

The Nature and Functions of Urban Jurisprudence as a Branch of Islamic Civilization Sciences

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Abstract

"Urban Jurisprudence" or "Construction Jurisprudence" is a collection of legal provisions, issues, and rules that directly relate to construction, urban development, and land development, including buildings and cities. It also explains legal provisions related to roads, residential areas, green spaces, commercial areas, industrial zones, and agricultural lands. In other words, Urban Jurisprudence refers to the jurisprudential examination of individual and social behaviors related to construction and urban development, and this jurisprudential examination is the application of evidence. This article, employing a descriptive-analytical method, aims to identify an overlooked aspect of Islamic jurisprudence and answer the question: What is the nature, subject, method, sources, background, and function of Urban Jurisprudence? The research findings indicate that the subject of Urban Jurisprudence is the obligatory actions at the individual and social levels in the field of construction. The methodology of Urban Jurisprudence is sometimes foundational, sometimes prescriptive, and sometimes a combination of both, requiring a more comprehensive jurisprudential framework than existing ones. Moreover, to clarify the issues and phenomena of Urban Jurisprudence, there is a need for humanities and engineering sciences. "Urban Jurisprudence," with its various subcategories, can be considered a subset of "Legal Provisions" in the traditional map of Imamite jurisprudence (acts of worship, transactions, and rulings) and in the proposed model by Martyr Sadr in public conduct.

Keywords: Urban, Construction, Urban Jurisprudence, Construction Jurisprudence, Islamic Civilization.

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Introduction

The evolution and advancement of human societies have always been accompanied by the invention and establishment of laws and regulations to organize and regulate societal affairs. From ancient times to the present, this process has been continuously ongoing, especially in Islamic societies, relying on specific religious concepts and rules known as Urban Jurisprudence. Urban Jurisprudence, as a vital branch of Islamic jurisprudence, is engaged in examining and interpreting laws and regulations related to construction, urban development, urban planning, and other issues related to the development of Muslim communities. In fact, Urban Jurisprudence, as a branch of jurisprudence, is used to establish wisdom and justice in matters related to urban and social development. Urban Jurisprudence focuses primarily on examining laws and regulations related to construction, urban development, resource management, and the development of Islamic societies. This branch of jurisprudence addresses issues such as social, economic, environmental, and technological aspects related to the development and advancement of Muslim communities. The background of Urban Jurisprudence dates back to the early days of Islam, as wisdom and regulations related to construction, urban development, and urban management are also found in historical and religious documents from pre-Islamic times. From that time until today, Urban Jurisprudence has been recognized as a vital element in the development of Islamic communities and has played a significant role in shaping and regulating societal affairs. This article aims to delve deeper into the concepts of this branch of Islamic civilization sciences, given the high importance of Urban Jurisprudence in the social life of Islamic communities, and to explore its role and significance in furthering social development and progress. This analysis will be conducted through the interpretation of laws and regulations related to construction, urban development, and other issues related to the development and progress of Islamic communities in the Islamic jurisprudential heritage. This article, using a descriptive-analytical method, seeks to identify an overlooked aspect of Islamic jurisprudence and answer the question: What is the nature, subject, method, sources, background, and function of Urban Jurisprudence? The research findings indicate that the subject of Urban Jurisprudence is the obligatory actions at the individual and social levels in the field of construction. The methodology of Urban Jurisprudence is sometimes foundational, sometimes prescriptive, and sometimes a combination of both, requiring a more comprehensive jurisprudential framework than existing ones. Moreover, to clarify the issues and phenomena of Urban Jurisprudence, there is a need for humanities and engineering sciences. "Urban Jurisprudence," with its various subcategories, can be considered a subset of "Legal Provisions" in the traditional map of Imamite jurisprudence (acts of worship, transactions, and

rulings) and in the proposed model by Martyr Sadr in public conduct. Despite being a general and widely beneficial subject, "Urban Jurisprudence" has received less attention in the works of jurists of different Islamic schools. Through research and exploration in libraries and databases, it was found that there is no comprehensive source such as a book, thesis, or article with the title of this book. Therefore, the subject of this research is novel and fresh. In contemporary times, the issue of "Urban Jurisprudence" has attracted the attention of researchers, especially Arab scholars, who have presented valuable works to the research community. The description of these works is as follows:

1) "Urban Jurisprudence: Architecture and Society and State in Islamic Civilization" by Dr. Khalid Azab, the author of this work discusses various issues of Urban Jurisprudence in eight chapters.

2) "Construction and Its Rules in Islamic Jurisprudence," a doctoral dissertation by Mohammed Ibrahim Al-Fayez at Mohammed Bin Saud University, which examines obligatory construction such as mosques, caravanserais, bridges, dams, clinics and hospitals, nursing homes, orphanages, airports, government buildings, libraries, factories, printing houses, ports, radar and television stations, missile launch sites, and more.

3) "Islamic Urban Jurisprudence through the Ottoman Algerian Archives based on the Sultan's Orders and the Contracts of Sharia Courts," written by Dr. Mustafa Ahmed bin Hamoush, the author of this book explains and elaborates on common terms in these documents related to Urban Jurisprudence based on the documents available in the special archive of the Ottoman era in Algeria.

4) The book "Islamic Architecture Jurisprudence" by Dr. Khalid Azab, which includes three chapters entitled: The Role of Jurisprudence in the Division of Construction, the Role of Jurisprudence in the Construction of Commercial Areas, the Role of Jurisprudence in the Construction of Residential Areas, and a conclusion explaining urban jurisprudential terms.

5) "The Essence of Islamic Civilization: Studies in Urban Jurisprudence" by Dr. Mustafa bin Hamoush, which is a collection of the author's articles in the field of Urban Jurisprudence.

6) "Abadi's Urban Jurisprudence" by Mohammed Abdul Sattar Osman, in the first volume, examines the jurisprudential heritage of the Abadi school related to Urban Jurisprudence such as the Book of Qasamah Farsta'i and the Comprehensive Book of Ibn Ja'far, and in the second volume, it extensively examines the terms related to Urban Jurisprudence in alphabetical order.

1. Conceptualization of "Urban"

"Urban" means settlement (Dehkhoda, 1998, Vol. 11, p. 16350, entry: Urban) and construction, the opposite of ruin (Ibn Duraid, 1987, Vol. 2, p. 773).

"Amareh" and "Urban" are synonymous in language. In the terminology of jurists, "Urban" is used in the same sense as the literal meaning, referring to "settlements and inhabited places." Some Imami jurists define "Urban," which is used in the context of acquisition and revival of estates, as follows: residential houses and their surroundings are "Urban," and the houses of cities, villages, and desert dwellers are all considered "Urban" settlements (Karki, 1993, Vol. 6, p. 142). Shaheed Thani writes in explaining "Urban": "Urban is inhabited residences and what is close to them" (Shaheed Thani, 2004, Vol. 12, p. 498). Sunni jurists also define "Urban" as "urbanization of cities and villages" (Ibn Najim Misri, n.d., Vol. 2, p. 214). Another term, "Civil Engineering," which is widely used today, is also another term for "Urban," "Civil Engineering" is one of the branches of engineering that deals with the design, maintenance, and construction of artificial structures including roads, bridges, canals, dams, and buildings. In Islamic heritage, there is another term called "Science of Urbanism" attributed to "Ibn Khaldun Tunisian." In the introduction to his book "Muqaddimah," which is almost an independent book and is the preface to his history book, he writes: "History is one of the common arts among nations that both ordinary people and kings are eager to know, and in understanding and comprehending it, all people are equal" (Ibn Khaldun, 2004, Vol. 1, p. 13). He continues that history has two dimensions: the apparent and the hidden. The apparent dimension is about: narrating stories about the past and how their situations change, and states emerge and engage in exploration and urbanization and how they extinguish after a while and give way to others. But he himself discovered another dimension of events and historical phenomena that did not receive attention and understanding from historians, and he called it his new science, "Science of Urbanism." In his view, history in the hidden dimension is about: contemplation, investigation, and precise causality about events and their principles, as well as precise knowledge of how events occur and the reasons for their occurrence. Due to the second dimension, Ibn Khaldun considers history as part of wisdom and believes: history springs from wisdom and deserves to be considered among its sciences (Ibn Khaldun, 2004, Vol. 1, p. 46-49). Ibn Khaldun defines "Urban" as follows: "Urbanism is settling and exchanging in a city or village for human life with families and meeting needs, and from this, urbanism includes nomadic life... and urban life." (Ibn Khaldun, 2004, Vol. 1, p. 53). In this definition, he equates urbanism with social cohesion and formation, where people interact with each other to meet their needs and form a unified society. He has also stated their equality in many other phrases. Perhaps the roots of today's "philosophy of history" or "sociology" can be found in "Ibn Khaldun's Science of Urbanism."

2. Nature of "Urban Jurisprudence"

Perhaps "Urban Jurisprudence" may seem like a novel and unfamiliar term; however, it is not actually a new term, and its rulings and issues can be found in general jurisprudential books. Its Persian equivalent can be rendered as "Construction Jurisprudence," and it can be defined as follows: a collection of jurisprudential rulings, issues, and rules directly related to construction, urbanization, and land development, buildings, and cities, as well as jurisprudential rulings regarding roads, residential areas, green spaces, commercial areas, industrial zones, and agricultural lands. In other words, Urban Jurisprudence is addressing individual and social behaviors related to construction and urbanization, and this jurisprudential addressing is the same as referring to evidence and deducing rulings appropriate to each subject and based on evidence. Also, in the definition of Urban Jurisprudence, it has been said: "Urban Jurisprudence is a collection of jurisprudential rules that have accumulated over time as a result of jurisprudential issues arising from the urban movement in society, which the jurists have answered, and these rules serve as a reference for authorities, society, and specialized bodies of engineers and planners who resort to them when necessary" (Qadid, 2015, p. 115): Urban Jurisprudence is a set of jurisprudential principles and rules that have accumulated over time, these jurisprudential issues and questions are the result of the construction movement in society to which jurists have responded, these laws and regulations serve as a benchmark for the state and society and expert bodies such as architects and planners who make decisions based on them in case of disputes. Dr. Khalid Azab writes in the definition of "Architecture Jurisprudence": The purpose of Architecture Jurisprudence is a set of rules and regulations that have been formed in connection with the movement and construction movement, and as a result of the interaction of society and their tendency towards settlement, and these rules have arisen from the questions that jurists have answered through jurisprudential deduction, and these rulings have accumulated over time to the extent that they have created a legal framework for the concept of urbanization in society that the government and people adhered to. Therefore, there are general principles and elements in Urban Jurisprudence that are based on "Shariah policy" (Azab, 2013, p. 12).

3. Subject Matter of "Urban Jurisprudence"

In response to the question of what the subject matter of Urban Jurisprudence is, it must be noted that according to the traditional viewpoint, the subject of jurisprudence is an obligatory act or an external subject in the sense that a legal ruling applies to it (Fayyaz, 1992, p. 326). The obligated individual to whom the rulings apply is sometimes an individual and sometimes society. Therefore,

in addition to individual obligations, there are obligations that the obligated individual owes to society as a whole. These obligations, and the rewards and punishments associated with them, are based on societal obedience or disobedience, not individual obedience or disobedience. Social justice and social injustice are referred to in some verses of the Quran as societal obligations (Rabbani, 2017, p. 85).

Given this explanation, the subject matter of Urban Jurisprudence encompasses obligated actions at both the individual and societal levels in the realm of construction. However, since Urban Jurisprudence addresses jurisprudential rulings related to roads, residential areas, green spaces, commercial areas, industrial zones, and agricultural lands, its subject matter can also be external.

But in the modern jurisprudential perspective, Urban Jurisprudence is a new jurisprudence and an associated jurisprudence, and associated jurisprudences can be classified into four major categories: "Jurisprudence of Existences," "Jurisprudence of Phenomena," "Jurisprudence of Institutions," and "Jurisprudence of Domains." The importance of these four categories lies in their ability to cover all contemporary human issues with their specific perspectives.

"Jurisprudence of Existences" (entities and beings) such as jurisprudence of humans, jurisprudence of animals, jurisprudence of land, etc., refers to entities and beings that deserve jurisprudential consideration regarding their surrounding behaviors, which are sometimes significant and substantial. For example, "Jurisprudence of Humans" presents numerous contemporary issues that are relevant to the evolving needs and relations of contemporary humans. "Human Rights Jurisprudence" can be discussed under this title. Or if "Jurisprudence of Land" is established, many major issues related to land, such as environmental issues like ecological balance, greenhouse gases, energy issues, and the relationship of land facilities with human generations, can be addressed.

"Jurisprudence of Phenomena" is concerned with matters characterized by the qualities of being "occasional and incidental to human life" and "evolving over time." Social phenomena (such as various social harms) fall within the scope of this jurisprudence. Unlike entities, their formation results from various factors. Therefore, in the Jurisprudence of Phenomena, our attention will also be directed to their roots. In this jurisprudence, attention is paid to three aspects of rulings: "Behaviors conceivable toward the phenomena themselves," "Behaviors conceivable toward the roots of the emergence of these phenomena," and "Behaviors in the interactive-exchange situation among the phenomena."

"Jurisprudence of Institutions and Entities": Topics such as establishing organizations, strengthening or weakening organizations, maintaining organizational order and structure, organizational and institutional

responsibilities, criticism within organizations, organizational bankruptcy, etc., are all encompassed within this jurisprudence. State Jurisprudence can also be discussed within Jurisprudence of Institutions, as well as within Jurisprudence of Domains; that is, political jurisprudence (jurisprudence of political domains).

"Jurisprudence of Domains" (jurisprudence of knowledge domains) is a jurisprudence that addresses domains and areas where knowledge has been formed, such as economic jurisprudence, political jurisprudence, medical jurisprudence, etc.

With this explanation, it becomes clear that Urban Jurisprudence can be discussed under the category of Jurisprudence of Existences on one hand and under the category of Jurisprudence of Phenomena on the other hand. According to this perspective, the subject matter of Urban Jurisprudence is the same social or existential phenomenon in human society that deals with urbanization and construction.

4. Methodology of Urban Jurisprudence

The aim of methodology in Urban Jurisprudence is to identify the jurisprudential inference method in the field of Urban Jurisprudence. The inference method in Urban Jurisprudence is the same as the traditional jurisprudential method and relies on existing jurisprudential principles; however, there is a need to supplement the method in Urban Jurisprudence. In other words, existing jurisprudential principles and the traditional jurisprudential method are not sufficient for Urban Jurisprudence, although they are necessary.

Some jurists believe that in response to emerging issues, a jurist needs generalities and practical principles, and there is no doubt about this. However, a new approach must be taken, and other dimensions of jurisprudence must be extracted from the realm of narrations; in other words, there are still unknown and undiscovered jurisprudential rules that can be created. Therefore, in emerging issues, there is a need to discover new jurisprudential rules. Also, from the perspective of the principles of jurisprudence, new rules and principles may be needed. It may be said that less attention has been paid to reason in existing principles. Many jurisprudential scholars have adhered strongly to reason; but what is clear is the absolute validity of reason; that is, if reason perceives a certain criterion absolutely and one hundred percent, such reason can be employed in the field of jurisprudence (Fazil Lankarani, 2014, p. 56).

Therefore, the methodology related to Urban Jurisprudence is sometimes foundational, sometimes legislative, and sometimes a combination of both approaches.

It should also be noted that for the compilation of Urban Jurisprudence: Firstly, we need more comprehensive jurisprudential principles than the existing

ones; and secondly, for clarifying the subjects and phenomena of Urban Jurisprudence, we need humanities and engineering sciences; in such a way that for clarifying the subjects of some phenomena and urban jurisprudential issues, the expertise of relevant science experts is required. Therefore, the jurisprudent in Urban Jurisprudence will not be independent of experts in humanities and engineering.

5. Functionality of Urban Jurisprudence

The most prominent function of Urban Jurisprudence is to provide a desirable model of construction and urban planning based on Islamic jurisprudence sources and tailored to the needs of contemporary society. By accurately delineating this proposed Islamic jurisprudential model in the field of urban planning, construction, and civil engineering, significant progress can be made towards realizing the ideal city and civilization lost to contemporary humanity. Although the application of Urban Jurisprudence principles is of greater importance for achieving this objective. Therefore, the function and application of Urban Jurisprudence lie in elucidating and establishing the principles, rules, and regulations of construction within the scope of Sharia.

6. Reasons for the Lack of Growth of Urban Jurisprudence

The question arises as to "why Urban Jurisprudence, particularly in Shiite jurisprudence, has not developed?" In response, it must be noted that the lack of social-political grounds for Shiite scholars and the absence of experience in religious governance are among the reasons for the lack of growth of Urban Jurisprudence in Imami jurisprudence. During the era of the infallible Imams, there was no political-social authority in the hands of the infallible Imams, and only scholarly and religious authority was sometimes entrusted to them, so the groundwork for the growth of Urban Jurisprudence was not provided. In the period of major occultation as well, since religious scholars and authorities were in the position of religious edicts, and society was governed by non-jurists, Urban Jurisprudence did not develop due to the distance of jurists from governance and rulership.

In addition to the above reasons, the weakness in believing in the maximum jurisprudential authority as the sole source of norms and behavioral models required by Islamic society, the disbelief of some jurists in the necessity of the guardianship of the jurist, the prevalence of individualistic attitudes and the agent's mentality compared to structuralist perspectives, are among the reasons for the lack of growth of Urban Jurisprudence in Shiite jurisprudence.

7. Positioning of Urban Jurisprudence

In order to address the question of where "Urban Jurisprudence" fits into the

overall framework of jurisprudence, it must be noted that the division of jurisprudential topics and their categorization to provide a proper and systematic structure to jurisprudence has been done in various ways. In traditional and classical jurisprudence, the four Sunni schools of thought typically divide jurisprudential topics into two groups: acts of worship and transactions. Ghazali, a Shafi'i scholar, categorized all religious and ethical rulings into four groups: acts of worship, customs, saving ordinances, and destructive ordinances, which had a significant impact on Shafi'i jurisprudential texts and formed the basis for the division of jurisprudential topics into four groups: acts of worship, transactions, marital relations, and crimes. The justification for this method of categorization is that jurisprudential matters are either related to the hereafter or worldly affairs. The first category, which pertains to matters securing eternal bliss, comprises acts of worship, while the second category, which regulates material life, consists of three types: laws regulating human relationships, forming the basis of transactional jurisprudence, laws established to preserve human nature, forming the basis of marital jurisprudence, and laws governing the survival of individuals and humanity, both of which are dependent on criminal and penal provisions.

Contemporary Sunni jurists, influenced by the categorizations existing in legal science, have incorporated jurisprudential topics into a maximum of eight categories: acts of worship, personal status, transactions, penalties, legal proceedings, governmental systems and fundamental rights, international law, economic regulations, and occasionally ethics and etiquette as the ninth category.

Given the aforementioned division, it can be said that "Urban Jurisprudence," with its various subcategories, can be placed under the section of economic regulations.

In Imami jurisprudence, the first person to propose a division of jurisprudential chapters and outline a specific method was Abu al-Salah Halabi (d. 447 AH), in his book "Al-Kafi fi al-Fiqh," where jurisprudential topics were divided into three major sections: acts of worship, prohibitions, and rulings. However, this division did not attract the attention of jurists, and one of its shortcomings is that prohibitions cannot be considered a subset of acts of worship and rulings. Following him, Sallar Delmi in "Al-Marasim" divided the religious rites into acts of worship and transactions, and the second category into contracts and rulings, considering contracts to include transactions. Helli, inspired by previous proposals, managed to present a comprehensive scheme regarding the categorization of jurisprudential topics in his book "Sharaye al-Islam," dividing jurisprudence into four sections: acts of worship, contracts, penalties, and rulings. Shaheed Thani in "Al-Qawa'id wa al-Fawa'id" divided

transactions based on their nature, presenting five reasons for them: reasons that benefit ownership, reasons that lead to domination over non-owned property, reasons that prevent the owner from disposing of his property, reasons that serve the five objectives of Sharia, and finally reasons that promote benefits and prevent harm. Molana Mohsen Feyz Kashani in "Mafatih al-Sharayi" considered acts of worship and policies as one art and customs and transactions as another, listing six books for each.

Their method did not gain the approval of later jurists, as there seemed to be no justification for their categorization. Safi Golpayegani divided jurisprudence into acts of worship, customs, transactions, and policies, justifying this categorization by stating: "The purpose of enacting laws or organizing worldly affairs is either for the sake of personal survival or for a type called customs. Or the goal is financial interests, which are called transactions. The first form [hereafter goal] is called acts of worship, and the second form is called transactions. The third form is referred to as policies."

Shaheed Sadr, in the introduction to "Al-Fatawa al-Wadhiha," presents a unique method that is closer to the divisions in legal science. He places religious rulings into four categories based on subject matter: acts of worship, properties (including public and private properties), specific conduct, and general conduct.

In this categorization, attention is paid to the nature of jurisprudential subjects, and there is a distinction not found in any of the previous divisions.

Considering the proposed schemes, it can be said that "Urban Jurisprudence" in the traditional map of jurisprudence (acts of worship, transactions, rulings) falls under the subset of "rulings" and can be placed in the proposed model of Shaheed Sadr under general conduct.

8. Source Identification in Urban Jurisprudence

The jurisprudential legacy of the four Sunni schools regarding foundation and urban planning can be divided into three sections:

1) The first section comprises miscellaneous discussions in various jurisprudential topics, which are relevant to the subjects mentioned. These discussions can be found in various jurisprudential books, detailed as follows:

✦ General jurisprudential books: These books encompass all jurisprudential topics, including regulations related to urban planning and construction. Examples include: the issue of house defects in the book of sales (Ibn Rushd, 1407, Vol. 2, p. 101), house rental in the book of leasing (Malik ibn Anas, 1415 AH, Vol. 3, p. 511), neighborly disputes and shared walls and beams within neighbors' walls in the book of reconciliation (Nuwayri, 1412 AH, Vol. 4, pp. 211-215), the chapter on repelling harm discussing various types of harm and what should be stopped and removed such as narrowing pathways,

opening windows, and diverting water (Qirwani, 1999 CE, Vol. 11, pp. 37-65), regulations regarding restrictions, encroachments, expropriations, and water regulations and quality of water supply in the book of reviving the dead and land (Kasani, 1982 CE, Vol. 6, pp. 188-192), issues of litigation regarding walls and fences (Nuwayri, same, Vol. 4, pp. 211-215), and other jurisprudential topics such as usurpation, imprisonment, intercession, division, and endowments related to urban jurisprudence.

✦ **Fatwa and legal opinion books:** These include fatwas and rulings issued by judges and jurists in various cases, usually organized based on jurisprudential topics. Urban-related regulations and construction matters can be found among these books.

✦ **Examples include:** "Al-Ilam bi-Nawazil al-Ahkam" by Isa ibn Sahl al-Asadi (d. 486 AH) (Al-Asadi, n.d., Dar al-Hadith, p. 20) and "Al-Fatawa" by Muhammad ibn Ahmad ibn Rushd al-Qurtubi (d. 520 AH) (Ibn Rushd, 1407 CE, p. 5). These two books are among the sources for "Al-Ilan bi-Ahkam al-Bunyan" by Ibn Rami al-Lakhmi in Urban Jurisprudence.

✦ **Books of legal judgments and rulings:** These books focus on the quality of judgments and issuing rulings, such as "Mueen al-Hukam fi ma Yataradda Bayna al-Khasmayn min al-Ahkam" by Abu al-Hasan Ali ibn Khalil Tarabulsi al-Hanafi (d. 844 AH), which includes discussions on disputes over disputed walls, placing wood in a shared wall, and the destruction of a leaning wall (Tarabulsi, n.d., p. 164 and 212).

✦ **Documentary books:** These books elaborate on the quality of documenting transactions and recording contract terms between contracting parties, known as "Ilm al-Shurut wa al-Sijillat" (Tashkubrizadeh, 2002, Vol. 2, p. 557). Some of these books also provide jurisprudential discussions and rulings related to the subject.

✦ **Examples include:** "Saygh al-Uqud wa al-Ayqa'at" by Abu Jafar Ahmad ibn Muhammad ibn Mughith, known as Ibn Mughith, which discusses issues related to houses, walls, and mills (Ibn Mughith, 1420 AH, pp. 93-128), and "Al-Maqsid al-Mahmud fi Takhis al-'Uqud" by Ali ibn Yahya Sanhaji.

✦ **Books of Calculations:** This is an area of interest for scholars of the four Sunni schools, who have paid attention to it and endeavored to explain and write about it. Some of the do's and don'ts in urban matters are mentioned in these books.

✦ **For example,** in the book "Al-Ahkam al-Sultaniyya wa al-Wilayat al-Diniyya" by Abu al-Hasan Ali ibn Muhammad ibn Habib Mawardi (d. 450 AH), a section at the end of the book mentions some rights judgments and issues related to construction (Mawardi, n.d., p. 369).

Furthermore, in the book "Al-Ahkam al-Sultaniyya," authored by Qadi

Muhammad ibn Husayn al-Farrah al-Hanbali (d. 458 AH), regulations related to compensating harm to neighbors, such as a harmful oven smoke or a tree with intrusive roots and branches, as well as regulations on heightening and supervising neighbors, are discussed (Ibn al-Farrah, 1421, pp. 300-307).

In the book "Nihayat al-Rutba fi Talab al-Hasba," written by Abdul Rahman ibn Nasr al-Shirazi, there is a special section concerning roads, markets, and their characteristics in terms of height, width, and the discussion of removing harmful elements from them (Shirazi, 1424, p. 296).

Muhammad ibn Muhammad Qurashi (d. 729 AH) in the book "Ma'alim al-Qurba fi Ahkam al-Hasba" dedicated a special section to the discussion of harmful aspects of buildings (Ibn Akuh, 1408, p. 135).

The second section: Among other authored works in urban jurisprudence is the allocation of a specific and independent section to urban issues, construction, and building in jurisprudential books, whereby the author has compiled major issues of urban and construction regulations in a section of their book.

Examples of such books include: a) The book "Usul al-Fatawa" authored by Muhammad ibn Harith Khushni al-Maliki (d. 361 AH), which includes a specific section titled "The Chapter of Building Regulations" covering building regulations, repairing shared walls, non-shared walls, mills, barns, creating exits for houses onto the street, disputes regarding walls, etc. (Khushni, 1985, pp. 359-365). b) The book "Al-Nawadir wa al-Ziyadat" by Abdullah ibn Abi Zayd Abd al-Rahman Nafzi al-Qairawani al-Maliki (d. 386 AH), has a special section titled "The Book of Judgments in Building" covering permissions for installing wooden beams, regulations for shared walls, upper and lower floor regulations, among other issues (Qairawani, 1999, Vol. 11, pp. 93-111). c) In the book "Lisan al-Hukam fi Ma'rifat al-Ahkam" authored by Ibn Shihnah al-Hanafi (d. 882 AH), there is a specific section titled "Chapter on Walls and Related Matters" (Ibn al-Shihnah, 1393 AH, p. 409). d) Ahmad ibn Yahya al-Wansharisi (d. 914 AH) in his detailed book "Al-Mu'yar al-Mu'rib wa al-Jami al-Mughrib 'An Fatawa 'Ulama Ifriqiya wa al-Andalus wa al-Maghrib," dedicated a separate and detailed section specifically to "Harmful Situations and Buildings" (Wansharisi, 1401 AH, Vol. 8, pp. 435-487 and Vol. 9, pp. 5-75).

The third section: Independently authored books on the subject of urban jurisprudence and building regulations, where some jurists have compiled regulations and issues related to one of the branches of urban jurisprudence in a treatise or a separate book. These works differ from each other in terms of generality and detail due to the specific nature of each topic. Some of these books have been printed, some remain in manuscript form, and some have been lost. These books include:

- 1- The book "Al-Qada' fi al-Bunyan" authored by Abdullah ibn Abdul

Hakam ibn A'in ibn al-Layth al-Masri (d. 191 AH), a student of Malik ibn Anas, written based on Maliki jurisprudence. This book has not survived, and only mentions of it can be found in biographical dictionaries (Ibn Farhun, n.d., Vol. 1, p. 420). Ibn Abi Zayd mentioned this book and its author in his book "Al-Nawadir wa al-Ziyadat" (Qairawani al-Maliki, 1999, Vol. 11, p. 104). It seems this book is the oldest book on the subject of urban jurisprudence, and the Maliki school was a pioneer in authoring on this subject.

2- The book "Al-Jidar" by Isa ibn Dinar (d. 212 AH) (Qadi Ayyad, 1970, Vol. 4, pp. 108-109), which was based on Maliki jurisprudence. This book also seems to have been lost, and only some parts of it are quoted in "Kitab al-Jidar" by Isa ibn Musa (Ibn al-Imam Tutili, 1417, pp. 119, 154, 220, and 338).

3- "Kitab al-Jidar" by Isa ibn Musa, famously known as Ibn al-Imam Tutili (d. 386 AH), is a precious book in Maliki jurisprudence, comprising 51 topics related to urban jurisprudence and building, with each section titled "Judgments in...". Some of the topics of the book include: "Judgments in Attached Buildings and Harm Exclusion," "Judgments in a House Located Between Two Men," "Judgments in Shelves (with a Covered Balcony) Extending onto Muslim Alleys," "Judgments in Opening Doors and Yards in a House," "Judgments in a Man Raising His Building Preventing Wind and Sun for His Neighbor," "Judgments in Walls and Their Division" (Ibn al-Imam Tutili, 1417, pp. 407-413).

The author has compiled many important contemporary issues in the field of urban jurisprudence, such as harm exclusion, disputes related to walls, roads, and streets, and many references can be found to primary Maliki jurisprudence books, with the author occasionally referring to the evidence of these rulings.

4- The book "Al-Haytan" by Sheikh Marji Thaqafi, a Hanafi scholar of the third or fourth century, gathers issues related to disputes in walls, roads, waterways, wells, and water supply from Hanafi jurisprudence books.

5- "Sharh Kitab al-Haytan" by Qadi Abu Abdullah Muhammad ibn Ali Damghani al-Hanafi (Broukland, n.d., Vol. 6, p. 287) (d. 487 AH) is a concise explanation of Sheikh Marji Thaqafi's book "Al-Haytan," with a manuscript of it available in the Damascus Library with the number (8284) (Al-Hafiz, 1401, Vol. 1, pp. 443-444).

6- "Sharh Kitab al-Haytan" by Umar ibn Abdul Aziz ibn Mazah Bukhari, known as Sadr al-Shahid (483-536 AH), is also an explanation of Sheikh Marji Thaqafi's "Al-Haytan" in Hanafi jurisprudence. Ibn Mazah has elaborated and organized Marji Thaqafi and Damghani's materials and divided them into three sections: first, issues related to walls; second, issues related to waterways, irrigation, and agriculture; third, discussions related to roads and streets.

7- The book "Al-Qismah wa Usul al-Ardain" by Sheikh Abu al-Abbas Ahmad ibn Muhammad ibn Bakr Farsati Nafusi (d. 504 AH) is written based on

the jurisprudence of the Ibadi school and consists of eight sections (Farsati, 1418, pp. 629–635), specifically addressing issues of partnership and land division.

8- The book "Al-I'lan bi Ahkam al-Bunyan" by Muhammad ibn Ibrahim Lakhmi, known as Ibn Rami Banna, who lived in the seventh and eighth centuries, includes five sections with the following titles: "The Book of Buildings in Walls," "The Book of Harm Exclusion," "The Book of Defects in Houses," "The Book of Irrigation Canals," "The Book of Mills" (Ibn Rami, 1999, p. 2). This book is written based on Maliki jurisprudence and most of its content is derived from Ibn al-Imam Tutili's "Kitab al-Jidar."

9- The book "Al-Fawaid al-Nafisa al-Bahirah fi Bayan Hukm Shuwar' al-Qahira fi Madhahib al-A'imma al-Arba'ah al-Zahirah" by Abu Hamid Muhammad Khalil ibn Yusuf Maqdisi Shafi'i (819–888 AH) independently addresses issues related to streets, and although the author is Shafi'i, he has organized the book according to the jurisprudence of the four main schools (Maqdisi, 1408, Vol. 3, p. 313).

10- The book "Riyad al-Qasimin" by Qadi Muhammad ibn Ahmad ibn Ibrahim Adrunawi al-Hanafi (1059–1136 AH) is organized based on Hanafi jurisprudence and consists of ten sections. The titles of the book are as follows: division, in determining property and measurement, neighbors and joint ownership, water flow and passage, accountability and guarantee, endowment issues, dispute matters, miscellaneous including issues of churches, people of the covenant, and division (Adrunawi, 2000, pp. 585–590).

11- The book "Marasid al-Hayatan" by Sanaullah ibn Ali ibn Khalil Alaiya (d. 1137 AH) in Hanafi jurisprudence deals with issues related to walls, and a handwritten copy of it is preserved in the Damascus Library with the number (2686) (Al-Hafiz, 1401, Vol. 2, p. 162).

12- The treatise "Fath al-Rahman fi Masa'il Tanzia fi al-Hayatan" by Muhammad ibn Husayn ibn Ibrahim Barudi al-Hanafi (d. 1215 AH) is preserved in manuscript form in the National Library of Tunisia with the number (3933) (Abd al-Wahhab, 1990, Part 2, p. 931).

9. Urban jurisprudence in Islamic jurisprudence

Based on the studies of the author, as referenced in the bibliography of urban jurisprudence, the Hanafi school has the highest number of works on issues related to urban jurisprudence and construction jurisprudence. Perhaps the reason for this lies in the characteristic and method of this jurisprudential school, namely, the frequent use of analogy and juristic discretion, as well as the abundant use of jurisprudential methods.

Among the jurisprudential schools, the Maliki school has been a pioneer

in writing on the subject of urban jurisprudence, as the book "Al-Qada' fi al-Bunyan" by Abdullah ibn Abdul Hakam ibn A'in ibn al-Laith al-Masri (d. 191 AH), who was a student of Malik ibn Anas, is the oldest work on urban jurisprudence. Additionally, after the Hanafi school, the Maliki school has the most works related to urban jurisprudence.

The Shafi'i jurists have shown less interest in addressing urban jurisprudence issues specifically and particularly, although various urban jurisprudence topics can be found in detailed juristic books of this school.

Among the jurisprudential sources, no relevant work was found in the Jafari school of jurisprudence. Perhaps the reason for this is the small number of followers of this jurisprudential school and their inclination towards tradition and hadith-oriented thinking.

Results

The equivalent term for "urban jurisprudence" in Persian is "construction jurisprudence." "Urban jurisprudence" is a collection of legal rules, issues, and principles directly related to construction, urban planning, and land development, as well as legal rulings regarding roads, residential areas, green spaces, commercial areas, industrial areas, and agricultural lands. In other words, urban jurisprudence is the jurisprudential examination of individual and social behaviors related to construction and urban development, and this jurisprudential examination is the reference to evidence.

The subject of urban jurisprudence deals with obligatory actions at both individual and societal levels in the field of construction. However, since urban jurisprudence includes legal rulings regarding roads, residential areas, green spaces, commercial areas, industrial areas, and agricultural lands, its subject matter can also extend to external matters.

The method of work related to urban jurisprudence is sometimes foundational, sometimes legislative, and sometimes a combination of both. For the development of urban jurisprudence, we first need principles of jurisprudence more comprehensive than the existing ones, and secondly, for elucidating urban jurisprudence issues and phenomena, we need humanities and engineering sciences. This elucidation of some urban-jurisprudential phenomena and issues requires the involvement of experts in related sciences.

The lack of social-political backgrounds for Shia scholars and the lack of experience in religious governance are among the reasons for the lack of growth in urban jurisprudence. Furthermore, the weakness of belief in maximum jurisprudence as the sole source for obtaining norms and behavioral models required by Islamic society, the disbelief of some jurists in the necessity of the guardianship of the jurist, and the prevalence of individualistic attitudes and

agent causality compared to structural perspectives are among the reasons for the lack of growth in Shia urban jurisprudence.

"Urban jurisprudence," which has various subcategories, can be placed in the sections of fundamental rights, international law, and economic regulations. Additionally, "urban jurisprudence" is a subset of the traditional map of Imamite jurisprudential science (acts of worship, transactions, rulings) and can be incorporated into the proposed model of Sayyid Sadr in general conduct.

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