Critical Review of the Science of the Rules of Jurisprudence

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Abstract

This study deals with the criteria used by scholars in their critical review of the rule of jurisprudence to adapt the rule, improve its formulation and realize its status in practice. The study's objectives are to understand the criteria established by the case law, uncover the aspects of innovation in jurisprudence by identifying the critical approach of jurisprudence developed by scholars and researchers, and use an analytical-inductive approach to draw results. First, the norms of judicial review are divided into two parts: norms of the formulation of the rule and norms of the status of the rule of law. Further, the criteria for the adjustment of the formulation of the rule are abstraction, progression or majority, realism, adjustment of the rule with the necessary limitation, and realization of the scope of the rule. Secondly, what the applicants have codified as jurisprudence in the works of jurisprudence must be considered and examined to take out what is not a rule and change what must be done. The previous studies serve as a rich source for developing critical research to help science continue on its regenerative path. According to the study, a reformulation of the doctrine in jurisprudence is required to account for its pillars, which include new chapters and doctrine that can be added to the doctrinal rule on the one hand and systematic and scientific additions on the other.

Keywords: critical review, doctrinal rule, draft theorem, renewal, rules

Introduction

The science of the 'Rules of Jurisprudence' is the methodological science wherein the rules and regulations from which jurisprudential rulings stem are organized, and following this, the branches are extracted and preserved. It is the second theoretical science of Islamic Jurisprudence, after the principles of Jurisprudence, and has uncovered jurisprudential approaches that clarify the strategies of jurists in applying legal rulings in accordance with what Allah (SWS) intended. It also brings to light the comprehensive rulings that apply to partialities and contemporizations.

It was developed to bridge the knowledge and methodological gap, namely, theorizing in Applied Jurisprudence, which has not received as much attention from scholars of principles as Legislative Jurisprudence. The books on principles are rich with rules for legislating legal rulings and interpreting texts, as they are predominant in these books, and the issues deriving from them support the research subjects of the principles of Jurisprudence. However, there is little research into the rules of Jurisprudence and research into its topics. These issues have been overlooked, making it necessary to specialize research into them.

After clarifying the specialty distinctions between the two sciences, in his book *Al-Furq*, this matter is brought to attention by Imam Al-Qarafi, where despite their great importance in jurisprudence and the approaches used to reach legal verdicts, he denied that the books on the principles of Jurisprudence are comprehensive regarding the rules of Jurisprudence except by way of generalization (1998, p.3).

Both the sciences, in their integration, express the maturity of the jurisprudential attitude to serving Islamic jurisprudence; nonetheless, the Rules of Principles have received more attention from the first scholars, and the Rules of Jurisprudence remains the wealthiest field of knowledge for conducting research and studies
What distinguishes the science of the Rules of Jurisprudence today is that the comprehensive and abstract jurisprudential ruling has the potential to be applied to any new events and incidents if necessary, as it is the most updated field of Islamic knowledge in the academic arena. So, it responds to the need for research into current affairs. Moreover, more jurisprudential studies have been conducted to explore its thematic issues in theorization and exposition. They may focus on the overall study of the science by investigating its concepts, beginnings, evolution, and most essential rules; those who have shifted to extracting laws from jurisprudential compilations; or those who are interested in researching a particular law or set of laws that apply to a particular subject.

With this diversity in addressing the topics regarding the science of the Rules of Jurisprudence, recent studies have conducted research into the science of the Rules of Jurisprudence and brought about a renewal that is accompanied by critical redresses and revisions, continuing the path set by senior jurists in their critical approach regarding the improvement and development of the science. The mechanism of criticism and revision is indispensable to the building and renewal of knowledge. It is, therefore, vital to draw attention to the need for critical revision in the science of the Rules of Jurisprudence and to evaluate the criteria by which jurists should revise the Rules of Jurisprudence

By assessing the points of critical revisions in the science of the Rules of Jurisprudence, the path of renewal in it becomes clear, and the researchers can be guided by it to the approach to evolving and renewing the science of the Rules of Jurisprudence as renewal is an ongoing and enduring process as the science itself. Additionally, this method clarifies the scholarliness of the science of the Rules of Jurisprudence, which is based on a systematic approach to the formation and exposition of rulings, in accordance with which revisions and corrections are made.

Furthermore, applying the mechanism of criticism to problems with the science regarding the Rules of Jurisprudence emphasizes theoretical and practical concerns within the science and draws attention to a number of solutions.

One of the reasons and justifications for this study is the lack of recent studies regarding the Rules of Jurisprudence's methodological aspect, particularly its critical part, despite the importance they gave to the thematic aspect and the extent to which most of its themes had been thoroughly explored. The need for jurisprudential research is, therefore, shifting in the direction of raising the most important questions for the science of the Rules of Jurisprudence and enriching its methodological aspect, a goal that converges in this dimension and the study of jurists' critical revisions by identifying the types, standards, and levels of revisions.

Another reason for conducting this research is to map out a critical theory of the science of the Rules of Jurisprudence. To do this, it will need to identify the mechanisms and standards of jurisprudential criticism in the field and accumulate knowledge from various jurisprudential perspectives, branches, rules, and regulations. This is expected to give the one who gains this knowledge a jurisprudential endowment that qualifies a person to examine the judgments drawn from it and cultivate critical thinking skills via staying informed of and revising jurisprudential perspectives and sayings.

Literature Review

One of the reasons for this research is also the dearth of previous studies on criticism in the science of the Rules of Jurisprudence. Some researchers in both Jurisprudence and Principles of Jurisprudence have addressed the issue. In his Ph.D. dissertation entitled *Naḍariyyat un-Naqd al-Usūlī Dirasatun fi Manhaj in-Naqd 'ind al-Imām Ashatibi (Principalist Critical Theory A Study of the Critical Approach of Imam Ashatibi)*, Alhasaan (2011) explores the features of the principalist critical theory of Imam Ashatibi by illustrating the foundations, avenues, principles, instruments, and methods of principalist criticism. Further, Almoslih (2005) wrote a book, 'Al-Imām Abulḥasan Allakhmi wa Juhūduhu fī Taṭwīr il-Ittijāh in-Naqdī fil-Maḍhab il-Mālikī bil-Ġarb il-Islāmī (Imam Abulhasan Allakhmi and his Endeavours towards the Development of the Critical Direction of the Maliki Doctrine in the Islamic West)' in this regard where the author's efforts were distributed between the historical study of Allakhmi's era and biography. He indicates the characteristics, pillars, and instruments of his critical approach and the stances that the jurists have taken on his criticisms and jurisprudential decisions by presenting samples of the jurisprudential branches existing within the criticism. Abdulhamid (2005) also examines the historical and thematic roots of the phenomenon of criticism and disagreement in Kairouan in his book 'Manhaj ul-Khilāfi wan-Naqd il-Fiqhiyyi 'ind al-Imām Almaziri (The Approach to Jurisprudential Disagreement and Criticism of Imam Almaziri).' In the second chapter, he presents Imam Almaziri's approach to matters of disagreement. Before concluding in the third chapter, he indicates his endeavors in applying the critical approach and indicating its roots, regulations, and instruments. The thesis, 'Manhaj un-Naqdi fil-Fiqh il-Islāmiyy "al-Madhab ul-Mālikiyy Unmūḍajan" Risālatu Doctorāh fil-'Ulūm il-Islāmiyyah (Critical Approach in Islamic Jurisprudence "Maliki Discipline as a Model' addresses the meaning of criticism, the requirements of a critic, the obstacles of criticism considering it a process of *Ijtihād* [independent judgment in a legal or theological question based on the interpretation and application of the Objectives], and the extent of the Maliki Discipline's consideration of internal and external criticism. Further, the paper titled 'An-Naqd ul-Fiqhiyyi Mafhūmuhu wa Ahammiyyatuh (Jurisprudential Criticism: Its Meaning and Importance)' (2014) also discusses the same issue.

All of these research projects and studies revolve around criticism in the branches of the Maliki Discipline, except Alhasaan's study, which is a theorizing study of criticism in the Principles of Jurisprudence. However, none of them intersect with the present study except in the conceptual aspect of the term 'criticism,' This difference is due to the foundation of the research, with the studies turning to research criticism in branches and principles. The present research elected to research critical revisions in the science of the Rules of Jurisprudence.

The Concept of Critical Review in the Science of the Rules of Jurisprudence

The present study primarily focuses on the term "Critical Review" because it is the core of the study on the one hand, and its meaning has not yet been established in recent studies of jurisprudence or principles on the other. Attention has only been paid to it recently and is not widespread in [Islamic] legal studies. To clarify the perception of the intended meaning and complete the mental visualization of the subject, it is necessary to explain its meaning concerning the science of the Rules of Jurisprudence. After all, making a decision about anything is merely a branch of visualizing it.

The semantics of the term "an-Naqd" (Critical) center around displaying: to say naqada (نقد) something means he displayed it (Ibn Faris, 1991, p. 467). It also signifies the revealing of a condition, the debate on a matter, and the scrutinization of a thing. Therefore, to say naqada (نقد), the dirham (a unit of currency, formerly a silver coin) is to reveal its condition, whether of high quality or counterfeit, and naqadahu (نقده) means that he debated him on the matter. The Arabs say so-and-so is still yanqudu (ينقد) the thing, meaning that he still looks upon it. (Ibn Faris, 1991, p. 467; Al-Raazi, 1995, p. 31).

The semantic affinity here is that debating and scrutinizing are the means to reveal and display the false from the good and the weak from the correct action or word. It is best to include the terminological senses of Principalist Criticism and Jurisprudential Criticism in discussions of the meaning of the term "an-Naqd" (النقد, criticism) as a [Islamic] legal term because the science of the Rules of Jurisprudence lacks a conceptual definition for it. This is because both the fields of Principles and Jurisprudence are similar to that of the Rules of Jurisprudence, and the science of the Principles of Jurisprudence parallels that of the Rules of Jurisprudence in its jurisprudential theorizing, and the science of Jurisprudence represents the outcome of both, and there is much overlap between them in concepts and terms.

Shahid defines Principalist Criticism as "a scientific process investigative of principalist issues in terms of their independence or of their originating from their author" (2012, p. 61). He then continues this definition in the model of the sciences of Hadīth and Literature, whereby Hadīth Criticism centers around studying and verifying the aspects of the science of Hadīth of both Hadīth text and Hadīth chain, and Literary Criticism focuses on studying and assessing literary categories and their factions of literary product and literary creativity.

He notes that criticism in the science of the Principals of Jurisprudence is connected to in-depth consideration of all the principalist fields of investigation and by evoking the linguistic and terminological semantics suggestive of study, verification, debate, and evaluation. He concludes that Principalist Criticism entails a thorough examination of the extrapolation rules and all principalist fields of inquiry to distinguish the absolute from the presumptive, as well as the study, discussion, and evaluation of principalist perspectives in order to determine what is right and what is wrong. (Al-Hassan, 2012, p. 61).

Shahid (2012) also suggests the revision of principalist issues in terms of absoluteness or presumption, which is one of the most important principalist problems. It is also one of the most important topics of principalist criticism. He also deems that criticism addresses how correct the opinions on the issue are and considers in-depth consideration one of the determinants of the definition, supported strongly by linguistic semantics.

The definition of Criticism in Islamic Jurisprudence is modeled on this concept. Ushak (2005) defines it as: "the process of research that aims to record the issues of the doctrine, either in terms of narrations and sayings or in terms of orienting them and issuing rulings based on them, by distinguishing the strongest and most valid from the weak or probable, and that by adopting established methods and specialized terms" (p. 9). Jurisprudential Criticism has been directed at exceptional jurisprudential cases that the revisions of the jurists generally turn to by indicating the valid from the weak, such as the orientation of narrations and sayings and issuing rulings based upon them (for this reason, it was highlighted in the definition).

According to the definition of "Ilm ul-Qawid il-Fiqhiyyah" (The Science of the Rules of Jurisprudence), it is "the knowledge of the absolute legal rulings wherein branches from numerous sections are gathered" (Al-Mayman, 2005, p.121). Moreover, suppose this definition focuses on developing the jurisprudential rule and

verifying it by deriving branches from it. In that case, these two aspects are the focus of research in the science of the rules, even though it also includes other benefits such as rooting the rule, laying out its concepts, and researching its authority.

Therefore, the most important focus of critical revision in this science is addressing the quality of the wording of the jurisprudential rule in terms of linguistic form and semantics. As such, Criticism in the Science of the Rules of Jurisprudence can be defined as: “examining the jurisprudential rule concerning its wording and verification, and the frameworks that it should be governed by.”

The link between Critical review and the science of the Rules of Jurisprudence lies in Criticism being the mechanism through which the observer stops at the points of inadequacy to identify and address them, which lends the science to renewal.

A Critical Review of the Jurisprudential Rule In Terms Of Its Formulation

In order to achieve the goals of the rule and its characteristics, the rule must be expressed in specific, appropriate words and a particular order (Arrouqi, 2013, p. 351). This can be done by either wording the rule following what jurists have said or by repurposing it to meet the standards of the jurisprudential establishment of rules.
Renewal at the level of wording can take place in one of two ways: either through the linguistic reconstruction of the form of the rule after gaining a thorough understanding of its significance, the [Islamic] legal goals behind setting it, and a scrutinized examination into it; or through the development of new linguistic construction of a significance that has not yet been extracted as a rule but whose widespread application and the induction of the partialities that it entails leading to its approval as a comprehensive meaning, due to which it can be approved as a jurisprudential rule.

When a rule is scrutinized, it indicates that it is tested using scientific standards, regardless of whether the issue is thematic or formal. The three principles—abstraction, constancy or majority, and realism—are used regarding the thematic issues.

Abstraction

This means that the decision must be free of any associations with particular partialities because it demands the creation of a rule. If it is attached to a single partiality, then it is not an abstract ruling and therefore is a partial non-comprehensive ruling that is limited and intransitive, and in this case, it is unfit to be advanced as a jurisprudential rule; because the concept of a rule is based on the comprehensiveness or predominance of the ruling, and several partialities being included within it.

This norm gives the rule for the level of comprehensiveness or predominance in terms of the absorption of its partialities and its ability to be applied to other branches (Arrouqi, 2013, p. 360).

It is not intended here to approve this characteristic as an essential element of the jurisprudential rule; the aim, instead, is to make it a standard for examining the jurisprudential rule, as not all that is contained in the books of rules is a rule, such as Almuqri's book of Rules and Īdāh ul-Masālik by Alwansharsi. A lot of what is recorded as rules is no more than a matter of disagreement in one jurisprudential issue, and only one branch is included. The principle "does expiation pertain to the oath or to perjury," for which only one branch has been mentioned, namely "whoever swears ihaar, i.e., that his wife is unlawful to him, then divorces by ihaar" (Al-Muqri, 2012, 381) (Alwansharsi, 1980, 227), is an example of this. The fact that the principle only pertains to one and only one specific partiality and is not abstracted from it means that it is not elevated to the level of a jurisprudential rule. There are many examples of this in the two books mentioned above and in others, such as the Rules of Ibn Rajab. There is a dire need to conduct studies that turn towards these compilations and scrutinize whatever rules they contain.

Constancy or Majority

Constancy means the connection of the abstract ruling to all its partialities without exception, and the majority is that the rule is connected to most of its partialities due to the deviation of some of its partialities from being classified within it. In terms of intellectual consideration, consistency of a rule is best, but in practice, the majority prevails since every rule is subject to exceptions. The experts have remarked that "for every rule, there is an exception."

The difficulty does not lie in the presence of exceptions to the rule; instead, it is when the exceptions are greater in number in comparison with the branches classified within the rule. Moreover, the rule becomes a subject of consideration if it does not assimilate enough branches to be upheld as a comprehensive ruling.

It was in accordance with this standard that Jalaluddin Assuyuti scrutinized the rule: “whoever precipitates a thing before its time is punished by being deprived of it,” and he mentioned the branches that the jurists classified under it, considering it a comprehensive ruling, and there are three issues: the first: acidifying wine by adding something to it; the second: depriving a killer of inheritance; the third: the contracted slave who is able to pay off his contract delays doing this so that he may still look upon his mistress” (Al-Suyuti, 1990, p. 152).

There are no more than three branches within this rule, whereas there are more than ten exceptions to it, such as the first is that a slave woman who bears her master's child and kills her master is freed, even though this is similar to the problem of the inheritor who kills the person he is to inherit from because she has precipitated her freedom. This is done so that the rule that "a slave woman who bears her master's child is freed by his death" is not broken. The second is that if the slave who has been promised freedom upon their master's death kills their master, they are still freed, even though they have precipitated the matter. The third one is that if the creditor of a deferred debt kills their debtor, correctly speaking, it is permissible. The fourth is that if the beneficiary of a will kills their benefactor: the beneficiary is entitled, correctly speaking, and it is an issue that is not far from that of precipitating inheritance. The fifth is that if a man keeps his wife while being a horrible husband to her to inherit from her: he inherits from her, correctly speaking; if to compel her to initiate divorce: it is enforced, correctly speaking. There are other exceptions. (Al-Suyuti, 1990, p. 152).

Following this, Imam Assuyuti points out that this rule does not in its actuality contain a comprehensive ruling, but one partial ruling instead, which is “a killer is denied inheritance,”; whereby he raises another objection to the rule's scarce branches that he had previously mentioned, concluding that more problems fall outside of the rule than inside. He asserts that the only one to fall into this rule is denying a killer their inheritance; the effective cause in acidifying wine is, not correctly speaking, precipitation. It is polluting the one who receives it, then it is turning on them with pollution; and as for the matter of the contracted slave, it is not from precipitating in any way (Al-Suyuti, 1990, p. 152). Moreover, if the rule only includes one partiality, then it is not comprehensive – instead, it is not a rule, according to the Shaafi'i Discipline, at least.

Realism

A rule must meet the criteria of realism by being applicable to preexisting partialities based on reality. Arruqi (2013) stipulated this standard among the supplementary elements of a rule (p. 376). However, since its absence violates the rule, it is more closely related to a theme element than a supplementary one. Al-Qarafi (1998) stated that Imam Alqaraafi's discussion of the wording "the rule of is the one who is able to own deemed an owner or not" (p. 20) provides insight into this. Further, about the branches that jurists attached to it, he went on to cite these and show that they are unrealistic in terms of their attachment to the ruling: for example, can anyone imagine that just because a person may be able to own forty sheep, they would then be considered to have ownership of them based on their ability to own them prior to having bought them, and according to one of the two opinions, Zakt would therefore be obligatory on them?

Furthermore, if a man is able to marry, then are dowry and alimony obligatory upon him before having asked for the woman's hand in marriage, simply because he is able to have her under the protection of marriage to him, according to one of the two opinions? Moreover, if a person should be able to have a servant or a riding animal, are they considered to have ownership of them, and therefore it is obligatory upon them to pay their dues, according to one of two opinions? This view is far from reality; indeed, no one with the slightest grasp of intellect and jurisprudence could imagine such things, and, therefore, according to Al-Qarafi's (1998) opinion, this cannot ever be considered a [Islamic] legal rule (p. 8).

It is troublesome for the rule's potential to assimilate branches that lack realism in the first place and then jurisprudential reality in the second as it is stated that “is the person who is able to own considered an owner or not." Law is based on text and reality, and its decisions are intended to control how legally bound persons behave in the real world.

Based on this viewpoint, Al-Qarafi (1998) suggests a new formulation of the rule, changing it from "upon whoever applies a reason that necessitates demanding ownership, are they given the ruling of an owner" to "upon whoever applies a reason that necessitates demanding ownership, are they given the ruling of an owner," thus limiting generalization and assimilation to where the feature of realism is achieved. Al-Qarafi (1998) then

deduced from its reality-based concerns to demonstrate the validity of the legal principle, including if the booty has been won, do the Mujāhidīn have a legitimate claim to ownership and division, so are they treated as owners of that or not? (p. 38).

There are two opinions: one is that they own by possession and collection, and that is the discipline of Ashafi'i , and the other is that they do not own except by division, which is the discipline of Malik. A second concern is whether someone who works in lending is considered an owner by appearance or whether they do not own except by division, which is the most common method of ownership (Al-Qarafi, 1998, p. 38).

The Standard of Regulating the Rule with a Binding Restriction

This standard is not mentioned in studies that focus on the jurisprudential establishment of rules, but it is present in the redresses on the rules that are absolute in wording but have limitations in application, so long as those rules do not already be restricted by another rule that governs their generalization. An example is the rule “the prevention of evils is advanced over the promotion of benefits,” as it is generalized in its phrasing, whereby there is no restriction placed upon it of a state of superiority or equality. However, whenever a ruling is set to a state of equality between benefits and evils, many jurists work to restrict it, as superiority is decisive in the matter. Whenever evil is likely, the first consideration is its prevention, while when the benefit is likely, it is advanced.

Arrisuni (2020) recognized this and changed the language of the rule to avoid generalization, changing it to “the prevention of evils is advanced over the promotion of benefits when equal” (p. 191). It is the nature of this restriction to lessen the exceptions applicable to the rule, as the branches beyond the jurisprudential rule, when generalized, are exceptions, whereas, when restricted, the ruling does not include them in the first place for them to be excluded for any reason. This is represented by Assabki in Al-Ashbāhu wan-Naḍāʾir (1991) when he excluded what was likely to bring benefit, given that advancing that is prioritized over the prevention of an expected evil, saying: “and some issues are excluded: the sum of which is that if the occurrence of the benefit is great and the evil has occurred, then the benefit is of first consideration.

From this, the prevention of evils is prioritized over the provision of benefits, even when they are equal. What is excluded from this prioritization of the prevention of evils is the situation of the woman with an irregular period who has forgotten when to begin counting her menses or how long to count them for: it is her responsibility to perform the obligatory prayers in order to protect the reward of prayer, but no safeguard has been established to prevent the evil resulting from praying when on menses, with the same applying to non-obligatory prayers, whereby it is most correct that she is not prevented from praying them, because prayer is an essential mandate of the religion and therefore it is not prohibited – non-obligatory or otherwise” (p. 105). Consequently, although having seniority, the Imam guided the norm toward equilibrium without changing its text, and Arrisuni initiated the critical review.

When the jurisprudential rules are adopted, these criteria are implemented in critical revision, in that the rules are evaluated in light of them. It is also possible to take a reverse approach in which we can use them to examine the comprehensive meanings that incidentally appear in the discourse of jurists and that were not intended to be accepted as rules but are suitable to be categorized among the jurisprudential rules because they meet the predetermined criteria. An example of this is the work of Arrisuni in his compilation “Qawāʿid ul-Maqāsid,” whereby he proceeded to adopt abstract comprehensive jurisprudential phrases as rules of either Jurisprudence or Objectives, either by adjusting them or approving them as they are. For example, he formulated the rule “what there is no evil in is not prohibited by the [Islamic] law” from a phrase of Qudamah (1968), “the [Islamic] law does not set out to prohibit benefits that have no harm in them” (p. 241).

Ibn Qudamah did not intend to set it as a rule so much as confining the meaning comprehensively in a succinct phrase, so the phrase incidentally carries the meaning of a rule of either Jurisprudence or Objectives, whereby it is a comprehensive abstract ruling that has constancy or majority and realism. It is a regulation that allows it to be classified as a rule. So someone aiming at establishment came along and reworded it in the more precise phrase that: “what there is no evil in is not prohibited by the [Islamic] law.” (Arrisuni, 2020, 46).

The rules that Arrisuni (2020) reworded were found readily available from jurists because even if they did not intend for them to be established as rules, the norms of the establishment are still contained within them. These phrases that are essentially rules do not necessarily require change. Arrisuni (2020) cites the rule "pure or likely good and the neutralization of pure or probable ills" as an illustration of this. He states that "this is the benchmark rule that has been articulated in phrasing or meaning by numerous scholars, among them Ibn Al-

Qayyim." (p. 46). Studies that adopt a technique of extracting rules from jurisprudential books can be carried out using this methodology.

A Critical Review of the Jurisprudential Rule In Terms Of the Application of Its Ruling

The practical study of jurisprudential rules is no less important than the theoretical study. The exposition of branches from jurisprudential rules is the aim for which the jurisprudential rulings were abstracted from partial to comprehensive and formulated in succinct linguistic molds ready to be applied to emerging events. In order to achieve its goal, it must adhere to three standards: total and inclusive consideration, the consideration of objectives, and the continuous updating of the branches of jurisprudential rule.

Total and Inclusive Consideration

In old times, jurists were eager for comprehensive rulings. They made them into a comprehensive framework for tangential rules and partialities, so they elevated partial rulings into comprehensive ones that have authority over the branches by identifying varying levels of jurisprudential rules. This was done by distinguishing four comprehensive rules by a judge, Husayn ibn Muhammad Almaruzi Ashafi. They are the rules that cannot be classified under any other rule, even if some singular matters have been excluded from them (Alhamawi, 1985, 51), and they are inclusive of all jurisprudential fields (Albahsin 1998, 130). These rules are: “certainty is not removed by doubt,” “difficulty brings facilitation,” “harm is removed,” and “custom is given arbitration.” Later, Imam Tajuddin Assabki and those that came after him added that “the intention behind them considers matters.” So they are five rules, and any others are inferior to them in the level of abstraction and are regulated by being assessed by them.

By carefully studying the meaning of comprehensiveness and level of abstraction in jurisprudential rules, jurists have distinguished between three levels of the jurisprudential rule. The first one is the level of comprehensive rules. The second is the level of general rules encompassing several jurisprudential fields, such as the rule that “capital punishment is dropped when there are doubts.” They are lower than the comprehensive rules but higher in terms of abstraction than the third level of particular rules. They are particular to certain limited or specific jurisprudential fields, such as the rule that “every carcass is unclean except fish and locusts” (Albahsin 1998, 123).

The general and the particular rules are organized within the comprehensive rules, creating a strong interwoven fabric. They appear as thematic units so that they are preserved from disorder and conflict as they regulate one another. Several examples include the mother rule, i.e., “difficulty brings facilitation,” combining supplementary rules. The rule “if a matter has narrowed, it expands” indicates that difficulty is an effective cause for concession, and “if a matter has expanded, it narrows” shows that if the difficulty is removed, matters go back to the original. The rule “necessities allow the prohibited” means that there is nothing wrong with what is prohibited by [Islamic] law being allowed if necessary, only the permitting of the prohibited is regulated by the extent of the necessity by the rule “necessities are measured by their extent,” and it returns to the original prohibition if the necessity is invalidated by the rule “what is permitted due to justification is invalidated by its loss.” The jurists amend this with the rule “need is given the status of necessity, whether it is general or particular,” as necessities are not the only effective cause for concession, with needs also given the status of a necessity.

Classified within the comprehensive rule, “there should be neither harming nor reciprocating harm,” are other rules, each of which is considered a regulator in some aspect. The rule “harm is removed” means that if harm has happened, then it is obligatory that it be removed, and the least harm possible be sought in its removal as per the rule “harm is driven away as much as is possible.” The occurring harm is not removed with what would best be removed itself due to “harm is not removed by its like (i.e., another, equal harm),” whereas if a lesser evil were to occur, then it could be tolerated, as by the rule “greater harm is removed with a lesser harm.” So, each of these rules covers one of the aspects of the topic and represents a structural unit linked by the same thread, that is, the topic of harm.

If the systematic arrangement and implementation of rules within the comprehensive framework lends jurisprudential rules order, regulation, and lack of conflict and disorder, then the perspective of objectives should regulate them. On the one hand, objectives are a comprehensive standard that jurisprudential rules are regulated by, while on the other, this jurisprudential view on jurists' eagerness for comprehensiveness and giving them authority over any partialities that come under them lays the groundwork for building jurisprudential theories,

considering them the comprehensive and inclusive framework for the rules of jurisprudence that are seamlessly organized within a single jurisprudential topic.

Consideration of Objectives

The discipline of jurisprudential rules is more appropriate from the perspective of objectives if the rules' regularity and application within the overall framework give the rules regularity and discipline and aid in resolving conflict and instability.

Ijtihād, no matter what type it is, does not function in isolation from the objectives of Allah (The Ultimate Legislator), regardless of whether it is *Ijtihād* in understanding a text or in extrapolating [Islamic] legal rulings or in applying them appropriately, as the objectives of Allah are not detached from the process of *Ijtihād* but, in fact, guide it. Imam Ashatibi (1997) (Allah's mercy be upon him) considered these objectives a chief element of the process of *Ijtihād*. The second of two qualifying conditions for *Ijtihād*, saying: "the level of *Ijtihād* is for whoever holds two characteristics: one of which is understanding the objectives of [Islamic] law in their perfection, and the second is the ability to extrapolate based on their understanding into them [i.e., the objectives]." (p. 41).

The need for the Objectives view is highlighted in Applied *Ijtihād*, where the objectives of Allah are generally assigned with the rulings. The one is making *Ijtihād* usually or often needs little trouble perceiving them when understanding a text or extrapolating a ruling. In contrast, in applying the [Islamic] legal ruling, they need to perceive the comprehensive and partial objectives for [Islamic] legal rulings, a balance between different conflicting benefits, and look into the consequences of applying it so that they do not contradict the objectives of Allah in examining the event. In order to prevent partial rulings from conflicting with Allah's objectives, the Objectives view, when applying rulings, focuses primarily on three aspects: first, considering the consequences of matters; second, considering the principle of removing strait; and third, balancing between disparate benefits and evils.

Alansarri (2010) states that Considering the consequence as a comprehensive principle requires considering it when applying the ruling to the action in a manner appropriate to its upcoming expected outcome" (p. 428). This consideration examines outcomes and compares them with [Islamic] legally approved objectives so that what is in contradiction with them is refuted and annulled, and what is in accordance with them is accepted and considered. The Malikis upheld this principle in their explanation of the jurisprudential branches based on the notion that "certainty is not removed by doubt": in the case of "whoever is certain of ablution and doubts the occurrence of what would invalidate it before beginning prayer," ((Sahnun 1994, p. 14). They see that the person must repeat ablution in accordance with the principle of the preservation of responsibility towards prayer, and they have only fulfilled this responsibility if they are certain of their purity.

This is in disagreement with the majority of jurists that think that it is not necessary to repeat ablution in adherence to the principle of purity and in the annulment of the doubt of the occurrence of what would invalidate it (Alkasani 1982, p. 140; Almawardi, 1999,p.207; Ibn Qudamah, 1998, p. 144). Each discipline has implemented the rule that 'certainty is not removed by doubt' differently from the other. Only the Malikis apply it based on what the principle of considering the consequence in worship dictates to avert the evil of taking worship lightly and fulfill the benefit of preserving it [worship].

Even if the majority of jurists pay attention to purity by annulling doubt of it, attention to prayer is prioritized, given that it is an objective. Imam Al-Qarafi explains that 'purity comes under means, prayer comes under objectives, and the consensus is that means are lesser ranking than objectives, so attention to prayer - and annulling what is doubtful is its exonerating cause – is prioritized over attention to purity and annulling the occurrence of what would invalidate it (Al-Qarafi, 1998, p. 20).

The same thing shows in Maliki's exposition of the branch of doubt in an oath, which is based on what is necessitated by considering the consequence of preventing the trivialization of oaths. This is the case of someone who makes an oath then doubts whether he did, or to what purpose it was, and is he, therefore, to free a slave or get divorced or give charity. The Malikis hold the opinion, and he also quoted Sahnun (1994) that the person is bound by whatever he has doubts about, as certainty is the preservation of responsibility towards oaths and the doubt is in the exonerating cause, so he has not fulfilled his responsibility unless he has fulfilled all the oaths.

Ibn Rajab (1999) states that this is in disagreement with the majority of jurists, who do not bind him to any of the requirements of any oaths, considering that the origin of the matter is that he is clear of responsibility from the requirement of each oath. Further, they also wanted to prevent anyone from violating the [Islamic] law by claiming doubt in the number of divorce oaths that the larger number may charge him.

As for "removing strait," it is a principle that is considered in the principle of legal commission, and all concessions are conditional to it, with strait being anything that leads to excess hardship in self or money, immediately or consequentially, and removing it is the eliminating of what leads to these hardships (Ibn Humaid 1981, p. 48). Attaining effective cause of rules in branches is under the condition that it does not contradict the principle of comprehensiveness, and the principle of removing strait is a comprehensiveness that has authority over the approach to the application of jurisprudential rules, whereby the jurisprudential rule "certainty is not removed by doubt," despite being one of the five comprehensive rules, is governed by this principle. This is evidenced by the jurists not requiring the obsessive/compulsive to build on certainty in what they doubt as to the number of Rak'as or Tawaaf rounds because of what strait may rise from it due to their excessively haunting doubt. Given that this is a devilish insinuation, the best course of action is to cut it off (Sahnun, 1994, p. 22; Alkasani, 1982, p. 33).

This justification is also present in the issue of a man who knows that he has a foster sister, but there is confusion about her identity among the women of a large region. It is not required to avoid marrying any woman from that region, as opposed to if the confusion was between the women of a village or a limited number of women, in which case avoidance is required due to the presumption of continuity of the principle of prohibition in marriage. The difference in the lack of presumption of continuity in the first instance is the strait occurring from abundance and the fear that the door of marriage will be blocked on him. Equally, knowing that the money of this life has most certainly been mixed in Harām does not require abandoning buying and eating; otherwise, that would be strait, and there is no strait in the religion" (Al-Gharali, 1982, 103).

The third principle is drawing a balance between benefits, prioritizing the greatest of them and evils, and preventing the most harmful. Falling within this is what Al-Kasani mentions in Al-Badā'i of Imam Abu Hanifah's apology for adhering to certainty in the matter of seeking the Qiblah for whoever does not know its direction and instead being content with the most likely direction (1982, 132-133). The principle here is the preservation of responsibility towards prayer, and that responsibility is not fulfilled until the prayer is performed in the mandated direction, so it is required that the prayer be performed in the directions that are thought to be the Qiblah possibly. However, implementing certainty leads to bigger evil which is three prayers taking place in other than the mandated direction, and so the Imam abandoned the presumption of continuity of the principle due to the predominance of evil over the benefit whose achievement was desired.

In addition, consideration of achieving the effective cause of rules within the Objectives perspective adds methodological importance, i.e., the achievement of the integrative dimension and inclusive nature of applied *Ijtihād*. This is because no matter how comprehensive the rules are considered in terms of abstraction and generality, they are partial in consideration of the comprehensivities that have authority over them. The key principle of *Ijtihād* is not to be trapped by partialities in such a way that comprehensivities are abandoned and made to contradict one another, and partialities are not suspended in such a way that leads to deviating from the constraints of legal commission.

The Continuous Updating Of the Branches of Jurisprudential Rule

After organizing branches and preserving them in a single body, the main objective of jurisprudential establishment is to illustrate rulings of applications that have been updated from what jurists have outlined before. Imam Assuyuti says, "know that the specialty of similarities and equivalences is great; with it, one gains insight into the truths of jurisprudence and its perceptions, source references, and secrets, becomes proficient in understanding it and evoking it and becomes able to perform analogical extension and exposition and to know the rulings of issues that have not been noted and incidents and events that do not expire over time. This is why some of our colleagues said that jurisprudence knows the equivalences" (Alsuyuti, 1983, 6). What is said of the specialty of similarities and equivalences can be said of the science of the Rules of Jurisprudence, given that it (the specialty of similarities and equivalences) is one of the specialties of the science.

Jurisprudential rules are the comprehensive rulings that are ready to be applied to emerging events due to the existence of relevancy tying the comprehensive ruling and the event; and the authority of these rules over the branches. They add both a methodological value and a thematic value. The former relates to the regulation of branches and preserving them from contradiction, especially if verifying them falls within the comprehensive

inclusive framework in the manner previously illustrated, and the latter to the determination of the [Islamic] legal framework for jurisprudential applications.

To speak of jurisprudential applications is to speak of the [Islamic] legal ruling crossing into reality to find its place in it through the process of *Ijtihād*, which is as constant as life itself. Imam Ashatibi established this by saying: "*Ijtihād* is of two kinds: the first cannot be discontinued until the principle of legal commission is discontinued, which is until the Last Day, and the second can be discontinued before the end of this life. As for the first, it is the *Ijtihād* that is related to achieving the effective cause, and it is the one in which there is no discord among the Ummah in accepting it, meaning: that the ruling is stable in its [Islamic] legal perception, but consideration remains in assigning its place" (ALshatibi, 1997, 11). Considering that jurisprudential rules are comprehensive rulings ready for application, the vitality of the science of the Rules of Jurisprudence does not expire, nor does it stop.

On these grounds, the problem of renewing the science of the Rules of Jurisprudence should not be raised in its branching aspect due to the constant interaction between its comprehensive rulings and the emerging application. This is evidenced by the reliance of the research projects of the Journal of the Islamic Fiqh Council upon jurisprudential rules in ruling upon emerging matters. However, they found space for them in several rules, such as the rule of certainty is not removed by doubt in the matter of brain death. It is still doubtful whether it is considered an actual death. Also, the ruling of preventing doctors from taking any action upon the body of a human being while their life is still in doubt according to the rule (Arduğdu, 1987, 623), (Tawfiq alWai, 1987, 710). The same can be observed in the research projects of the Symposium on Implementing Jurisprudential Rules on Medical Issues, which addressed in a number of research papers the jurisprudential rules and regulations that affect the rulings of the medical profession and medical cases.

This is in addition to recent studies of current implementations of jurisprudential rules, such as: "The theory of predominant assumption: a practical rooting study," which works the rules of assumption in several issues, including imported meats and DNA.

The rule "al-daf awal min al-raf" which can be translated as "prevention is better than cure," and its jurisprudential applications have developed contemporary branches such as premarital medical examination and the use of desalination water and sewage (Jaradan, 2013, 189).

The difficulty lies in the efforts exerted in exposing modern applications based on jurisprudential rules remain individual efforts in separate studies. There is a need to collect them so they may proceed in the same direction as the landmark of jurisprudential rules. Further, the jurisprudential lectures in the science of the Rules of Jurisprudence remain far from what has emerged from the current applications, and they have not been integrated, so we have moved away from the aim outlined for it.

Conclusion

The science of the Rules of Jurisprudence is the field of [Islamic] legal knowledge that is most evolving and renewing in current times, whereby the rules have known a lot of redresses and renewal, especially those concerning the rules of objectives. Regulating the rule by scientific standards lessens the exceptions occurring, increasing their strength in authority and constancy in regulating jurisprudential branches. The standards of controlling the jurisprudential rules are divided into two parts, (1) the standards of controlling of formulation of the rule and (2) the standards of realizing the norms of the rule. As for the standards of controlling of formulation of the rule, they are the standard of abstraction, the standard of regularity or majority, the standard of realism, and the standard of adjusting the rule with the necessary restriction. Further, what has been recorded as jurisprudential rules by the senior [jurists] in the compilations of the rules of jurisprudence needs reconsideration, and these compilations as a whole represent fertile grounds for establishing critical studies for the progression of the science in its path of renewal. The science of the Rules of Jurisprudence is a science that parallels the science of the Principles of Jurisprudence in terms of theorizing; both of them theorize for Islamic Jurisprudence. Only the science of the Rules of Jurisprudence is not of the Science of Instrument but one of the Sciences of Objective, for it is the product of the comprehensive rulings that are approved in-text or the consequence of jurisprudential partialities. Critical revision has accompanied the science of the Rules of Jurisprudence on several levels, from building the rule regarding wording, amendment, and regulation, to verifying it within a comprehensive, inclusive framework, to modernizing its branches. However, the comprehensive view is the most conducive to study and research in accordance with the approach to building theory on units of jurisprudential rules. The benefit is derived from jurists' approach in critical revision in the

science of the Rules of Jurisprudence in the studies that adopt the extraction and collection of rules from the books of jurisprudence because it puts in front of the researcher the standards for examining the formulations that could potentially approve jurisprudential rules. Finally, the science of the Rules of Jurisprudence is yet fertile ground for jurisprudential studies concerning establishment and theorization, especially concerning its objective aspect. The efforts are still going on in establishing objectives and rules and extracting them from the depths of jurisprudential compilations, and perhaps the compilation of Arrisuni's (2020) "Al-Qawā'id ul-Maqāsidiyyah" is the most significant evidence of this.

Recommendations

As this research is one of its first building blocks, which has revealed the standards of criticism to control the formulation of the jurisprudential rule, there should be an invitation and call to build a theory of criticism in the science of jurisprudential rules integrated with elements. Contemporary jurisprudential studies that turn to research the contemporary applications of jurisprudential rules are considered individual efforts that lack screening and verification in accordance with critical revision and the lack also being annexed to the branches approved by jurists in a study that brings them together. Further, it is necessary to reformulate the jurisprudential lecture on the subject of the rules of jurisprudence due to what has been achieved in it of modernity, redresses, and methodological and scientific additions on the one hand, and, on the other, due to what applications and branches extracted upon them that can be annexed to the rule have been renewed, so that recent compilations in the science of the Rules of Jurisprudence can appear in the style of their time. In conclusion, I hope this research study will serve as a foundation for future research on the science of the Rules of Jurisprudence, bringing researchers' attention to the theoretical underpinnings that might serve as a basis for future studies in this field.

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