

Majallat AL-Ahkam Al-Adliyyah: Its Role in Afghanistan's Legal History

The Majallat AL-Ahkam Al-Adliyyah is a legal code based on Hanafi fiqh, which is historically significant in Afghanistan's legal system. Recently, lawyers in practice and the de facto authorities (DFA) have been using it in drafting various legislative documents. This article provides an overview and answers key questions about this important legal source.

What is Majallat AL-Ahkam Al-Adliyyah?

The Majallat AL-Ahkam Al-Adliyyah is a legal code that governs Islamic civil transactions. Drafted under the Ottoman Empire in the late 19th century, it is based on the Hanafi school of Islamic jurisprudence, which was the official school of law during the Ottoman period.

When was the Majallah adopted?

The Majallat AL-Ahkam Al-Adliyyah was developed between 1869 and 1876 by a commission of jurists led by Ahmed Jawdat Pasha, the Minister of Justice of the Ottoman Empire. The code was then approved by Sultan Abdul Hamid II in 1876 and promulgated in 1877. As one of the first comprehensive attempts to codify Islamic law, the Majallat AL-Ahkam Al-Adliyyah is considered one of the most successful and distinctive legal codes in history. It preserves original Islamic terminology, follows a logical structure, and incorporates principles of customary law and equity.

Which topics does the Majallat AL-Ahkam Al-Adliyyah address?

The Majallat AL-Ahkam Al-Adliyyah begins with an introduction covering around 100 articles that lay out the main principles of Islamic jurisprudence, serving as the foundation for the detailed legal provisions that follow. The code consists of 1851 articles addressing various aspects of civil transactions, such as sale, hire, guarantee, transfer of debt, pledge, trust, partnership, agency, gift, and waqf (endowment). However, family law issues such as marriage, divorce, nasab (lineage), welayat (guardianship), wesayat (wills), and inheritance matters are not included in the Majallat AL-Ahkam Al-Adliyyah.

It consists of 16 books, each covering specific aspects of civil law:

1. Book 1: Sale

- Focuses on the jurisprudence and codification of laws regarding sales, including standards of contracts, subject matter, price, delivery, and categories of things sold.

2. Book 2: Hire

- Deals with the legal codification of circumstances related to hire (renting), including contract specifications, period, type of hire, and rights and obligations of parties involved.
3. **Book 3: Guarantee**
 - Covers matters of contractual agreements and release from contracts of guarantee.
 4. **Book 4: Transfer of Debt**
 - Includes contracts dealing with the transfer of debts.
 5. **Book 5: Pledges**
 - Discusses the fundamental basis of the contract of pledge, stipulations of the pledgor and pledgee, and rules relating to the sale of the pledge.
 6. **Book 6: Trust and Trusteeship**
 - Contains legal information regarding trusts and trusteeship, including conditions of trusteeship, depositing for safekeeping, and loaning for use.
 7. **Book 7: Gift**
 - Outlines matters relating to the contract of gift and fundamental rules, such as guidelines for the revocation of a gift.
 8. **Book 8: Wrongful Appropriation and Destruction**
 - Addresses issues related to wrongful appropriation and destruction of property.
 9. **Book 9: Interdiction, Constraint, and Pre-emption**
 - Covers laws related to interdiction, constraint, and pre-emption.
 10. **Book 10: Joint Ownership**
 - Discusses the legal aspects of joint ownership.
 11. **Book 11: Agency**
 - Deals with the laws governing agency relationships.
 12. **Book 12: Settlement and Release**
 - Includes legal provisions for settlement and release from obligations.
 13. **Book 13: Admissions**
 - Covers the legal implications of admissions in various contexts.

14. Book 14: Actions

- Discusses the procedural aspects of legal actions.

15. Book 15: Evidence and Administration of an Oath

- Focuses on the rules of evidence and the administration of oaths in legal proceedings.

16. Book 16: Administration of Justice by the Courts

- Outlines the administration of justice by the courts, including procedural rules and judicial conduct.

Does the Majallat AL-Ahkam Al-Adliyyah contain procedural rules?

The Majallat AL-Ahkam Al-Adliyyah addresses procedural matters related to the administration of justice and litigation, for instance, in Section 5 of Chapter 3 (The Hearing of an Action) and in some other sections. Examples include:

- Public trials and confidentiality of judgments (1815)
- Questioning processes for plaintiffs and defendants, handling admissions, denials, and evidence (1816-1823)
- Prohibition of interruptions, provision of interpreters, and encouragement of settlement (1824-1826)
- Formal judgment requirements, including comprehensive reasons for decisions and orders (1827-1828)
- Judgment conditions and rules (1829-1832), instituted actions, party presence, and default judgments (1833-1836)
- Retrial procedures and defenses (1837-1840)
- Arbitration rules (1841-1851), such as appointment, jurisdiction, dismissal, and enforcement of decisions and settlements

These procedures underscore fairness, transparency, and orderliness in the administration of justice and litigation.

Procedural law governs legal case handling, including steps taken by disputing parties, evidence presentation requirements, and decision-making and dispute resolution procedures. It aims to ensure fair, orderly legal proceedings while protecting the rights of all parties. Key elements include the rights to a fair trial, to be heard, to present evidence, and to legal representation.

In some civil law legal systems, civil procedural rules are historically codified alongside substantive rules, as seen in Afghanistan's civil code and other influential codes like the Egyptian Civil Code. Later on in Afghanistan, special procedural laws, such as the Civil Procedure and Commercial Procedure, also incorporate Hanafi Fiqh principles addressed in the Majallat AL-Ahkam Al-Adliyyah.

What is the Majallat AL-Ahkam Al-Adliyyah's relevance to Afghanistan?

As most Afghans are Muslim and adhere to Hanafi fiqh, the Majallat AL-Ahkam Al-Adliyyah holds considerable relevance for Afghanistan. The DFA has also repeatedly asserted their application of Hanafi fiqh, though they have been less clear on other crucial topics, such as the status of previous laws. Given that the Majallat AL-Ahkam Al-Adliyyah is primarily based on Hanafi fiqh and has played a crucial role in Afghanistan's legal history, its importance is heightened. Moreover, the widespread use of the Majallat AL-Ahkam Al-Adliyyah by judges and legal practitioners in Afghanistan underscores its contemporary significance in the country's legal landscape.

Was Majallat AL-Ahkam Al-Adliyyah ever addressed in Afghan laws before?

Historically, certain Afghan laws referred directly to the Majallat AL-Ahkam Al-Adliyyah. Additionally, judicial seminars of provincial court chiefs concluded that one of the commentaries on the Majallat AL-Ahkam Al-Adliyyah should be consistently used as a source in order to address difficulties in understanding Arabic.

Are there similarities between the Majallat AL-Ahkam Al-Adliyyah and other state laws?

The 1977 Afghan Civil Code, which regulates aspects of civil law, was significantly influenced by the Majallat AL-Ahkam Al-Adliyyah, with some provisions appearing as exact translations. The Commercial Code and some other procedural laws in Afghanistan have also adopted principles of the Majallat AL-Ahkam Al-Adliyyah.

Did formal justice institutions in Afghanistan apply the Majallat AL-Ahkam Al-Adliyyah after the adoption of the 2004 Constitution?

Upon the adoption of the 2004 Constitution, Article 130 mandated that courts refer to the Constitution and other laws before resorting to Hanafi Fiqh. However, some judges referred to the Majallat AL-Ahkam Al-Adliyyah directly from 2004 to 2021. The Supreme Court directed lower courts to consult statutory laws before Hanafi Fiqh sources. For example, in a commercial matter where a lower court relied on the Majallat AL-Ahkam Al-Adliyyah, the Supreme Court issued a circular stating that courts should not depend on the Majallat AL-Ahkam Al-Adliyyah or non-commercial codes if a Commercial Law provision applied to the case. The Supreme Court's Judicial Decision Number 26 dated 1387/5/26 Hijri Shamsi Calendar (HS) emphasized that all commercial cases must adhere to the Commercial Code and Commercial Procedure Code as specialized codes, resorting

to other statutory laws when no provision exists in commercial codes. This principle was reiterated in other judicial circulations (e.g., Judicial Circulation # 572-644 dated 1391/3/21 HS and # 1363-1434 dated 1391/5/18 HS), specifying that if commercial laws lack sufficient guidance, judges may refer to civil laws. Despite these directives, some courts utilized Majallat AL-Ahkam Al-Adliyyah provisions without consulting statutory laws.

Is the Majallat AL-Ahkam Al-Adliyyah currently applied in Afghanistan?

The Majallat AL-Ahkam Al-Adliyyah has played a crucial role in Afghanistan's legal history and continues to be a widely used source in the country's legal system. It is currently used frequently as a source in DFA legislation. Legal professionals and scholars should continue to develop their understanding of the code and its historical context.

In what languages is Majallat AL-Ahkam Al-Adliyyah available?

Among other languages, it is available in Turkish, Arabic, and English and has also been translated into Farsi/Dari.

Have any commentaries been written about the Majallat AL-Ahkam Al-Adliyyah?

Yes, numerous commentaries and analyses have been written on the Majallat AL-Ahkam Al-Adliyyah, discussing its historical and legal significance. Some of these commentaries include Saleem Baz's Commentary, Munir Al Qazi's Commentary in four volumes, Durrar Al Ahkam's Commentary in six volumes, and Attasi's Commentary in six volumes.

I am not a legal practitioner. Can the Majallat AL-Ahkam Al-Adliyyah benefit researchers, scholars, and law students?

Yes, the Majallat AL-Ahkam Al-Adliyyah serves as a valuable reference and guidance for law students, scholars, and practitioners. The Majallat AL-Ahkam Al-Adliyyah continues to be relevant as a reference for Islamic law students, scholars, and practitioners and may serve as a model for contemporary efforts to reform and revitalize Islamic law.

Will the Majallat AL-Ahkam Al-Adliyyah be utilized in the future in Afghanistan?

The future utilization of the Majallat AL-Ahkam Al-Adliyyah in Afghanistan remains uncertain due to the country's ongoing changes and instability since August 2021. While the de facto authorities (DFA) are reportedly reviewing pre-existing laws, they emphasize the primacy of Sharia law as the sole legitimate legislative source. The DFA aims to establish an Islamic government with the "Amir al-Mu'minin" or "Commander of the Faithful" as its supreme religious authority, knowledgeable in Islamic law. They advocate for an Islamic judicial system, with consultation (shura) involving religious scholars and stakeholders in decision-making processes.

Given the DFA's position about the role of Hanafi fiqh and the Majallat AL-Ahkam Al-Adliyyah's popularity, it is possible that courts and legal practitioners may continue to rely on the Majallat AL-Ahkam Al-Adliyyah for private law matters. However, the exact role the Majallat AL-Ahkam Al-Adliyyah and other similar sources will play in Afghanistan's legal system hierarchy remains uncertain.

How can I access the Majallat AL-Ahkam Al-Adliyyah?

You can access the English version of the Majallat AL-Ahkam Al-Adliyyah [online](#). The [Dari](#) and Arabic versions of it can also be found online, including on [Google Play](#) for Android users.

How does the Majallat AL-Ahkam Al-Adliyyah contribute to the rule of law within the context of Afghanistan?

The relevance of the Majallat AL-Ahkam Al-Adliyyah in the rule of law within Afghanistan lies in its influence on Islamic civil transactions and its promotion of legal certainty, consistency, and predictability. Historically, the Majallat AL-Ahkam Al-Adliyyah unified various interpretations of Islamic law within the Hanafi fiqh, which is the dominant school of thought in Afghanistan. By creating an extensive framework covering numerous civil transaction aspects, this codification enabled uniform application in daily life, fostering fairness and equal treatment among Afghan citizens.

Clear, public, and forward-looking laws or other legal authorities, such as the Majallat AL-Ahkam Al-Adliyyah, enhance the rule of law by allowing individuals to foresee the outcomes of their actions. Recent studies indicate that this fosters economic growth. Investors and businesses favor operating in stable, predictable settings, which the rule of law delivers by reducing risks from sudden government actions or untrustworthy contract enforcement. Conversely, unclear or obscure laws fail to offer such predictability.

In the realm of Islamic law, with its vast resources, interpretations, and schools of thought, incorporating a codified set like the Majallat AL-Ahkam Al-Adliyyah is especially beneficial. Focusing on the Hanafi fiqh perspective prevalent in Afghanistan, it provides accessible, coherent guidance for everyday matters, thus strengthening the understanding and implementation of Islamic law. This results in a more consistent legal framework that accommodates the complexities of diverse jurisprudential approaches, which is particularly relevant to Afghanistan's legal landscape.

To bring more balance and resolve existing ambiguity and inconsistency, it is crucial for the DFA to have a clear position on former laws of Afghanistan, finalize the process of reviewing these laws, and clearly define the hierarchy of sources of law in the Afghan legal system, including the role of the Majallat AL-Ahkam Al-Adliyyah or similar sources. This will contribute to a more stable and effective legal environment.

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