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Functions of Custom Law in Inferring the Religious Rules and its Impact on the Spiritual Life in the Modern Era

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ABSTRACT

SUBJECT AND OBJECTIVES: Religious rules in Shiite jurisprudence are inferred from the four sources of the Quran, Sunnah, reason and consensus; but in addition to these sources, some foundations such as common law are also mentioned. Based on it, the question arises here "what are the roles of common law and Ertekazat in common law in understanding and inferring the religious rules? This article seeks to answer this question and tries to study and analyze the functions of common law in understanding and inferring the religious rules. The research hypothesis is that common law and Ertekazat in common law are used in understanding the words of religious arguments, subjecting and de-subjecting of common law for the religious documents, proving or denying some rights and other issues that are used by jurists and lawyers in the process of inferencing.

METHOD AND FINDING: The research method is descriptive-analytical. One of the findings of the present study is that most scholars of the Islamic jurisprudence and law have not distinguished between these two foundations; but it is more correct that common law is considered from the category of objective matter in the practical life of people, but Ertekazat in common law are from the category of subjective matter.

CONCLUSION: Presence of custom in the scene of inference causes the contemporary Muslim to realize that the religious rulings are made according to the customary understanding, facts and tangible needs, and therefore in his spiritual biology more obedience to the rulings, commands. He will have the divine and the spiritual program of Islam and his spirituality will be strengthened.

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Introduction

One of the most controversial issues in Islamic jurisprudence and principles and consequently in Islamic law is the place of common law and *Ertekazat* in common law in understanding and inferring the religious rules; although the sources of ijtihad in Shiite jurisprudence are exclusive and only four sources of the Quran, Sunnah, reason and consensus are accepted by the jurists; but a search in the words of the jurists reveals the fact that the jurists have repeatedly cited common law and *Ertekazat* in common law in the process of inference.

At the same time, there are no clear boundaries between common law and *Ertekazat* in common law, and the two are confused in the writings of scholars of Islamic jurisprudence and law, despite the similarities that exist between them.

The functions of common law and *Ertekazat* in common law are ambiguous in understanding and inferring the religious rules.

Some jurists and lawyers do not adhere to common law and *Ertekazat* in common law, and others seek to conform the rulings as much as possible to the common law of the present time and have somehow turned to religious secularism. These ambiguities give rise to the main question: What are the functions of common law and *Ertekazat* in common law in inferring the religious rules?

In line with this main question, an important sub-question arises: What effect does paying attention to custom in inference have on the spiritual life of Muslims in the modern age?

To answer this questions, in addition to the religious texts, the views of jurists and lawyers must be examined and analyzed,

and a clear picture of their functions must be provided.

Common law (Custom)

Different meanings have been expressed for common law: subordination, connection and succession, *(Haeri Isfahani, 2013: 343)* peace, calmness, and stillness, knowledge and cognition, known and common among people, an acceptable act from the point of view of intellect or Shari'a, *(Haeri Isfahani, 2013: 343; Ibn Manzur, 1985: 238-239)* custom and habit, a name for confession, and phrase.

In the Holy Quran, the word common law is used twice and known is used thirty-two times. In the first usage, *(Ref: Quran, 7: 99)* common law means known, good deeds and words; *(Tousi, 2011: 512)* and in the second usage, *(Ref: Quran, 77: 1)* it means goodness or subordination and succession.

The word known has one of two meanings in all applications of the Quran:

- Good and righteous thing, including actions and omissions, speech, deeds and thoughts. *(Ref: Quran, 2: 178&229&231&235&263; Quran, 3: 104&110&114; Quran, 4: 8&35; Quran, 7: 157; Quran, 9: 67&71&112)*
- conventional and common. *(Ref: Quran, 2: 233&236&241; Quran, 4: 6&25)*

The Quranic meaning of “common law” and “known” is often valuable, moral, and corrective, and although in the word, it was not seen until the time of Ibn Athir that such these meanings are considered for these two words and immoral and anti-correction for “sin”; but such a thing has

been done in the Quran and consequently in interpretive and narrative texts.

The customary good deeds and words, the knowledge of nature and intellect towards it and the unfamiliarity of the ugly matter and the lack of familiarity between nature and intellect towards it can be desired by God in this usage.

On this basis, it should be said: common law and known (= every thing that is admirable and righteous) is innate and familiar to reason, and denial (= disgusting and corrupt thing) is non-natural and unfamiliar to reason. *(Alidoust, 2010: 47-48)*

Various definitions of "common law" were presented with the same title or titles such as "habit", "reason", and "manners" in the Islamic jurisprudence, law and principles and we will explain them.

1. Custom is something that is placed in the souls of human beings from the point of view of reason and is accepts by the healthy nature that is not polluted with lust.
2. A custom is a habit of the general public or a specific group of people according to which they have lived and are living, and this habit can be organized in the form of speech, action or leaving.
3. Custom is anything that the reason considers good to appear and pure thoughts do not deny it. In this interpretation, custom is considered the same as topics such as "justice", "truth", and "chastity" including "goodness" and "must be arisen" from the viewpoint of the wise

people and reason, however, the phenomenon of custom may belong to these subjects; but it is not the same and united with them.

4. The custom is those who were present at the time of the issuance of sermons and religious arguments and were the direct audience of the message of revelation and the words of the Prophet and the Infallibles. The obvious mistake of the above statement- which has been made with the aim of limiting the scientific and complex term custom- is that the custom in question is a popular phenomenon and not the people themselves. It seems that the source of the above mistake is the use of custom in some procedures meaning the wise and the mass of people with a special description; while custom in this practice is not the same as the above definition.
5. Custom (common custom) is the continuation of the action of the rational- because they are rational- on something. The source of custom is sometimes external coercion that forces the reason in a way; but gradually becomes one of their *Ertekazat* and sometimes it has a religious and revelatory origin, as it sometimes originates from human nature. *(Naeini, 1993: 192-193)* Equality between custom and rational point of view, heterogeneity between interpretations, failure to fully investigation of the principles, are the challenges facing this definition.

Since the manifestations and applications of custom are different in the Islamic jurisprudence, law and principles, the following comprehensive definition can be provided for it:

> *It is the continuous and voluntary understanding or basis or judgment of the people that is not considered as a contractual or Shari'a law. (Alidoust, 2010: 61)*

Ertekaz

The word "*Ertekaz*" is to be pronounced like Efteal and is on the basis of Ertakaza, Yartakezo, *Ertekaz*. Arab Linguists believe that the word "*Ertekaz*" means that "something is fixed somewhere", and also what is fixed in the mind is called "Rakez". *(Waseti Zubaidi, 1993: 72)*

Some have defined it as "inserting something vertically", like inserting a spear into the ground that can be leaned on. *(Ibn Manzur, 1985: 355)*

It means "putting something in something else. Hence, people who work in the mines are called 'Rekaz' because they are located in the ground". *(Ansari, 1997: 389)*

Therefore, it can be said that this word is used if something is established in something else. This word is also used in the verses of the Quran, where God says:

> *"How many a generation we have destroyed before them! Can you descry any one of them, or hear from them so much as a murmur?" (Quran, 19: 98)*

What can be understood from this verse is that "Rakaza" is used in this verse in the virtual sense of sound, otherwise it actually means that you do not hear the news

based on that they are alive and well.

In past, the jurists used the word "*Ertekaz*" meaning to keep the matter in mind. For example, Sheikh Mofid (1993) considered "*Rejat*" meaning the return of the dead and it is one of the meanings of *Ertekaz* in the minds of the legislators.

Ertekaz can be defined as confirmation a specific concept in the mind of a group of people or most of them or all people. The concept of *Ertekaz* is just sometimes theoretical in the minds, such as that two people are more than one person, and sometimes it is a theoretical concept on which action is based, like the *Ertekaz* of acceptance and authenticity of the word of an honest man according to the wise men of the world.

The wise men of the world form their lives and deeds on this principle which is in their minds as the *Ertekazi*; and another example of *Ertekaz* is to respect the Kaaba and the Quran from the point of view of Muslims, which is sacred to them and they act according to this *Ertekaz* and anyone who insults the Kaaba and the Quran and does not protect them is severely reprimanded, also from the view point of the Imamites, the *Ertekaz* related to the sanctity of the Imams is one of these cases. *(Ansari, 1997: 390)*

The characteristic of *Ertekaz* is that it has penetrated deeply into the human being in a way that it is not easy to give up.

According to Ayatollah Sistani- one of the jurists- "*Ertekaz* is a fixed thought that has penetrated into the minds so much that it is difficult to give it up even if there is a reason to the contrary". *(Hosseini Sistani, 1994)*

Of course, there is a consideration in the final part

of this definition, and that is if a person- a legislator or a non-legislator- speaks clearly and with a convincing statement against the *Ertekaz* and does not accept that customary understanding in a particular case, naturally this statement and reason must be accepted from the speaker and the previous *Ertekaz* must be given up.

Thus, *Ertekaz* is the penetration of some concepts into the mind of custom, based on which sometimes a practical way of life emerges, and sometimes because it is a theoretical concept, a practical way of life is not established. *(Andalib, 2019: 35)*

Spiritual Biology

Bio-spiritual consists of two words "bio" and "spiritual". "Spirituality" in the word Masdari Jali, and is made from the word "spirituality". Spiritualism is also derived from the word meaning which is the source of Mimi and its meanings are intended by referring to it. Therefore, spiritual means is attributed to the meaning and in contrast to the word. This word is also used in other meanings such as: "true, right, original, intrinsic, absolute, esoteric, and spiritual". *(Ibn Manzur, 1985: 1334)*

"Spirituality" The word "spirituality" is used in English. The word itself is derived from the Latin word "spiritus" meaning "soul and tail". "Spiritus" is also derived from "spirare" meaning to blow or breathe. In the Latin translations of the New Testament, "spiritualis" or spiritual person refers to someone whose life is regulated or influenced by the Holy Spirit or the Spirit of God.

The abstract word "spiritualitas", which is "spirituality" or

spirituality, was used at least in the early fifth century, the same meaning derived from the Bible; but by the beginning of the twelfth century, spirituality took on a more or less implicit meaning with a psychological function as opposed to physicality or materiality. However, another meaning quickly emerged in which spirituality referred to persons or facilities related to the church.

In the eighteenth and nineteenth centuries, the use of the word "spirituality" declined. This may be because Voltaire and others used the word derogatory. It was not until the early twentieth century that the word was revived, with the revival, mainly with the help of French Catholic writers, in the original religious or devotional sense, and gradually referring to special and diverse matters. Even now, it shows some areas of research related to theology and the history of religions. *(Principe, 1983: 127-141)*

The term "spiritual biology" in this study, considering that it is used about religious rules, is related to the spiritual life of a Muslim, which is achieved by following the religious rules and other orders of God Almighty in other areas.

Usages of Custom

The instrumental effectiveness of custom in Shari'a and Ijtihad is agreed upon by all and it does not accept opposition from anyone; we can not talk about religious and ijtihad and not accept this usage. Of course, the search for cases and instances of instrumental usages leads us to differences in the acceptance or non-acceptance of some cases; therefore, by exploring the instances, it is needed to separate the general accepted

cases from the disputed ones, and to organize the discussion of each of them as much as necessary.

There are some instances of these usages as follows:

1. **Referring to custom in the concepts of words and the sentences used for reason**

One of the definite and general accepted usages is the authority of custom in interpreting the words and phrases taken in the evidence and religious documents. As custom is also a competent reference in the interpretation of phrases.

This efficiency and the second efficiency for custom are based on three undeniable presuppositions:

a) The will of the legislator is understandable to us;
b) This perceeption is a kind of proof and document;
c) The saint legislator has not chosen any special tools in understanding his intentions. *(Alidoust, 2010: 214)*
d) A search of the written and spoken documents of the knowledge of Islamic jurisprudence, principles and law reveals the fundamental role of custom in identifying and explaining religious documents- including the Quran, hadith and consensus. Although the authority of custom does not need to be argued in recognizing concepts and phrases; but in order to remove any doubt, it clarifies the

matter with an explanation from the point of view of wisdom.

Undoubtedly, in notifying the law to the citizens and those who are responsible for that law, any legislator must adhere to the principles and rules of communication and the rules that are common among their audiences, uses their words and phrases and be bound by their custom in communication and also must remind if he has a particular term or method, and otherwise organize his conversation according to the procedure and custom of the people.The saint legislator has followed this procedure. The result of this rational understanding is two statements as follows:

- The saint legislator does not have a specific method in his legislative communication.
- The term Shari'a precedes custom. *(Alidoust, 2010: 215)*

2. Referring to costume in understanding the related matters, reasons and arguments

One of the most common and subtle instrumental uses of custom in deriving rulings is its use in interpreting and explaining valid religious arguments and documents. This means that a Mujtahid should instill documents such as the Quran and Hadith into people who are fluent in the Arabic language, and consider their understanding and judgment (which we interpret as custom) about that document, and take into account the other necessary aspects in Ijtihad.

The difference between this usage and the previous usage is that the previous usage was about the interpretation of the words and sentences of a

reason of custom meaning that people familiar with the language were asked the concept of the words and sentences of command and prohibition and their understanding was the criterion, hence the custom in that usage is called “verbal custom”.

Customary supervision in the previous usage was within the words and the literal meaning of the valid religious document and what was at consideration was its verbal appearance, no more; but in the usage in question, people's understanding and judgment of the set of reasons- and in some cases the set of arguments- are important, hence, custom in this usage is not a verbal one; but a kind of understanding and judgment; an understanding that its source is the words and sentences in the same reason, and also involves many other relations and elements.

For example, some jurists believe that according to the costume, the verse of the Quran *“Cooperate in piety and God wariness; but do not cooperate in sin and aggression”*, *(Quran, 5: 2)* indicates the need to eliminate corruption, without that “cooperation” or “assistance” have a special feature. *(Musavi Khomeini, 1993: 130&137& 143)*

It is clear that this usage is not about the word or phrases “do not cooperate, *lata'wanu*” or “sin”, “*ethm*” and “aggression”, “*odwan*”; but about the understanding and judgment of the people as a whole in this verse-even under the supervision of other arguments and the Shari'a.

This usage of custom originates from the fact that in their communication people sometimes understand something from the whole reason but each word does not convey the

meaning, and when they are placed together, they convey that matter.

The limitation of custom efficiency in the former usage can be considered as "imaginary concepts" and its limitation in the discussed usage as "affirmative concepts".

In previous and last jurisprudential and legist writings, there is a lot of practical and scientific aspect of this usage; for example, the late Seyyed Morteza has dedicated a chapter to this efficiency in his book of principles entitled "Chapter on the allocation of the public to habits"- although incomplete.

This efficiency has been mentioned by the later ones with titles such as "refinement of basis of the ruling", "abolition of specificity", "specification of reason", "restriction of reason", "failure to conclude the absoluteness of reason", "acquisitions based on the relationship between sentence and subject", "customary priority", "change of text". *(Alidoust, 2010: 231-233)*

3. Referring to custom in conforming customary concepts to instances

In religious texts, we see thousands of sentences which have subjects based on costume and predicates on religion.

There are some examples such as, usurpation is forbidden; buying and selling are allowed; the deal of idiots and lunatics is void; blood is impure; intoxication is forbidden; if it is expedient, the guardian can seize the assets of the pupil, etc.

In all these cases, the predicates are religious, whether it is a law that did not already exist and was legislated by the legislator, or already existed and approved by the legislator. The terms used by the

legislator, whenever they are taken from the custom, so their interpretation is left to the custom.

For example, custom is considered as the reference for interpreting these cases (usurpation, buying and selling, idiots and madmen, blood, intoxicants and expediency). Of course, in accordance with the objective materials, we must refer to the real one, for example, what wine means should be referred to the custom; but whether what is inside the glass is wine or water, one must refer to external reality (for example, the laboratory).

The question is what and who is the legal authority for the application of customary concepts mentioned in religious cases?

For example, the legal authority for whether the blood is impure or not, is the legislator, and custom is referred as the authority to what blood is; but who should judge that this real substance is an example of blood; or according to farsakh, whether it is how many kilometers from one place to another to cause the prayer to be broken or not, should be referred to custom and also what clean water (kor) means, we should refer to custom, and whether the water inside the pool is kor or not, it should be measured, and whether a person is an idiot or not, we should refer to custom.

Through this explanation, it is clear that the authority of custom in determining concepts other than its authority is in the conforming of concepts to instances. What was in the first function was the first authority, and what is raised now is the second authority. *(Alidoust, 2010: 253)*

This function has been denied by most jurists because there is no valid reason for the

authority of custom in this case and religious commands depend on the truth of the matter, and if people misjudge, the truth will not change. *(Akhound Khorasani, 1988: 227; Khoei, 1997: 276; Boroujerdi, 1993: 24)*

However, some jurists, including Imam Khomeini, have accepted this function because they believed that the legislator does not have a specific term or method in talking to others. On this basis, in some sentences such as "avoid blood and wash your clothes from impurity" when the narrator is a legislator, the same meaning is understood as when the narrator is one of the people. *(Musavi Khomeini, 2006: 228-229)*

Therefore, just as in explaining the concept of blood, one should refer to custom, in identifying one instance of it, one should also refer to custom.

For this reason, if the custom considers a case to be "the color of blood" and not "blood", the rules regarding blood should not be applied for that case, however philosophically nothing can be placed on it without context.

4. Function of custom in legislative affairs

In the matter of documenting custom in *Ijtihad*, we denied the role of custom- because it is custom- in legislating and forging rulings; but the effect of custom and norms accepted by the people on how to forge, the quality and fictitious expression for who are legally competent, should be accepted without any difference in this regard among the legislators, unless the legislator has established special principles

in the matter of legislation and declares it.

God Almighty, as a holy legislator, follows the same customary procedure in legislation and acts like customary legislators and has no new method in legislation.

Belief in "considering the custom undesirable in determining and limiting of the majority from the general and absolute ones" and "the manner, extent and adequacy of the expression of the law" are the manifestations of this function. It is one of the functions that has been accepted by all jurists. *(Alidoust, 2010: 282-293)*

5. Custom in the field of evidence and documents

The custom is not a document and a reason for discovering the Shari'a; but its efficiency and impact in matters related to authentic documents is considerable.

"Understanding the discrepancy of proofs", "summing up the arguments and their coordination", "expanding the meaning of the words mentioned in the reason" are among the manifestations of this function in the field of inference. This function has also been accepted by all jurists. *(Alidoust, 2010: 293-299)*

6. Custom in contracts and transactions

One of the most obvious manifestations of custom in Religious and Islamic jurisprudence is its function in transactions, treaties and contracts.

According to these important sentences, "*Keep your agreements*"; *(Quran, 5: 1) "Believers fulfill their commitments"*; *"All people have the right to control their property and their souls"*; the legislator of Islam has not only confirmed the customs, habits, contracts and conditions that

are common in his time and place; but also has opened the way for the acceptance of customs in later times and other places.

On this basis, we do not need to provide evidence and examples about the presence of custom in this field. One can refer to the books of jurists to see many examples. *(Musavi Khomeini, 1993: 91)*

7. Making custom subjective and de-subjective for implementing the documents and rulings and not implementing them

Other cases in which custom is used are subject-making for evidences and religious documents and implementing the Islamic laws that the evidences can be expressed by them; also, sometimes the subject of a reason or a law disappears through custom and there is no base for the implementing the law and reason.

This function creates obligations for profit or loss. Due to the role of custom in many cases, it prevents us from expanding the discussion; but in order to be familiar with this function, we will give examples of it through the jurists' words.

For example, Imam Khomeini in following the land and air regarding personal property commented as follows:

> *Using land and air compared with the personal property is within the customary needs. For example, if someone digs a canal outside a personal home or land or endowed one and passes through or takes possession of the basement, the owners or custodians cannot make a claim. If someone*

builds a building above the normal amount, or comes and goes, none of the owners or custodians have the right to prevent him. Finally, subjection to a personal land is customary in value, and new instruments have no bearing on customary value; but the subjection to the country is very high and the government has the right to prevent the seizure of more than the customary right of a person or persons. Therefore, oil, gas and mines that are outside the customary limits of private property, are not subject to real estate. (Musavi Khomeini, 1993: 588)

According to an idea about discrimination in rejecting the deal, Ayatollah Hakim (1984) also wrote, "Customary *Ertekaz* is not conducive to discrimination in rejecting the transaction due to a defect and in accepting the transaction; but agrees with discrimination in rent. Therefore, if the lease is terminated before the expiration of the term, the lease is valid compared to the past and the determined rent is fixed".

Making custom subjective can be seen in the establishment of the intellectual rights of authors, innovators and artists. By validating these rights, custom prepares the basis for the implementation of the necessity of respecting these rights, which is a judicial decree. *(Alidoust, 2010: 310)*

Examples of Referring to the Ertekazatat of Custom

A search for the words of the jurists shows a large amount of referring to custom and *Ertekazatat* of custom; but

here we will suffice with just a few examples:

1. Wife's Alimony

As for the alimony of the wife during the marriage, it depends on the fact that she has not yet gone to her husband's house.

Here, there are arguments that alimony is obligatory, which obliges a man to pay it and on the other hand, *Ertekaz* of the custom is in the opposite because according to it, during the time that the wife is in her father's house and the alimony is given to her by her father and according to custom, no one obliges the man to pay alimony during this period and no one condemns him for not paying it.

This issue is considered as *Ertekaz* of the custom which is accepted by the couple before and during the marriage. Therefore, this *Ertekaz* prevents the applications and generalities of the obligation of alimony.

Some jurists such as Ayatollah Khoei, Tabrizi, Vahid Khorasani, Tabatabaei Qomi, Rouhani, Fayadh, issued a fatwa on the non-obligation of alimony in these days, "The alimony of the wife is not obligatory on the husband between the time of marriage and the wedding because according to *Ertekaz* of the custom, alimony is not the responsibility of the husband during this period". *(Khoei, 1997: 287; Tabrizi, 2005: 360; Vahid Khorasani, 2007: 326; Tabatabaei Qomi, 2005: 297; Hosseini Rouhani, 2007: 535; Fayadh Kaboli, 1999: 71)*

2. Lien

The lien is the legal right that in the transaction the parties can keep something that belongs to someone who owes the other party money, until the debt has been paid.

The jurists have stated four reasons for the legitimacy of this right:

a) Obligation to give someone else's property back
b) Requirement of the general statement of marriage
c) Rational judgment resulted from the transaction
d) *Ertekaz* rule.

Mohaqeq Naeini (1994) actually considered *Ertekaz* here as an "implicit condition" in the transaction and explained: "But you are aware that lien is permissible in the exchanges before or after the transaction; but before termination, it is due to the implicit condition of the parties because it is customarily on the basis of giving and taking the goods and according to custom, it is considered as a matter of *Ertekaz* (and definite). Therefore, the seller has the right to keep the something sold to receive the payment and also the buyer has the right to keep the payment to receive the goods".

About *Ertekaz*, he also explained that customarily *Mortakez* is who doesn't give the reciprocal thing in the transaction as long as the something in the transaction has not given to him, therefore, there is a right for the parties not to deliver the object of transaction until the other party has not been the debt.

3. Option of Loss

Option of loss is one of the rights discussed in transactions and there are several theories about it. Some jurists have proved it by referring to the "defect of will", that is, the loser is not satisfied with what has happened, and therefore taking property from him is an example of unjust possession.

By referring to the "principle of no harm", others

have proved the option of loss; but neither of these two reasons can prove the option of loss, therefore, some jurists have proved the option of loss by referring to *Ertekaz*.

Mohaqeq Naeini (1994) and *Ayatollah Khansari (1985)* considered *Ertekaz* as an implicit condition in the transaction and interpreted it as of the complete evidence to prove the option of loss.

The base of option of loss, according to Tabatabaei Yazdi (2008) is *Ertekaz* of transactors. He wrote, "The *Ertekazi* will of the parties to the contract is based on the fact that there must be a balance in financial value between the parties, and this, although not specified in the contract, is a condition authorized in the text of the contract and violation of it is considered as a violation of the condition that causes the proof of the option". *(Tabatabaei Yazdi, 2007: 512-527)*

He considered the *Ertekaz* in option of loss similar to the *Ertekaz* in option of fault and also wrote, "The imposing condition of equality in exchange contracts is not in the form of a restriction, the violation of which causes the invalidity of the contract, nor in the form of a claimant and motive, the violation of which has no executive guarantee; but is an implicit condition of *Ertekaz*. What the jurists have said in the option of defect is the description of the validity of the implicit condition of *Ertekaz*, and those who trade on the basis that they receive the goods without defects".

4. Option of Delayed Payment

Ertekaz rule can be considered as one of the principles of proof in the option of delayed

payment. Option of delayed payment means that “if the seller does not pay the something sold to the customer and does not receive the price and the condition of delay of the price is not met, the sale is necessary for up to three days. Therefore, whenever the customer brings the price during this period, he can take it from the seller, otherwise the seller can both cancel the sale without the need to go to a judge or keep the sale and demand the price from the customer”. *(Hosseini Ameli, 1998: 244)*

Some jurists, such as Ayatollah Mirza Javad Tabrizi (1995) considered *Ertekaz* as the basis of the option of delayed payment and wrote, “When the goods for sale are delivered immediately after the contract but the customer refuses to pay the price, the seller has the right to terminate the transaction because the payment of the price and the non-impediment to payment is an *Ertekazi* condition for the sale of the seller.

Also, delivering the goods for sale and not preventing its delivery is an *Ertekazi* condition for the customer's purchase. That is, both the seller and the customer consider the delivery of the price or the goods for sale on the other side as an integral part of the transaction. *(Tabrizi, 1995: 238)*

It means that after the contract, if the seller makes a contract with the goods for sale and the customer refuses to pay the price, the seller has the right to terminate the transaction; because payment of the price and non-refusing by the customer is an *Ertekazi* condition for the sale of the seller, and also the contract of the seller and non-refusing by the seller is an *Ertekazi* condition for the customer's purchase.

The Effect of the Presence of Custom in Inference on Spiritual Bio

After the main question of the research has been examined and analyzed and it has been determined that custom has a prominent and meaningful presence in the scene of inferring religious rules, now it is time for the sub-question of this research, which is very important and closely related to the question.

The main thing is to be examined and analyzed. The sub-question of this research is "What effect does paying attention to custom in inference have on the spiritual life of Muslims in the modern era?"

To answer this question, it should be noted that one of the expectations of contemporary Muslims is that the religious rules be inferred according to his customary understanding, facts and material and spiritual needs, and presented for his action in life.

Explain that if a contemporary Muslim finds that the religious rules presented to him have been inferred according to customary understanding, facts and material and spiritual needs, he will show more luck in following the religious rules and his spirituality will be strengthened.

It should be noted that the spiritual tool is one of the most central issues in Islamic spirituality. One differentiates between spiritual and non-spiritual behavior and more or less understands the desirability and value of spiritual states; but in choosing the type of spiritual states and the means of creating spirituality, one is strongly influenced by external and internal affairs.

The religion of Islam has brought special states and

behaviors for spirituality and has provided certain tools for this purpose. For further explanation, it is necessary to pay attention to the following points:

a) Each person can draw a special spirituality for himself and make an effort to reach that point. By choosing any spiritual program, the human psyche is developed in a special way and the person moves towards the same goal. A person who commits himself to not sinning and does not sin in practice for a long time is existentially different from a person who does not have such adherence.

b) Practicing the program of Islam cultivates a human being who is different from a human being who grows up in the shadow of other programs such as yoga, Zen, and other self-made programs. Therefore, fasting, as stated in Islam, is definitely other than not eating or drinking and water therapy. It may have a positive or a negative, which is not known to be in the path of his spiritual perfection.

c) In short, the following can be considered as tools of spirituality:

- Accepting the program of Islam (faith); In Islam, spirituality cannot be realized without faith.
- Continuous practice of Islamic worship programs.
- Spreading spirituality to other religious sectors; For example, transactions and finally, all behavior, to the extent that human speech and deeds find a

color and smell, and otherwise do nothing in human existence.

Therefore, after faith, for example, praying, fasting, paying khums, going to Hajj, enjoining what is good and forbidding what is evil are undoubtedly considered spiritual matters. The important point is that one cannot choose and replace what I think is good.

For example, say: Instead of the morning prayer, say a little in a special way, or meditate a little, or find spirituality only in exploring nature, and the pleasures that are obtained in this way, although this is also It can be an acceptable means of attaining spirituality.

As a result, if the contemporary Muslim realizes that the inference of the religious rules is done according to his customary understanding, facts and needs, the acceptance of the religious rules will increase in his view, and in practice he will follow the divine rules and regulations and the spiritual program of Islam more than It goes away and thus his Islamic spirituality is also strengthened and promoted.

Conclusion

In this research, the status of custom and *Ertekazat* and applications of custom were examined to understand and infer the religious rules.

According to the words and expressions of the jurists, it is obvious that there are many uses for custom and it also plays a great role in understanding and inferring the religious rules. However, according to these applications, custom is not considered as one of the sources of *Ijtihad*; but rather it is used in the interpretation and understanding of sources such as the Quran and hadiths.

It is also the most important reference in subject matter for custom. Therefore, paying attention to the custom has many effects on understanding and inferring the religious rules; but it is not the source to issue a fatwa.

It was also found that the presence of custom in deriving religious rules, while meeting one of the expectations of contemporary Muslims, which is to pay attention to customary understanding and its facts and needs, increases the acceptability of the rules, divine commands and spiritual program of Islam in his view and causes Promoting the Islamic spirituality of contemporary Muslims.

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