

## Majalla - Codification of the Norms of Islamic Law

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### ABSTRACT

The article deals with the creation of a code of civil legislation of the Ottoman Empire. Majalla is the first successful large-scale codification of Islamic law, occurring during the Tanzimat period in the Ottoman Empire. It is one of the examples of the successful codification of Islamic law, which allows answering questions about the compatibility of democratic and Muslim principles, the possibility of building a rule of law state within the framework of the Islamic justice system, and the relationship between the divine and legal nature of the norms of Islamic law.

**Keywords:** Majalla, mujtahid, fiqh, madhhab, fatwas, tanzimat, mushaf, sharia.

“We have not yet made progress in learning the Arabic language. Now the Arab countries have switched to a modern language. Secondly, we have many unique manuscripts, but we have not yet started translating them. Therefore, we must convey to the youth, the people in a modern and understandable language. In the countries of the Muslim world there are large libraries, centers - they cause admiration,” said the President of the Republic of Uzbekistan Sh. Mirziyoyev.

The word Majalla is of Arabic origin and in translation means "pages containing wisdom." This short title of the Ottoman Civil Code is an abbreviation of the full title "Majalla-al-Ahkam al Adliya", which in translation sounds like "a book of judgments about justice" or "journal of court decisions". Majalla is a compilation of legal conclusions derived from the Sharia and contained in books on Islamic law, the works of legal scholars - mujtahids concerning the law of obligations, property rights and procedural law, into one legislative act. It went down in history as the most successful experience of adopting a civil code based on the norms of Islamic law. Comparing this codification with the experience of Roman jurists, the chairman of the commission that prepared Majalla. In 1868, by decree of the Sultan for the preparation of the civil code, the Commission was approved and began its work under the leadership of Ahmet Cevdet Pasha. The commission consisted of fourteen experts in the field of civil law authoritative in the Ottoman Empire, whose names were indicated on each book that was part of the Majalla. All members of the Commission were well known among scientists and political leaders of the country, many of them were engaged in teaching activities and were the authors of legal works. The process of developing and discussing the draft codification was not easy. The legislative process caused a lot of discussion and controversy among specialists in the field of Islamic civil law.

An important point in studying the process of developing Majalla and its legitimization is to understand which method or rule allows one to choose one norm from a variety of acceptable opinions of scientists, legitimize it and ensure state sanction. When compiling the Majalla, as

well as any other codification of Islamic law, the rule “the order of the imam nullifies the disagreement” or “the order of the imam regarding what is permissible is mandatory” was in effect. Majalla is an act that does not repeat any of the codes of laws that exist today. This act incorporated numerous norms and institutions of Islamic law relating to civil, commercial, procedural law and obligations. That is why researchers characterize Majalla as a private legal act. Despite the fact that Majalla was the first such codification in the history of Islamic law, the norms that entered into its content were not new. The norms of Majalla were formed in the course of systematization of part of the norms of Islamic law, which had existed by that time for a long time. The word "Majalla" itself does not actually carry the meaning of a legal act or law. As mentioned above, it refers to a collection or book that collects information on a specific topic.

Majalla includes a preamble, 16 books and consists of 1851 articles. In its structure, Majalla resembles modern legal acts, its norms are framed in articles, since this simplifies the process of referring to them and makes it possible to refer to them when making a decision.

Researchers highlight several features regarding the structure and content of the Ottoman Civil Code. First of all, the feature of Majalla is its preamble. It includes the fundamental principles of fiqh, clarifying subsequent norms and guiding law enforcement. As L.R. Syukiyainen, it is the principles of fiqh, formulated back in the Middle Ages, "represent a legal expression, the formulation of the religious and ethical principles of Sharia" .

The sources codified by Majalla are the books on Islamic law of the Hanafi madhhab and their interpretations, as well as the fatwas of this legal school. This once again indicates that Majalla is not the result of the reception of European legislation or the codifications of Roman jurists. Another feature of Majalla is that it allowed contradictions to popular opinions in the madhhab, and it legitimized opinions that were unpopular and unapproved in the madhhab on certain issues. For example, Article 357 of the Majalla provides for the right of the misguided party to terminate an overpriced sale and purchase agreement, which contradicts the most popular opinion of the Hanafi school adopted in the work of Zahir al-Rivaya that an overpriced price is not a reason for terminating the contract.

Unlike the Civil Code in its classical presentation, Majalla does not contain the norms of family and inheritance law, but at the same time it incorporates procedural norms, which, as a rule, is also not characteristic of acts of substantive law.

Majalla was not an act of exclusively substantive law. One of her books was devoted to the rules of procedural law. The following reasons for the inclusion of procedural norms in the code can be singled out. During the development of Majalla, the norms of procedural law in the Ottoman Empire were not yet sufficiently developed and were not adopted at the state level.

Therefore, the Commission also included procedural rules in it. Thus, the compilers of the Majalla took care not only of the quality of the adopted norms, but also of how justice would be administered with their application. Majalla includes the rules of procedural law, which should not have been covered by the content of a substantive legal act, but were included in its content due to the strong need to regulate the administration of justice at that time. It must be said that the decision to include them in the Majalla was pragmatic on the part of the developers, showed their desire to carry out codification that meets the needs of the time and corresponds to the legal realities of that society. Despite the fact that Majalla is a complex

private legal act, it does not regulate the issues of family law, marriage, divorce and inheritance. Family law, due to the special sacredness of the family institution, remains the most conservative branch of Islamic law and continues to be directly regulated by Sharia law. The compilers of Majalla paid special attention to traditions and customs when preparing the code. The position on traditions and customs was reflected in several articles of Majalla. For example, Article 45 states that custom is equated with divine law. In addition, Article 43 of the Majalla stated that "generally recognized custom is taken as the basis for deciding on punishment". Thus, the reformers radically reconsidered the place and role played by customs in Islamic legal doctrine, elevating its status to the two most important sources of Sharia, the Koran and the Sunnah, which, of course, looked bold and innovative in this era.

Majalla's books cover various aspects of private legal relations, contracts, labor activity, and procedural rules. Each book is devoted to a separate institution or sub-branch of law and is divided into chapters. Majalla is the first successful large-scale codification of Islamic law, occurring during the Tanzimat period in the Ottoman Empire. It is one example of the successful codification of Islamic law. The topic is interesting for study, since it allows answering questions about the compatibility of democratic and Muslim principles, the possibility of building a rule of law state within the framework of the Islamic justice system, and the relationship between the divine and legal nature of the norms of Islamic law. The topic of codification is popular among Muslim jurists. Quite a lot of research has been carried out on the history of Majalla, as a successful experience in the codification of Islamic law. Turkish and Arabic authors analyze the prerequisites and consequences of the codification carried out, as well as the code itself. The topic is also quite popular among European researchers and is analyzed from the standpoint of the possibilities of building a rule of law state in the conditions of the Muslim system. The issue of codification in Islamic law is not an innovation of modern times. The phenomenon of codification in Islamic law appeared along with the advent of statehood among Muslims. The Holy Quran, the main source of Sharia, can be considered the earliest codification in the Muslim tradition, since even during the life of the Prophet Muhammad (SAW) it existed in a memorized form in the minds of his closest followers and in the form of records of individual verses on stones and tablets.

Subsequently, the collection of the Koran was compiled into a single book - the Mushaf began under the first Caliph Abu Bakr. The codification of the Qur'an continued under Caliph Uthman, who distributed copies of the codified Qur'an to other Muslim regions. In parallel with the codification of the Qur'an, the process of collecting the sunnah (actions and sayings of Muhammad) also took place.

At first, the Sunnah was codified at the non-state level, under Caliph Umar Abdulaziz (717-720), the scholars Az-Zuhri and Abu Bakr in Hazm created collections of the Sunnah. Then there was an attempt at codification and unification under the Abbasid ruler Abu Jafar (754-757), who proposed to Imam Malik to make his well-known work on fiqh "Al-Muwatta" official and obligatory and apply it only when making decisions. However, emphasizing the richness of Islamic law in the diversity of his opinions, Imam Malik did not approve of this initiative of the caliph and the judges continued to refer to books on fiqh and branches in their activities. Subsequently, the Ottoman ruler Suleiman Kanuni carried out a large-scale codification of fiqh on the basis of the fundamental Hanafi works, during which the book *Multakal-abkhur* was published by the scholar Ibrahim bin Muhammad Khalyabi.

The foregoing testifies to the existence of a tradition of codification in Islamic law from the

beginning of its existence. It can be said that Muslims over time codified the main sources on the scale that the time required. Thus, we can draw some conclusions about the role and significance of the Majalla Civil Code of the Ottoman Empire.

The codification activity that unfolded at the end of the 19th century was aimed at overcoming the contradictions in law enforcement that developed against the background of the application of various legal norms, ensuring legal stability and unity of law enforcement, strengthening the authority of the central government and ensuring political unity through the development of legal science. Majalla, being the first codification prepared on the basis of Islamic law, is of value not only for the law of the Ottoman Empire, but also for the history of Islamic law in general. Majalla is a source of legislation, distinguished by the quality of legal technique and style of presentation, responding to the needs of its time and based on strictly defined principles. The Code not only demonstrated the practicality and dynamism of a legal system with a history of fourteen centuries, but also became the basis for some modern legal acts.

As a rule, any phenomenon should be evaluated only from the point of view of the conditions in which it took place. Accordingly, even if Majalla contains detailed norms and regulates in detail the powers of members of the judiciary, which does not fully comply with today's standards of legal technique and the principles of civil law and becomes, it would seem, less perfect because of this, it must be remembered that in this form it most corresponded to realities the time it was taken. When making Majalla, the authors were primarily guided by pragmatic goals that take into account the needs of the era.

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