

The Jurisprudential Controls Regulating Judicial Rulings And What Is Related To Them From The Book “The Rulers’ Insight Into The Principles Of The Judiciary And Methods Of Judgments” By Imam Ibn Farhun Al-Maliki

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Abstract

The study aimed to explain the jurisprudential controls regulating “judicial rulings and what is related to them” in Islamic jurisprudence from the book Insight on Rulers in the Principles of Judiciary and Methods of Rulings by Imam Ibn Farhun al-Maliki and to know some of their applications, as The researcher: Collect and extract Collecting the jurisprudential rules related to the subject of the study, extracting them, explaining them, studying them, analyzing them, clarifying the related rulings supported by legal evidence from the Holy Qur’an and the Sunnah of the Prophet, and explaining some applications of each rule with explanation and detail.

The study showed that the first section of the book, which is in the forefront of the judiciary, contained many legal disciplines relevant to this science, where more -Allah's mercy - than explaining the judgments on the branches and collecting them under the controls of an umbrella college for many issues of the door.

Keywords: Ibn Farhoun, jurisprudence controls, judiciary.

Introduction

All Praise is due to Allaah, we praise Him, and seek His help and forgiveness. We seek refuge in Allaah, Most High, from the evils of our own selves and from our wicked deeds. Whomever Allaah guides cannot¹ be misguided, and whomever He leads astray cannot be guided. I testify that Allah the One, the Prevailing, the Exalted in Might, the Compeller, sent Muhammad - May the blessings of Allah be upon him- witness and a bringer of good tidings and a warner.

Allah Almighty said "And We revealed to you the message that you may make clear to the people what was sent down to them and that they might give thought." Surah An-Nahl.

The Islamic sharia encompassed all aspects of life, devoted great attention to the infallible rights of people, enacting provisions guaranteeing the administration of justice, restitution of grievances and establishing judicial rules in order to achieve security, stability and the separation of conflicts between members of society without favoritism or discrimination.

The works of jurists are full of these rulings and they have established rules and controls that cover all aspects of these issues, To ensure that the right is safeguarded and that

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grievances are restituted and safeguarded from any theft or fraud, Such controls were of great interest to the study and attention on which many great jurisprudence such as judicial decisions were based; It has the path of stability among societies.

Among the jurists who paid attention to these regulations, and whose books are full of them, is Imam Ibn Farhun - may Allah have mercy on him - in his book (Insight of Rulers in the Fundamentals of Judiciary and Approaches to Rulings), which contained a wealth of knowledge that was unparalleled, as it included many jurisprudential controls on which the Imam built the principles. His doctrine, and this study focused on one aspect of it which is: Jurisprudential controls regulating judicial rulings and what is related to them, because this knowledge has a great importance for the entire nation.

Study Problem and its questions:

The problem of this study is the lack of visibility of many of the jurisprudential controls scattered in the foundations of the most important jurisprudential books, and the great importance of these controls in revealing the rulings on issues, especially those that were not concerned with classification according to some jurists, and highlighting their practical aspects. This study attempts to answer the following questions:

What are the jurisprudential controls regulating the rulings of the judiciary and what is related to them from the book "Insight of Rulers in the Fundamentals of Judiciaries and Methods of Rulings" by Imam Ibn Farhun Al-Maliki - may Allah have mercy on him-? The following questions branch out from this question:

- 1-Who is Imam Ibn Farhun, and what is the importance of the Book Insight of Rulers in the Fundamentals of Judiciary and Approaches to Rulings?
- 2- What jurisprudence regulates judicial rulings and related of the book " Insight of Rulers in the Fundamentals of Judiciary and Approaches to Rulings?
- 3- What are the jurisprudential applications related to judicial rulings?

Objectives of the study: This study aims to:

- 1-Introduction to Imam Ibn Farhun al-Maliki and the importance of his book, Insight of the Rulers.
- 2- A statement of the jurisprudential controls regulating judicial rulings and the related book, The Rulers Insight.
- 3-What are the jurisprudential applications related to judicial controls.

The importance of the study, and the reasons for its choice:

The importance of the study comes from the importance of studying the jurisprudential controls, highlighting the jurisprudential issues on them, and highlighting its most important ancient and contemporary applications for the benefit of the individual and society. Especially those issues that the jurists did not single out under specific sections or books in their works, such as the controls governing the judiciary, so it was important to single them out and explain their most important rulings and the controls that regulate these rulings and what includes under them.

Limits of study:

This study specializes in trying to identify the most important controls regulating judicial rulings and the related book" Insight of Rulers in the Fundamentals of Judiciaries and

Methods of Rulings" Accordingly, its limits are limited to the scope of this topic, and the results cannot be applied outside the framework of this study.

Study methodology:

The course of work in this study requires the use of an inductive approach based on the extrapolation of texts on the subject matter of the study in order to reach the legal controls governing the judiciary's jurisprudence in Islamic jurisprudence, and then the use of a descriptive approach to describe and explain the concept of these controls as well as the relevant controls, and mention some of their jurisprudence applications.

Previous studies and their relationship to the current study:

First: The study of Ibrahim Muhammad Abu Al-Qasim, which is a master's thesis entitled: (Legitimate Policy : Comparative Study and Achievement of Part XI of the book Insight of Rulers in the Fundamentals of Judiciaries and Methods of Rulings By Judge Ibrahim bin Ali bin Muhammad bin Farhun al-Maliki) 2007 AD, Omdurman University, Sudan.

This study focused on the subject of the judiciary with the legitimate policy in matters of crimes, as compared to the Sudanese Criminal law. The plan of the study included an introduction and two chapters. The researcher divided the first chapter into two sections: In the first, he explained the popularity of the book Insight of Rulers and its importance and explained in the second: the approach to writing according to Imam Ibn Farhun, As for the second chapter: he devoted it to the judiciary and the Sharia policy in criminal matters compared to contemporary cases, as it included four sections. In the first, he defined: the Sharia policy and criminal principles, and in the second he mentioned: the rulings related to crimes of murder and harm, and in the third section: he explained the rulings related to money crimes. The fourth section included: crimes of drinking, public display, crimes against the family, and miscellaneous crimes.

What distinguished my current study from this study is that it specialized in independent aspects of the judiciary, explaining the most important controls that regulated these aspects and their various jurisprudential applications.

Second: Study: Fifth, Qanani, Master's thesis entitled: "Imam Ibn Farhoun and his vision in the judiciary in Shariah politics", 2010, Hajj Lakhdar University (Battneh), Algeria.

In the first chapter, she introduced Imam Ibn Farhun, his book, and his vision for the judiciary. Then, in the second chapter, she defined Sharia politics and the scope of the judiciary within it. She discussed the ethics of the judiciary and Sharia politics. As for the third chapter: I devoted it to talking about the types of judiciary based on the legal policy according to Ibn Farhun, which are represented by the judiciary by guarantee, the judiciary by imprisonment, the judiciary by eliminating harm, and the judiciary by blocking pretexts.

The current study differs from this study: my study dealt with the most important controls in the field of judiciary, which is a main heading under which many issues fall in various types of litigation and dealings between people.

Study Plan:

This study included an introduction, four sections, each section containing a number of demands, and a conclusion, as follows:

Preface: a definition of Amam Ibn Farhun and the importance of his book" Insight of Rulers in the Fundamentals of Judiciary and Approaches to Rulings"

Brief definition of Imam Ibn Farhun -May Allah have mercy on him-

His name and lineage: Ibn Farhun is Judge Burhan al-Din: Ibrahim bin Ali bin Muhammad bin Muhammad Abi al-Qasim bin Muhammad bin Farhun bin Muhammad bin Farhun Abu al-Wafa, son of the Imam al-Muhaddith: Nour al-Din Abi al-Hasan al-Yamari, al-Madani al-Maliki, and he is from Hijaz, born in Medina He was born in Medina after seven hundred years and grew up there. He assumed the Maliki judgeship in Medina in the year 793 AH-1397 until he died on Eid al-Adha, in Dhi al-Hajjah in 799 AH. He was buried in Baqayq and He died in the eighth century AH in relation to the ages of his elders.(Al-Asqalani, 1969, p 75)

His lineage: His lineage goes back to Ya`mar ibn Malik ibn Yatham, a descendant of Rabi'ah ibn Nizar ibn Ma'ad ibn Adnan, and there is a difference in his lineage based on the different sources of translation, but the lineage we chose is what Al-Sakhawi summarized in Brilliant Light, and commented on it by saying: "This is how I read his lineage in his handwriting.(Al-Sakhawi, 902, p 92)

The importance of the book "Insight of Rulers" by Imam Ibn Farhun - may Allah have mercy on him:

(Insight of Rulers in the Fundamentals of Judiciary and Approaches to Rulings) The author mentioned this name in the introduction to the book, saying: I called it the insight of the rulers into the principles of judiciary and the approaches to rulings and I arranged it into three sections: (Ibn Farhun, 1985, p 789)

The first section: In the introduction of this science on which the judgments are based.

The second section: The district's separate data and the corresponding data.

The third section: In the provisions of legitimate policy(4) The book is divided into two parts, in which Imam Ibn Farhun - may God have mercy on him - dealt with the jurisprudence of the judiciary, because the jurisprudence of the judiciary is for the sake of knowledge, the most prestigious in its status, and the most honorable in its mention. Because of its great impact on stability. Society, preserving the foundation of justice, preventing injustice and resolving disputes.

The first topic: The ruler rules according to what appears

First requirement: adjuster 's explanation.

What is meant by the rule of the ruler in this adjuster: the rule of the Sultan and the judgment of the judge.

Language Provision: Al-Hakam - with the addition of the H and its opening - is a source of ruling that rules. Ibn Faris said: (The ha, the kaf, and the meem) have one principle, which is prevention, and the beginning of that ruling, which is prevention from injustice. (Ibn Faris, 1979, p 93)

Judgment terminologically: What is meant by ruling in this rule is judicial ruling, and every ruling is decided by the guardian in the affairs of the subjects in their interests and disputes, and what is meant by it is ruling according to the fundamentalists, (Al-Isnawi, 1999, p 772) Jurists have defined the ruling with several definitions, the most important of which is that it is: "the adjudication of a dispute between two or more adversaries by the rule of God Almighty". (Ibn Abidin, 1992, p 352)

The appearance is a language: from the appearance of the object, if it turns out and stands out after the invisibility, and the appearance is contrary to the subcontractor, which is clearly exposed. (Al-Fayrouzabadi, 1993, p 817)

The apparent terminologically: is the word that has been made clear by simply hearing it without presumption, and it is possible to interpret and personalize, and the judgment used in it is inadvertent and corresponds to it at the tap text, interpreter and arbitrator, which precedes the minds and illusions of its appearance as a subject in what is meant by its example. Allah Almighty said "O mankind, fear your Lord" Surah An-Nisa, Verse 1, Allah Almighty said "But Allah has permitted trade" Surah Al-Baqarah is a verse 275, Allah Almighty said "amputate their hands" Surah Al-Ma'idah is a verse 38. This and the like are apparent.

It depends on what is meant by it by hearing the formula and its ruling on the necessity of its imperative, whether general or specific, and what is apparent according to jurists is: "It is what is most likely and most likely to occur". (Al-Zarkashi, 1985, p 312)

According to the majority of fundamentalists, it is equivalent to the text. (Al-Sarkhasi, 1999, p 157)

What the adjuster said:

It is known to us that the judiciary is based on a case brought by one of the other's adversaries with evidence and evidence. The defendant presents this case. The judge hears the two of them, explains their evidence, and then bases the judgement on the apparent appearance of what he himself has established, and his senses have realized that it is difficult to know the truth; The truth in the matter of absenteeism is known only by the Almighty God, who takes over the beds and rules them on doomsday in the Court of Absolute Justice; That is why the judge's judgement does not change the truth of things in validity and invalidity, nor does it transfer things from what they are.

Another formula for the adjuster:

The ruler's ruling does not remove a thing from its nature. (Ibn Qadamah, 1968, p 53)

The second requirement: the adjuster's evidence and his legal document.

The Adjuster's evidence is from the honorable Sunnah of the Prophet as follows:

Umm Salamah- may Allah be pleased with her- narrated: Two men came and were disputing over inheritances that are studied, but there was no evidence between them, so The Messenger of Allah - May the blessings of Allah be upon him- said: "You are disputing against me, but I am human, and perhaps some of you will be more sensitive to his argument than others." So I will judge for him according to what I hear. Whoever I judge for him something that is due to his brother should not take it, for I am only isolating for him a piece of fire. (Al-Bukhari, 1442, p 180)

The significance of the noble hadith: The Messenger of Allah - May the blessings of Allah be upon him- tells that he is a human being and does not know the unseen, but rather rules according to what is apparent to him, so if it agrees with the truth and the reality in it, and you are blessed, even if the apparent contradiction with the truth and reality, then what is ruled upon is not the right of the one to whom it was ruled. Rather, it is forbidden, and taking it is forbidden, and it is a piece of the Fire that he deserves on the Day of Resurrection. (Al-Shawkani, 1993, p 332).

Abu Saeed Al-Khudri - may Allah be pleased with him- narrated a long hadith, in which a man misbehaved with the Messenger -May the blessings of Allah be upon him- so Khalid bin Al-Walid- may Allah be pleased with him- asked to behead him, and the Messenger of Allah-May the blessings of Allah be upon him- said: "No, perhaps he should be praying." Khaled said: How many worshipers say with their tongue what is not in their heart? Then the Messenger of Allah- May the blessings of Allah be upon him- said: "I have not been commanded to dig into people's hearts, nor to open their stomachs". (Muslim, 1064, p 742)

Indicator: Imam Al-Nawawi said: "I have ordered that I rule in the obvious sense, and Allah is responsible for secrets, as said by the peace and blessings of Allah:" So if they say so, their blood and wealth are protected from me except rightly, and their reckoning with Allah". (Al-Nawawi, 1392, p 163)

Third requirement: adjuster applications

Firstly: If a person claims to marry a woman, and brings two false witnesses to the marriage, and neither the woman nor the judge can challenge their testimony, then the judge rules that the marriage is valid based on what is apparent from the testimony, but his ruling does not make it permissible for the convicted person to enjoy the woman, and she must abstain as much as possible, if she is forced There is no sin on her, and sin on him. (Ibn Farhun, p 84)

Secondly: "If the contracting party said about the condition of ratification after knowing the different people of the differences of the scholars regarding the obligation and invalidation of an oath, and he took the opinion of those among them who believed that it was invalid, will that benefit the lord of the religion and remove it from the dispute? It was said: It will benefit him and the oath is waived from him, and it was said that the oath is necessary, and the debtor does not have the right to choose over the judge and rule for himself, according to the saying of someone from the people of knowledge, but rather the judge rules according to what appears to him. (Al-Shirazi, p 468)

Third: If a judge awards money, property, or anything else, for an immoral oath, or false testimony, and the person to whom the ruling is made knows that he does not actually deserve that, what he ruled is not permissible for him, because the judge rules according to what appears, but he does not change the facts of things so It does not permit what is forbidden nor prohibit what is permissible. (Ibn Farhun, p 170)

Fourth: If two witnesses testify before the judge against a man that he divorced his wife three times, and he separated between them based on their testimony, and they were aware that they were lying, the divorce shall be carried out in the apparent form of the judicial ruling based on the apparent matter, and the wife shall not be divorced in the truth and in the truth of the matter, and therefore it is not permissible for either of them to marry her with His knowledge of the situation allows the previous marriage to remain, because the judge rules according to what appears, and ruling according to what appears does not change the reality of the matter.

Fifth: If the judge annuls the marriage between the spouses due to a defect proven in one of them through false testimony, then the judge's ruling is implemented on the surface only; Because the ruler rules according to what is apparent, and does not enforce what is hidden, and the marriage remains subsisting in secret, and they are entitled to enjoyment, and inheritance remains between them if one of them die.

The second topic: necessity's Judiciary is permissible. (Ibn Farhun, p 21)

The first requirement: the adjuster's explanation.

Since the judiciary is one of the most important and prestigious positions, and performing it is one of the most dangerous tasks; Because through it, people's needs are met, and rights are returned to their owners, it was necessary to take into account important conditions when choosing who would assume the judiciary, so the jurists stipulated several conditions for appointing a judge, and the Messenger of Allah- May the blessings of Allah be upon him - Omar and Ali- may Allah be pleased with them- and the rest of the caliphs, were. They are strict in selecting judges who are qualified to judge.

Imam Ibn Farhun - may Allah have mercy on him - said: "If the imam wants to appoint someone as a leader, he should strive to do so for himself and for the Muslims, and he does not show favoritism or intend to appoint anyone except for the sake of Allah Almighty. It was narrated on the authority of Omar Ibn Al-Khattab - may Allah Almighty be pleased with him - that he said: There is no prince who commands." A prince or a judge who seeks justice from favor, unless he is liable for half of what he has earned from the sin, and if he orders or seeks justice for the sake of Muslims, he is his partner in what he did". (Ibn Farhun, p 25)

Among the most important conditions for judiciary agreed upon are: (Al-Kasani, p 323)

Islam, maturity, reason, freedom, integrity of the senses, justice, knowledge of legal rulings, masculinity, and diligence.(Al-Kasani, p 323)

The jurists added some desirable conditions, which are called conditions of perfection, such as chastity, piety, patience, dignity, forbearance, wisdom, being from the people of the country, known lineage, vigilance, avoiding trickery, wealth, acumen, respectability, and others. (Ibn Farhun, p 1994, p 375)

If these conditions are met, the person must be appointed, and if there are a number of persons, the best and fittest must be appointed to Muslims, taking into account the qualities of perfection and the conditions desired. If one or more of the necessary conditions is lost, whoever meets the other conditions of necessity may be appointed, and jurists call it the judge of necessity, Because the imperatives permit prohibitions, but they must be restricted in the narrowest cases, and be valued only to the extent that they are, the hardship in the absence of full due conditions brings facilitation in the appointment of the judge of necessity, and this is what is meant by the adjuster. (Al-Haitami, 1983, p 114)

If a person is appointed to judge who has missed the obligatory conditions agreed upon, then his judgement is valid and carried out out of necessity, so that the judiciary is not disrupted and rights and rulings are lost, but he must state his evidence in all of his rulings and his statement "I ruled thus" is not accepted without explaining his evidence in it. (Al-Ramli, p 240)

The second requirement: the adjuster's evidence and his legal document.

It indicates the adjuster's origin from the Holy Qur'an, the Sunnah of the Prophet, and what is reasonable, as follows:

From the Holy Quran:

Allah said :(So fear Allah as much as you are able) Surah Al-Taghabun is a verse 16

The significance of the noble verse is that Allah Almighty commanded those responsible in the noble verse to strive to be pious in their affairs as much as they are able to do so, especially when they choose someone who follows their command and is responsible for resolving disputes between them. (Al-Shawkani, 1993, p 284)

Allah said: (Allah does not intend to make difficulty for you) Surah Al-Ma'idah is a verse 6. and Allah said: (and has not placed upon you in the religion any difficulty) Surah Al-Hajj is a verse 78. The significance of the two noble verses is that Allah Almighty has removed the embarrassment from His nation, and does not want to make them embarrassed by what they cannot, or by what they cannot find, or by what they cannot find, and it is missing for them. Therefore, it is permissible to make up for what is necessary when needed, so that making up for it is not disrupted.

(Al-Tabari, 2001, p 644)

From the Sunnah of the Prophet:

Abu Hurairah- may Allah be pleased with him- narrated that the Prophet- May the blessings of Allah be upon - said: "If I forbid you from something, avoid it, and if I command you to do something, do as much of it as you can". (sahih, 1337, p 975)

The basis of inference: The matter in the hadith is an order to enforce binding rulings, including appointing judges according to ability, and not entrusting people with what they are unable to do. Al-Nawawi-may Allah Almighty have mercy on him- said about his saying: "If I command you to do something, then do as much of it as you can." This is one of the important rules of Islam, and one of the comprehensive words that he- May the blessings of Allah be upon - gave, and countless rulings are included in it. (Al-Nawawi, 1392, p 102)

It is reasonable:

Rule: "Imperatives permit prohibitions".

The third requirement: adjuster applications.

First: It is not valid to imitate a blind person to judge, but if the blind person is appointed for a benefit, his imitation is valid, and it is a matter of necessity. If the judge was sighted and became blind, he must be removed. If he ruled before the removal, his judgment is valid out of necessity. (Ibn Farhun, p 13)

Second: If the immoral person is appointed to the judiciary, then his judgment is not valid according to the majority , and it is valid according to some of them. According to the opinion of the majority, if he appoints the immoral person then it is a matter of necessity, and likewise if he is just, and immorality occurs to him while he is a judge, then the majority said that he must be dismissed, but if the ruling is valid It is necessity's Judiciary. (Ibn Farhun, p 453)

Third: If the imitator is appointed to judge, with the availability of hardworking people, then his appointment is not valid, except in cases of necessity. If the hardworking people are missing, the appointment of the imitator is valid, his judgment is valid, and his ruling is implemented. He is a judge of general necessity, and he judges the fatwa of his imitator, and consults scholars, because preventing the appointment of imitators to the judiciary is a disruption of the rulings. And the cause of pandemonium, strife and conflict. (Ibn Farhun, p 453)

Fourth: It is permissible to plead to judges appointed by the rulers of injustice and tyranny out of necessity, because a person has the right to take his rights however possible, and by analogy with the permissibility of pleading with the violator to the violator in order to achieve the fulfillment of the right, let it be permissible with the unjust believer.

The adjuster's exception is:

1- If a non-Muslim takes over Muslims, his judgment is null and void by agreement, and he is no longer the judge of necessity, according to what Allah Almighty says (and never will Allah give the disbelievers over the believers a way) Surah An-Nisa is a verse 141, Because the purpose of the judiciary is to implement the Sharia rulings, and the infidel is ignorant of them. (Ibn Abi al-Dam, 1983, p 70 – 71)

2- If the judge is ignorant and does not read or write except his name and his father's name, and appears dull and stupid, then he is not appointed, and it is not permissible for testimony to be given to him, for he may go beyond falsehood, Ibn Farhun-may Allah Almighty have mercy on him- said: "The guardianship of an ignorant person is not valid". (Ibn Farhun, p 21 – 22)

The third topic: The judge does not have the right to pardon within the limits of punishment, but he has the right to pardon with discretionary punishment(43).

The first requirement: the adjuster's explanation.

Punishment concept: Plural of punishment, which is the punishment prescribed by law as a right for Allah Almighty, and the punishments are in seven things, which are: apostasy, banditry, adultery, slander, theft, drinking, and prostitution.

discretionary punishment concept: It is a punishment that is not legally prescribed. Ibn Farhun -may Allah Almighty have mercy on him- says: "discretionary punishment is a discipline that corrects and rebukes sins for which no punishment or expiation has been prescribed, Ibn Qudamah-may Allah Almighty have mercy on him- said: "discretionary punishment is the legitimate punishment for a crime for which there is no punishment.

What the adjuster said:

If the punishment is established before the judge and he is certain of them, he must establish the punishment determined by Sharia law. Because the punishment is a right of Allah Almighty, and He does not tolerate it, and He does not have the authority to change it, or pardon it, and the intercession of any of the creation is not accepted regarding it, regardless of his quality. However, if the punishments do not reach the authority, and they are between people, then intercession and forgiveness are permissible in them. (Al-Hasani, p 298)

It becomes clear to us that discretionary punishment is punishment, discipline, and correction, and the ruler has the right to pardon and revoke it if it is Allah Almighty's right, when he sees the benefit in that. Because the matter is up to him, and to his discretion, and the interest may be in pardoning and forfeiting according to the circumstances and people, but if the punishment is the right of individuals, then they have the right to pardon and forfeit whenever they want.

The second requirement: the adjuster's evidence and his legal document.

The adjuster's evidence from the Qur'an and Sunnah is as follows:

From the Holy Quran:

The totality of the generous verses indicating that boundaries are legitimately assessed penalties cannot be tolerated or exceeded, including:

Allah said :(The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah) Surah An-Nur is a verse 2.

Allah said: (Indeed, the penalty for those who wage war against Allah and His Messenger and strive upon earth [to cause] corruption is none but that they be killed or crucified or that their hands and feet be cut off from opposite sides or that they be exiled from the land. That is for them a disgrace in this world) Surah Al-Ma'idah is a verse 33.

The significance of the noble verses is that the command therein indicates a definite obligation, and that these limits are a right of Allah, Blessed and Most High, and it is not permissible to deviate from them or be negligent in them.

From the Sunnah of the Prophet:

On the authority of Aisha- may Allah be pleased with her- that the Quraysh were concerned about the Makhzoumiya woman who had stolen, so they said: Who will speak to the Messenger of Allah- May the blessings of Allah be upon him -? Who would dare him except Osama, the love of the Messenger of Allah- May the blessings of Allah be upon him -? So he spoke to the Messenger of Allah- May the blessings of Allah be upon him - and said: "Do you intercede regarding one of Allah's punishments?"

Then he stood up and delivered a sermon, and said: "O people, those before you went astray, in that if the noble among them stole, they would leave him, and if the weak among them stole, they would impose punishment on him, and I swear by Allah, if Fatima, the daughter of Muhammad, had stolen, Muhammad would have cut off her hand(48)".

(48) Narrated by Al-Bukhari, Sahih Al-Bukhari, Book of Punishments, chapter on the dislike of intercession in a punishment if it is brought to the authority, No. 6788, vol. 8, p. 160. And Muslim, Sahih Muslim, Book of Punishments, Chapter: Cutting off the Noble Thief and Others, and the Prohibition of Intercession in Punishment, No. 1688, Part 3, p. 1315.

The significance of the noble hadith is that it indicates that the ruler is prevented from waiving the punishment if he reaches it and is confirmed by him, since when the theft from the Makhzoumiya was proven, and its people appointed Osama- may Allah be pleased with him- to intercede for the punishment to be dropped, the Messenger -May the blessings of Allah be upon him - denounced that. (Ibn Battal, 2003, 410)

The third requirement: adjuster applications.

First: A discretionary person may be forgiven. If Allah has the right, he shall be deprived of the right of human beings and the right of the Sultanate is unique to him, then the ruler has the right to take into account the ruling of the best in pardoning and discretionary punishment.

Second: If a person drinks alcohol or wine, and this is proven by the judge, he will flog him with eighty lashes, and he must be punished for drinking a little or a lot, and it is not permissible for him to pardon him. (Ibn Farhun, p 298)

Third: If the theft is proven according to the judge's conditions, it must be severed and no pardon may be granted. (ibid, p 246)

Fourth: If adultery is proven according to the judge's conditions, Stoning, flogging and alienation must take place, and only the ruler shall assess the punishment and may not drop it". (ibid, p 248)

Fifth: Anyone who breaks another's lineage, or accuses him of adultery, has no evidence to say, and has been found guilty of defamation in front of the ruler, shall be punished with flogging, shall not drop the punishment and shall not pardon it.

The fourth topic: The ruling of the ruler does not permit what is forbidden nor prohibit what is permissible of his knowledge.

The first requirement: the adjuster's explanation. (Al-Mughirah, p 1407, p 527)

The ruling issued by the judge in the lawsuits and disputes brought before him depends on the evidence and evidence provided by the adversaries in the Judicial Council, then on his diligence and appreciation of the reality of the situation. In both matters, error and falsification are possible on the part of the litigants. If the judicial ruling is issued and it is consistent with the truth and reality, it is ostensibly implemented. And secretly, according to the agreement of scholars, because the ruling is consistent with the truth and the facts of things, and the one who was awarded the ruling was lawful and kind to the person to whom the ruling was granted, and it is permissible for him to take it without resentment or embarrassment, but rather he has the reward for claiming his right, defending it and collecting it, in compliance with the noble hadith prohibiting wasting money.

If the judge's judgement is contrary to fact and reality, whether in good faith, error, sound diligence, or in bad faith by the plaintiff, or evidence and arguments, or by the judge himself, then there is detail in that:

1-If the judge's ruling cannot be constructed, but rather is limited to exclusively revealing the past, such as the property transferred and the inheritance to one of the heirs, then his ruling here does not change matters from what they are, and does not change the facts of things, It is based on the apparent; Because the judge does not have the authority to establish in these cases, ownership must have a reason in the past, and inheritance depends on specific and established reasons, which the Sharia entrusted to explain exclusively to the heirs, and accordingly. (Al-Kasani, 2004, p 219)

If the ruling agrees with the past, it is correct, both apparent and hidden, and if it contradicts the truth and reality, it is invalid, and taking it is truly forbidden, and whoever takes it is taking a piece of fire.

2-If the judge has the authority to establish some contracts, such as marriage and divorce, and sales and annulments, then the scholars differed regarding that, with two opinions:

The first: The saying of the majority of jurists from the Malikis , the Shafi'is , the Hanbalis, and the saying of the two Hanafi companions, which is that the judicial ruling does not change the facts of things, nor does it change matters from what they are, and that the legal description in them is not changed by the ruling, so what is forbidden is not permissible. What is permissible is not forbidden, but its effect is limited to what is apparent in the event in this world according to what is possible for the judge to see, The ruling has no structural consideration, and the judiciary and judgment are carried out according to what appears to be the case, and the judge and the adversaries are only assigned to the extent of human capabilities, and if the judiciary falls short of reaching the truth, such as relying on false testimony that reveals the truth and conceals lies, or forged writing, or a false oath, or a sham confession. Or if the evidence is completely lost, and the judge rules of acquittal, the ruling does not change the facts of things, and the convict remains unjust, and his liability is fulfilled. (Al-Qarafi, 1994, p 144)

The second: It is the saying of Abu Hanifa- may Allah Almighty have mercy on him- which is that the ruler's ruling affects things, and what is forbidden becomes permissible by ruling, and what is permissible is forbidden by judgment, and that the ruling is like the actual truth after it was issued, even if it did not represent it in the past; Because it is tantamount to a contract or annulment, and it is an establishment, and everything in which the judge ruled

outwardly forbidding it is inwardly so, and if he ruled to make something permissible, it is permissible, and he has evidence for that, but it was not proven upon investigation, and Imam Abu Hanifa- may Allah Almighty have mercy on him- stipulated the validity of the construction and its effectiveness. The ruling, both apparent and hidden, is that the judge does not know that the plaintiff and witnesses are lying, and that the subject is capable of doing so. (Ibn Qadamah, p 266)

The second requirement: the adjuster's evidence and his jurisprudential basis.

The origin of the rule is inferred from the Qur'an and Sunnah, as follows:

From the Holy Quran:

Allah said"(O you who have believed, do not consume one another's wealth unjustly) Surah An-Nisa is a verse 29.

And Allah said:(or send it [in bribery] to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know) Surah Al-Baqarah is a verse 188.

The significance of the noble verses is that taking people's wealth by sin is forbidden and invalid, even if it is done through a judiciary, because the ruler's ruling does not turn invalid matters into correct ones, nor does forbidden wealth into permissible ones. Sharih al-Qadi used to say: "I will judge for you, and I think that you are unjust, but no." I can only make a ruling based on the evidence that I can bring to my attention, and my ruling will not make lawful for you what is forbidden". (Al-Baghawi, 1999. P 234)

From the Sunnah of the Prophet:

Umm Salamah - may Allah be pleased with her - narrated: Two opponents came and were disputing over inheritances that were studied, but there was no evidence between them. Then the Messenger of Allah - May the blessings of Allah be upon him - said: "You are disputing against me, but I am only human, and perhaps some of you will be more compassionate, so I will decide for him in a way that I hear." Whoever I decree for him something that is due to his brother, let him not take it, for I am only granting him a portion of the Fire". (Al-Bukhari, 2003, p 181)

The evidence from the noble hadith refers to: The judgment of the Messenger - May the blessings of Allah be upon him - does not turn falsehood into truth, does not change the facts of things, does not make lawful what is forbidden, does not make unlawful what is lawful, and does not remove a thing from its quality. So whoever the Messenger of Allah rules for him something that is his brother's right, it is not lawful for him, and he becomes a piece of fire. And it leads its owner to hell. (Ibn Battal, p 254)

The third requirement: adjuster applications.

First: If a man claims against a woman that he married her, but he did not actually marry her, and two witnesses testify to him that he married her, and the judge rules based on their testimony, then she is not permissible for him at all. The same applies if a woman claims marriage to a man and he denies it, and she brings witnesses, and the judge rules for her. (Ibn Farhun, p 145)

Second: If a man divorces his wife three times, then claims that she is his wife, and two false witnesses testify to that, and the judge rules that the marriage is valid, it is not permissible for him to have intercourse with her. There is no disagreement between the majority and Abu Hanifa regarding that; Because the man knows the truth about the matter

of triple divorce, and the ruling of the ruler does not change things from what they are, and does not change the facts of things. (Ibn Abi al-Dam, p 493)

Third: If two witnesses deliberately testify falsely against a man that he divorced his wife, and the judge accepts their testimony due to their apparent fairness, and separates the man from his wife, and then the waiting period has passed, then it is not permissible for one of the two witnesses to marry her; Because he knows that he is lying in his testimony, and the judge's ruling does not change things from what they are. (Ibn Farhun, p 145)

Fourth: A man said to his wife: You are divorced from a bond, or I let you go, or I separated from you with my body, so she is not divorced according to what appears to be the case. Because his words were related to what distracted the word from its reality, and divorce became a metaphor, his intention was accepted, and the matter remained between him and Allah as a religion. (Al-Shirazi, p 293)

Fifth: If a person claims to buy an item from another person, and he denies it, and the plaintiff brings two false witnesses to the purchase, and the judge rules accordingly, then the judge's ruling does not confirm the contract, nor does it change matters from what they are, and it is not permissible for the buyer to take the sold item(71).

Exception from the adjuster:

If two false witnesses testified to a man that this woman is his daughter, her lineage from him is proven outwardly and inwardly, and he becomes forbidden to her and her heir, because the testimony proves lineage, and Sharia takes precautions to prove lineage. (Ibn Abi al-Dam, p 169)

Most important results:

First: The importance of the book "Insight of Rulers in the Fundamentals of Judiciary and Approaches to Rulings" by the scholar Ibn Farhun - may Allah have mercy on him -, as this book enriched the Islamic library with the most important principles of the judiciary and the pillars of governance and politics, so it became a reference for all scholars and jurists who seek this knowledge.

Second: necessity's Judiciary is permissible; So that the judiciary is not disrupted and rights are lost, provided that its document is stated.

Third: The judge has the right to pardon in discretionary punishment without the punishments if it is proven before him and be certain of it, Because the punishment is the right of Allah Almighty.

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