

## The Rules of Justice and Good Conscience in the Civil Procedure Code 1983

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### **Abstract**

*This research investigates the ideas of justice and good conscience in the Sudanese Civil Procedure Code of 1983; the importance of this research appears from the fact that it represents the two descriptive aspects concerning positive jurisprudence in the hope of arriving at scientific facts. The research has dealt with the legal rules and principles that can fill the gap in the absence of a text in the relevant special laws, in addition to addressing the meaning of the rules of justice and good conscience in the Sudanese legal system, in addition to the controls and standards that are used to determine their intended meaning, and an attempt to clarify their nature as sources of private Law in the absence of a text. The results of the research showed that there is a difference between the sources of the legal rule, the legal principles, and the goal that the Law aims to achieve and that justice is a goal that the Law aims to reach and not a source of the rule, it also has different meanings and connotations that vary depending on the legal systems and philosophies that they adopt. The results also indicate that the rules of good conscience do not create legal rules; their role is limited to determining legal principles. It also differs from the concept of common sense established by Islamic Law. The research results are reflected in the recommendation to amend the Civil Procedure Code by deleting the phrase "rules of justice and good conscience" from the text of Article 6/2 and Article 3/7 of the Code of Judgments of 1983. It is sufficient to refer only to the rules of Islamic Sharia, with the addition of the phrase (rules), to become the rules of Islamic Sharia to control the proficiency and legality of procedures. To achieve the objectives of this research, the researcher used the inductive, analytical, comparative, and objective methods, in addition to the textual method and its restrictions, which eliminates confusion and ambiguity when applied.*

**Keywords:** Justice, Law, Sound Conscience

### **INTRODUCTION**

The feeling of justice is ancient among man, despite his confusion in knowing its source, and it has remained so until now. Man, I still wonder: Is justice innate or acquired? Is it possible to set a specific and transparent standard for what is just and what is not?

Hence, the problem of achieving justice in truth and reality through the intention of justice in itself or through sound conscience (Natural Law) is fundamentally linked to the issue of the judiciary and its role in applying the Law. Alternatively, it is called the fair application of the Law, linked to legislative justice. Legislation is also supposed to achieve justice; therefore, it can be said that the basic idea that preoccupied man, if not the basis, and continues to preoccupy him and will preoccupy him, is the idea of justice, the ways to achieve it, and the mechanisms for reaching it, and in particular, it is called common sense or natural Law.

Sudanese judges found themselves obligated to achieve and reach this justice without a legislative text and without the legislator setting a standard for them to help them do so. Opinions became numerous and diverse, and the door was wide open for diligence on this sensitive and vital issue; the matter did not stop at this point, but rather, reference was made to the rules of justice and sound conscience as sources of the legal rule in the absence of a text and to cover the shortcomings and shortcomings resulting from the legislation not addressing some problems and legal positions. Article 6 of the Civil Procedure Code of 1983 regulates the ruling on cases to which there is no explicit text that can be applied, and it is not limited to that only; instead, it establishes the rule that must be applied to all cases that have a provision under the Law as mentioned earlier, so it was necessary to address the ideas of justice and good conscience and the extent of their sources in the Sudanese legal system. In an attempt to clarify their truth and tasks, given their importance to society in general and the judiciary in particular, by shedding light on them. The Sudanese Legal Library needs an explanatory memorandum for the Civil Procedure Law of 1983 AD to deal with such sensitive topics. However, the

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judiciary's job is to interpret and apply the legal rule; it may here, in light of what is sometimes referred to as Article Six, create a new legal rule.

### **Research Problem**

The rules of justice and good conscience cover the shortcomings resulting from the absence of the text in all branches of private Law and are referred to as backup sources of the legal rule in the branches of private Law. Is it authenticated as a source for establishing legal rules and their meaningful role in the Civil Procedure Code 1983?

It is not clearly defined, as no standard or control defines and clarifies what is meant by justice and good conscience, determines the reference for understanding them, and uses them as a source for special laws in the absence of a text.

### **RESEARCH METHODOLOGY**

The researcher follows the objective approach that combines induction and deduction to arrive at scientific facts.

#### **Research Objectives**

In the following sections, this research aims to clarify the meaning of the rules of justice and good conscience and the extent of their source in the Sudanese legal system; it also attempts to clarify the controls and standards to which it is referred to in determining their intended meaning, while attempting to clarify their nature as sources of private Law in the absence of a text, in the following sections:

The first section defines the legal rule's source and explains the difference between the legal principle's source and the Law's purpose.

The first requirement is defining the source of the legal rule.

The second requirement is distinguishing between principles of Law and sources of Law.

The third requirement is distinguishing between the sources of the Law and the purpose of the Law.

The second topic: The rules of justice as a source of legal rule in the absence of a text in the Civil Procedure Code of 1983.

The third topic: Good conscience as a source of legal rule in the absence of a text in the Civil Procedure Code of 1983.

#### **The First Topic**

##### **Defining The Source of The Legal Rule and Explaining the Difference Between the Source, The Legal Principle, And The Purpose Of The Law**

Since the essence of the term cannot be made clear except by clarifying its meaning, defining its content, and distinguishing it from other terms, which may indicate meanings and concepts that may appear to be similar to it in some of its connotations so that its features and nature appear clear and determine its meanings. So, this study requires defining the source of the legal rule as a legal term with a specific meaning that aims to have a specific meaning and then distinguishing it from other terms that may share some similar or close meanings with it.

#### **The First Requirement**

##### **Identifying The Source of The Legal Rule**

Source in the language source: the plural of sources and the source of a thing, i.e., its origin, its source, its source of reference, and the place of its origin. It is also called the originating cause. Issuance means creation, the legal rule's source, then the cause that establishes and creates the legal rule and gives the command and prohibition the quality of obligation. However, "source of the legal rule" means more than that to jurists, as it includes

several meanings. It also means the objective source of the legal rule, that is, the facts from which the legislator derived the content of the legal rule, and this fact may be a social, political, economic, or even legal fact from which the legislator drew inspiration from the legal rule that he changed in the form of legislation. The difference between the content of the legal rule and the reason that created the legal rule and gave it the status of binding is evident; therefore, the unsecured source, which is the essence of the thing, is the content of the legal rule is what the legal rule contains commands, prohibitions, and meanings included in the body of the legal rule. Therefore, the content is not created because the legal rule is created from the will of the legislator (legislation) and from the behavior that the members of society repeatedly engage in despite their feeling that this behavior is obligatory and entrenched in their conscience - (custom).

As for the content, it is the meanings, commands, and prohibitions contained in that will or behavior. The source does not establish content, and the content does not create a legal rule; there is a clear difference between the source and the content, which should not be confused; all that happened was that the legislator adopted a specific content and expressed his will by issuing that content in the form of written legislation, the legal rule here arose from legislation as a source and not from its content. Also, one of the meanings that the term "source of the legal rule" refers to is what is called the historical source of the legal rule, which means that the legislator derived the content of the legal rule from an ancient historical source that preceded the emergence of the legal rule, and issued it in the form of legislation, drawing inspiration from the provisions of the legal rule such as Roman Law, Islamic Law, English law, or French Law. When the legislator resorts to an ancient legal rule in time, drawing inspiration from the content of the legal rule, this does not automatically turn it into a binding legal rule unless the legislator adopts it in the form of legal legislation or the conscience of the group discloses it as a binding (customary) rule, or at least judicial application settles on it so that it becomes a binding legal rule and principle.

It becomes clear here that the term historical source is imprecise and does not indicate its intended meaning, whereas the historical source does not create a legal rule. Still, its role is limited only to providing the legislator with the content of the legal rule. The judiciary subsequently helps determine the legislator's intention when interpreting the legal rule and does not itself create a legal rule. One of the meanings to which the term "source of the legal rule" is attributed is the interpretive source of the legal rule, which means the reference in interpreting the legal rule or custom. To remove confusion and ambiguity or try to complete the shortcomings and fill the shortcomings, in the event of the absence or insufficiency of the text, legal scholars are almost unanimous in their right, and the judiciary is an interpretive source considering the legal rule through the principles approved by the judiciary when deciding various disputes in all branches of Law, or through the writings of legal scholars in their explanation and commentary on legal texts.

Once again, interpretation does not establish a legal rule. Still, its role is limited to removing ambiguity and reconciling the conflict and contradiction of legal rules, just as the interpretation responds to a pre-existing legal rule. He did not create it in the first place to address it with explanation and commentary. Moreover, he can only give it binding force if the legislator expresses it through legislation or if members of society express its obligation.

I conclude from the above that the term "source of the legal rule" is a term with a special meaning that is distinct from the terms that are confused with it, such as the terms "interpretive source," "historical source," and the term "content of the legal rule," which does not in itself create an obligation for society to obey and respect it because the source is the resource that creates. Its role is not limited to transmission or interpretation.

## **The Second Requirement**

### **Differentiating Between Principles of Law and Sources Of Law**

Legal principles refer to the general rules of Law characterized by generality and abstraction and apply to specific and infinite cases. They are not helpful for specific facts or specific persons.

Legal principles are generated initially from the legal rules prevailing in a particular legal system and can be identified either by deducing them from the legal rules through reason, extrapolating them by investigating the

legal texts that make up the legal system, or by analogy with them, or by borrowing them from civilized nations. Such as the principles that the Sudanese legislator derived from Islamic Law and included in the Civil Transactions Law of 1984 AD, as stated in Article 5 of the Civil Transactions Law of 1984 AD, without prejudice to the generality of the provisions of Article 3, the following general principles are the basic rules for implementing the provisions of this Law:

Damage shall be paid as much as possible.

Damage cannot be eliminated.

Custom is a court, whether public or private.

It is considered a habit if it is frequent or overwhelming.

Hardship brings ease.

It is not denied that changing times can change rulings.

As general principles in Islamic Law, its jurists have extracted them from the total number of legal rulings. An example of this is also the basic principles and values contained in the Universal Declaration of Human Rights, such as that the human being has fundamental rights that are inherent to him and cannot be waived or dealt with. It is reserved and preserved for all humans and is equality regardless of religious, ethnic, or geographical distinctions. These principles are fundamental ideas around which society's legal system revolves at a given time and on which legislation expressing its spirit is based. Therefore, we do not often find these principles in constitutions, just as we find that legislation builds on them and is not permitted to specify or contradict them. General legal principles are still generated from the legal rules of a state's legal system. These principles only acquire binding legal force if the legislator adopts them in legal rules and expresses this in written legislation. They also differ in nature and content from the sources of legal rule. The general legal principle does not create a legal rule, so the source differs from the legal principle.

## **The Third Requirement**

### **Distinguishing Between the Sources of Law and The Purpose of The Law**

The purpose of the Law is the ultimate purpose that the legal system in a country aims to achieve or reach; legal systems almost unanimously agree that achieving fairness and justice is the Law's primary goal, preserving the group's entity and regulating legal ties in society. This is the goal of Islamic Law. God Almighty says: (Indeed, Allāh orders justice) . God Almighty also says: (Indeed, Allāh commands you to render trust to whom they are due and when you judge between people to judge with justice. Excellent is that which Allāh instructs you. Indeed, Allāh is ever Hearing and Seeing.) . God Almighty also says: (And if you judge, judge with justice between them.) . That is, justice . The philosopher Aristotle says: (Justice is the foundation on which societies must be built and laws must be established because it includes all virtues and achieves the general good of society and the private good of each individual) . With a closer look at the various legal systems, it becomes clear their keenness to achieve fairness and justice, even if their concepts of this justice, the mechanisms for achieving it, the ways to reach it, and the philosophies leading to it differ, and what is the principle of the supremacy of Law that prevailed in societies ? It expresses the goal of achieving public and private justice by submitting the state and individuals to the Law. Public justice can only be achieved by balancing the group's general interest and not wasting individuals' private rights. This is known as fairness, which requires applying the Law flexibly in exceptional cases. There is no legal system - as far as I know - that does not aim to achieve that goal and that nourishes all its branches with values, ideals, and morals. It will become an abstract, soulless, coercive method of ruling and controlling societies that will soon sprout and disappear because it will become a worldly system that cannot keep pace with all developments. Therefore, justice is the basic idea to be considered and observed when legislating legal rules. Because the lack of a spirit of justice will lead to controlling reality without breaking away from its source, the absence of the philosophy of justice from any legal system or legislation will lead to its subordination to other systems and their supporters. It will be stripped of its identity and the religious, philosophical, and moral considerations on which it was built, thus becoming a structure without a soul.

## **The Second Topic**

### **Rules Of Justice as A Source of Legal Rule in The Absence of a Provision in The Civil Procedure Code Of 1983**

Understanding the idea of justice and its characteristics in every society helps determine the legal ideology of society because determining the basis helps determine the nature, that is, the nature of the legal system, its intellectual dimensions, and its origins. . Thus, defining the intellectual framework and the principles generated from it or based on it also helps define its goals and objectives. The term justice is used as a synonym for justice . Some differentiate between fairness and justice to denote one meaning. Fairness is giving each person his right, that is, giving each individual what belongs to him and his money, while justice is achieving justice in a particular case, as stated in Article 6 of the Civil Procedure Code 1983 AD. If no provision can be applied to the procedures in the matter presented, the court shall apply such rules to achieve justice. In matters not governed by any legislative text, the courts apply Islamic Law, the principles judicially established in Sudan, custom, justice, and good conscience. Likewise, Article 285/2 of the same Law (2) What is stated in this Law is not considered to infringe or restrict the natural powers of the court in issuing the orders it deems necessary to achieve justice or prevent abuse of court procedures. . Justice is also a latent feeling in the soul that a sound mind reveals and suggests to an enlightened conscience, aiming to give everyone their right, as mentioned .

When referring to the two terms in the language, the opinion is strengthened that the two terms are not synonymous, as justice in the language is (equality between similar people) . While justice: (what is fair to a thing other than its kind, and justice is the ideal) . As for justice in language, it means: (weighing matters with justice).

There is a generality and restriction between the two terms. All fairness is justice, but not all fairness is justice. The Sudanese legislator used the term fairness and justice in a synonymous sense in the Civil Procedure Code of 1983. Articles 6 and 285 of it, as evidenced by its connection to his humanitarian laws, as is evident from the text of Article 3/7 of the Code of Judgments of 1983 AD, as stated in Article 3 Seventh of the Code of Judgments of 1983 AD (despite what may be stated in any other law and except criminal lawsuits if there is no legislative text governing the incident. (Seventh) Aim for the meanings of justice recognized by noble human laws and the rule of fairness instilled in a sound conscience . It was also mentioned in a broad, uncontrolled, and specific meaning, in a way that opens the door wide for Ijtihad and for importing rules of justice from different nations, as allowed by the Judicial Procedures Law of 1982 AD.

The term justice is a loose term with different meanings among different nations. For example, the legislator's will expresses the meaning of justice in the Latin systems; the will expressed in legislation is nothing but an image of justice on earth. The judge's ruling when applying the texts of legislation is only another reflection of this picture because these systems were established and built on the principles, philosophy, and foundations of the school of explanation on texts, which was founded and based on the sanctity of texts and not deviating from them as the true embodiment of the idea of justice that society envisioned and the legislator expressed on its behalf through legal texts. Therefore, searching for and determining the legislator's intention when interpreting texts is necessary. If this is not possible, then the historical origin of the legislation and the preparatory work for it will contribute to determining the legislator's intention. . Therefore, we do not find the term justice in the Latin systems because this justice is embodied in the texts of legislation. The texts are on the other side of justice . While we find another meaning of justice in the Anglo-Saxon systems, justice does not stem from texts but rather arises in a specific social environment; it grows and develops on its own as it develops, influenced by economic, social, political, and geographical factors until it is implanted in the conscience of the group that expresses it through behavior. What is firmly established in the group's conscience and expressed by it is the true expression of justice . Therefore, these systems are opposed to formality, which significantly hinders access. It tends towards customs at the expense of texts. It derives rulings and rules from judicial precedents issued by higher courts, considering that these provisions reveal the group's conscience in achieving justice and belief in individual solutions to individual problems. The American judiciary expresses justice in terms of liberal legitimacy, which means respect for human rights and individual property and limiting the state to guarding. To be considered fair, judgments must meet these standards.

As for Islamic Law, the term justice is inseparable from the two revelations (the Holy Qur'an and the Sunnah of the Prophet), which constitute the sources of Islamic Law; if there is a legal text and the legal objectives of preserving religion, mind, soul, money and offspring, in the absence of a text, the text of Article 3 of the Code of Judgments of 1983 states what the judge must do, it was stated in it despite what may be stated in any other law and except criminal cases if there is no legislative text governing the incident.

(Seventh) Seek the meanings of justice recognized by noble human laws and the rule of fairness that appeals to a sound conscience. Also, it is stated in the text of Article (2) of the same Law when interpreting legislative texts, unless the text is interpreted or conclusive in its significance:

The judge must be guided by the fact that the legislator does not intend to violate Islamic Law to disrupt a permissible duty or permit something forbidden and that he considers the directives of Sharia law regarding condemnation and hatred.

The judge interprets the discretionary sentences and expressions in a manner consistent with the provisions, principles, and general spirit of Sharia law.

The rule of no *ijtihād* is established in the source of the text, as justice goes hand in hand with the texts and objectives of the Sharia. As it turns out, justice is an undefined term that varies depending on the systems and philosophies on which it is based. Dr. Haj Al-Dush says: (The Sudanese judiciary is criticized in this regard for unthinkingly following the rules of English Law until it ultimately reached results that are difficult to describe as fair or just given the local circumstances and customs and religion to a degree that makes us say that it has neglected justice and lost with it the features and objectives of the Law that require its existence in a state with a distinct ethnic, religious and social affiliation.). It is noted here that the Sudanese legislator did not set a specific control for the term and did not restrict it in the Civil Procedure Code of 1983 in the text of Article 6; this is also the case in the Judicial Procedures Law of 1983 AD in Article 3/7. Instead, the matter increases ambiguity when linking it to humanitarian laws, so what is meant by justice according to noble humanitarian laws? We have seen the difference in the idea and the mechanism for arriving at it in these laws. I do not think that the Sunni legislator links the term justice to its content in Islamic jurisprudence, as evidenced by the fact that the legislator assumed that there is no solution to the dispute in Islamic Law in Articles 6 of the Civil Procedure Law 1983 AD (6) (1). If no provision can be applied to the procedures in the matter presented, the court shall apply such rules to achieve justice. (2) In matters not governed by any legislative text, the courts shall apply Islamic Law, the principles that have been judicially established in Sudan, custom, justice, and sound conscience. Likewise, Article 285/2 of the same Law ((2) What is stated in this Law is not considered to infringe or restrict the court's natural powers in issuing orders deemed necessary to achieve justice or prevent abuse of court procedures). Likewise, Article 3/7 of the Judicial Procedures Law of 1983 AD: Judiciary in the absence of a text 3 - Despite what may be stated in any other law and except criminal cases, if there is no legislative text governing the incident:

The judge applies whatever legal ruling he finds established by the texts of the Qur'an and Sunnah.

Suppose the judge does not find a text. In that case, he shall exert his opinion and formulate his opinion to this end with the following principles so that he takes them in a complementary manner and considers their order in terms of priority of consideration and weighting.

(First) Considering consensus, the requirements of the universals of Sharia law, its general principles, and the details of its directions guide the issue.

(Second) The analogy to the rulings of Sharia law is to verify their reasons, represent their similarities, or compare them to those in the system of rulings.

(Third) Considering what brings benefits and wards off harms and evaluating that in a manner that seeks the objectives of Sharia and the purposes of integrated Shariah life in the circumstances of the present reality and in a way that is not negated by sub-texts of Sharia.

(Fourth) Acquiring innocence in the circumstances, permissibility in actions, and ease in assignments.

(Fifth) Being guided by the precedents of judicial work in Sudan in matters that do not conflict with Sharia and what the majority of Sharia jurists adhere to in terms of subsidiary fatwas and the jurisprudential rules they have decided upon.

(Sixth) Taking into account existing customs in transactions in a way that does not contravene the provisions of Islamic Sharia or the principles of innate justice.

(Seventh) Adhering to the meanings of justice recognized by noble human laws and the rule of justice instilled in a sound consciencenso that the court can implement the rules of justice.

The first reason is that it is neither possible nor conceivable for the judge not to find a solution to the dispute presented in Islamic Law. Therefore, its implementation will lead to resolving any dispute so that the judge does not have to search for any subsequent source; instead, there are not only sayings that enrich it but rather prevent it, and any subsequent source has no particular place or reason, and the previous text has referred to Islamic Law without the judge being bound by a specific doctrine so that the judge can choose the ruling that is most appropriate to the circumstances of the given time and place. —using legal diligence, including measurement, approval, and interest, as stated in Article 3 of the Judicial Procedures Law, 1983 AD .

The second reason: All the sources mentioned by the legislator in Article 6/2 of the Civil Procedure Law 1983 AD are included in the first source. When the judge derives a solution to the dispute from Islamic Law, he considers the achievement of justice , which is undoubtedly more important. He has all its provisions and principles. All the commands and prohibitions of the Sharia consider the achievement of justice. God Almighty says: (God commands justice and benevolence). As God Almighty says: Indeed, Allāh commands you to render trust to whom they are due and when you judge between people, to judge with justice. Excellent is that which Allāh instructs you. Indeed, Allāh is ever Hearing and Seeing. . God Almighty has made justice a name for Him (God) to glorify justice as one of the principles of Islamic Law. In addition, fairness and justice are a goal that the legislator aims to achieve, so it is not suitable to be a source, and the description of a source does not apply to it, just as the rules of fairness and justice do not create legal rules and do not establish general legal principles. Accordingly, I consider deleting the phrase "rules of justice" from the text of Article 6 of the Civil Procedure Code of 1983 AD and the text of Article 3 of the Code of Judicial Procedures of Judgments of 1983 AD and being satisfied with the justice achieved by Islamic Law with its texts and objectives. It combines the means and the end.

### **The Third Topic**

#### **Sound Conscience as A Source of Legal Rule in The Absence of a Provision in The Civil Procedure Code Of 1983**

The Sudanese legislator used the term sound conscience as a term synonymous with the term natural law. It was called natural Law due to its derivation from nature. However, philosophers and jurists differed in defining what is meant by natural (natural) Law depending on their disagreement about the standard by which nature is determined and whether what is meant by it is the nature of the universe derived from its laws and system or human nature. Some of them tried to reconcile the two natures, and despite all that, they agreed that there is a law inherent in nature that man can reach. Some of them tried to reconcile the two natures, and despite all that, they agreed that there is a law inherent in nature that man can reach. Therefore, those who believe that the reference is the nature of the universe have defined it as a set of rules that the human mind derives from the divine Law scattered throughout the universe . At the same time, those of the second trend see it as something from the sound mind that makes it seem to them that an action, depending on its agreement or disagreement with the nature of the human soul, is right or wrong. They also differed about how to reach these rules. Those of the first trend believe that arriving at these rules is through reason, contemplation of nature and its enactment, and extracting legal principles from it. Meanwhile, those of the second trend see that the rules of natural Law can be extrapolated from human nature. Human nature expresses itself, and the judge's role is only to extrapolate and reveal them through the human nature common to all humans

Natural Law does not establish legal rules but sets general principles that can be inspired and applied to legal problems without legislative text or custom. These principles are suitable for applying the same ruling to similar disputes. Examples of these principles include the guarantee of the individual and his freedom, the sanctity of money, respect for pledges, and compensation for harm. . As mentioned above, the Sudanese legislator uses sound conscience instead of natural Law, and both terms correspond to peaceful nature and Islamic Law. The Almighty said: So, direct your face [i.e., self] toward the religion, inclining to truth. [Adhere to] the *fiṭrah* . It is clear from the previous verse that the term common sense in Islamic Law is more disciplined than the term used in the Civil Procedure Code of 1983 AD. Common sense in Islamic Law is the standard that God revealed His Law in agreement and conformity with and in a way that guides us if the human mind becomes distorted or society changes in time or place. . A clear and specific standard for good conscience does not appear in the Civil Procedure Law 1983 AD and the Judgment Procedures Law 1983 AD, which increases the ambiguity of the matter when it links it to the equity imbued in the mind (i.e., justice). Did he mean by it the natural Law, given that justice is the fruit of the natural Law, that is, it is generated from it, as Aristotle says? As Sir Gravelled Burrell says , a sound conscience is what the Law (justice) should be, not just what the Law is. Then there is the rule of justice that is instilled in the sound conscience of the judge, society, or civilized nations (the noble human laws). For example, German, Swiss, and Jewish Law permits the marriage of an uncle to his brother's or sister's daughter after obtaining a papal dispensation or permission from a judge. . From what the Sudanese legislator expressed and by analogy to the text. I think the matter needs more clarification, and some people should try to clarify it.

He argued that what is meant by the rule of justice that is inspired by a sound conscience is the same as the well-known diligence and opinion in Islamic Law, and I do not think that this opinion can be accepted for two reasons:

The first reason is that *Ijtihad* in Islamic Law is linked to the diligent person, who must have the qualifications for diligence, so the judge cannot do it unless he fulfills the conditions of the diligent person. Likewise, *Ijtihad* is within the scope of Islamic Sharia law and is restricted from contravening its foundations, principles, universals, and objectives for extracting Sharia rulings. At the same time, the legislator here assumes that the judge did not find a solution to the dispute in Islamic Law, so he turned to the rules of natural Law (sound conscience), which is the rule of justice that is imbued in the mind and which does not require for deduction or extrapolation from it the conditions of diligence that the diligent person must meet, so anyone who has acquired the knowledge of Law and has practiced working in it can reach those principles.

As for the second reason, sound conscience was stipulated in the text of Article 6 of the Civil Procedure Code of 1983 AD. Following legislation, custom, and Islamic Law, the legislator's intention appears clear. He did not intend *Ijtihad*, nor did he indicate what it indicates. It is known that the rules of *Ijtihad* are connected, both existentially and non-existent, to Islamic Law, and sound conscience is not Islamic Law and is not included in it. The explanatory memorandum to the Code of Judgments indicates that the ruling on equity that comes to mind in the judge's mind is nothing but an expression of the well-known approval in Islamic Law.

Accordingly, some commentators of the Judicial Procedures Law of 1983 believe that a ruling that is imbued in the sound conscience is the ruling that is imbued in the conscience of the judge who is free from inclinations, whims, and whatever comes to his mind in the context of the relevant incident and as a result of his extended experiences, or it is what comes to the judge. From a point of view, its significance is precise and almost difficult to interpret in *Ijtihad* systems. Therefore, the rule of fairness stirred up in the conscience means approval. Because approval prevails in the mind of the diligent person, the sound conscience, in comparison with that, must be measured by the judge's standard. What was said about this diligence is the same as what is said about diligence. A sound conscience is entirely different from the diligence known in Islamic Law. In addition, sound conscience does not establish legal rules but rather establishes general principles that can be replaced by legal principles derived from Islamic Law through diligence or analogy.

Moreover, this description does not support the source's description, as shown in the first section. Therefore, it must be deleted from the text of the Article under comment. Until this is done, the court must abstain from interpreting and applying the intended meaning of justice and good conscience, with the meanings and



connotations that Islamic Law gives to these two ambiguous terms, especially since the text on them came after Islamic Law, which requires that they do not contradict it, due to the necessity of coordinating all parts of the legal system in one country.

## **RESULTS**

This study discussed the meanings intended by the terms source of legal rule and the term legal principle, with an explanation of the distinction between them; then, I explained the purpose of establishing and legislating laws as a logical introduction to discussing how to apply the rules of justice and good conscience as sources of the legal rule in the Civil Procedure Code of 1983 AD.

In the absence of a legislative text, this study concluded with the following results:

The term "source of the legal rule" means the reason that creates the legal rule and gives it binding force. At the same time, there is a significant difference between the sources of the legal rule, the legal principles, and the goal that the Law aims to achieve; it is also true to say that the rules of good conscience do not create legal rules, but rather their role is limited to determining legal principles. It also differs from the concept of common sense established by Islamic Law, and the methods and rules of deduction from it differ from the methods of deduction (Ijtihad) in Islamic Law.

The term historical source is imprecise and must clearly indicate its intended meaning. The historical source does not create a legal rule; instead, its role is limited only to providing the legislator with the content of the legal rule. Justice also has a goal that the Law aims to achieve, and it cannot be a source of rule because justice is an idea, a goal, and a philosophy.

Justice has different meanings and connotations depending on the legal systems and philosophies they adopt. The absence of a philosophy of justice from any legal system or legislation will lead to its subordination to other systems and its integration into them, and it will end up being stripped of its identity and the religious, philosophical, and moral considerations on which it was built, and it will become a structure without a soul.

There is no clear and specific standard for the term "sound conscience" in the Civil Procedure Law 1983 AD. The same is true in the Judgment Procedures Law 1983 AD, which requires clarifying the intended meaning or replacing it with a specific, more disciplined meaning or term, such as the term common sense, which came in Islamic Law because it has a clear and disciplined standard.

What is meant by the phrase "the rule of fairness" that is stirred in the conscience is the same as the well-known approval of Islamic Sharia jurists. However, approval is based on the subjective preference of those who approve, unlike justice, which has a clear, controlled idea and purpose and an objective standard and does not have a subjective standard, as in justice and natural approval, the combination of two refinements that flow in the conscience (approval) is an irreconcilable combination between what is a subjective criterion, and what is the objectiveness of the standard, especially since the legislator did not give the judge a choice between applying the rules of justice, the objective standard, and sound conscience, which does not have a disciplined standard, nor even the rule of justice that strikes the subjective standard of conscience.

There is a difference in meaning and significance between the terms sound conscience and Ijtihad, known in Islamic Law. Sound conscience does not establish legal rules; instead, it sets general principles, unlike Ijtihad, which may lead to the creation of new rulings, such that each of them cannot be synonymous with the other, which necessitates being satisfied with one of them because they will conflict when applying them practically and applying them on the ground of reality.

### **Secondly, Recommendations**

Deleting the phrase "rules of justice and good conscience" from the text of Article 6/2 of the Code of Civil Procedure 1983 AD and Article 3/7 of the Code of Judgment Procedure 1983 AD, it is sufficient to refer only to Islamic Sharia with the addition of the phrase "rules of Islamic sharia" with the intention of clarification and restriction to remove confusion and clarify the ambiguity that accompanied the text of Article 6 of the Sudanese Civil Procedure Law of 1983 AD.

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