



Modernization of the rules on rights

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ABSTRACT

Among the fundamental questions in the field of legal theory is that, if a set of codified rules of civil and criminal law, the Islamic Republic of Iran, based on the principles of the law of Muhammad (PBUH), developed and provided for, how emergent phenomena, after nearly fourteen centuries, can be effective ?, this research tries to study the mechanism of evolution and dynamics based on diligence in Shiite jurisprudence, methodical and comprehensive response to these questions. The meaning of "Modernization" The wide range of realistic approaches that, with dedication to understanding change and the emergence of issues rulings, and with an emphasis on how jurists predecessor, in the process of legal reasoning and reach closer to the "judgment of God", Can play a role. Consistent with the requirements of rational understanding, practice of intellectuals, of physical, sensory and significant natural and common requirements, and demands of modern life, and historical realities, with a modern and innovative approach to verbal tradition, the current version of the Infallible (AS) is one of them which, following secondary titles, may help to understand the criterion of jurisprudence, and fundamental change as a result of the passage of the law, news, and changes in the new legislation, will bring. In this paper, examples of this mechanism, with emphasis on codified rules, will be examined.

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Introduction

Islam has always rational ideality, hint, trying, trying, overtaking and acceleration, ordered, on the stability and integrity of the non-opposition. and the time and age of technology, consultation, deliberation, a suitable form of the soul, is founded. As a modern interpretation of the Qur'an, it is emphasized traditions. Imam Sadiq (as), the Quran says: God Almighty, the Quran for time and is not specific people, therefore, Quran every new time, and with each new generation to Doomsday. (Majlesi: 1989, vol 17, p 213) Thus, there are different interpretations of evidence on the effects of time and space seem to understand the Qur'an, this characteristic cent as revealed that there is. (Makarem: 2006, p. 280)

Although "Modernization ", a term derived from the word new, which often means modernity and secularization of the principles and basis of religious knowledge is used, but in this particular sense is concerned, on the one hand of the circular, including changing laws , and deductive reasoning jurisprudence and some evidence is limited, and on the other hand, whether the meaning of the term "emerging issues", because in addition to responding to emerging issues, including the review and update of the previous rulings, it is. So the gist of "Modernization " The use of mechanisms, including a wide range of approaches is realistic, so the effort to understand the changes, and the emergence of topics of or cases of sentences, and with an emphasis on inference jurists predecessor, the diligence animation process, and reach closer to "the judgment of God is real 'could, Can play a role. Therefore compatible with the requirements of rational understanding, practice of intellectuals, of physical, sensory and physical and observing the requirements of common and

scientific discoveries and demands of modern life, and the main influential factors and history character, with modern and innovative approach to verbal tradition, the current version of the Innocents (as) is one of them, and by basing mechanism following secondary titles such as "The focus of the revision" in some of the provisions and other similar cases, may help to understand the criterion of jurisprudence, and as a result of a fundamental change in the transition from law news and changes , a situation in forging new regulations will bring.

1. fixed and variable rules

The true principles which, for verity is, in a split into two types: fixed (primary) and variable (secondary) is divided. The fixed part of the eternal, however, and time and roaming as well, including some patterns and sentences is authorized, in the form of book texts and traditions have been notified to human society. So true principles of the rule of the former, and as proof can not be changed, because it is connected to a normal human life. As the hadith, "the Day of Resurrection solvent Mohammad ever so legit, and he always Resurrection forbidden is forbidden, except it will not be, or otherwise he would not come" (Koleini: 1986, p. 58), indicative of the fact, but the sentence secondary and prove, and in different conditions and specific (Vacuum area), if you run it at the discretion of the supreme leader, as a Muslim ruler with one of the most important materials, in cases where the social effects, disagreements will, to close it temporarily, or totally possible. But in cases where no social works, has entrusted the conventional understanding people. Such as fasting month of Ramadan, the first sentence is mandatory, but if would "disadvantage", the second sentence is unlawful.

The variable part of the rules, in fact, due to change the subject, change the title, the influence of provincial or state laws, changing values and the like changes.

Obviously, the sentence is known, the first rulings on the acts and instruments in terms of their initial titles, and the issues to be considered and durability times, while the provisions of the second sentence, the verb and essences despite the formal description of the syntax of time commitment is , and because the law is the first, second they say. For example, meats that are not religious slaughter, eating is prohibited, such as the first one, but if one gets caught and is destroyed by fear, and no food other than meat of this species, or live in countries that that there is halal, and to risk his health fails, as emergency here can use the meat. As God, in verse 3 of Surah Maedah, it is mentioned, "Forbidden to you are carrion, blood, the flesh of swine,, everyone is forced by hunger, without sin be inclined [if you eat what is forbidden], surely Allah is Forgiving, Merciful "and that" as a secondary ', which, as laws vary. (Makarem: 2006, p. 480)

2. Types of secondary titles

Secondary titles, various functions in Islamic law and jurisprudence, although not quantifiable, but has different divisions. In a split second titles, the titles of two types of general and specific topics divided, general titles, in more topics can be raised, is also famous twofold secondary titles, and titles are divided secondary non-celebrity. Famous secondary titles, including the following: 1. Emergency (essential), 2. harm and losses, 3. severe hardship, 4. Rejection of Way, 5. Primary (introduction of obligatory or forbidden), 6. Deputy of the State Obligatory,, helping to fulfill religious obligations, 7. care of myself, 8. help the sin, 9. the main and most important rule (rule of reason), 10. enjoining good and forbidding wrong, 11. Vow, 12. promise, 13. I swear, 14. reluctantly, 15. maintain the system, 16. The judge (supreme leader). (Ibid.) Although secondary titles non-celebrity, non-enclosed, but in some cases that are mentioned here: 1. being strangled and obey their parents, 2. prohibited wife, 3. response to an invitation Muslim brother, 4. discipline and sanctions, 5. Defense of self, 6. save others, 7. will, 8. maturity reward (though weak narrative reach, the reward of doing), 9. obsession, 10. seize the property of others, 11. incompetence judgment (catch unrighteous judge), , 12. humility and humbleness (in prayer), 13. canonization, 14. the glory of15. Mootooih, 16. interest between father and son, 17. obligation opponents, 18. assist the implementation of obligatory or forbidden by religion, 19. disease, 20. Champions obligatory, 21. stipulating what the contract required, 22. fear, 23. bribe, 24 occultation, 25 false (and Rationale it), 26. helplessness, 27. ignorance simple and compound ignorance, 28. error, 29. amnesia and new titles such as 30 the construction of roads and highways, 31, described the Muslim bodies, 32. damages in excess of the blood money, 33. hardship wife, Jeb 34. (pardon and clemency Bob converted to Islam and Muslim). (Ibid.)

Specific topics of secondary titles, which, in certain fields of technology such as: Many Figure in purity and prayer and example.

3. secondary criteria underlying modernize laws

It is obvious that the provisions of the first, in time and place and context, and specific substrates, are fixed, but the transformation Find the features and fields, it is possible sentence be changed.

1. Change the sentence to change the whole thread: This type of transformation will all agree, and scholars say that the transformation that occurs naturally. The transformation, however, the industry that chemical analysis laboratory is done, the kind of evidence can be considered. Such as blood or urine with the dissolution of a variety of materials from which they draw no one, neither in reality nor in the name, no blood and urine, in this case, the preceding sentence is destroyed.

2. Change the sentence for features characteristic of the subject: this kind of transformation, as well as all agree, and scholars say that the revolution or transfer. Such as porcine heart valve transplant a human heart, from the gut thread Stitches that provided rabbit, animal or insulin injections to diabetics, which is normally taken from pigs glandular secretions. The substance, since the substance produced in the body Butcher Eye is unclean, and when removed from the body, and the human body and is injected, like the blood that, apart from the human body and the body Mosquito entered. However, scholars Descriptions and transformation features, such as vinegar, wine revolution, and qualifying human blood to mosquitoes in transmission, transformation affecting the considered judgment. (Tabatabaei Yazdi: 1988, vol. 1, p. 282)

3. Sometimes, the characteristics and properties of matter is constant, but the conditions it gone and unsteady shelf or the preceding sentence, is questioned. (Toosi: 1986, vol. 6, H. 165), such as brain dead patients, in medicine people who may have known cessation of all brain activity, but the heart and some other organs, they will continue to a. The patient stopped breathing, and using the respiratory tract (aspiration), can be established breathe. These patients at intervals of a few hours or more, they will eventually heart failure and death, according to stipulate that clinicians, such individuals are like the person that shattered his brain, or head separated from his body have, with the help of a ventilator and feeding equipment, it may be time to vegetative life, he continued, are not a zombie, but are not a dead man. Therefore, the provisions relating to life and death, must be articulated. For example, copper judgments dead body, bath and prayers for dead, and the mortician about them is not flowing, the heart fails, and the body is cold. Their property can not be divided among heirs, and their wives died not keep them, until the end of their life. But their lawyers from practicing law are void, and the right sales or for their marriage, or divorce from their husbands do, and continue to care about them is not obligatory, and removing some of their organs if they save lives Muslims ceased to be no problem, it should be noted that, if all this is that brain death is complete and will be conclusively proven, and there is absolutely no possibility of return. (Makarem: 2008, p. 113)

4. Sometimes the sentence is not true foreigner observers cases, the accounts due to incompatibility with the principles of the Sharia, the possibility of legal monsoon, the proposed rules. For this reason, some of the conditions and characteristics that, in the judgment of the dogma or of the possibility, their role has changed. Such provision is stated in the Hadith: "Whoever build a dead land, his property would be" Whoever land to build, is the owner. (Toosi: 1986, vol. 7, p. 152). What about land uncultivated, it can be concluded that, in the Islamic domination of individual uncultivated land, the law alone is not the possession of uncultivated lands and selling them is illegal.

5. Change the sentence for emergency, distress and hardship ... Sometimes verdict and issue, both permanent and can not be changed, but must at the same time, and the dilemma was that if you do not unlawful, is compromised. Such as cloning and human cloning in particular, one of the new issues, which is why the sentence is not expressed in verses and traditions, but Shia jurisprudent scholars and scientists, using the methodology of diligence in the verses and traditions, theories in this issue have expressed.

The issues of concern such as Christianity and Sunni religious communities to challenge where it's been the past century. Pop in a statement the job, because the human dignity deficit, has sanctioned. Sunnis also has over ten Conference in this field, and the sanctions that have almost reached a consensus. The only doctor Mahroos of the Sunni world, and the Hanafi religion, in Iraq it considers.

Some Shiite scholars, it has responded to the objections sustained in this area, and possible adverse consequences it prevents not permit this practice.

However, in relation to human cloning, the Shi'ite scholars there are several theories:

1. license per se limit, 2. permit at the individual level and limited, as the first 3. forbidden.

a. The license per se:

Some jurists and experts, the lack of specific wording of the prohibition of human cloning, and according to the principle of resolving (things are lawful for you), ... also cite permissible principle, have permitted human cloning.

Jurists such as Sistani, Moosavi Ardabili, Fazel Lankarani, Allameh Fazlallah, Mohammad Momen, etc., in answer to the question "Is human cloning and replication in the laboratory, and through advanced scientific methods (Clonage) permissible?" said, "as herself, not a hindrance." Some other jurists, in addition to ruling on the permissibility of questions and confusion that would ban this practice to look at others, have responded in detail.

Others have said if doing so will lead to inevitable evils, so to prevent this corruption, human cloning is forbidden as secondary. Jurists such as Sayyed Kazem Haeri, and Ayatollah Makarem Shirazi support of this view.

B. Limited license:

Some based on existing texts, according to the basic principle in this case, human cloning are permitted, but did argue that widespread human cloning creates problems. Sheikh Hassan javaheri, the idea has been raised, not only do this, at the individual level permitted, but it is forbidden to claim forbids a person has no right to prohibit legitimate count, and unreasonable prohibition fatwa give it.

C. The first is the prohibition of cloning:

The proponents of this view, can be named as Tabriz jurisprudence. Also Allama Muhammad Mahdi Shams al-Din, a scholar of Lebanon not only cloning in humans, but in animals also forbids it. (Eslami: 2005, p. 3).

Conclusion

Legal study of the changing religious titles, in Jurisprudence and its effects is that the dynamic jurisprudence can obtain substantial. Religious commandments as God willing, with the overall theme, which, as its overall theme is the same, as is in fact the subject of the sentence.

And because it is general, and with the provisions on the overall titles, and subjects it to an individual, as are its people as to account for sentence. Change makes, as different from the first title that applies to them, is the change in titles.

Because changes in different categories, variations on the theme, change is in the title, which, as applicable to new and former title, non-compliance on the issue. Every topic sentences, and the effects of its own, as long as certain issues under the same rules and works, but when you come out from under that name, have other provisions, and works as new orders Takes. According to multiple categories religious, what is important in changing categories, where the effect of the change is widespread. The study of what the title is obtained, the provisions of threads, with change as the theme of change, and the effects and the provisions of the new issue are, and what determines the change titles subject, common law, which, according to the criteria provided by legislator, to change the title commands.

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