

Unwritten Preferences and their Application in Family Law

Khadijah Moradi¹
Ateke Ghasemzade²

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Abstract

One of the controversial issues in the principles of jurisprudence under the topic of balance and preference is the possibility of using or non- using of unwritten preferences, which will have a significant effect on Ijtihad. The famous saying of fundamental scholars in jurisprudence (named Osulion) is based on using unwritten preferences. Regarding the dependence of jurisprudence and the principles of jurisprudence (Osul Fiqh), as well as the interaction and correlation of Imami Fiqh with the legal system of Iran and considering the fundamental importance of the family in terms of individual and social, and the problems and legal gaps in this field, this article has an attempt to provide a practical explanation in this context. In this research, firstly, the use of unwritten preferences in the principles of jurisprudence has been investigated, then the applications that may exist in family law have been discussed. Finally, in order to fill the existing gaps, in Article 167 of the Constitution Law, jurisprudence sources have been referred to. It is necessary to mention that unwritten preferences are used in the principles (Osul) to prefer between two narrations, but in jurisprudence and law, especially family law, it is considered to distinguish the issue.

Keywords: preference, written preferences, unwritten preferences, principles of jurisprudence (Osul Fiqh), family law

1. Assistant Professor, Department of Law, Faculty of Literature and Humanities, Razi University, Kermanshah, Iran
Kh.moradi@razi.ac.ir

2. Post-Doctoral Student in Fiqh and Fundamentals of Islamic Law, Mazandaran University, Mazandaran, Babul Sar, Iran
U.ghasemzade@gmail.com