023). Whereas we find the mujtahid seeking for each issue its own evidence from the Holy Qur'an, the purified Sunnah, or others that are suitable for inference, so his evidence for legal rulings in this regard is detailed evidence (Husin et al., 2022).

Second: the concept of (social)

Social in the language: an artificial source of a meeting, and the meeting is against separation, on the weight of “fabricating.” It is said: I collected the dispersed thing and gathered, and the people gathered: that is: they gathered from here and there (Manthovani, 2023). The concept of meeting is only achieved between three or more parts; Because the least plural is that which consists of three or more (Akeel & Khoj, 2023).

And the meeting, joining something to something, Ibn Faris said: “Al-Jim, Al-Mim, and Al-Ayn are one origin, which indicates the solidarity of the thing.

Ibn Manzoor said: “The people gathered and gathered together, meaning: they gathered, joined each other, united and agreed” (Chowdhury et al., 2022).

And meeting in terminology: Al-Jurjani defined it as: (the closeness of bodies to each other) (Xu, 2023). Accordingly, the idiomatic meaning of the meeting does not differ from the meaning that it informs in the origin of the language, even if the Shari'a intent of the meeting is what is praiseworthy in Sharia, which is for Muslims to meet, join each other, and not disperse ().

If the concepts of (jurisprudence) and (social) become clear to us, the concept of (social jurisprudence) will become clear to us.

By social jurisprudence, what is meant is “knowledge of the sub-legislative rulings for their detailed evidence by describing the meeting of their subjects or achieving the societal interest, even if they are not combined” (). Based on this; Every jurisprudential issue with a topic related to more than three people or achieves the public interest rather than the private one, it falls within the scope of social jurisprudence (). In other words: the social jurisprudence is in every place in which the speech of the legislator is addressed to everyone as a whole and not to individuals ().

Third: the concept of clans

Clans in the language: the plural of “clan” which means mixing, Ibn Faris said: “The eye, the eye,

and the eye are two true origins: one of them is in a known number, then the other is predicated on it, or else Khar denotes intercourse and interaction.... As for the other origin denoting intercourse and intercourse, the ten and the cohabitation, and your intimate: the one who associates with you, and it was called the man's clan; to associate with one another, even the husband, the female partner. E....and the community: every group is one command, towards the community of Muslims, and mankind is a community, and the jinn are a community" ().

Ibn Manzoor said: "And the ten: the mixing; Bila, the plural of clans, the cohabiting clan, the intimate: the relative and the friend, the plural of the tithes, and the woman's clan: her husband; because he sleeps with her and she sleeps with him like a friend and a friend" ().

And the clan in the term: As for human studies: the concept of the clan has been used in many developing or traditional societies, expressing a group of individuals who believe that they belong to one lineage, ancestors, for several generations, and this group is considered a social unit with a distinct identity, as it shares In one system or close locations and linking its members mutual economic and social relations and obligations ().

The clan was defined as: "The family of a man who is multiplied by them, that is, they become for him the status of a complete number, because ten is in the complete number, so the clan became a name for each group of the man's relatives who are multiplied by them" ().

The clan is narrower in its concept than the tribe. Because it is limited to its authorship of the closest individuals, and the sum of the clans may constitute a tribe; Because clans, in their union, form clans, and from clans later the tribe is formed ().

The clan consists of several factions, and it has a chief, its origins and laws, and it is usually closely and exclusively linked with the mother tribe, and the clan chief is responsible to the general chief of the tribe in important clan matters ().

As for the jurists: some of them defined it by absolute kinship (), and others defined it by the closest relative ().

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The first requirement: defining the related terms linguistically and idiomatically.

First: the tribe

The tribe in the language: "One of the tribes of the head of the pieces, which are intertwined with each other, and among them are the tribes of the Arabs, and one of them: a tribe, and they are the sons of one father" (), "and the tribe: the group of people, from the three onwards, from a different nation, and its gathering before, and the tribe: The sons of one father, and his group is tribes, and the nomadic tribes: his arms, one is a tribe, and the tribes of the head: the ways of the bones that are in him, and one of them is a tribe" (), Almighty saying (O children of Adam, let not Satan tempt you as he removed your parents from Paradise, stripping them of their clothing[365] to show them their private parts. Indeed, he sees you, he and his tribe, from where you do not see them. Indeed, We have made the devils allies to those who do not believe) That is: his offspring.

And the tribe in terminology: it is "the group that is attributed to one origin: that is, one grandfather, so they are the sons of the father" ().

Second: Al-Amara

Al-Amara in language: by breaking against destruction, and it is the source of life. It is said: the

life of a man, and also life by joining if he lived a long time, and from it their saying: May God prolong your life by joining the eye and opening it, and it was not used in the oath except the opened one of them. And the narration is omitted. His estimate of God's life is my oath, or God's life is what he swore by. If the blame did not enter upon him, I set him up as sources, and I said: God's life is what I did so, and God's life means: by God's life, that is: by your approval of him to stay, and the Umrah is in Hajj and its origin is from the visit. And the plural: al-Umar, and al-amara: also, the great tribe and clan, and the fraction in them is more than the conquest ().

And al-amara in the terminology: "It is what divided the lineages of the tribes, such as Quraysh and Kinana" ().

Third: Al-Batin

Al-Batin in language: other than back, and it is masculine, and the plural is stomachs and abdomens, and the abdomen without the tribe is feminine, and if I want the neighborhood, then it is masculine, and the plural is as previously mentioned, and the abdomen of a thing is concealed from the door of killing other than back, so it is interior and its interior is its interior. For the object, it is padded, i.e. sick of the stomach, and the lining of the man is like: belt, weight and meaning ().

And Al-Batin in the term: "which is what the lineages of architecture were divided into, like Abd Manaf" (), and in another definition: "al-batin is below the tribe and above al-fakht" ().

Fourth: Al-fakht

Al-fakht in linguistically: the connection between the hip and the leg, and it is said: thigh, which is feminine, and some say: thigh, and it is said: the man's thigh, so it is taken if his thigh is injured, and the man's thigh: a group from his neighborhood who are his closest clan and it is closer to him than the stomach, and it is said So the man took the sons of so-and-so when he called them, so he took them, and it is said: So I took the people from so-and-so, which means: I let them down, and I took between them, which means: I separated and let me down().

And al-fakht in terminology: it is "by opening the neighborhood of a man if he is from his nearest clan" ().

Al-fakht consists of several houses or fencing, and the thigh has its own chief who works according to the customs of the clan, and it is not permissible to deviate from it, and he is directly responsible to the head of the clan, and it is not permissible to bypass the clan and contradict it in some matters, and he is an integral part of the mother clan ().

Fifth: Faction

Faction in the language: derived from the separation, which is the barrier between the two things, it is said: a separation between them separates a chapter and then separated, and the separation and the joint are every meeting of two bones of the body, and the comma is the bead that separates the two beads in the system, and the systems have been separated, and the faction, from the man: his clan and his close family, and it is explained (And his nearest kindred who shelter him)

And it was said: The species is from the closest human clan, and its origin is the piece of thigh meat.()

And the faction in terminology: it is that in which the lineages of al-fakht are divided, such

as Bani Hashim, or Bani Al-Abbas, and it is below al-fakht in the neighborhood of the man.()

Sixth: Al-Aqilah

Al-Aqilah in the language: the mind is the language of knowledge (), and the mind: the stone and the prohibition, and a sane man and minds, and he has a mind that is sane and sensible as well, and he is a source (), and a sane man who is the collector of his command and his opinion, taken from the camel's mind if its lists are collected (), The sane one means in the words of the Arabs: the one who locks himself up and turns him away from his desires, taken from their saying: the tongue has been arrested: if he is imprisoned and prevented from speaking" (), "and the mind: the blood money" (), "the mind of the murdered is given his blood money, and the mind of the blood of so-and-so if left The money is for the blood money, and he is wise on behalf of so-and-so who is fined for his crime, and that is if he is required to pay the blood money on his behalf."(), "And the wise woman is the noblest of the living and the noblest of camels, and the wisest of everything I honor. And the pearl is the wisest of the sea." With the annihilation of the guardian of the slain, then it was used a lot until reason was applied to the blood money, even if it was not from camels, and it was said: it was called reason, because it reasoned the tongue of the guardian of the slain, or from the mind, which is prevention, because the clan used to prevent the murderer with the sword in the pre-Islamic era, and then prevented him In Islam, and the sane: the people of the court, if the murderer was from the people of the court()".

And Al-Aqilah in terminology: Al-aqilah of the man: his clan, and they are relatives on the part of the father who give the blood money for killing him by mistake (), and Al-aqilah: they are the person's tribe, his clan, even if they are far away ().

Seventh: the people

The people in the language

Is the group of men without women, (The believers are but brothers, so make settlement between your brothers. And fear Allāh that you may receive mercy (10)O you who have believed, let not a people ridicule people; perhaps they may be better than them)

The one from him is a man and a man without his own pronunciation, and the plural is people (). They are called by that because of their standing up to great things and tasks. I want all men and women in it.

And the people in the term: they are the relatives of the man who meet with him in one ancestor, and the people are more specific than the tribe, and the man may reside among foreigners, so they are his people as a metaphor for neighborhood ().

The second requirement: the characteristics of the clan

The clan has several characteristics, including:

First: Membership in it is based on blood ties, as those who belong to it believe in the unity of origin through one lineage or one grandfather.

Second: The feeling of belonging to the same clan increases among the members of the same clan, despite their dispersal over large areas.

Third: Individuals are organized into families, families into loads, loads into stomachs, stomachs into thighs, thighs into a clan, the clan into a tribe, and the tribe into an emirate, as

the family is the least indivisible unit in the tribal system.

Fourth: Collective responsibility in the clan system is based on an alternative to personal responsibility on the basis of solidarity among its members, except in some crimes, such as the crimes of (theft) and (assault on honor), which are called (the crimes of blackness), as the punishment only affects the perpetrator of the act of theft or assault. To the exclusion of others who did not participate in it as an actor or partner ().

The third topic: tribal customs and Islamic jurisprudence in Islamic law:

What distinguishes Islamic jurisprudence is its comprehensiveness of all aspects of individual and social life, as the jurists agreed that: God has a judgment in one of the five mandated legal rulings, which are obligation, desirability, prohibition, dislike, and permissibility ().

In other words: There is no incident that took place in the past, or will take place in the present, or will occur in the future, except that it has a ruling. That is: “The ruling that is made for the thing first and by itself, that is, without observing what other accidents occur to it” (), or the secondary ruling, that is: “What makes rulings for the thing by observing the special titles that occur to it that require changing its primary ruling” (), so that There is no resource that does not fall under one of the specific or general texts (the most general of the primary and secondary provisions ()).

They infer that with evidence, including:

The first requirement: clan customs in the Qur’anic perspective:

1-Almighty saying: (And We have sent down to you the Book as clarification for all things)

This verse, in its generality, requires that there be a ruling for all the resources that a person needs that is clarified in the Holy Qur’an. In a matter of their religion except that it is indicated in the book, either by stipulating it or by referring to what necessitates knowledge from the statement of the Prophet (ﷺ) and the arguments standing in its place or the consensus of the nation, so the judgment of everyone in the outcome is benefited from the Qur’an” ().

2- Almighty saying (We have not neglected in the Register a thing)

Al-Tabarsi said: “That is, what we left.” On the tongue of His Prophet (ﷺ) and commanded us to follow him” ().

3- Almighty saying (This day I have perfected for you your religion and completed My favor upon you and have approved for you Islām as religion.)

That is: “I have completed for you my statutes and limits, my lawful and forbidden, by downloading what I have revealed, and my statement is what I have made clear to you.

The second requirement: tribal customs in the purified prophetic Sunnah

1- The words of the Most Noble Prophet (ﷺ) during the Farewell Pilgrimage: “Oh people, by God, there is nothing that brings you closer to Paradise or distances you from Hell except that I have commanded you to do it.” And there is nothing that brings you closer to Hell and distances you from Paradise, except that I have prohibited you from it.”).

And based on this hadith: that the Great Prophet (ﷺ) did not leave a resource without explaining his rule in Islam, in general or in particular.

2- It was narrated on the authority of Imam al-Sadiq (upon him be peace) that he said: “God, the Blessed and Exalted, has sent down in the Qur’an an explanation of everything, so that by God, God has not left out anything that the Almighty needs. Bad, so that no servant can say: If this was revealed in the Qur’an, he did not. God is in him” ().

3- What Abd al-Aziz bin Muslim narrated on the authority of Imam al-Rida (pbuh) who said: “We were in the days of Ali bin Musa al-Ridha (pbuh) in Marv, so we gathered in the mosque on Friday from the beginning of our introduction, so they managed the matter of the imamate, and they mentioned the large number of people’s differences in it, so I entered on My master (u), so I taught him to confuse the people, so he (u) smiled, then said: O Abd al-Aziz bin Muslim, the people were ignorant and deceived from their opinions, that God (U) did not take His Prophet (U) to death until He perfected the religion for him, and revealed to him the Qur’an in detail Everything, in which he clarified what is lawful and what is forbidden, limits and rulings, and all that people need completely.

The third requirement: tribal norms in the mind

Sheikh Nasir Makarim Al-Shirazi stated that it is a rational proof of the comprehensiveness of Islamic jurisprudence that it consists of several premises, namely:

A- The world in which we live is governed by a special system, where we see all its atoms moving towards a goal and a goal, as they are subject to comprehensive guidance and direction, not deviating from that the smallest atoms, nor the largest galaxies, and the heavenly bodies that have been discovered so far, and everything in existence This fact is attested to, and the Holy Qur’an refers to this fact by saying: (He said, "Our Lord is He who gave each thing its form and then guided)

B-The human being; As part of this universe, he did not deviate from this formative divine law. Whereas he enjoys the power of reason and feeling, God Almighty linked his formative guidance to man with legislative guidance through the prophets (:).

C- Man, on the other hand, is a social being. He has needs that can only be met within the framework of social life, such as: material and emotional needs.

D- The social life is not without conflict and conflict between the interests of the members of the society. In addition to that, the continuation and continuity of social life requires the distribution of roles, the division of responsibilities among the members of society, the determination of powers, and who undertakes the general social administration. The occurrence of crowding among them, as well as dividing social functions among individuals, and there is an urgent need for the presence of someone who applies the law among people fairly.

E- The history of human life is replete with many efforts to reach a law that guarantees the application of rights to all people by justice, but where a person was suffering from a lack of knowledge regarding himself and what surrounds him, none of these efforts succeeded in reaching a decisive result, and therefore we see Always an amendment and reform in positive laws ().

And God sent his Prophet Muhammad bin Abdullah (6) as the Seal of the Prophets, and the bearer of the most complete heavenly messages, and the most perfect divine religions; To place doctrinal fetters and false opinions from human necks, to loosen the shackles from their hands, and the chains from their legs, to liberate minds with the help of revelation, and to lead people to the best and most perfect laws, as the Holy Qur’an said in describing the Noble Prophet (6):

(Those who follow the Messenger, the unlettered prophet, whom they find written [i.e., described] in what they have of the Torah and the Gospel, who enjoins upon them what is right and prohibits them from what is wrong and makes lawful for them what is good and forbids them from what is evil and relieves them of their burden[410] and the shackles which were upon them).

From the mental point of view, it is quite clear that no one other than God, in his capacity as the creator of man and the world with all the details of his existence, his life, his principle, and his enemy, can formulate a complete law; To organize his life in a way that includes his happiness in this world and the Hereafter.

There is no doubt that there are fixed provisions that do not change, such as: the obligation of prayer, fasting, Hajj, jihad, and so on.

There are other rulings that change with the change and difference of time and place, meaning that time and place interfere in changing the subjects, and then the ruling changes, according to the change of the subject; Because the ruling is always dependent on the subject, and accordingly, if we say: "Wine is forbidden," then this ruling remains as long as the subject of alcohol remains, but if the wine turns into vinegar, then it will become pure and lawful, and it is obvious that the prohibition of wine was never abrogated, but the subject has changed ().

The same applies to the effect of time and place on changing rulings as well. For example: buying and selling blood was previously prohibited. Because there is no analytical benefit on it that can be taken into account. Today, great benefits have emerged from blood in saving the lives of the wounded, some patients, and the likes of that. So, the subject has changed here with the change of times, and the blood becomes a permissible and noticeable benefit, so buying and selling it at that time is permissible.

From here, it is possible to solve many of the emerging issues in our time and the ages to come, through the principles and general rules contained in the Book and the Sunnah, after taking into consideration the change of topics ().

Issues related to the anatomy of the human body, the development of medical science, as well as organ transplantation, banking issues, types of commercial companies, guarantee institutions, electronic commerce, space travel, tribal customs, etc. Time and place are taken into account, and hence there is no legislative vacuum in this regard.

As there are well-known principles and rules in Islam, derived from the Book, the Sunnah, and the evidence of reason and consensus, and there is not a new issue that does not include one of these rules and principles, so many of the new issues can be placed under the title (the necessity of preserving order in the Islamic society), which is fixed. By consensus, rational evidence, and narrations, and some of them fall under the heading (preface to duty), such as: the issue of anatomy, and many other medical issues, which are considered an introduction to saving lives and souls, which is one of the most obligatory duties, and some of them fall under the heading (no harm), necessity, And compulsion, and the other most important section falls under the law (the most important and the important), and the preference of the most important over the important when the matter rotates between them, and it is also one of the fixed mental and transmitted assets, as well as all the new matters about which no special text was mentioned ().

Conclusion

And after completing this research on the jurisprudence of clans in the balance of social jurisprudence - criticism and analysis, I mention some results:

- 1- Jurisprudential adaptation is one of the intellectual activities of the jurist, as it identifies the reality of the emerging incident, and searches in Islamic jurisprudence for an origin close to it, and transfers the descriptions of that origin to the emerging incident after investigating the homogeneity and similarity between them.
- 2- Social jurisprudence is every jurisprudential issue with a topic related to more than three people or achieves the public interest rather than the private one, or is what is in every place in which the legislator's speech is addressed to everyone as a whole and not to individuals.
- 3- Social affiliation is an urgent necessity of life. For social relations are not established without a system, nor are they stable without it. Man has been imprinted on finding a system that directs his behavior, whatever that system may be.
- 4- Enveloping the depths of a person with (fanaticism) is extremely dangerous because of the pathological secretion it carries, and intellectual paradoxes that reach the point of removing faith from personality.
- 5- The Arabs in the pre-Islamic era were not familiar with governments that imposed their control as in the modern era, but rather the tribe was the political unit for them.

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