

A comparative study of reasons for award in Islamic jurisprudence, the laws of Iran, Afghanistan, Egypt and Iraq

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Abstract

Reasons for award is one of the basic cases in the civil justice system. Reasons for award are the statement of the legal and factual reasons on which the court makes the judgment. This research has been conducted with the aim of comparative analysis of reasons for award in Islamic jurisprudence and the law of Iran, Afghanistan, Egypt and Iraq.

According to the comparative study that was conducted and found in Islamic jurisprudence and the laws of Iran, Afghanistan, Egypt and Iraq, the judge is obliged to mention reasons for award. And according to jurisprudence, it is obligatory for the judge to state the direction of the judgment. The duty of the judge to mention reasons for award did not exist from the beginning of the societies until the 19th century, but from the 19th century, the laws of the countries obliged the judges to state direction of the judgment. The nature of the obligation to mention direction of the judgment is accepted as a general rule in the school of natural law, and even if the requirement of the judges is not specified in the law, the judges are obliged to mention the documents and reasons for award. However, in the voluntary and statutory school of law, the task of the judges to mention reasons for award is considered formal and the judges are obliged to state reasons for award when the law obliges them to do so. In Islamic jurisprudence, the law of Afghanistan, Iraq, Egypt and Iran, the effect of not mentioning reasons for award is considered null and void, and it has been introduced as a violation of the appeal. This research has been done with descriptive, analytical, comparative and library methods.

Keywords: reasons for award, reasonable, violation, annulment of the verdict

Introduction

The reasons for award and direction of the judgment is one of the very important issues that the French law and following it the Egyptian law in Article 176 of the Civil Procedure Law and also French and Egyptian jurists have dealt with in detail which the judge should mention in the sentence. But Iranian law, in Article 166 of the Constitution of Iran, Article 9 of the Civil Procedure Law, Article 374 of the Criminal Procedure Law, and Article 23 of the Customary Affairs Law, have emphasized on reasonable, justified, and documented court opinions. But Iranian jurists have not paid attention to this. In Iraqi law, according to Article 59 of the Civil Procedure Law, the judgment must contain the reasons for the judgment based on which it was issued. Also, in Article 247 of the Civil Courts Law of Afghanistan, the court's judgment must be legal and justified, and in Article 12 of the Law on the Organization and Jurisdiction of the Courts of the Afghan Judiciary: "The court is obliged to mention the reasons for the sentence in adjudicate". In Islamic jurisprudence, the judge should mention the reasons for award and direction of the judgment.

This article seeks a comparative analysis of evidence (documented and substantiated) in jurisprudence and laws of Iran, Afghanistan, Iraq and Egypt. And at the top of the presentation is the answer to the questions

that what is meant by reasons and causes for the judicial verdict? What are the nature and conditions of reasons of the verdict? And finally, what is the effect of not mentioning reasons for award?

1- Definition of Causes of the Verdict

In Islamic jurisprudence and the legal literature of Arab countries, words and expressions such as Subb al-Ham, (Ibn Hammam, 5, 1135) Document al-Hakm, Tasbib al-Hakm al-Qada'i, Wajh al-Hakm, Ta'leel al-Hakm, Al-Haqam al-Haqam and Al-Wajj al-Haqm al-Haq, all has the meaning of document and is a proof of judicial verdict. But mystic jurists usually use the term subab al-hakam, and the Arabic rules use the term tasbib al-hakam (Al Khanin, 21, 2021).

The question is, what is meant by reasons or causes of the judicial judgment? In the Arabic language, the word cause is the singular infinitive, and the infinitive suffix is the plural and is means, and cause in the word means string; as for the occasion, it has also been applied to any means (everything with which they achieve something else) (Al-Wasiti Al-Zubaidi Al-Hanafi, 1994, 2, 65).

In the term of Islamic jurisprudence, the meaning of the justification of the verdict is that the judge should include in the text of the document the original verdict issued, the evidence of the verdict such as the Qur'an and the Sunnah, and the methods of proving the verdict such as witnesses and decrees, as well as mentioning the origin of the lawsuit, which may be caused by legal acts and legal events. In other words, the reasoning of the judgment is to mention the principle of the verdict, reason, methods and proofs of it, as well as the origin of lawsuit that may be caused by actions or legal events (Al Khanin, 21, 2021).

In Islamic principles and jurisprudence, it is divided into different credits, but the reasons for the judgment in the proceedings are divided into two categories, one is the factual and objective reasons for the verdict, and the other is the legal and judicial reasons. In Islamic jurisprudence, the judge is required to mention the legal and factual reasons in his judgment (Al Khanin, 35, 2021) and in Egyptian law, there are two types of reasons of action, one is actual reasons and the other is legal and judgmental reasons (Ahmad al-Attar, 2016, 16). Some believe that what is meant by thematic reasons is the mention of events and reasons based on which the judge made the judgment (Fahmi, 1975: 515). Some define it as such: Means of judgment reasons, legal materials and texts that the judge applies to the lawsuit.

Despite the fact that the legislators of Egypt and Iraq consider reasons for award as one of the essential elements of the verdict (Ahmad al-Attar, 6, 1607), the law of Iran and Afghanistan also stipulates that the judgment of the court must be justified and documented. But these terms are not defined in the laws of the countries in question. In the laws of Iraq and Egypt, authors have defined causes.

Some Egyptian law commentators have defined it like this: The justification of the verdict is the mention of the reasons for the subject matter and the verdict that the court issues a verdict based on them (Hawi, 2004: 718; Ahmed Al-Attar, 6). And some have defined it as such: The causes of civil judgments is a technical and artistic process, which means stating the real and legal reasons on which the judge based the judgment (Sweid Al-Saeidi, 2013, 5).

In the Constitution and Civil Procedure Code of Iran, it is enough that the judgments must be substantiated and documented, but it is not defined anywhere in the law and the legislator has not defined it. Lawyers have defined these terms. The meaning of substantiated opinions is the statement of the real and legal reasons that led the judge to the verdict he issued (Hormozi, 6).

There are different interpretations regarding judgment certainty. Some have come to the conclusion that the reasoning of the judgment is to mention the proofs of the claim in the judgment (KhodaBakhshi, 2013, 337). And some others have interpreted certainty as documented, who believe that being these terms are used in the same sense in terms of legal terminology (Amir Moazi, 2013: 219). Reason means the ability

and power of thought that a judge with this skill can create acceptable opinions (Jafari Langroudi, 2003, 3-9). Some have given an opinion in the meaning of justification: "The special meaning of the opinion being justified is that it is based on rational, logical, convincing and comprehensive aspects of the disputed issues in a well-reasoned way, the reader feels that all matters in dispute, definite or possible, have been taken into consideration by the court and a clear answer has been given to the expectations of the litigants (Khoda Bakhshi, 2013, 379). It seems that what is meant by the justification of the opinion is the "legal basis" of the opinion, or the fact that it is documented, confirms this interpretation.

In the field of law: Afghanistan, according to Article 247 of the Law on

Principles of Civil Procedures: "The judgment of the court must be legal and justified." Also, Article 12 of the Judiciary Organization and Jurisdiction

Law: "The court is obliged to mention the reasons for the judgment it issues in the judgment".

Nowhere in the law of Afghanistan is there a definition of the reason, justification, and documentation of the judgment, and it is enough that the court should state in its judgment, the reasons for the judgment, the documents and the legal materials on which the judgment was based. However, from the total of articles 247 of the principles of civil trials and article 12 of the Judiciary Organization and Jurisdiction Law, it can be deduced that what is meant by being documented is the mention of legal articles. Because in Article 247, instead of being documented, it mentions legality, which is mentioned in Iranian law. And another reason is that the meaning of being documented is the expression of legal materials, because the legislator has mentioned in the law on the organization and jurisdiction of the judicial branch under the title "mention of legal materials".

The meaning of the reasons of judgment in Afghan law is to mention the evidence to prove the claim, because the legislator mentions Chapter 15 of the Principles of Civil Trials Law under the title of judgment, and below that, he states the materials related to confession, certificate, document, oath, and evidence. For example, Article 272 of the Civil Procedure Law of Afghanistan provides: The means of proof that form the basis of the verdict are as follows: "1) confession, 2) Evidence means attribution, witnesses, conclusive and inferred evidence, 3) oath, 4) dishonor".

According to the contents that have been stated, it can be said that the documentation of the judgment of reasons for award has not been defined in any of the laws of Iran, Afghanistan, Iraq and Egypt, and all the different definitions presented by the lawyers for reasons for award are verbal differences and not real. Therefore, the reasons for award is the expression of the legal and factual reasons on which the court make the judgment.

2- The History of the Formation of Reasons for Award

Judicial verdicts in their current form were not known to primitive societies. Over time, disputes were settled based on arbitration, but at the beginning of the emergence of arbitration, the parties were not required to implement the arbitration award, and after the relative development and progress that took place, the implementation of the arbitration award became mandatory for the parties to the lawsuit. After the method of settling disputes by arbitration, the judicial system was created, where the judge replaced the arbitrator, and the government took over the execution of the judgments issued and the punishment determined by him (Ahmad al-Attar, 2016, 27).

In primitive societies, priests and clerics considered themselves to be both legislators and judges, and the decrees issued were based on divine and heavenly revelation. And with the expansion and development of societies, especially in the Mesopotamia and ancient Egypt, verdicts were issued based on the inferences

and laws of the land and the state. At this stage, priests and clerics did not mention the reasons and directions based on which the decrees were issued.

After the emergence of ancient laws, including Hammurabi's law that he wrote at the end of his reign, in this law, judges were obliged to issue judgments based on the law. But the courts and judges of that time were not obliged to mention the reason for the judgment, that is, in Hammurabi's law, the courts and judges were not obliged to state the legal elements in the text of their judgment (Ahmad al-Attar, 2016, 29).

In the Greek era and in Roman law (from 754 BC to the sixth century) there is no legal text that requires the courts to mention the reasons for award. In some European countries in the Middle Ages, the principle was not to mention the direction of the judgment, and the fact that verdict was documented and substantiated was accepted as an exception (Youssef Mohammad Al-Masoura, 2010, 10). This principle of not mentioning the verdict also existed in the 15th-16th-17th centuries (Azmi, Abdul Fattah, 28). In the 17th century in Italy and Germany, it became mandatory to mention the direction of the judgment in the text of the verdict (Azmi, Abdul Fattah, 29). At the beginning of the 18th century, on 8/16/1780, the representatives of the French National Assembly enacted a law that required the judge to mention reasons for award in the text of the judgment (Azmi, Abdul Fattah, 33).

3- The Essence of Reasons for Award

The question that can be raised is whether it is obligatory or recommended for the judge to mention the directions of the judgment? In legal terms, is the judge obligated or free to mention the reasons and directions of the judgment? All the jurists of Hanafi, Maliki, Hanbali and Shafi'i agree on the legality of mentioning reasons for award by the judge. That is, all the Islamic jurists of the Sunni sects believe that the judge, when issuing a judicial verdict, should mention the form and document of the verdict in the text of the document (Al Khanin, 18, 2021). For example, Abu Mansour Matrudi and Shamsuddin Sarakhsi Hanafi say that when the judge issues judgments for the parties to the lawsuit, he should mention the evidence and documents of the judgment, such as the Qur'an, the Sunnah, witnesses and oaths, and explain so that they know that the judge has issued the judgment based on knowledge, not out of speculation (Sarakhsi, 16, 108; Ibn Najim al-Hanafiyyah, vol. 6, 1999, 303). But regarding whether it is obligatory or recommended for the judge to mention the reasons and directions of the opinion? In answering this question, there is a difference of opinion among jurists. A number of jurists believe that it is obligatory to mention reasons for award, and some other jurists believe that it is preferable to mention the reasons for award. The opinion of the jurists is expressed below

a) Hanafi Religion

In Hanafi jurisprudence, there are two views regarding the obligation or desirability of mentioning the documentary of the verdict. Some Hanaf jurists, such as Muhammad Ibn Hassan Shaibani and Tripolisi, are of the opinion that it is obligatory to mention reasons for award in the case (Al-Khanin, 2021, 39; Khasaf, 1977, 3, 83). This means that it is obligatory for the judge to mention and explain to the litigants the principle of the verdict, the proofs of the lawsuit, such as the mention of evidence, or confession, the reason for the verdict, such as the Qur'an, the Sunnah of consensus and analogy, and the reasons for establishing the right, such as legal acts and events. Another group of Hanafi jurists should know that mentioning reasons for award, whether it is a real reason or a Shari'a, is recommended for the court judge, not obligatory. Shamsuddin Sarakhsi and Ibn Najim, supporters of this theory, write as follows: it is recommended for the judge to see the reason for his judgment and verdict clearly in the verdict, because mentioning reasons for award in the case shows that he understood and issued the verdict accurately and correctly (Sarakhsi, 16, 108; Ibn Najim al-Hanafiyyah, 1999, 6, 303).

b) Shafi'i Religion

In the Shafi'i religion, two theories have been proposed in this field. From Imam Shafi'i's point of view, it is recommended for the judge, whether he is a Mujtahid or an imitator and has ruled with his own knowledge

or with evidence presented, to mention reasons for award, whether it is factual or subjective (Shafi'i, 1983, 6, 336). Additionally, Imam Nawawi says that it is not obligatory for the court judge to mention the document of the judgment such as the order, certificate, but writing and mentioning the reasons for award by the judge is recommended and better (Nawawi, 1991, 162). And most of the Shafi'i jurists believe that it is obligatory to mention reason for award regardless of whether the Mujtahid judge is a comprehensive judge of circumstances or an imitator (Shamsuddin Mohammad, 2003, 8, 240).

c) Maliki Religion

According to some jurists of Maliki, it is obligatory to mention reasons for award, such as the Qur'an and Qiyas. Based on this sentence, the judge must mention reason, whether it is a Shariah or a real reason, whether in present or absent judgment. For example, in the case, the judge should mention the original award and the reason for it, if it is the Qur'an, the Sunnah, or consensus (Ibn Farhoun, 2003, 1, 98). However, most Maliki jurists, such as Ibn Ashhab, Ibn Asgba, have elaborated on the mention of the document of the verdict. If the judgment is present, it is obligatory to write a document of the judgment, but if the judgment is absent, it is recommended to mention the reason for the judgment (Al Khanin, 35, 2021).

d) Hanbali and Zaheri Religion

According to Hanbali jurists, the judge is required to write reasons for award in the text of his judgment. For example, Ibn Taymi and Muhammad Ibn Ibrahim, the chief judges of Saudi Arabia, from the Hanbali jurists, are of the opinion that it is obligatory for the judge to mention it, like witnesses and oaths, when issuing a documented judgment (Ibn Taymi, 1999, 333). Ibn Hazm is of the view that it is obligatory for the judge to write the document of his judgment in the text of the judgment, and if the ruler does not write the document of the judgment, the judgment issued by him will not be enforced and executed, even if it is known that it is proven by the Holy Quran and the Sunnah of the Prophet (Ibn Hazm, BiTa 9, 436).

The sayings and views of Sunni jurists regarding the reasons and documentation of the judge's judgment can be summarized into two views. Some Shafi'i and Hanafi jurists believe that it is recommended that the court verdict be documented and justified in all criminal and legal awards. Most of the jurists, including the Hanbalis and Zahirists, most of the Shafi'is, Malikis, and Hanafis, believe that it is absolutely obligatory for the judgment to be substantiated and documented, regardless of whether it is a legal or criminal judgment. Advocates of mentioning the necessity of documenting the verdict argue with the following reasons for award:

First: Obedience and following is permissible only in famous affairs (Al Khanin, 52, 2021).

According to the above hadith, famous matters should be obeyed, and obedience is not permissible except for the Qur'an and the Sunnah, and an award document such as the Qur'an and the Sunnah must be mentioned to be obeyed.

Secondly: Mentioning the reason for the slander verdict negates the judge who did not issue a verdict on, without a document or evidence from the Quran or the Sunnah. In other words, when a person initiates a lawsuit, they resort to issues and reasons for award that basically create the mentality for them that they are right in the lawsuit, and when they are faced with a cause that lacks reasoning, they accuse the judge of ignoring the statements and favoring the other side.

Thirdly: the reasoned and documented nature of the judgments urges the judge to examine and write down the Shariah and real evidences in detail.

Fourthly: the reasons and documentation of the judge's awards convince the loser, because he knows that the judge understood the award correctly and issued based on reason and reasoning, and if the loser is not satisfied with the award issued and documented, he can protest and complain to this court judgment. Failure to state reason, from the point of view of supporters of the recommendation reasons for award, means that

the awards issued are not considered violations and do not deserve to be violated in a jurisprudential sense (Al-Khanin, 52, 2021).

There is a difference of opinion regarding the executive guarantee of not stating the reasoned and documented judgment from the point of view of those who say that the reason for the court's judgment must be mentioned. According to Shafi'is, if the court judgment is not documented and justified, the judge is asked to document and mention the reason for his judgment, and if he mentions the document of the judgment, the judgment will not be violated, but if he refuses to write the document and reason for the judgment, it will be violated (Sarakhsi, 8, 258). Maliki jurists have distinguished between judges who are known for justice and those who are not known for justice. They write that if a judge known for justice does not mention the names of the witnesses in the verdict, it will be violated, but if a judge known for justice and equity does not state the reasons and documents for issuing the verdict, it will be violated (Ibn Hasan, 2, 1989, 610).

Hanafi jurists believe that if the judge does not mention reasons for award in the issued document, the issued order will be violated and null. For example, Tripolisi writes that if the judge writes the reasons for the verdict, such as the names of the witnesses, it will not be violated, but if he does not mention the reasons for the verdict, it will be violated. In other words, in Hanafi jurisprudence, failure to state reasons for award is one of the grounds of appeal, which is violated in the Supreme Court of Afghanistan (Al-Khanin, 61, 2021).

The legislator in Afghanistan has obliged the judge to state the reasons for award in the text of the document. Article 247 of the Law of Principles of Civil Trials of Afghanistan stipulates in this regard: "The court's judgment must be legal and justified". And Article 12 of the Law on the Organization and Jurisdiction of the Courts of the Afghan Judiciary is also mentioned: "The court is obliged to mention the reasons for the award issued in the judgment". In Iranian law, the judge and addressee are also required to mention the reasons and direction for the judgment. Article 166 of the Iranian Constitution rules in this regard: "The judgments of the courts must be substantiated and documented by the articles of the law and the principles based on which the judgment was issued" and Paragraph 4 of Article 294 of the Civil Procedure Law of Iran states that the court judgment must contain "the aspects, reasons, documents, principles and legal materials based on which the judgment was issued."

In Iraqi law, one of the essential elements of a judicial verdict is the expression of causes in the court's verdict (Al Alam, 2008:3,186; Abdul Rahman, 2011:24). According to Article 59 of the Civil Procedure Law of Iraq, the judgment must contain the reasons for the judgment based on which it was issued, and the court must also state in its judgment, the main claims, the defenses presented by the litigants, and the legal documents based on which the judgment was made. According to the Iraqi law, the judge is obliged to state reasons in the text of his issued sentence.

The Egyptian legislator has considered the statement of reasons for award to be necessary and has made it the main and essential element of the verdict. This task of the judge in mentioning the reasons for award, both the judicial and thematic reasons, is a general duty that should exist in every lawsuit, whether commercial, civil, or criminal. Also, all judicial verdicts must include reasons, otherwise it will cause the order to be invalid (Ahmad Al-Attar, 2016, 10).

Therefore, according to the topics that were said, it can be concluded that in Islamic jurisprudence and the laws of Iran, Afghanistan, Egypt and Iraq, the judge is obliged to mention reasons for award in the text of the verdict.

Now, the question that can be raised is, what is the nature of the duty and obligation of the judges regarding the statement of the reasons for award? If stating the reasons for award is accepted as a general rule, even if

the obligation and duty of the judges is not specified in the legal text, the judges are obliged to mention documents and reasons for award. The source of the duty of the judge in expressing reasons for award as a general rule is the rules of natural law, the purpose of which is to respect the rights of the defense and does not require a legal text, because the right to defense is a natural right and the judge is obliged to mention reason in the text of the document as well as respecting and observing the right to defense requires stating reasons for award (Mohammad Ali, 1988, 9). However, if the task and obligation of the judges to mention reasons for award is considered formal, the judges are bound and obliged to state reasons for award in the text of the verdict if the legal text obliges it. In codified legal systems such as Iran, France, Iraq and Egypt, the judge is bound by the laws, that is, the judge is obliged to state reasons for award when it is specified in the law.

4- The Conditions for Causes of the Verdict

The judgments of the courts must have a series of conditions during the issuance of the judgment, in order to have more strength and power, and also the issued judgment is in accordance with the requirements of justice, and as a result, the supervision of the Supreme Court of the country is provided. These conditions are discussed below:

4-1 External Presence of Reasons

One of the conditions of the reasons for award is that the judge must mention it in the material and objective world, and it is not enough that reasons for award is in the knowledge of the judge, but he should see it in the file. In other words, the judge is obliged to write the reasons based on which he issued the judgment in the document (Al-Abudi, 2000, 385; Al Badarin, 2010, 302).

The thing that the judge should pay attention to when preparing and writing the verdict is to use sentences that are legal and comprehensive and avoid short and unnecessary long sentences (The site, sponsored by Al-Haq). The judge should also consider the well-documented and well-justified opinion in a clear and legible font that any reader can easily read. Another point is that the court judge should avoid using vague and complicated sentences and use clear sentences when writing the reasons for the verdict. According to the opinion of most jurists of Sunnah, the judge is obliged to mention the reasons for the verdict in the material and objective world, and the judge cannot issue a verdict based on his own knowledge (Hanin, 2021: 119; Ra'fat, 1994, 235) because the Holy Prophet (PBUH) has not issued a verdict according to his knowledge (Zidan, 213: 1988).

There are two types of reasons for award, explicit and implicit. Explicit reasons for the judgment means that the judge mentions the basic and effective facts in the lawsuit and the reasons for the judgment based on which he has issued a judgment.

In the law of Egypt and Iraq, the court is obliged to clearly state the reasons for the verdict, such as the main claim, the defense of the litigants, and the legal materials based on which the judgment was made, so that the Supreme Court can monitor the correctness of the implementation of the law on the issuance of the judgment and if the name and details of the litigants as well as the names of the judges issuing the verdict are not included in the text of the verdict, the verdict will be invalidated (Ahmad al-Attar, 2016, 7; Hamid al-Shammari, Bi ta 6).

Article 176 of the Egyptian Civil Procedure Law rules in this case: "The reasons on which the awards are based should be mentioned" and Article 178 of the Egyptian Civil Procedure Law also stipulates "The judge is required to mention in the text of his sentence, the court that issued the sentence, the names and details of the parties to the lawsuit and the residence of the litigants and their presence and absence, the judgment should also include a general presentation of the lawsuit and the case, the request of the litigants and a summary of the basic defenses". Article 159 of the Civil Procedure Law of Iraq also stipulates in this

regard: “In its judgment, the court must mention the reasons for accepting or rejecting the claims, the defenses of the litigants, and the legal articles relied on”.

Paragraph 4 of Article 296 of the Civil Procedure Law of Iran has also clearly stated that the judge must mention the directions, reasons, principles, documents and legal materials on the basis of which the verdict was issued in the verdict (Shams, 410: 2017). The principle is that the reasons and directions of judgment should be clearly mentioned in the text of the document, which justifies each of the components of the issued judgment (Youssef Mohammad Al-Masarouh, Masdar, 184).

However, judicial practice (Yusuf Mohammad Al-Masarouh, Masdar, p. 184) and some jurists (Mahmoud Al-Qadi, 1966, 11; Al-Allam, 2009, 3, 185) believe that the existence of reasons and direction of judgment is not a condition that it always exists explicitly. If there is an implicit reason and direction of the judgment, it is also considered identity (Ahmad al-Attar, 2016, 176). But some jurists do not accept the implicit existence of reasons for award and believe that the issue of implicit reasons direction of the judgment is a personal issue because some legal procedures consider it valid and others do not (Azmi, Tasbib, 2010, 293).

The Supreme Court of Egypt accepts the implicit existence of reasons for award (Mahami, 7, 85, Bi Ta). And the Supreme Court of France does not consider the explicit existence of reasons for award to be a condition and accepts the implicit existence direction of the judgment. Because the Supreme Court of France declared in a case that the reasons for the appealed award regarding the rejection of the debt payment request are also considered as the implicit reasons for the judgment regarding the rejection of the debt interest payment request (delay) (French veto of the idea of implicit reasons, 1910).

4-2 Suffice of Reasons for Award

Another condition for a verdict to be documented, besides existence of direction of the judgment, must also be sufficient. In other words, it is not enough to have reasons for award, but it is necessary for it to be sufficient (Ahmad al-Attar, 2016, 176; Al Khanin, p. 111; Hawi, Bi Ta 831). What is meant by the sufficiency of the reasoned judgment is that the judge mentions the reasons for the judgment and the issue that proves the validity of the judgment and convinces the parties to the case (Al Khanin, p. 112).

In Islamic jurisprudence, the direction of the judgment must be sufficient means that the judge should mention the factors that will convince the claimant and show that the verdict has been issued according to justice. One of the jurists named Ibn Ashour writes like this: “It is not only the speeding up of the process of resolving the hostility of the disputes that is favorable and the desire of the legislator, but the issued verdict should be in line with the right of justice and should convince the parties.” (Objectives of Islamic Sharia, 2013, 202). Another jurist, Sheikh Ibrahim, in a case where the judge had ordered the driver to pay the ransom due to the lack of documentation, rejected the judgment and considered invalid (Ibrahim, 2020, 8, 158).

A noteworthy point is that when the verdict is documented, it is considered sufficient that the court clearly and unambiguously states all aspects of the verdict, because the existence of ambiguity in the verdict is one of the faults and defects that are effective in violating the awards (Abbas Al-Abudi, 384).

The condition of insufficiency is not explicitly stated in the law of Iraq and Egypt, but the Supreme Court of Iraq, Egypt and Egyptian jurists (Ahmad al-Attar, 2016, 19) believe that one of the conditions of the verdict is its sufficiency. The meaning of the sufficiency of the judgment document is to mention the necessary reasons and directions of the judgment. It means that the court should mention reasons for award according to the necessity of the verdict, which should be neither brief nor boringly long (Mohammad Maher Abul Ainin, 2006, 526).

Some Egyptian writers have defined it as such: The meaning of sufficiency is to clearly and unambiguously mention the reasons and aspects on which the awards are based (Seif, 1959, 709, Hawi, 719, Ghasan, 6). For example, in the text of the judgment, the judge should mention the court that issued the judgment, the date of issuance of the judgment, the names of the issuing judges, the names of the litigants and their representatives, a brief mention of the lawsuits, the defenses of the litigants, and the evidence based on which the verdict was based (Mohammad Maher Abul Ainin, 2006, 526).

4-3 To be in Order

One of the conditions of the verdict is that the court mentions them in order. It is meant by the order of reasons for award, the logical order of the reasons and directions of the judgment, the validity of the mandatory and strong, as well as the presentation of reasons for the verdict (Al Khanin, 1998, 115). For example, when issuing a verdict, the judge must first mention the mandatory and necessitate reasons and then the important reasons. Regarding expressing the logical order of documenting the judgment, the question is whether the judge should mention the reasons for the judgment in the text of the judgment first or not? Second, should he mention the award first, or its reasons, in a sense, is it the first award or its reasons? (Al Khanin, 1998, 116).

In Islamic jurisprudence, the principle is that the judge must first mention the reasons of award and then thematic reasons. For example, in his judgment, the judge should first mention the reasons for the judgment, such as the Qur'anic verse and hadith, and then thematic reasons, such as the contract of sale. In other words, mentioning direction of the judgment takes precedence over thematic direction of the judgment. Also, regarding the answer to the second question, it can be said that reasons of award are prior to the award itself. That is, the judge must first state the verdict in the text of the document and then the essence of the sentence. However, in the Holy Qur'an, it is stated in two ready ways regarding the presentation of reasons or verdict, sometimes in some verses the reasons precedes the verdict. For example, God says about the morals of the Prophet (PBUH): "It is by Allah's mercy that you are gentle to them; had you been harsh and hardhearted, they would have surely scattered from around you" (Al-Imran/159). So, because of God's mercy, you are kind and gentle with them; it means, O Prophet, in the light of God's mercy and grace, you became kind to people, while if you were harsh, hot-tempered, and hard-hearted, they would have dispersed from around you. In this verse, the cause and the reason are the priority. In some verses, knowledge precedes the reasons. For example, God also says: "The spoils that Allah gave to His Apostle from the people of the townships, are for Allah and the Apostle, the relatives and the orphans, the needy and the traveller, so that they do not circulate among the rich among you" (Hashr/7). What God returned from the people of these settlements to His Prophet belongs to God and the Prophet and his relatives and the orphans and the poor and those who are on the way. In this verse, the verdict precedes the reason.

4-4 Non-Conflict of Reasons for Award

Another condition is that direction of the judgment which are compatible and coordinated. The clarity of reasons for award requires their completeness and harmony to confirm each other.

What is meant by the harmony of reasons for award, the compatibility and coherence of direction of the judgment and their non-conflict with each other or the non-conflict of the reasons with the verdict (Ahmad, p. 18). There are two types of conflict, one is the conflict of reasons with each other and the other is the conflict of cause and verdict (Al Khanin, 1998, 113). For example, the judge sentenced the defendant to compensate for the damage caused in the traffic accident incident, but in terms of documenting the verdict, he only blamed the plaintiff and obliged him to compensate the damage. In this case, there is a contradiction between the judgment issued by the court and the directions of the judgment, and this conflict is considered as a defect of the verdict, and the existence of the contradiction is actually the absence of reasons for award, and its absence leads to the violation of the awards issued by the Supreme Court (Ahmad, 18).

In Egyptian jurisprudence, the inconsistency of the reasons for award is considered as defect in the judgment, because it is not clear which of the petitioners or the defendants the court has condemned in the issued judgments (Ahmad, 19).

The point that the court and especially the judges should pay attention to is the discussion in the science of principles under the title of conflict of evidence and the methods of solving it that mujtahids use in case of conflict between evidences (Al-Shanqaiti, 1999, 60). Examining this issue requires a separate article and is beyond the scope of this paper.

Therefore, the judge should refer to the science of the principles of jurisprudence and by using the method of resolving the conflict of evidence, resolve the conflict between the reasons and the evidence of the verdict and proceed to issue a verdict.

5- The Effect of not Mentioning the Reasons for Award

Basically, the general rule is that all court awards should include documents and direction of the judgment that convince the litigants and justify the position of the judge. Now, if the judgment issued by the courts lacks reasons and direction of the judgment, will it invalidate the appeal or not? In other words, does failure to express the validity of the opinion lead to a violation of the verdict or not? (Al Khanin, 1998, 112; Khalf al-Raqqad, 2015, 8).

In Islamic jurisprudence, not stating reasons for award, from the point of view of recommended advocates, it is desirable to mention reasons for award, because the awards issued are not considered as violations of the appeal and, in a jurisprudential sense, they do not deserve to be violated.

There is a difference of opinion regarding the executive guarantee of not stating the reasoned and documented judgment from the point of view of those who say that it is necessary to mention the court's reasons for award. According to Shafi'is, if the court judgment is not documented and justified, the judge is asked to document and mention the reason for his judgment, and if he mentions the document of the judgment, the judgment will not be violated, but if he refuses to write the document and reason for the judgment, it will be violated.

Maliki jurists have distinguished between judges who are known for justice and those who are not known for justice. They write that if a judge known for justice does not mention the names of the witnesses in the verdict, it will be violated, but if a judge known for justice and equity does not state the reasons and documents for issuing the verdict, it will not be violated. The Hanafi jurists believe that if the judge does not mention reasons for award in the issued document, the issued verdict will be violated and annulled. For example, Tripolisi writes that if the judge writes the reasons of verdict, such as the names of the witnesses, it will not be violated, but if he does not mention them, it will be violated.

In Afghan law, failure to state direction of the judgment is considered as a violation of the appeal. Article 247 of the Law of Principles of Civil Trials of Afghanistan stipulates in this regard: "The court's judgment must be legal and justified". The twelfth article of the Law on Organization and Jurisdiction of the Courts of the Afghan Judiciary is also mentioned: "The court is obliged to mention reasons of awards issues in the judgment". Therefore, if the court does not mention the reasons of award, the judgments issued by the Supreme Court will be overturned. Article 400 of the Civil Procedure Law of Afghanistan stipulates in this regard: "The cases of violation of the judgment are as follows: 1- Lack of reasons for the judgment".

In French law, the lack of direction and reasons for award, in other words, failure to express reasons for award, is clearly one of the reasons for the violation of the appeal (Hormozi, 27). Jurists and writers in Iranian law have not discussed the effect of not expressing the direction of the judgment either in general or in detail. However, based on the opposite meaning of Article 166 of the Constitution and Paragraph 4 of

Article 296 of the Civil Procedure Law, it can be inferred that failure to state court's reasons for award will invalidate and violate the verdict. Therefore, in Iranian law, the lack of reasons for award is considered one of the violations of the appeal.

In Egyptian law, failure to mention reasons for award, in other words, the lack of reasons for award in the text of the verdict, invalidates the verdict issued by the court (Sweid Al-Saeidi, 2013, 5; Anwar Talabah, 2006, 426; Ahmad al-Attar, 2016, 7). Article 176 of the Egyptian Civil Procedure Law stipulates this: "The reasons on which the awards are based must be mentioned, otherwise the issued award is invalid".

Article 178 of the Egyptian Civil Procedure Law also provides: "The judge is required to mention in the text of his judgment, the court issuing the judgment, the names and characteristics of the parties to the lawsuit and the residence of the litigants and their presence and absence, as well as the judgment should include a general presentation of the lawsuit and the case, the request of the litigants and a summary of the basic defenses. However, a mistake in stating the reasons for the judgment or a gross mistake in the names and details of the litigants, as well as not mentioning the names of the judges issuing the verdict, will cause the verdict to be invalid". According to the above articles, if the judgments of the courts lack reasons and direction of the judgment, it will cause the awards to be invalid.

The point that should be noted is that there is no indication in the Egyptian law about whether the total absence of reasons for award or the absence of partial reasons invalidation or the total and partial absence of both reasons invalidation. However, most of the jurists and commentators of the Egyptian procedure have distinguished between the cases where the reasons of the verdict is not stated in general and the cases where the reasons of the verdict is incompletely stated (Abu al-Wafa, 1998: 303).

There is another point of view that they do not differentiate between situations and cases where the reasons for award and direction of the judgment are not mentioned at all and the cases that are mentioned incompletely. This point of view believes that failure to mention the direction of the judgment, either completely or incompletely, has the effect of invalidating the awards issued by the court. Because according to the application of Article 176 of the Civil Procedure Law of Egypt, it includes failure to state the reasons for award, whether complete or incomplete (Ahmad al-Attar, 2016: 213) and it does not see any reason to separate the total and partial lack of reasons (Hawi, Bi Ta 856). Therefore, from their point of view, the lack of reasons for award, whether it is general or partial, the awards issued in the Supreme Court are violated and annulled.

In the Iraqi law, the lack of direction of the judgment in the text of the verdict reasons the verdict to be invalid. The ways to cancel the issued verdict are through complaints and appeals. If the awards issued by the court do not have direction of the judgment, it will cause the awards to be violated (Abdul Rahman Allam, 2008, 3, 190).

In Iraqi law, the total lack of direction of the judgment, the failure of the judge to mention the direction of the judgment, the partial lack of reasons for award, and the conflict between the reasons and the award lead to the violation of the judgment (Abdul Rahman Allam, 2008, 3, 19). In Iraqi law, the following cases cause the judgment to be violated and invalidated.

a) Total lack of reasons

According to the law, the judge is obliged to state all legal and factual reasons in the text of verdict. If the judge of the court does not mention the reasons of the verdict in the text of his judgment, and in other words, the issued awards do not have direction of the judgment in general, it is considered one of the cases of invalidity in terms of violation of the appeal (Khalf al-Raqqad, 2015, 6).

b) Partial lack of reasons for award

If the judge is negligent and at fault in stating the reasons for award, that is, if the court states some reasons for award in the verdict and neglects to mention some reasons for award, it will cause the verdict to be null and void. Because there has been no hostility, and in fact, the dispute and lawsuit remain and have not disappeared. In other words, the partiality of the reason, in the sense that the demands and defenses of the litigants are numerous, and the court mentions direction of the judgment only for some demands and does not mention direction for the rest of the demands (Rozan Al Mousavi, 2014, 169).

c) Conflict of reasons with each other and with the issued verdict

One of the other cases is the annulment of the verdict and the violation of the appeal, the contradiction of the directions with each other and the issued verdict. In the above two cases, the documents and reasons of the verdict are not mentioned either in general or in detail, but in this case, the reasons for award are stated in the text of the verdict, but there is a contradiction. Contradiction has two forms, sometimes there are contradictions and conflicts between the reasons, knowledge of the reasons for award is contradictory and conflicting with the awards. In both cases, whenever there is a conflict, it causes the awards to be violated and invalidated (Rozan Al Mousavi, 2014, 170).

Conclusion

This research was conducted with the aim of comparative analysis of reasons for award in Islamic jurisprudence and the law of Iran, Afghanistan, Iraq and Egypt. According to the comparative study that was done, as a result, it can be said that in Islamic jurisprudence and the laws of the countries under discussion, the judge is obliged to mention the reasons for award. In Islamic jurisprudence, the law of Afghanistan, Iraq, and Egypt, the effect of not mentioning reasons for award is explicitly considered to be null and void, and it is introduced as a violation of appeal, but in Iranian law, it is not explicitly recognized as an appeal; but, from the opposite concept of the principle of 166 A.H.A. means that the lack of reasons for award violated the appeal. Therefore, if the reasons for award are not stated, it will be overturned in the Supreme Court.

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Quran

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