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Reason and usage of the wise in family dispute resolution proceedings with the implementation of judicial decisions

Razón y uso de los sabios en los procedimientos de resolución de disputas familiares con la implementación de decisiones judiciales

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ABSTRACT

In recent years, the use of reason has been the subject of much attention by legal writers and prosecutors. The use of this argument in the family law system has led to many ambiguities to the extent that the doctrine and the judiciary have not been adequately addressed. Therefore, as an essential part of the legal system and the proper quality of citing it as a judicial proof by the prosecutors, it is of great importance that the present article discusses the position of this argument and its analysis. Judiciary is based on an Osule feghh.

Keywords: Judiciary, Legal System, Prosecutors, Reason.

RESUMEN

En los últimos años, el uso de la razón ha sido objeto de mucha atención por parte de escritores legales y fiscales. El uso de este argumento en el sistema de derecho de familia ha generado muchas ambigüedades en la medida en que la doctrina y el poder judicial no se han abordado adecuadamente. Por lo tanto, como parte esencial del sistema legal y la calidad adecuada de citarlo como prueba judicial por parte de los fiscales, es de gran importancia que el presente artículo discuta la posición de este argumento y su análisis. El poder judicial se basa en un Osule feghh.

Palabras clave: Fiscales, Poder Judicial, Razón, Sistema Legal.

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1. INTRODUCTION

The family law system, one of the most important private law trends that has a long history in Islamic law, has always been the focus of scholars. In recent years, however, in the light of current developments in the community, this field has suffered from a lack of external cohesion, in addition to the large volume of incoming cases, meaning that there are conflicts of opinion in the judicial authorities in cases of equal evidence. This external conflict and inconsistency can be attributed to the identifier (judge) and the inherent nature of these laws in the judicial system.

Despite the importance of the judge's role in the inference process that the author is aware of, this article does not seek to influence a judge's effective decision-making, including his or her knowledge, working conditions, mental activity, and physical condition, as well as his or her prior views, Rather, the discussion in this article is about the inherent nature of these disputes, which in fact has caused a large amount of family law claims. Cases of summary, ambiguity, or contradiction that make it necessary for the judge to interpret and oblige the judge to use all means in order to comply with the law in the matter. Undoubtedly the most important tools used in these situations are the interpretation of the specific meaning, the legal logic, the analysis of structure, the spirit and purposes of the law, the emergence of custom and legal hermeneutics

However, the tools that have been neglected in the current legal system and that prosecutors do not pay much attention to in the face of hostility are rationality. Turning to reason as a means of understanding Shari'a law has always been the focus of the Imamiyyah, to the extent that some have considered the confrontation between reason and the Shari'ah to be incorrect and They believe that the Shari'a ruling is proved either by quotation or reason, and that reason has always been a proof of the religion and the Shari'ah, and is against quotation (Phillips & Piazza: 1982).

Therefore, as wisdom has been cited as a source in the Imamiyyah jurisprudence, its position along with the rationale in the family law system must be carefully considered and the question answered that the two main reasons for a reason and the rationale in the present situation: Where are the family differences? Can one draw a favorable situation for these two reasons? What is the distinction between reason and reason, and how is it analyzed in the Iranian legal system as judicial proof? Moreover, in the end, what is the family case law? As research backgrounds, there have been some articles that have been devoted to a purely jurisprudential approach to the legal system.

Concerning the reason for a reason, some have argued that the knowledge of the principles indicates that the Scholars are engaged in the pursuit of his or her courses of thought are based on his or her mind. Furthermore, in this regard, the author seeks to show the abilities to achieve sentences. They have also said that pure reason is a resource, and in addition to being an independent source of inference for sentences, it is a tool in their service to each other and to their resources. He traces the length of the opening to the surface of the opening and invalidates the originator's statement. Others also seek to show me as high, efficient, and effective in their writing and find the deficiencies in the use of reason to be due to the lack of understanding of the concept. In this regard, some others, due to its reason and its position in the jurisprudence of scholar Mohammad Ardebili, have discussed this issue from the perspective of this great jurist (Lind et al.: 1993).

Concerning the usage of the wise, some scholars in the article entitled customary acts, have explained some aspects of the usage of the wise and considered it as the fifth source. Others have commented on the jurisprudence. In an article titled Reasonable Authority Analysis with an Approach to Proposal Issues, the author has addressed the foundations in Reasonable Authority's authority and has adopted a basis to respond to the question of Reasoning in the subject matter. In another article titled Research on the Rationale of Intellect and its Relation to the Rule of Wisdom, the author discusses the distinction between the Rule of Wisdom and the Rule of Wisdom and then discusses the origin and reason of the Rule of Wisdom. Another article that deals with rationality and its place in the evidence is merely a comparison of the rationality in the evidence and a comparison between rationality and custom, and it is said that rationality is non-conventional, and the rationality is also in the diagnosis. Subjects are also used in the inference of sentences, and it is

necessary to identify the rational basis in the proofs of the sentences after the third reason, consensus, and before reason (Gurule et al.: 1996). Other articles have also discussed the nature of wisdom and authority. Thus, as is clear, the authors have dealt with the purely jurisprudential view, and if, in some cases, the legal system has been attacked, the anatomical reason has been the subject of debate, and the judicial proofing has generally been neglected.

In light of the foregoing, the present article has been written in six sections, which have been discussed separately after the introduction, the reason, and the usage of the wise as a legal and judicial proof. In the second part, reason and usage of the wise have been explored in the normative system, and in the third part, the usage of the wise is detailed in the system of Osul. Judicial opinions are then analyzed to conclude and submit to the author's opinion.

Rationale and reason as a legal reason:

The legal doctrine implicitly intends reasoning in the current legal system. The explanation that Article Three of the Code of Civil Procedure provides: "Judges shall be required to consider lawsuits, to issue a warrant, or to enforce an injunction. Unless the laws of the subject matter are complete or explicit or inconsistent or there is no law in the matter in question, they may and may not issue a ruling by reference to authentic Islamic or fatwas sources and legal principles that are not contrary to Shari'a standards. "The excuse of silence or defect or summary or contravention of the laws shall be refused and shall be recognized and punished." Also, Article one hundred and sixty-seven states: "The judge is obliged to try to find the verdict of any lawsuit in the law and if he cannot rely on valid Islamic or fatwas sources to issue the verdict and cannot issue an excuse. The silence or defect or summary or conflicting laws of the State shall refuse to hear and adjudicate.

Careful consideration of Article of the Code of Procedure and Article 167 of the Constitution, the law firm argues that the reference to valid jurisprudential fatwas is both valid and jurisprudential. The reason for this generalization is the assumption of a lack of valid fatwas and legal principles in the disputed cases, which in this case, the judge cannot, of course, refuse to adjudicate on the pretext of silence or defect or contravention or contravention of the law. Therefore, the only evidence of the judge in these cases is to follow the jurisprudential method of discovering the will. On the other hand, it is obvious that the use of reason as a rational monopoly can be in two ways. First, the reason is regarded as an independent source throughout the book and tradition and independently from religious sources, which is one of the four sources of jurisprudential jurisprudence for the discovery and issuance of the reason (Mabey et al.: 1994).

However, the claim that "pure reason" can compensate for all these shortcomings has failed in the present world. The judgments of reason cannot make a perfect and ideal legal system. For this reason, natural-rights advocates have also given up on past ambitions and entrusted a significant portion of the ideal order to the established rights of states and custom and social rules. The need for independent reason or the building of rationality also depends on trusting in the experience and observance of the interests and interests. Absolute acceptance of this statement seems to face some drawbacks, as the Shari'ah does not prescribe everything that the independent intellect has acquired, but rather the prescription depends on the conditions that the Shari'ah considers acceptable. That is why the writings of independent reason are so rare and somewhat rare in the writings of legal writers.

Secondly, reason can be used as a tool to enforce religious law from other sources. In this context, reason seeks to understand the meaning of the Shari'ah by means of textual understanding tools such as interpretation, and on this basis, the principles of jurisprudence as an artifact to be deduced. Moreover, the judge uses this tool to give a verdict. The arguments about organic reason and the usage of the wise as the two tools of reasoning in the current legal system are such that many writers attempt to comment on these criteria without going into the basics. Some have argued that the owner can request the price of the day of payment or the price of the yadda from the usurper based on the time of payment. Others argue that from a

rational point of view, one who is reluctantly forced to make a transaction should not be bound by its provisions and that such a contract is incorrect.

Reference to these tools is also found in family law. Some writers have considered couples presiding over the family as rationally correct. Some also believe that the rational custom is that when a man and a woman marry because of the specific characteristics of the woman, the couple is responsible for the wife's expenses and does not consider the obligation to obey the wife. In the light of the above examples, which are numerous, the legal doctrine has also argued that acceptance of the principle of reasoning, regardless of the validity of the method of reasoning, implies acceptance of the principle of correctness, the argument for these two tools is in the current legal system (Keršuliene et al.: 2010).

Reason and usage of the wise reason as a judicial proof:

Judicial procedure is the sum of judicial opinions and the general form of a repeated judicial decision that, in the same cases, is either spiritually or legally binding. Accordingly, the judicial procedure is the same as the general rule, which is widely used and not unique to a single case. In these cases, the mediator in the verdict is not the rational means, but the reason itself as the mediator. However, due to the arguments that have been raised regarding the citation of independent reason, the prosecutors have not cited it and have not documented their verdict except in the rare cases of independent reason. One of the few examples of such citation has been to invoke the name of independent reason. In one of its arguments, the General Court of First Instance has held that a name change is reasonably and reasonably the right of a person. The name is essentially one of the individuals and constituent parts of it, and the senses at the core of their personality must feel rationally and reasonably entitled to act according to their desire for change and consistency.

On the other hand, if there is a legal ruling at the hearing that mediates the rational understanding of that law, the magistrates can invoke it as an instrumental reason. In this method, the judge, by using rational analysis of the text, in deriving rational ruling and principle arguments and considering its requirements, deduces certain sentences from the text, since it is assumed that the rational person rules the rational and rational rules in His speech has been respected and relied upon, silenced or silenced about it (Golann: 1989). Citing jurisprudential, legal, principles of inference, and rules of interpretation are examples of this kind that are widely available in judicial decisions. For example, Tehran's Court of Appeals on the Conversion Proceedings, citing the instrumental reason (principle of non-existence) in non-conversion, holds that: "Conversion of an obligation that is contrary to the principle cannot be inferred, but also in the judgment of reason. The principle of non-disclosure must be established and can only be ruled out if there is no doubt that the relationship is new and that the intention to convert should be clearly inferred from the agreement of the parties.

In fact, the Court of Appeal has ruled that conversion should not be realized, arguing that it is one of the tools of inference. On the other hand, the rationale has also been put to trial in the judiciary as one of the arguments to be considered.

The tool has been more of a magistrate's independent rational rule, and the courts have used other similar titles in their arguments to cast their votes, in addition to citing and applying the rationale. In cases where some courts have relied on the rational ruling, it is necessary to recover compensation for the property. It has been stated in this regard that "the rationalist and the law-maker have not prescribed any compensation for another's property, but that they are based on the assumption that no loss should be left unpaid, and that there must be some damage between that "The damage to the person's body is caused by the difference in the damage caused to the person's property, such as temporary or permanent disability and the imposition of medical and medical expenses ...". Other ways to cite rationality are in compensation.

In addition to the above, in some cases, some criminal courts have resorted to rational cases. In family law, the use of independent reason and the building of reason is also used. For example, the alimony lawsuit, in which a wife claimed to have no alimony after five years of marriage, states: "Mystically and intellectually it is unlikely that a woman has been without alimony since 2006 and has no alimony once he wants to act on it.

The Usage of the wise has also been invoked and applied with the terms logic, logic tradition, and method of reasoning.

It is known in the above cases that the courts have acted in favor of reasoning and have based their verdict on cases based on reason and reason. The fundamental question now is whether all the above-mentioned colonies have been applied correctly and, more precisely, is there a criterion for referring to the intellect and the way of reasoning, and if so, what are its limits and limits?

2. METHODS

The concept of reason and rational proof:

The meaning of reason, as everyone agrees, refers to a spiritual gem that understands the good and the evil and the good of the good and the evil of the evil. However, there is disagreement about the nature of the judgment of reason and its origin. The ancients of the jurisprudents and theologians generally have gone beyond the discussion of the rational rule as an independent reason and have not come within the scope of its definition. The first person to mention the reason for a reason, among other arguments, is Ibn Idris Heli. However, he also offered no definition of the reason.

After him, scholars such as Mohaghegh Heli and Shahid I, in order to discuss the conceptual reason, attempted to cite some of the reasons for a reason and its conceptual development. However, no definition of this concept until the contemporary period has been provided in a way that generally clarifies the angles of discussion. Existing conventional textbooks such as teachers and apostles and scholars have not discussed this subject separately and have gone beyond rational ruling and merely point out that in cases where the perception of an independent judgment for reason is clearly possible This is the reason for the wisdom of wisdom and this is referred to as intellectual autonomy and if there were no reason for the book, tradition, consensus, and fame, it would have been inappropriate to do so. We are the reason; they are enough. However, some of the main principles of the subject have been defined. Sheikh Ansari argues: The reason for reason is rational judgment, which leads it to the religious law (Menkel-Meadow: 1997).

However, this reason does not include cases such as analogy. Moreover, the meaning of the sentence in this definition is a predicate, which means that the predicate is a rational proposition that is self-evident in its subject matter and does not place it in contravention of the Shari'a law. The rational predicate is like the cruelty of oppression, and the religious predicate is the same as the sanctity of oppression. According to the aforementioned cases, it can be said that the rational rule is a definite rational theorem from which knowledge can be obtained with certainty and discontinuity of the Shari'a decree, but this is subject to the acceptance of the conviction between the Shari'ah and the Shari'ah.

Divides the rational rule:

As mentioned, rational monopoly reasoning can be done in two ways. First, the reason is regarded as an independent source throughout the book and tradition and independently of a religious source that can issue Sharia. Secondly, reason can be used as a tool to enforce religious law from other sources. In this context, reason seeks to understand and discover the meaning of the Shari'ah by means of textual understanding tools such as interpretation.

Independent reason:

Independent reason applies in two ways, rational independence, and non-rational independence. In rational autonomies, the reason is dominated by the analogy. For example, in the case of justice, good justice is necessary, and what is rationally necessary, the Shari'ah considers it obligatory, and consequently, justice is obligatory. In this analogy, both introductions are rational. However, in intellectual non-independence, only the analogy is beyond the power of reason. For example, it is obligatory on the hajj proposition, and every obligatory, its preparations are obligatory, so the preparations of the Hajj are obligatory, it is merely a minor of the religious analogy, and a cobra for the analogy, which is obligatory on the introduction, is rational.

Accordingly, the application of autonomous reason is limited to the three cases of non-independence and of the minor, and of the independence of the intellect, and this is based on the acceptance of the conviction between the law and the law (Bingham: 2004).

According to Shi'ite principles, the intellect of the discoverer is a Shari'a, and in other words, it is not law. Therefore, regarding the necessity of general vaccination and so on, reason discovers that the Shari'a law is in need of vaccination in the present age, though acceptance of this discovery depends on the acceptance of the rule. It may be said that there is no excuse for accepting the constitution of reason in these cases. In this regard, Martyr Sadr, in rejecting the Sunni endorsement, says that if wisdom is accepted as an independent cause, it will cause a defect in the Shari'ah, as it generally destroys the meaning of ijtihad and no longer requires ijtihad to The discovery was not a religious law, but any jurisprudence can issue its judgment without ijtihad, and it is the same as the law while the current term is the discovery of the religious law, and according to the promulgation, the jurisprudent is the law (Rozdeiczer & de la Campa: 2006,).

The use of independent reason in the writings of the principals can be seen at least in the following cases: the principle of the absurdity of mind, the preferences of bisexuals, the task of science at a glance, and the obligatory circulation between the two, the components of the duty of restoration and of justice. The question that is very much related to constitutional rights is whether the elimination of antagonism by the magistrate for reasons of the reason is independent of the legal ends and the will of the legislator or whether the magistrates are obliged to move in the direction of the legal ends and ends, and the reason cannot help alone? The answer to the question depends on looking at the sources of law as the most plausible principles for proving the right or obligation. The sources of law have been identified as exclusive to law, custom, and legal thought. Moreover, this question is in place. Where is the place of reason in legal sources, and why has it not been regarded as a source in subject matter law? The answer to this question relies on the place of instrumental reason in jurisprudence, which is discussed below (Hensler: 2003).

Instrumental reason:

Instrumental reasoning in jurisprudence is not even opposed to speech, and it has been accepted by the Shiites and Sunnis, as a matter of principle. The most important of these applications, which are also important in law, is the application of reason to the conflict of arguments, the conceptualization of the evidence, and the making of exceptional and extraneous comparisons. In so far as law is also invoked daily in countless cases, the judge It should analyze the basis of the arguments and make for each one a particular logical analogy consisting of the law (coercion) and the ascertainment of the material and external event (minor analogy), and make the result of this compilation and deduction the prelude to deduce the later more general analogy. Reach the result. Therefore, there are no particular forms of instrumental reason and the application of the rules of understanding.

3. RESULTS

The concept of Usage of the wise:

Sire has been divided in terms of ownership, origin, autonomy, organic validity, etc., but by definition, Sire has been defined as a way in which people are confronted with casual events. Despite differences in time, place, culture, civilization, and religion, they act like. It is also said that Siraah is the continuation of rationalism, whether rational or not, no matter whether they are religious or not, and include Muslims and non-Muslims (Crowne: 2001).

It is possible to define sire in the sense of the term al-mashour meaning practical or conduct, and a common behavior that uses that particular behavior, that is, in the practical sense, or on the part of the rational, or on the other hand, it is called the common sense. There seems to be a rational difference between the concept of custom and the concept of reason. Conceptually, the relationship between custom and tradition is divisive, and from my point of view, both general and specific. Conceptually, all people, including the wise, the

crazy, the sly, and the mean, are involved in the custom, while in the sense of reason, the mere policy of reason is in view. The sufficiency of transactions is rational, while after the validity and validity of that adequacy, the common name must be given.

Divides of sireh:

What should be the focus of the speech on sire is the realization of sire and its authority, which can be divided into three types:

A. External conduct, according to the sire, is the same as trusting in the knowledge of the sage in the time of the jurist and will certainly be valid if no trace of the juror is proved on this sire.

B- External conduct is not true of Mossadegh, but there was a rational practice in the time of the share'. Like the license to imitate mate.

C - Conduct and rational practice is the subject of what some scholars have called the rational premises of the subject. Now, can we say, through the wisdom of the Sira and the rationale that since the intellect was accepted after the era of the Shari'ah, the Shari'ah's silence at that time was the discoverer of acceptance, and thus the Hinduism is valid? In the first and second types, there is no restriction as to citation of the sire; however, in the third, there is an infallibility of the signature of the infallible. This prevents the rash from happening for this reason

Analysis of judicial opinions:

As the preceding, the magistrates have used two types of reasoning to deal with the case. In a few claims in the independent judgments of the General Court of Appeal for a change of name petition, in one of its arguments, the name was rationally and reasonably regarded and stated: The name is essentially a personality and its constituent elements. Whenever the sensible person feels a lack of emotion in his or her personality, he or she must reasonably and have the right to act on his or her own accord and in accordance with the personality.

In spite of such citations, it should be noted that independent reason cannot be invoked in the process of voting as a reason for citation, because first of all, the function of independent reason is to issue a general verdict and to apply the verdict on the issue from the circle. The function of this intellect is separate. Secondly, the independent reason is not recognized as a source of law resources and cannot be independently documented. In family law, there has been a demand for alimony in cases where independence has been addressed, and prosecutors have ruled on it. Regarding the alimony lawsuit in which a wife has claimed no alimony after five years of marriage, it is said: "Mystically and rationally it is unlikely that a woman has been without alimony since 2006 and has been left without alimony and will To act on it. " However, as is clear, the reference to reason in this vote means the present in jurisprudential terms, and in such cases, the term in the jurisprudential term is used in such cases, which is the appearance which is ruled by Hegel (Posner: 1986).

Therefore, reason in this vote is not only used in the sense of independent reason but in a sense other than reason. It is probably because of these arguments that the reference to independent reason has not been favored by the judges in the judiciary and especially in family law. On the other hand, there is no doubt about the wisdom of the instrument and the use of inference and the authorization of these tools, and the only way to get a vote is to use these tools correctly, such as verbal and practical principles.

The usage of the wise is more than the independent reason of the magistrates and has been taken into consideration by the terms of logic, logic of reason and method of reasoning. The distinction of Diyat for material and spiritual damages and the ruling on payment of material damages in addition to Diyat has been invoked as a rationale. And some other courts have also documented the ruling to compensate for intellectual damage. In criminal law, in a personal case, in order to prevent future harassment, he threatened the other party, and the court did not condemn him, saying that "emotions and rationality give him the right, or in other words, if it is not lawful." The rational building has appealed.

An examination of the quality and validity of citation to Sireh in family law involves understanding the relationship between custom and cure. The reason for this is the acceptance of custom as one of the legal

sources. Thus, if the relationship between custom and sire is considered to be an absolute, specific and absolute one, the reference to sire means to refer to a branch of custom that is rational, justified in discovering a subject such as custom. On the other hand, if the relation of sire and custom is regarded as my own, the reference to sire in the community is the reference to the custom which, if the rules of citation are observed, is legally the source of the work and otherwise, the ability to cite Does not exist. In the distinction zone, the circumstance can be invoked only when all the criteria, including the realization of the external conduct according to the circumstance, were fulfilled by the scholar at the time of the scholar, or at least there was no rational practice at the time of the jurist, and were rejected in both cases. Rational conduct and conduct cannot be proved by reason. Obviously, finding Sirea's circumstance unavoidable, given that the main task of the magistrates is to apply the case to the verdict and not to the judgment in the Appeal Judgment, thus citing Sire in many cases is incorrect (Mabey et al.: 1994).

According to this foundation, in addition to family rights, the ruling on compensation for spiritual damages is incorrect in reference to the principles of reason. On the one hand, as to the principle of material realization, as stated above, the necessity of compensation in all legal systems and countries should be established by the judge, and on the other hand, on the basis of the realization, the innocent signature or at least their rejection on the issue must be fixed. To be sure, proving such a thing, if not impossible, is simply not Missouri. In discussing threatening the other party in order to prevent future harassment, the elements of citing either the assumption of absolute authority or my assumption were not entirely valid, and besides the aforementioned drawbacks, even custom threatened the other party. Family law claims should also be based on the facts of the case. Therefore, it is not possible to refer to the sire in the necessity of alimony or the presidency of the family by the man, because the realization of the sire's pillars is an unfinished matter, and this prevents him from resorting to the sire. However, in cases such as violating the principle of presidency in the family and the condition of both parties that the head of the family is absent, such a condition may be invalidated by reason of opposition to the rational course (Phillips & Piazza: 1982).

4. CONCLUSION

Dealing with rational reasoning from the point of view of accuracy is subject to the explanation of the reason and its kinds. Although the use of reason is widely traced in the writings of legal writers, nevertheless, in the family law system, when independent reason is invoked by judges, it faces problems such as the generality of reasoning and the lack of precise explanation of its position. On the other hand, if the instrumental aspect of the reason is invoked, it is in the form of inferential methods and techniques that have long been the subject of universal wisdom in litigation. Such use of reason is not only visible in family law but in the overall legal system as a whole. The usage of the wise is more than reason in the writings of jurists, yet its limits and limits have not been specified in the legal system and have evolved into different legal interpretations.

However, this trend in family law necessitates adherence to the system of principles that underpin the principle that the relationship with the customer is recognized in the text, as discussed in detail in the text. Therefore, in the current state of the legal system, and especially the family law, although it has been used in some rational and rational means, however, these citations have not been followed in many cases due to lack of specific criteria and limits. Cases, in addition to counterfeiting a new term such as rationale and rationale, can be cited in terms of citation. This disadvantage has led some prosecutors to resort to other arguments, in addition to reasoning and reasoning, to prevent a higher court from violating a ruling. On the other hand, in cases such as proving the existence of a boss in the family and invalidating the opposite, invoking the rationale can be the prosecutor's full reason.

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