

# Conflict of Government Orders with Individuals' Rights

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## ABSTRACT

The religion of Islam is the last religion; it means that its rulings are eternally immortal. On the other hand, human life is constantly evolving, and this transformation in every age and time brings new needs, the responding to which is a new matter itself. To meet this end, Islam has legitimized the rulings of the Islamic ruler, which means that the Islamic ruler can, according to the established laws of Islam, be accountable for all the changing needs in terms of the ruling government; these needs are of a temporary and situational nature. In the Holy Quran, as well as the tradition of the Prophet (PBUH) and the infallible Imams (peace be upon them), many examples can be found that the practice and command of some Prophets and Awliyā (friends and allies of Allah) only can be justified by the acceptance of the legitimacy of a government decree. Government rulings have a wide circle that, in addition to the ruler's involvement in unnecessary sentences, it includes the ruling of the ruler in mandatory tasks. In some cases, in the implementation phase, there is a conflict between the rulings of the government and the rights of the actual or legal persons, which, according to the scholars such as Imam Khomeini (RA), the ruling of the government precedes other rulings.

**Keywords:** Confusion, Conflict, Judgment, Right, Government

## Introduction

Islam is the last religion, and includes rulings in different aspects of human life; the necessity of being the last is that its rulings should be complete, universal, and eternal. On the other hand, human life is constantly evolving and is simply complex, everyday new needs are found, or the shape of the needs of the past are changed. With this in mind, the Islamic community needs to respond to the Islamic laws according to the needs of individuals and the government; what is important in discussing Islamic rulings is to clarify the rules and their impact on each other as well as the Islamic society.

### 1. Lexical and idiomatic definition

Tazahama - Tazahoman (Za-ha-ma) Al-Qum: Those people hardened each other and got into trouble. Al-Rajolan: The two men disagreed. <sup>[1]</sup> Zahama- Mozahama, Zahama (Za-ha- ma):

He pushed him and caused a problem <sup>[1]</sup>. Za-ha-ma – Zahman-Zohamāh: He threw him in a hole, put him in a harshness (454).

Whenever the two judgments are valid and the obliged is accidentally in charge of them, so that he cannot sum up the two and combine both, there is a conflict (Tazahom) between the two, which are called Hukmain Motazahemain<sup>[2]</sup>.

Etaraz<sup>1</sup> - Eterazan (A- ra- za): That thing is spread out wide, as the wooden panel is facing the water of the creek, Alayhe man qawl aw fe'l: He attributed to him the error and mistake, - lah: forbade him, - don Al-Shi'ii: It prohibited that thing, - Sabileh: The path to him was closed <sup>[2]</sup>. Ta'araza – Ta'arozan (A-ra-za) Al-Rujlan: The two men protested each other and stood up against each other <sup>[2]</sup>.

The late Sheikh Ansari (ra), in the definition of the conflict – Ta'aroz-, stated: التعارض هوتا فى مدلولى الدليلين على وجه التناقض او "التضاد". The conflict is the incompatibility of the signifying and the concept of two reasons for contradiction or conflict. <sup>[3]</sup>

Some terminologists believe that "Hukm - judgement" means "expedient arrest", and for this reason they regard the term "Hikmat al-Dawba" as tether and something to keep the mouth of the animal closed (al-Menfardat, 126) <sup>[4]</sup>.

<sup>1</sup> objection

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Perhaps the use of the word *Hukm* to the laws, the rules and suppositions which have been forged by the God of Sobhan in relation to the verbs of the plaintiffs is to assert that the judgment, is a statement of opinion or theory, which is in good faith. Therefore, the jurists have stated in the definition of the *Hukm* that "the *Hukm*-judgment- is the law set forth by the Almighty God for the purpose of regulating human life" (Dorous fi Elm al-osoul, 161).

Two things are mentioned for the word *Haq*-right-: one is firmness and solidity, as the "reseathoub mohaq" means a solid clothing or cloth, and the other is agreement and matching, so the hole in which the door moves in and out, is called "*Heq al Bab*" to the door and the place where two bones are joined is called "*Hoq*". (Tajalloqat and sahal-arabiyah, Almofradat).

## 2. Government rulings

The need for the establishment of government rulings here is about the conflict between these laws and the rights of the people, and in the event of this contradiction, what is the criterion for eliminating it. Shiite scholars have provided definitions for government rulings, some of which we refer:

2.1. The first martyr<sup>3</sup>, in his statement of the difference between a fatwa and a *Hukm*, defines the ruler's judgement –*Hukm*- as follows:

« الحكم انشاء اطلاق او الزام في المسائل الاجتهادية و غيرها مع تقارب المدارك فيها مما يتنازع فيه الخصمان لمصالح المعاش»  
(Alqavaed-alfavaed, 1,320)

- A) Regarding the limit of inscription, the fatwa gets out of the definition, since fatwa is not the inscription of the *hukm*, but the announcement of the *Hukm* of God.
- B) The terms "requirement-*Etlaq*-" and "necessity- *Elzam*-" refer to the types of ruler, that is to say, the ruler is of two types, or to issue and make decrees, such as that the ruler orders the release of a prisoner, since no right has been proved against him or for instance; about the land that has been hedged by a person and abandoned, he orders to change it into the previous manner, or he may order to free the man who no longer is subject to servitude and sometimes the ruler's judgment is obligatory, as it is obligatory to pay a financial contribution to a person.
- C) By the words "*Al-Mutaqarab al-Madarek Fihah*", the rules that are not applicable to Shi'ite jurisprudence are omitted. Such as when a ruler, sentences vengeance or a punishment against a disbeliever. If the ruler issues such rulings, the violation is obligatory.
- D) By the virtue of the constraint of the "*Masaleh Al-Ma'ash*", the prayer is excluded (ibid), because the ruler cannot issue a decree about praying; for example, if the ruler ruled that the prayers of someone are correct, the correctness of his prayers is not necessary.

2.2. The late Saheb-i-Jawahir also states the difference between the fatwa and the *Hukm*:

"و اما الحكم فهو انشاء انقاذ من الحاكم لا منه تعالى لحكم شرعى او وضعى موضوعها فى شئى مخصوص"  
" (Ja'vahir al-Klam, 40, 100)<sup>5</sup>

In this definition, reference is made to the definition of the *Hukm*, including:

- A) The judgment or *Hukm* of the ruler has been introduced as a matter of assignment and situation; an assignment *Hukm* is required, such as that the ruler will decide on the implementation of the boundaries or necessity of Friday prayers or the reverence for communication with the enemies of Islam, whereas the situational *Hukm* is such that the ruler decides on the void of the deal with some infidels.
- B) In this definition, the *Hukm* of the ruler has been found to be specific to the cases and has not been regarded in the definition of the "مما يتنازع فيه الخصمان", by the martyr. Saheb Jawaher says:

Is it conditional that, the *Hukm* –judgment- should be along with the interruption of the dispute, as much as is the case with such a sentence? It should be noted that more than this amount, (which the ruler can rule in non-conflicts) is questioned, and the principle in such cases is that whether the *Hukm* issued in non-conflicts have impacts or that whether such a condition has any legitimacy? The reason of the emergence of this sacred word, "انى جعلته حاكما", is that the religious ruler can enforce freely. Of course, the cessation of hostility in the narratives being questioned is a part of this absolute authority, and that is why, in the case of the jurists, the problem of fixing the first of the month and the limits that are not contested by the people, can be judged by the ruler (ibid).

- C) In this definition, the religious *Hukm* (whether as an assignment or situational) is attributed to the Shari'a ruler, since the *Hukm* of the ruler is nothing but the execution of religious judgments; of course, this definition governs only the implementation of religious rules, therefore it doesn't include rules and the orders issued by the ruler or the governing body for the management and development of society in various political and social contexts.

2.3. Allameh Tabataba'i, after dividing the Islamic law into two invariable and variable kind, outlined the rulings of the government. Attending to his comments, a definition for the government rulings can be summarized from the sum of his speeches.

"Government rulings are decisions that, the person in charge adopts and regulates in the light of the laws of the Shari'a, according to which, he conditions laws that are timely executed". He continues to say that "the intended rules are compulsory and valid as Shari'a, with the difference that the laws of the heavens are fixed and unchangeable but the situational provisions can be changed and in terms of stability or

<sup>2</sup> Bab means door

<sup>3</sup> Muhammad Jamaluddin al-Makki al-Alimi

change follow the expediency, and because the life of society is evolving; naturally, these regulations will gradually be transformed into better ones".<sup>16]</sup>

Many scholars have opted for this definition in defining government rulings. In fact, they have used government rulings as a means of linking "variables" and "invariables"; when they are faced with the question of 'how Islamic rulings that have been used for previous centuries in the conditions and circumstances of the Arabian Peninsula, can be implemented at this time with the unpredictable advances in science and technology and profound transformations in the way of life and the emergence of thousands of new subjects?', they divide the laws of Islam to two parts: one as invariable law, that is suited to human nature being constant and the same at all times, and the other as variable laws, which in fact are born because of the same governmental freedom and in the shadow of the invariable laws being based on them at any time, appropriate to the needs of that time and as an element of expediency period<sup>17]</sup>.

### 3. Government rulings in Qur'an

The Holy Quran, as the first foundation and source of religious teachings and the divine immortal miracle, has pointed to the examples of governmental rulings:

This verse is one of the verses, which have a clear indication of the authority of the government: " اطيعوا الله واطيعوا الرسول و اولى الامر منكم"<sup>4</sup> (Nisa / 59)

This verse indicates this issue in many respects:

- ✓ The repetition of the term اطيعوا—obey— means that the obedience to the Prophet and those in authority is different from that of obedience to God. This difference may be justified so that obedience to God is obedience to divine laws and Shari'a, but obeying the Messenger and those in authority is in line with the implementation of those rulings, which includes governmental affairs.
- ✓ The word, Amr —meaning order-, which is a subjective covenant, brings to mind that this order is a matter of government, administration, and administration of society.

### 4. The governmental Hukm -judgement- in the tradition of the Prophet and the infallibles (peace be upon them)

Referring to the history of the life of the Prophet (pbuh) and the infallibles and referring to the Shia narrative books, one can find many examples indicating the authority of the leadership in the administration of the Islamic society. Here are some examples:

- 4.1. The Immigration Order was issued to Habasha, so that Muslims, while protecting themselves from the persecution of polytheists, would propagate Islam in that land, when they ordered Taqiyah to save their companions. Like the commandment given to Ammar Yasir, if the polytheists forced you to insult your Prophet to save your life, do so (Al-kamel Fi-Taariq,

2, 67). At the end of his visit to Mecca, Musab ibn 'Amir was ordered to go to Medina and teach the Qur'an and Islamic teachings to new Muslims.

When the Holy Prophet went to Medina and formed a government, all the orders, decrees and rules issued by him regarding the reforming of the Islamic society, were considered as governmental judgments. These included the signing of a covenant of fraternity between Muslims, the conclusion of a treaty with various groups inside the city of Medina and groups outside each city, such as the deserters and tribal neighbors, signing various peace talks with enemies, sending military troops around, the issuance of war orders, sending couriers to the court of kings and so on.

- 4.2. Examples of government rulings during the five-year ruling of Ali's caliphate against Islam can be cited as following:

- A) During the period of his ruling, he prescribed Zakat for the horses to provide a deficit. The following is quoted from Imam Baqir and Imam Sadiq (PBUT) in this regard:

"وضع اميرالمؤمنين عليه السلام على الخيل الراعيه فى كل فرس فى كل عام دينارين و جعل على البرازين ديناراً"

(Wasa'el al-Shi'a, 6, 51)<sup>18]</sup>

Here it is worth noting that some jurists have suggested that basically the sources and amounts of zakat are dependent on the point of view of the person in charge, being subject to the changing conditions of time and place.<sup>19]</sup>

- B) One of his rulings was the order of the demolition of the high marks which is stated in a narrative.

انه رأى مأذنة طويلة فأمر بهدمها وقال عليه السلام: لا يؤذن على اكر من سطح المسجد"

" (Mustardak al-Wasael, 4, 36),<sup>110]</sup>

the author of Da'aem Al-Islam, stated that this sentence was issued because houses were seen from the top of them.

- C) Imam Ali (pbuh), when he counts the rights of leaders to the people, says:

" اما حقى عليكم... والإجابة حين أدعوكم و الطاعة حين أمركم "

(Nahj al-Balāghah, Sermon 34)<sup>111]</sup>

His Holiness had absolutely stated that my obedience to you is obligatory, indicating that the Imam has authority in his area of responsibility and he can issue instructions according to that authority, and obedience of the commands is obligatory for people.

- 4.3. The rulings of the jurists in the era of the great absence

Although in the great absence, the jurists were generally not involved in government, but it is not possible to say that at that time, the government rulings were completely inaccessible. Because although Shiite jurists often considered their

<sup>4</sup> Obey Allah and obey the Messenger and those in authority among you.

time-ruling governments illegitimate, they, as far as they could, enforced the laws and objectives of the Sharia law.

Here, by mentioning the words of Sheikh Mufid (RA), we will give examples of government rulings in those periods. "The establishment of the limits and punishments of God is entrusted to the sultan of Islam, which is set by God; they are innocent imams of the family of the Prophet (pbuh) and the emirs and rulers appointed for this purpose. Imams (PBUT) have given this to the Shiite jurists - if possible - "(Al-Muqna'a, 810) <sup>[12]</sup>.

Sahab Jawaher also quotes such a phrase from Sallar, the author of the book Al-Murshim. This statement has been the guidance of the jurists during the great absence until today. Their practical work in this area is worth mentioning:

The jurists considered themselves to be the acuity or substitute of Imam Mahdi –Hojjat-, so they not only deduced the sentences and gave fatwa, but also conducted executive affairs, to the extent that the governments allowed them. The scope of their efforts can be as follows:

- A) Taking khums and zakat and consuming them in the manner prescribed by the Shari'a;
- B) Guardianship of orphans, Qasaran, (mentally retarded); absentees; missings;
- C) Special and popular endowments dedicated to all Muslims;
- D) Performing the task of doing good and forbidding the evil; some of them even carried out the high ranks of doing good and forbidding the evil, which led to the assassination and murder;
- E) Judgment in people's litigation;
- F) Implementation of Islamic punishments;
- G) Verdict on the observance of the moon<sup>5</sup>.

Obviously, the implementation of the Islamic limits as well as doing well and forbidding the evil are related to the jurisprudents who enjoyed social power. Except for the regular and somewhat systematic cases mentioned, in the history of the Shi'a jurisprudents, we deal with the issues in which government's Hukm is regarded as a political and social position on the level of a "nation-religion", and international relations.

Examples of this are:

- A. During the Safavid regime, when the kings of this dynasty tried for any reason, to display their ruling Shiite, some of them converted to the supreme jurists, asking them to allow the legitimacy of their monarchy. The issuance of these permissions is considered as the rule of the supreme leader.
- B. During the Iranian-Russian wars, a series of jurists against the enemy issued a decree of Jihad.
- C. In 1309 AH, the late Ayatollah Shirazi issued his famous decree on the ban on tobacco: "Today the consumption of Tobacco is like a war against the Imam of Time against Islam".

- D. Ayatollah Seyyed Abdul Hussein Lari, with the formation of the Islamic government in Larestan province, issued important sentences, including: the decree to dissolve the Qajar dynasty; Jihad against the British army (1914) which at that time had deployed forces in Bushehr; a sanction on some foreign goods; (fatwa epic)
- E. Ayatollah Muhammad Taqi Shirazi issued an armed Jihad for the Iraqi people against the occupation forces of England.
- F. The late Ayatollah Sheikh Mohammad Hossein Kashef al-Ghatha issued the Hukm of Jihad against Zionism and assistance to the Palestinian mujahideen for all Muslims in 1357 AH.
- G. The late Ayatollah Seyyed Mohsen Hakim issued the verdict on the Communist Party of Iraq: "Joining the Communist Party is not allowed because it is a disobedience or atheist or helps it be promoted."
- H. Imam Khomeini issued orders before the revolution. Among these are: the decree of respecting Taqiyah in the struggle against the tyranny (Sahifeh Noor, 1, 40) <sup>[13]</sup>; banning Muslim-Israeli political-commercial relations; banning American capital investment agreements with Iran.

## 5. The scope of government rulings

It has become clear that the prophets and infallible Imams (PBUT) as well as the jurists throughout history issued orders and decrees based on the changing needs of the time. However, another question that arises here is the scope of the rulings of the government and the extent of the Islamic rules' involvement in the invariable religious rulings and the source of legitimacy of such an action, which have been mentioned in the following.

5.1. The Islamic ruler's interference in non-binding rulings  
Martyr Sadr, who is undoubtedly one of the most precise theorists of this field, has provided this constant rule only in the case of the Islamic ruler's involvement in non-binding rulings, in the form of Mantaqatol Faraq theory based on these verses; The Prophet is closer to the believers than their own souls (ahzab/6) and 'O you who have believed, obey Allah and obey the Messenger and those in authority among you.' (Nisa / 59) (Martyr Sadr, 726). He believes that the Prophet is more deserving in what the people are free to do or leave or decide on (that is, in the meaning of all-permissible). Since any other Islamic ruler is the successor to the Prophet, he has such an option.

In other words, permissible, in the sense of all means that it includes; the recommended, execrable, and permissible in the sense of particularities, are void of any obligation, and the Islamic ruler can issue an obligatory ruling on the basis of the circumstances of his time and place. It is clear that the need to obey these rulings of the government does not require opposition to any permanent religious order. Since fixed sentences are permitted in this area and people are obliged to perform or abandon them, therefore, obedience to the obligatory rulings of the supreme leader does not interfere with obedience to the creator.

<sup>5</sup> For determining the first day of the month to do some rituals

For example, everyone is free to spend part of his property in public use, and this action is deemed appropriate regarding his current right. However, according to the rules, the supreme leader can, on the basis of the rules, make it payable to anyone as a tax. Tobacco use is also a permissible act, but the supreme leader can prohibit it based on rules. Hence, obedience to the leaders' obligation in the first example and the reverence in the second example has no opposition to the invariable rulings of the religion.

This point should also be considered that the obligatory and haram by the verdict of the supreme leader is not considered a fixed order, but merely a conditional order based on variables. However, the principle of the legitimacy of such rulings by the supreme leader and the necessity of obeying them are invariable religious decrees.

The implementation of this verdict of religion within itself has the capability to manage the changing needs of human life. Therefore, it can be said that Islam in some cases has directly issued a decree, and in another part, has provided the Islamic ruler with the ruling, and the changing human needs are directly regarded by the rulings of the supreme leader whereas indirect rules are confirmed by invariable religious decrees provided that such authority is given to the Islamic ruler.

#### 5.2. The interference of the Islamic ruler in the necessary rulings and their legitimacy

What has been said so far is that it is not necessary to rule out the rulings of the Islamic ruler in the field of judgments. However, the issue is that can the Islamic ruler intervene in the area of mandatory binding rulings? The answer to this question is yes. What matters is the legitimacy of this operation and the basis of such interference. There are three possible theories in this regard.

##### 5.2.1. Theory of obedience conflict

Whenever two mandatory Hukms interfere with each other, that is, if obeying the two judgments is not possible, one is obliged to abide by the more important ruling and leave the other. For example, if the patient's salvation is obligatory and the touch of the non-related (not related by blood or marriage) is forbidden, and obedience to both is not possible for the physicians, it is necessary to reproduce the important sentence that is necessary to save the sick person's life. Although he/she is forced to touch the body of the non-related person. They call this conflict as obedience conflict

In the event of obedience conflict between the mandatory provisions, whenever the recognition of the conflict and the preference of the significance does not have social and public effects, the responsibility for detecting the conflict and recognizing the significance is the responsibility of whom the conflict has occurred to, although the sacred ruler has stated the criterion for the differentiation of the significance than the other.

However, wherever the recognition of the principle of conflict and preference of the significant has social and public effects, it is the responsibility of the Islamic ruler. For example, in the socially binding provisions, we can refer to the situations of the early days of victory of the Islamic revolution. If the

preservation of the Islamic government is dependent on the bank, but the existing banking system is also based on usury, in this regard, because of the importance of maintaining the Islamic state, the Islamic ruler temporarily removes the forbiddance of usury in order to design a banking system without usury in the shadow of the Islamic government. If the banking system is implemented without usury, the allowance for the usury will be eliminated and the conflict will be omitted.

##### 5.2.2. Theory of preserving conflict in theology

This confusion occurs for the ruler (Shaare'), and it is where the ruler has falsified the actual sentences, but he knows that people in some cases may be in trouble in identifying the actual verdict. The ruler cannot find a way for such a task to preserve all the criteria of the actual rulings. Therefore, he will determine the ways in which most of the actual rulings are preserved. For example, in cases where the criteria of binding rulings are more important than the criteria for non-binding sentences, the principle of precaution is obligatory to require that binding criteria and, in cases where the criteria of non-binding rulings are considered more important, the principle of innocence is revealed to earn the absolute truths. The sentences derived from these paths are called apparent sentences.

In addition to these two perspectives, a third theory can also be formulated to illustrate the status of a government ruling in both of these areas in one form. This theory, which we call "preserve conflict in execution," does not have the practical effect of limiting the powers of the Islamic ruler, but only a new analysis of the same powers.

##### 5.2.3. Theory of preserve conflict in execution

This conflict occurs only for the Islamic ruler, in such a way that the ruler of Islam has a set of fixed sentences (both real and apparent, binding and non-binding). He is responsible for establishing and enforcing all these sentences in the community. Meanwhile, when the two judgments conflict with each other, which means that keeping one of them, is not possible by maintaining the other, the Islamic ruler would be confronted by preserving conflict in execution. At that time, he must, by recognizing a more important ruling, observe it at the community level and shut down the non-binding ruling until it stops interfering with the previous ruling. Thus, in different circumstances, Islamic laws are introduced in society.

Things to Consider:

- The theory of preserving conflict in the execution is related to the interference of the ruler in the constitutionally fixed religious commandments and doesn't justify his judgments in other respects, such as his Hukm on the observance of the moon or the forgery of the situational rulings (against the mandatory) and the like.
- Perhaps the purpose of those who have interpreted the interference of the Islamic ruler in the binding rulings with obedience conflict is what we called the preserving conflict. Perhaps the theory of Manteq-al-Faraq could also be referred to this theory. In other words, the theory of

preserving conflict in execution is a deeper justification of the two previous theories.

- The preference for the theory of the Manteq-al-Faraq than the theory of preserving conflict in execution is that in the former, for the sake of the time, the Islamic ruler can set up binding and mandatory rulings in the circle of non-binding rulings, and it is not necessary to search for a more important decree. While in the theory of preserving conflict in execution, any kind of interference in the field of non-binding rulings is subject to conflict with a more significant binding or non-binding ruling, therefore, the ruler searches for fixed religious decrees and expediency of the Hukm. This point may at first glance create a constraint on the Islamic ruler with respect to existing jurisprudence.

Another point that is considered as expedient for the system or as a government ruling is the secondary sentences that have been mentioned below.

## 6. Famous Secondary rulings

So far, in Islamic jurisprudence, there has been no exact numbers from the secondary rulings. The following items have been agreed on by the principals, jurists, and lawyers as "secondary sentences":

Preservation of the system; expediency of the system; urgency (necessity); loss; compulsion and harassment; reluctance; primacy; taqiyah; vow; promise; parental obedience; conditions of marriage, significance.

In appearance and at first glance, it is thought that each of these titles is distinct and independent of the other, each with its own particular place and territory, but by contemplating on their implications and the reasons for their application in the jurisprudential texts, it becomes clear that some of these sentences have a relationship with others, so that in some cases two may be considered as one.

For example, in many cases, there may be an urgent need of "Taqiyya". Although the narrative says "التقية في كل شيء يضطر" (Vasa'ele Shiite), "اليه ابن آدم، فقد احله الله له" "Taqiyah, in everything is permissible if there is an urgency, that God has made it lawful for him."

In addition, in some cases, the reason for Taqiyya is "to stop loss". Sheikh Ansari writes in Taqiyah's treatise: "obligatory Taqiyah allows for committing haram or abandoning the obligatory, and the basis of these issues are the reasons for the rejection of harm and the hadith and the general reasons of the Taqiyah."<sup>[14]</sup>

Mohaqq Bojnourdi also writes during the discussion of the legitimacy of the Taqiyyah: "The reason for the legitimacy of the taqiyyah, is the principle of harm or the principle of pressure."<sup>[15]</sup>

From Imam Khomeini's point of view, sometimes the punishment and the pilgrimage areas may be subject to Taqiyah. Thus, he writes: "Among the necessities which make haram possible, are reluctance and Taqiyah of anything that endangers either the person's life, his self-esteem, his honor, or his

property, in such a way that its endurance is impossible" (Imam Khomeini, Tahrir al-Vasilah, 2, 170)

Some jurisprudential phrases show that from the point of view of some jurists, "necessity" is the general name of "difficulty and pressure" and "taqiyah". For example, Saheb Jawaher in the book of purification writes: "whenever water is condemned to pollution, it is not permissible to use it to purify in absolute terms, both in eliminating harm and damage, and in both cases of necessity and lack of necessity. You cannot use this water for eating or drinking unless you need it. The emergence of necessity, and the impurity, and the taqiyya, and so on, are some of its attributes."<sup>[5]</sup>

In some cases, he has also considered the necessity of obtaining "harm and loss", including in the book "At'amah va Ashraba", he writes: "Anything that is prohibited to eat is a matter of choice. However, if there is a necessity, there is no difference in permission to eat, because God says: "فمن اضطر غير باغ ولا عاد" "فلا اثم عليه". Adding the rule of negation of harm and loss as well as the rule of negation of permission, the ease and simplicity of the law and comfort is desirable..."<sup>[5]</sup>

Thus, although taqiyyah, difficulty, and pressure can be examples of "necessity", they are individually referred to as a particular rule. The reason for this differentiation is the introduction of various reasons in the language of the ruler. Some of these arguments are based on the title Taqiyyah. Additionally, not all cases of taqiyyah are accompanied by necessity and harm, as every pressure may cause harm. On the other hand, some other scholars have faced the secondary character of some unnamed topics; for example, the late Ayatollah Khomeini, considers the idea of Mohaqeq Irvani in denying the inherent problem of "Ghash" and reverses it for secondary titles it may cause, such as lying and using the property of people without their consent. In this regard he wrote in his rejection: "Without doubt, the traditions indicate, contrary to his view, since it appears from these narratives that Ghash is forbidden due to being false in its nature, therefore, if the issue of fault is realized in a certain case, its ruling will be demanded, as in other real cases. Thus, it became clear that the fundamentals of the subject that the scholar has denied were the fault of claiming that there was no reason to refuse to mix the milk with water, and to respect the sale of the mixture and the merit of the creation of the deal."<sup>[16]</sup>

With that in mind, it becomes clear that the fourteen secondary titles mentioned above are in some cases inconsistent in terms of jurists and scholars and do not have a single criterion. Imam Khomeini (RA), as one of the Shia intellectuals, has paid attention to the secondary decree and its role in the administration of Islamic society.

If secondary titles are found individually, it will not be difficult to identify their subjects in many cases; as often, each person easily recognizes their urgency and discomfort, but in many other cases this issue without referring to a specialist, such as an expert, is not possible, especially if the standard in these cases be a kind of difficulty or pressure.

Issues related to the community and administration of the Islamic state are among the issues where the recognition of the secondary verdict is of particular complexity and the stance of the experts are of particular importance. From Imam Khomeini's point of view, since it is not in the power of the individual to recognize all the issues of governance, for determining their importance, and considering the expediency or corruptions of all matters of the state, it is necessary in some cases to use experts and relevant specialists.

Imam Khomeini, referring to this point, writes: "Perhaps a problem may occur because of this issue that we say about government being for the riotous Faqihs, or jurists are not capable of political and military affairs; but this is baseless, because in every state, the management and administration of affairs, have been done by the cooperation of a large number of experts and informers, and kings and presidents from time to time have not been aware of the political techniques of leadership, except a few of them, but the affairs have been carried out by specialists of any technical field; if the person at the head of the government be a just person, he will set honest ministers and servants, thus would reduce oppression, corruption and rape to Muslims, and their dignity. As during the reign of Imam Ali (PBUH), he did not do all the government's work, despite having governors, judges, and heads of the Revolutionary Guards and so on. Today we also find that the administration of political or military affairs, and the regulation of them as well as the protection of borders, are delegated to different person or competent people."

The significance of secondary sentences in the administration of community and country affairs can be derived from a letter written by the head of the Islamic Consultative Assembly in 1981, saying: "As you know, a part of the laws passed by the Islamic Consultative Assembly are in the light of the general provisions of the affairs and the necessity of preserving the expediency of time, or the repatriation of the defects, and in accordance with the secondary laws, they must be temporarily enforced. In the context of the implementation of the rulings and policies of Islam, and in relation to such laws, some of the laws may be stopped or changed being only possible with the exercise of the authority of the Supreme Leader, and the Constitution of the Supreme Council. Therefore, I ask the Islamic Consultative Assembly for help and guidance."

Imam Khomeini's response to this letter is as follows: "What interferes with the maintenance of the system of the Islamic Republic and the act or abandonment of it, causes a disruption or pressure on the system, requires the consent of the defendant after identification of the matter, by the majority of the lawyers of the Islamic Consultative Assembly. Specifying its temporary nature, until the subject is researched and canceled after the resolution of the matter, can be approved and enforced. In addition, it must be stipulated that any one of the executing officers who exceeded the limits will be guilty and prosecuted and legalized."<sup>[13]</sup>

The Islamic government can sometimes use Taqiyah based on the necessity and expediency of the Islamic system against disbelief and arrogance and according to the interests of the

Islamic society, tolerate and co-ordinate with them in some areas, as foreign trade actors in the Islamic State, can use secondary rules in their trade and economic relations with non-Islamic countries. Hence, the existence of secondary judgments in Islamic jurisprudence must be considered as the cause of its perfection, and not the signs of its weakness; since the existence of these sentences is a necessary and indispensable necessity for escaping the transformation of human life and the emergence of non-existent situations.

Hence, Imam Khomeini (RA) says: "Sometimes there are issues in the society that need secondary rules in the work, these are also divine ordinances, but the divine secondary commandments," or says: "The rejection of secondary rules, after the recognition of the subject by the expert law, does not differ from the rejection of the original judgments, because both are the commandments of Allah."

One of the secondary titles that has a special place in the jurisprudential and political thought of Imam is the expediency of the system. In many of his speeches and writings, he has reminded of the importance of this age and its vital role in the administration of society in various aspects of social, political, economic, and so on. As you can see in one of his messages: "Students, Imams of mosques, newspapers and radio and television, should make it clear that in Islam, the expediency of the system is one of the things that precede everything and everyone should be subject to it."<sup>[13]</sup>

In the early years of the Islamic Revolution, we did not speak of the Expediency in our system of governance, but in the following years, because of dealing with some difficulties in the field of internal affairs and connections to economic, cultural, political, judicial, etc. the formation of such council was felt by Imam, and even considered in the constitutional amendment. In an extract of the Imam's message to the expediency council the following message is stated: "pay attention that the expediency of the system is one of the important things that sometimes is neglected resulting in the defeat of Islam, today the Islamic world, regards The Islamic Republic of Iran as the leader in the resolution of their problems. The expediency of the regime and the people is one of the most important issues, the resistance to which may question Islam in the distant and nearer time, causing the victory of American Muslims and arrogant Islam backed by billions of dollars."

Another aspect of government's rulings is Imam's theory on the rule of rejection of harm: the jurists and scholars have expressed many opinions about the provisions of this rule, but Imam Khomeini has a special point in this regard. From his point of view, the rejection in the hadith "لاضرر ولاضرار" is meant as a rejection, but this rejection is not a divine religious order, such as a prohibition of usurpation and lying, but the rejection here is the ruler of Maulvi-e Soltani, and the means of issuing it from the Prophet (pbuh) is that he was the ruler and sultan of Islamic Ummah.

## 7. Conflict between the rights of the government and the rights of individuals

Sometimes there is a conflict between the rights of individuals and the state. In such cases, the rights of the state and society should be preceded by the rights of individuals, for example:

The Islamic State has established rules in the field of military service, and it is up to those who are subject to military service in accordance with these regulations. However, if parents are not happy with it, an interference is caused between parents and the government, and the right of the government is preemptive and the offender is prosecuted.

According to narratives, Shi'ah has the right to use Anfal - such as forests - to the extent permitted, but by changing the conditions and relations governing society and economy, this right conflicts with the right of government, for example some want to use modern means to cut down the forest trees and to bring in irreparable losses to the social and environmental interests of the area. In this case, the government has the right to prevent such action. A person who plants an arid land, is subject to the "مَنْ أَخْبَى أَرْضاً مَوَاتاً فَهِيَ لَهُ" as being the owner of the land. But in some cases, a conflict is caused between this right and the right of government and social affairs, such as where, according to the reference of this hadith, we have the limitless permission to restore property in all arid lands. This is not in the best interests of the community, rather those with advanced facilities can easily take over the land, which will restrict the assets of others.

Accordingly, at a time when the socio-economic relations of the ruling community have changed, the housing problem has become a social issue. According to Imam Khomeini's (ra) view, the government has the right to prevent such a movement, and to allow those who are able to make unconditional revival of such lands by the means of advanced means.

If the Islamic government places rules in big cities such as Tehran, regarding the car owners' not having the right to use their vehicles unless they are gas-fueled, there will also be a conflict between the personal right and government. The right of the government is preferred in this context. In addition, if the government requires environmental protection, those who have planted a tree in their own homes, have no right to cut it. Alternatively, the government provides street development plans to solve the commuting problem and facilitate it. In cases where private homes, lands and properties are placed on the plan, there is a conflict between the rights of these individuals and the government, and in such cases, the right to government is predominant and individuals have no right to prevent or deter.

If a property is located next to the public street and the owner lands in such a way that it is detrimental to the passerby - for example, by building a canopy, putting gutters, window installation and the like in public space - there will be a conflict between the personal right and Public rights, so the government can prevent such seizure, and the owner does not have the right to disobey government orders. If the branches of such a tree

extend into the street and be harmful to passengers, there will be a conflict between the personal and public right, and the owner will have to cut off the annoying branches - albeit fruiting - and, if prevented, the government can interfere with it.

Everyone is free to choose his or her job and work, but this right in some cases harasses public interest and governmental regulations; for example, someone chooses to go to a job that is harmful to the community or to do things that the Islamic system has prohibited, in this case such person should be enforced according to the same rules, and if someone wants to violate these rules, the government can act according to the laws as in special jobs such as currency exchange and currency transactions, import and export of goods, smuggling of goods and narcotics. In such cases, there is a conflict between the individual's right to choose a job and governmental rights, and the right of the government is priority and the offender is punished according to the rules.

In some cases, divine law is in conflict with government's rights, such as a mosque being in the way of the development of streets necessitating destroying the mosque. In this case, the government can order the destruction of that mosque. In addition, when the Haj pilgrimage, due to necessity, conflicts with the material or spiritual interests of the Islamic Ummah or land, the government can, temporarily, stop the Hajj order as long as it is harmful, and prevent the Muslims from Hajj.

## Conclusion:

With regard to the cases mentioned in the present study, it has become clear that the religion of Islam as the religion of God, has rulings in different aspects of human life. However, the necessity of its being the last religion is that its rulings are universal and permanent. Hence, for human life, which is constantly changing and evolving to new needs, it provides a solution that legitimizes rulings by the Islamic rulers. The Islamic ruler can, according to this law, secure all human needs in accordance with his own governmental rulings, which are of a temporary nature. Now these sentences can be in different titles, alternatives, secondary titles, or according to items such as expediency of the system, rejection of harm, difficulty, and pressure. Like the same powers, these issues could have been applied by the Prophets and infallibles (as well as jurists) throughout history based on the changing needs of the time. In some cases, these sentences have a conflict with the rights of individuals. In these cases, given the interests of the society and the system of government, these rulings precede the rights of individuals and come into force.

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