

The tenth lecture

• **Application of the legal criminal text in terms of time:** The life of the criminal text begins in terms of time from the moment of its entry into force until the date of its cancellation, and therefore the legal criminal text applies in terms of time to all acts committed after the beginning of its entry into force and before the expiration of its validity, where its authority is determined between these two moments and has no authority outside this area that governs it, and this is the general rule that governs the application of the legal criminal text in terms of time and controls its application, but this rule is not at all. Rather, there is an exception that reduces and limits the scope of application of the text, and this exception is summarized in the application of the criminal texts that are most suitable for the accused to acts committed before the entry into force of these texts and the beginning of their entry into force, which requires an explanation of the rule at the beginning and then exposure to the exception at the end.

- ✓ **The rule of non-retroactivity of criminal texts Sharia:** It is the general principle and the general rule governing the application of criminal texts temporally, according to which the provisions of criminalization apply only to acts committed after the moment of their entry into force, because the requirements of justice require that the text applicable to the crime be made the text in force at the time of its commission and not the text in force at the time of the trial of the perpetrator.

This rule is one of the outputs of the principle of legality of crimes and penalties and one of the most important consequences of it, and this rule finds its legitimate support in many Quranic verses that came to forbid behavior decided at the same time not to impose a penalty on those who came the same behavior before the descent of the prohibition, for example, the Almighty says regarding the prohibition of marriage to fathers' wives: "And do not marry what your fathers marry women except what has already been said that it was obscene and abhorrent and bad way," and said Almighty regarding the prohibition of combining the two sisters: "And to combine the two sisters except what has already been done", and understood from these two texts not to punish those who issued him behavior in the pre-Islamic era, ie before the revelation of the two verses, out of respect for the principle of legality of crimes and penalties, it is not permissible to punish a person for an act that was permissible at the time of his coming.

This rule is widely applied in Islamic law more widely than in man-made legislation, as its application extended even to those who issued the forbidden behavior before entering Islam,

although this behavior was after the prohibition of it, for example, the Almighty says: "Tell those who disbelieve to end up forgiving them what has already been done", and in application of this verse, the Messenger of Allah (peace and blessings of Allaah be upon him) said to Amr ibn al-Aas when he became Muslim: "Islam must be accepted", nor did he reproach the murderer of his uncle Hamza bin Abdul Muttalib, nor did he question Abu Sufyan and his wife Hind bint Utbah for their behavior that violated explicit texts in the Qur'an and Sunnah before their Islam, which clearly reflects the broad application of this rule.

- ✓ **Exception to the retroactivity of criminal texts that are more suitable for the accused:** This exception means the application of the new text to the acts committed before its issuance if it is more suitable for the accused and then the exclusion of the text that was in force at the time of their commission, where the accused benefits from the new text that is more suitable for him that erases the criminal character of the act, reduces the punishment prescribed to him, or determines for him a better status than the law under which the criminal incident was committed.

One of the most important cases of applying the retroactivity of the most suitable texts for the accused in the era of the Messenger of God, may God bless him and grant him peace, is the abolition of the penalty of flogging the husband who slanders his wife and the replacement of the recitation of the curse, as the verse of slander stipulated the punishment of slander in a general form and in the face of everyone, including the ejector husband, so that the verses of cursing are applied to a man even though they were revealed after he examined his wife in the situation he mentioned in his complaint, so the limit of slander was not applied to him, which is an application of a new text The Messenger of Allah (peace and blessings of Allaah be upon him) decided that his wife's slanderer should benefit from the rule of tallaan, despite the fact that the incident preceded the revelation of the verse of talla'an and exempted him from the punishment of slander that was prescribed at the time of committing the incident.

This exception was also applied to the incident of zahar, in which the Messenger of Allah (peace and blessings of Allaah be upon him) ruled that it was forbidden between spouses, after which the verses that were revealed regarding the dhahar were applied, despite the fact that the incident preceded the revelation of the verses, so this was a retroactive application of them because they were the most suitable, so the exception was applied instead of the rule.

- **The application of the legal criminal text in terms of place:** In addition to the eternity of Islamic law as valid for all times, it is also universal as it is also valid for application everywhere, the basic principle that determines the scope of application of Islamic law in terms

of place and people is its universality, as God Almighty revealed it to be applied in all parts of the earth and to all people, as the complete integrated Sharia that suits the condition of human beings everywhere and at all times, and the evidence of the universality of the application of Islamic law is the Almighty's saying addressed His Holy Messenger: "We have not sent you except all the people as a good omen and a harbinger."

Although the principle of the universality of Islamic law is one of the basic principles of Islam, its application is hindered by material obstacles that do not affect its validity in itself, but rather related to the fact that not all parts of the world are subject to the sovereignty of the Islamic state, which makes it difficult to impose the application of the provisions of Islamic law in areas not governed by Islamic law.

Within the framework of determining the spatial authority of the criminal text, several jurisprudential theories have emerged that cannot be mentioned all, and the most likely theories are those that recognized the principle of territoriality in an absolute and expanded manner for the legal criminal text, as it approved the comprehensive application of the criminal text to all crimes committed in the territory of the Islamic State without regard to the status of the offender, as it is not considerable, as it is equal to be a Muslim, dhimmi or trustworthy, as long as he committed the crime on the territory of the Islamic State, which is what was agreed. The principle of regionalism also supports the principle of "the personality of the legal criminal text" as a precautionary principle in the face of crimes committed by Muslim and dhimmi nationals of the state outside the Islamic region, and this principle also excluded the application of that text to the crimes of insured persons outside the territory of the Islamic State.

The rule governing the applicability of the Shariah criminal text to crimes committed abroad is that the act is punishable in accordance with the provisions of Islamic law alone without regard to the law in which it was committed, since it does not matter whether it is punishable according to the law of the place of its commission or not, taking into account the time of the commission of the crime as a control for the application of the legal text without any other time.

• **The application of the legal criminal text in terms of persons:** Equality represents the spirit of Islamic law and one of its most important priorities, as it decided the principle of absolute equality between people in terms of rights and duties that it decides for them, and this principle does not accept controversy in terms of its existence or scope, and the most important texts that enshrined this principle are the saying: "O people, I created you from a male and a female and made you into peoples and tribes to know that I honor you with God, I fear you, that God knows

an expert", the balance of differentiation with God Almighty According to this verse, the Almighty is "piety" only, which was confirmed by the Messenger of Allah, may God bless him and grant him peace, in saying: "People are equal like the teeth of a comb, there is no virtue for an Arab over Ajami except by piety" and his saying, peace and blessings be upon him: "O Mu'asher Quraish, the immoral does not bring me with deeds and you bring me genealogy", and the implication of this hadith is that there is no lesson in the application of the provisions of Islamic law by belonging to a person to a certain race or lineage, everyone is equal before the provisions of Islamic law.

The implementation of the principle of territoriality, for example, imposes the application of Islamic law to anyone who commits a crime on the territory of the Islamic State, regardless of his sex, religion or social status, and the same is the case for those who are subject to the rule of Islamic law pursuant to the principle of personality, in-kind or universality of the legal criminal text.

The principle of equality from the standpoint of the provisions of Islamic law is strictly applied compared to positive law, as it results in the extension of this principle to all people, including the imam and the ruler, as well as non-Muslims who reside in the territory of the Islamic State, which gives this principle in general and absolutely makes its application easy, and leads to the determination that the legal criminal text applies to anyone who violates it and the penalties it determines are applied to him without regard to functional or social status or religious affiliation, as it abolishes stratification in various ways. There is no infallibility of the imam or ruler and no immunity from the applicability of the legal criminal text to him, and all penalties are imposed on him in punishment, retribution, blood money or ta'zir like the rest of society who commit crimes.