

Investigating the Effect of Time and Place on Contraction and Expansion of the Authority of the Islamic Ruler

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Abstract

The primary basis of the Islamic Republic of Iran's system is the absolute Vilayat-e Faqih, one of the essential concepts in Shiite jurisprudence. Vali-e Faqih cannot solve modern problems and problems of contemporary society only with primary and secondary commands. Instead, using the element of expediency, governmental rule, the law of essential and more important, and the consideration of time and place, can solve emerging problems. The present study aimed to explain the impact of time and place on contraction and expansion of the empowerment of the Islamic ruler's authority and propose new theoretical researching the use of absolute Vilayat-e Faqih for facilitating community affairs. To this aim, the role of time and place in ijtehad, commands, the emergence of new topics, discovering new investigating the effect of time and place on contraction and expansion of the authority of the Islamic Ruler.

Keywords: Vilayat-e Faqih, Empowerments, Time and Place, Contraction, and Expansion.

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Introduction

The theory of Vilayat-e Faqih is the Shia political school achievement. And presented by the Shia scholars and jurists since the occultation of the Imam (A.J.). This theory showed again, along with the Islamic Revolution's victory and establishment of the Islamic State. This theory does not apply to some religious scholars. Sheikh Mufid presented the doctrine of absolute Vilayat-e Faqih, and later this view was put forward by other religious scholars. Imam Khomeini, in the contemporary century, introduced the principle of absolute Vilayat-e Faqih, reasonably, in its jurisprudential compilations. The role of time and place in the inference of religious law is when the time and location change the subject, and the commands criteria and the commands also change. And this view opinion is accepted by all jurists. Instead, Vali-e Faqih, based on the right of guardianship, knowing the time and place, and recognizing the suitability of society, changes some commands by changing the titles and subjects. It is due to the ijtehad of Vali-e Faqih. These titles, mainly, are the keys of the Islamic ruler to help them resolve the conflict between commands and resolve the impasses facing the Islamic State and new issues. The present study is going to answer these questions: To what extent we can change the rules, taking the time and place in its employment?

1. Research Background

The word Faqih rarely find in jurisprudence books, but there are other terms such as the ruler, Imam Adil, Mujtahid, scholars, etc. (Jahan Bozorgi, 1376: 108). According to the books and writings of centuries ago, the word Vilayat-e Faqih has received little attention. Here, we refer to some of the questioned books.

The first Shi'a jurist to express rational theories was Sheikh Mufid (d. 413 AH). In his book al-Muqniah, he discusses his jurisprudential views and represents "the Vilayat-e Faqih issue in the context of order to goodness" and "prevention of evil" and "implementing Islamic penal code provisions." He believes that implementing the Islamic penal code is the duty of the Islamic ruler, appointed by God, the Imams (Sheikh Mufid, 1274: 810). In the occultation of the Imam, the perfect Faqih is responsible for implementing the Islamic penal code. Taqi ibn Najmuddin ibn Obeidallah Al-Halabi known as Abi Salah Halabi (447-374), one of Sheikh Mufid contemporaries and students of Sayyed Murtaza and Sheikh Tusi, in the book al-Kafi fi al-Fiqh on the subject of the destiny issue, mentioned that Imams and those appointed by them are

responsible for executing commands at the time of Imams (a.s.). But this duty, if the Imam is not present, is limited to the Shias who have the conditions of Imam's successor. These conditions are knowledge of the truth law, reason, patience, justice, loyalty, and judgment (Abu al-Salah Halabi, 1403: 421).

The person is obliged to refer to him as a judge, and the rejecter of the commands of the ruler is like the rejecter of God and the Prophet's command (Abu al-Salah Halabi, 1403: 423). And Sheikh al-Tusi (460-385) in the book of *Al-Nahayah*, *Al-Makasib*, in the context of "The Ruler's Practice and Receiving their Reward" says, about the duties of the *Vilayat-e Faqih* mentions. He states "the acceptance of the order governorship by the righteous king, the commander of the goodness, forbidding evil," who puts things in their positions (justice), is permissible and may be obligatory because this allows for the order to virtue and prevention of evil and the administration of justice (Tusi, 1400: 356). Abdul Aziz ibn al-Baraj al-Tirablosi, known as Ibn Baraj (481-400) in his jurisprudential book, *Al-Mohazab* in the *Makasib*, order to virtue and prevention of evil section mentions command warden is ruler based on Imam's order (Ibn Baraj Terablosi, 1406: 346). Abi Ja'far Mohammad ibn Mansour ibn Idris al-Heli (d. 598), in the book of *Al-Sarair*, expresses the judge's conditions and emphasizes the Shia reference to the Imam's appointees in the judiciary (Muhammad ibn Mansour ibn Ahmad ibn Idris Heli, 1411: 537).

He says, there is no difference between the Islamic penal code and other commands. The ruler appointed by the Imam can do as he was commanded by the infallible, according to his science (Muhammad ibn Mansour ibn Ahmad ibn Idris Heli, 1411: 545). Ja'far ibn Sa'id al-Heli (676-602), in the book of *Shari'a al-Islam* in the context of the judiciary, says that the perfect jurists in the occultation of the Imam is the ruler (Muhagheq Heli, 1408: 362/3-4). Hassan ibn Yusuf ibn Mutahar Asadi (726 - 648), in the book of *Mukhtalif ol-Shi'a* in the context of "order to virtue and prevention of evil," says that, due to the Imams command to Jurisprudents, disobedience of Islamic penal code leads to wrongdoing and the publication of corruptions. (Hassan ibn Youssif ibn Motahar Heli, 1413: 463).

Shams Al-Din Muhammad ibn Macy, the first martyr (736-786) in the book of *al-Dorus al-Shariyah* and *Al-Hasabah*, has commented on the perfect Faqih and effect of his command. He believes we should refer to the jurist, help and strengthen him (Amili, 1417: 47, 67). Muhaghiq Karaki (868-940) has commented on the *Vilayat-e Faqih* in

Investigating the Effect of Time and Place on Contraction and Expansion of the Authority of the Islamic Ruler

the book of *Rasa'il* and *Jami al-Maqasid*. According to him, all Shia scholars believe in the subrogation of *Vali-e Faqih* and perfect *Mujtahid* in the occultation era (Muhaghiq Karaki, 1414, 11: 266). Also, Sheikh Ja'far Kashif al-Ghitta (1228-1154), in his book *Kashf ol-Ghitta* states the implementation of Islamic penal code and punishments belongs to Imam, his special or general deputy (Kashif al-Ghitta, 1383: 4/430). Mola Ahmad Naraqi (d. 1245 - 1185) also has some views on the *Vilayat-e Faqih*. He states in *Awa'id ol-Ayam*, the jurisprudent authorities are the same as that of the Prophet and the Imam, and its circle encompasses all matters about the world of servants (Naraqi, 1375: 536).

The owner of *Jawahir Muhammad Hassan Najafi* (d. 1266) writes in the book of *Jawahir al-Kalam* in the context of the order to virtue and prevention of evil. It is permissible for jurists who are aware of the Sharia rules to observe the Islamic penal code in the occultation of the Imam, as they rule among the people if they have security. And people must help him, just as help the Imam (Najafi, 1362: 394). Sheikh Murtaza Ansari (1281-1214) has expressed three positions for *Faqih* in the book *Al-Makasib* (Ansari, 1410: 3/545). The opinion of Ayatollah Boroujerdi (1380-1292) mentioned in the book *Al-Badr ol-Zahir*, "jurists are authorized to perform Friday prayers during the time of occultation, and it is because of his rule and *Vilayat-e Fiqh*. Because jurist has rule permission, so all matters are also permissible for him, including the performance of Friday prayers, such as the time of the Prophet (P.B.U.H.) and the caliphs" (Montaziri, 1362: 50). Imam Khomeini, who has practically implemented the first independent *Vilayat-e Faqih* and presented the complete views on *Vilayat-e Faqih*, states "divine commands, including financial, political and legal, is existence and have not repealed. And the existence of rulings requires the necessity of government and guardianship, and it is not possible to keep the divine laws except by forming a government because it will require chaos" (Khomeini, 1432: 619).

Various articles have written on the subject, such as; Imam Khomeini's jurisprudential-political ideas by Mohammad Hossein Mokhtari, Interpretation of the absolute *Vilayat-e Faqih* from Imam Khomeini's point of view by Gholamreza Mesbahi, *Vilayat-e Faqih*, installation or selection? (A Critique of the theory of the jurists General Installation on the time of occultation) by Mohammad Hassan Movahedi Savoji, appointed and elected *Vilayat* of Sayyed Mohsen Mousavi Gorgani, *Vilayat-e Faqih* by Mostafa Nourani, discussion on Suspicion in the issue of *Vilayat-e Faqih* by Saeed Norouzi, the limits of the *Vali-e*

Faqih authority (explanation of the absolute Vilayat-e Faqih from the jurist and the constitution view) written by Mohammad Javad Arasta and dozens of other articles. Numerous articles have written on the connection of absolute Vilayat-e Faqih and the role of time and place in ijtehad that mentioned above.

2. Terminology

2.1. The Literal and Idiomatic Meaning of Vilayat

Vilayat in Arabic derived from Vali, which is unique and has a single meaning. Vali means closeness (Ibn Faris, 1404: 6/141; Johari, 1404: 6/25-28; Zabidi, 1414: 10/398; Fayumi, 1372: 2/396). Some have expressed the three meanings of a friend, lover, helper for the word Vali (Montazeri, 1362: 55). Furthermore, for the word Vilayat, the two meanings of monarchy and domination, leadership, and government, have also quoted (Zabidi, 1414: 10/397; Toreihi, 1375: 396). Therefore, Vilayat has no more meaning, and the rest are its cases and examples.

Regarding the term Vilayat-e Faqih, Bahr al-Ulum says, "Vilayat" means guardianship and domination over a particular person or persons. And it represents a kind of right to intervene and comment on something for one specific person. Vilayat means dominance over another by the rule of reason or sharia, in the body or property or both. This domination can be considered as original or vicariously (Bahr al-Ulum, 1362: 3/210).

When the word Vilayat used for the jurisprudent, it means the same government and the rule of society. Some claimed, in this sense, the meaning of lordship, presidency, and monarchy, which expresses the dominance of the Vali, who has Vilayat over the Mola whom there is Vilayat over him.

2.2. Unconditional

Unconditional is in the face of conditional. In jurisprudential books, following the discussion of Vilayat-e Faqih, is examined Vilayat-e Faqih and the debate of seizing property, population, and social and political affairs. The right of occupation define in two senses:

First: it is the domination of profession over the other souls and property, as a person has guardianship over her soul and wealth. That is, it can seize in any form and manner it wants, including foreign possessions. It's like Vali operates, prudentially, Mola Alayh, or taking him on a trip with him and the like. Then is the domination of occupation in the country social and political affairs, which interpreted as "guardianship of leadership" (Mousavi Khalkhali, 1380: 309). Some have examined the application in the entire province from four aspects:

Investigating the Effect of Time and Place on Contraction and Expansion of the Authority of the Islamic Ruler

"temporal attribution means that the need for such a guardianship will never disappear." The local attribution implies that the scope of Vilayat-e Faqih will not be limited to any geographical border and for this theory has cited on the application of the verse: obey God and obey the messenger. The order application means that the Vali-e Faqih order, like the judge order, will apply to everyone, even to other mujtahids. Thematic use is related to all political-cultural and economic relations and structures of the society, and there is no dignity in the affairs of the community that the Vilayat-e Faqih is not currently in that area. (Hosseini Hashemi, n.d.: 2, 7, 9).

2.3. The Literal and Idiomatic Meaning of Jurisprudence

The word jurisprudence means "understanding, awareness and knowledge" (Ibn Fares, 1404: 4/442). "Whether it's religious or something else, in the book of *Lesan al-Arab*, the meaning of jurisprudence is beyond absolute knowing, and it means knowledge that is accompanied by the accuracy and inference" (Ibn Manzur, 1375: 10/305). Jurisprudence in the term means exact knowledge and awareness of the religious sciences and divine rules and the ability to infer them through detailed arguments (books, traditions, reason, and consensus). Jurisprudence is one of the branches of religious science and is knowledge of legal commands through inference and *ijtihad* (Mirahmadizadeh, 1380: 143).

2.4. The Literal and Idiomatic Meaning of Faqih (Jurist)

The word jurist means someone who has a deep and precise understanding and derived from the root (F Q H.), which means the domination of knowledge and understanding about something. Jurist, in term, is the one who can deduce and extract the religious rules from the Qur'an verses and the Imams words (Soleimanian, 1388: 1/475).

Vilayat has different meanings. Its lexical root (V I Y.) means nearness, connection, and link of two or more objects. Vilayat emerges from the deep connection of two objects (Ragheb Isfahani, 1392: 533).

2.4.1. Idiomatic Meaning of the Vali-e Faqih

Vali-e Faqih is one who is aware of religious policies and establishes social justice among the people. Regarding traditions, he is the Islam fort and prophets heir and the Prophet successor, and like the prophets of the children of Israel .He is the best of God's people after the Imams. The implementation of affairs, rulings, and orders is in his hands and governs the rulers (Khomeini, 1389: 2/94-102).

2.4.2. Absolute Reign of Faqih (Jurist)

The meaning of "perfect" in the "phrase" complete reign of the jurist is relative inclusion and application in contrast to other reigns that accept a

specific direction. The jurists, the types of provinces that they name, determine the scope of each. The jurists determine the extent of each kind of reign. For example, the father reign over the daughter in the matter of marriage, the father and forefather reign in the financial possession of the minor children, the believer's reign in the preservation and protection of the absents property. The reign of legal executor over minors and the like which has discussed in detail in jurisprudential books. However, the scope of Vilayat-e Faqih is more extensive and considered as part of the public dignities and public interests of the ummah. It means that a worthy jurist, who bears the burden of responsibility of leadership, is responsible for all aspects of politics, and he must strive to provide for the ummah interests and in all its dimensions. It is the "public reign" that mentioned in the past words, and its meanings are the same as the "absolute guardianship" has become common in terms of the latter. Therefore, the definition of "absolute" is to expand the scope of Vilayat-e Faqih as far as "Shari'a" extends. And the "executive responsibility of the Vali-e Faqih is in all disciplinary provisions of Islam and concerning all aspects of the ummah interests. And like other reigns, it will not be one-dimensional" (Marefat, 1379: 112-145).

2.5. The Entity of Time and Place

Time is a name for a moment, whether it be more or less, and its sum is Azman and Azman and Azmenah. (Ibn Manzur: 1375, 6/86) Place means location. According to Some jurists about the entity of time and place: "Time and place do not mean its philosophical and geographical meaning. Instead, the time and place purpose and its role in command elicitation is attention to the political, economic, and social conditions in the age of text and Fatwa issuance. Of course, it is not essential to pay attention to these conditions; instead, paying attention to them leads to a correct understanding of the issues at the time of tests issuing, adapting them to the new questions and sub-issues. And disregard for the causes not only the jurist not to have a correct understanding of religious texts, but he cannot, properly, adapt them to the time conditions" (Sobhani: n.d., 60/49).

2.6. Ijtihad Concept

Ijtihad in Arabic, taken from jahd, means effort and enduring hardship (Ibn Fares, 1404: 1/486; Ibn Manzur, 1375: 3/133; Toreihi, 1375: 3/4, 30, 32). Its terminology concept in the science of the principles means: "the station that a mujtahid will be able to obtain religious rulings and arguments from sharia arguments" (Akhund Khorasani, 1415: 2/422; Khomeini, 1389: 2/95).

Investigating the Effect of Time and Place on Contraction and Expansion of the Authority of the Islamic Ruler

In describing *ijtihad*, Imam Khomeini writes: “*Ijtihad* means knowing all the laws of God on personal and social matters, from before man came into the world until after he passed away, he is directly involved in all things. And such a science, which has many rules and sub-rules, cannot be completed with fifty years when there is no job for human beings except education. Based on the *Jawaher ol-Kalam*, the *mujtahids* efforts, who are now under the command of some corn chandler” (Khomeini, 1432: 204). Jannati, regarding the *Ijtihad* meaning changes, states: “*ijtihad* in the jurisprudence history associated with the word opinion, analogy, which has formed in the Sunni school against the *hadith* companions. Although these two schools have disagreed on the practical aspects of *ijtihad*, neither of them has doubted the foundation of *ijtihad* in answering new issues” (Jannati, 1370: 6/599). Agha Tehrani denies questioned *ijtihad* in the Sunni views and states: “The *Imamiya* School rejects *ijtihad*, which means the implementation of personal opinion and analogy, due to the many Shia narrations. *Ijtihad* denial by Shia scholars up to the time of *Muhaghiq Heli* has been based on this definition of *ijtihad*. *Ijtihad*, in the sense of deriving rulings based on texts and appearances of books and traditions, was common among the *Imams* companions during the time of *Imams*. Still, there are various opinions on the scarcity of this *ijtihad*” (Tehrani, 1401: 76).

Martyr Motahhari believes that although there were *mujtahids* and *Faqih* during the presence of the *Imams* that the *Imams* encouraged them to give *fatwas*, they overshadowed by the presence of the *Imams* and their authority was in the occultation of access to the *Imams* (Motahhari, 1373:76).

3. The Role of Time and Place in *Ijtihad*

Ijtihad does not mean the time and places itself. Still, the situation that arises in time and place, and determines the ruling and the subject of the divine command, and changing it can change the ruling and the matter of the divine judgment. Imam Khomeini discusses the role of time and place in *ijtihad*: “time and place are the two defining elements of *ijtihad*. An issue that has been in place for a long time may seemingly have a new issue in the relationship between politics and society and the economy of a system. It means that by accurately recognizing the economic, social, and political relations, the very first issue, which does not seem to be different from the old one, has become a new issue, which forcibly demands a new ruling” (Khomeini, 1389: 21/273).

Motahhari believes that: "the secret of ijtiḥād varies in the implementation of general instructions with new issues and events." the real mujtahid is the one who has obtained this secret, pays attention to the interpretation of these issues. And she knows that their commandment will change. Think about the old and thought-out subject, changing the obligatory to a precaution or a precaution to the required. Ijtiḥād has many conditions and preconditions. Mujtahid must have gone through various sciences; From Arabic literature, logic, jurisprudence principles, and even Islamic history, jurisprudence, and other Islamic sects and need long practice to find a real and accountable jurist. Just reading a few literary books on syntax, grammar, meaning, expression, and logic, and then three or four specific books on levels, such as Favaed, Makasib, Kefayah, and a few lessons outside, one cannot claim ijtiḥād as usual. And give a Fatwa based on the book of Vasael and Jawaher. He should be aware of interpretation and ḥadīth, that is, from several thousand ḥadīths during 250 years from the time of the Holy Prophet to the time of Imam Asgari and the environment of issuing these ḥadīths, i.e., the history of Islam, jurisprudence, other Islamic sects, Rijals, and narrator classes. (Motahhari, 1341:58). It is necessary to state the types of the subject from the jurisprudential point of view to examine the change of sentence and subject.

4. Types of Topics in Jurisprudence

The topics discussed in the science of jurisprudence are not the same type and do not change and transform, but some of them adapt according to the circumstances. So we need to have a new division of jurisprudential issues to recognize issues that have the potential for change and are influenced by social developments, from the problems fixed that society changes are ineffective in them. Among Imam Khomeini's writings, the issues divided into religious and customary (Khomeini, 1432: 3 / 228-229). For example, prayer and fasting are spiritual issues. Current topics are credit and genetic. Types of items are as follows: The religious matters that the lawgiver has extracted them, such as prayer and fasting. Traditional subjects include two categories: some are the lawgiver expropriation, and he expresses its conditions and restrictions, such as sale, Mud araba, Musaqat, etc. Some of them have the same traditional meaning without limitation, such as modesty in the earth, afford in Hajj.

Understanding issues in various political, social, medical, and other fields require experienced and specialized experts to be able to explain the rulings related to each of the areas by using the expert opinion of the

Investigating the Effect of Time and Place on Contraction and Expansion of the Authority of the Islamic Ruler

jurist. Ignoring this issue can cause problems for society. To interpret and examine the rulings changes due to the similarity of the relationship between ruling-subject and cause-causer, knowing items is necessary. Command changes can have several different reasons:

- A) The command change and its subject due to a switch like an issue, such transformation discussion, and external conditions change of the subject (subject examples change or its titles).
- B) Change due to changes in the criteria of sentences.
- C) Change due to common sense.
- D) Change due to government decree.

5. Time and Place and Its Role in Rulings

Since Islam is a complete, comprehensive, and universal religion and to govern the world as the last religion does not have a specific time or region applies to all times and places. In jurisprudence, the primary rules are the responsibility of management, and subsequent sentences are used for emergencies and to solve the social problems of Muslims on a cross-sectional basis. But the principle of school administration of society is based on the same basic rules. If the initial rulings are not efficient in an issue, an emergency and legal decision must make in the interests of Islam and Muslims to solve the community problems. It means that a few general rules are sufficient to manage society, and the rest is the responsibility of the Muslim leader, and in jurisprudential terms, the regulations of Soltanieh or the governmental laws. In other words, the issuance of such rulings is within the scope of the broad authority of the Vali-e Faqih and, consequently, the Islamic government (a group of authors, 1374: 7).

Imam Khomeini discusses the purchase and sale of military weapons and considers its ruling to be subject to time and place. He said: "The issue of war weapons varies from time to time. A weapon may be considered military at a particular time, and it may remove at another time from this issue. For example, in ancient times, swords, spears, shields, etc. were considered military weapons, but now they have been removed from this title. Therefore, the subject of military threat is the weapon that uses in wars in the current situation" (Khomeini, 1432: 1/226). Religion enemies is another case that Imam Khomeini examine: In general, anyone who opposes our religion is considered our religious enemy, but the discussion subject is specific to this category. The issue in question refers to a group or tribe that opposes Islam; therefore, the sale of weapons to a Jew who is in the Islamic land and subject to its rule will

not be a problem if there are no other aspects to it (Khomeini, 1432: 1/226). Buying and selling weapons to enemies is also one of the topics discussed by the Imam. It is a matter of political affairs and the subject of the day's interests. And Muslims' benefits may be in the free granting of military weapons to an infidels tribe. And it is in the situation that the repulsion of a strong enemy from the Islam realm depends on the arming of a particular tribe of infidels from whom the Muslims are safe (Khomeini, 1432: 1/226). An example is Iran's cooperation with Russia and its assistance to repel the enemies of Islam (Takfiri Groups) in the Syrian-Iraqi border areas in the last decade.

6. Time and Place and its Role in the Emergence of New Topics

Islam is a perfect religion and has a plan for all times. With the spread of science and societies, issues arise that did not exist earlier. So, jurists should identify problems with the help of each technique elites and experts, then examine carefully and express the relevant rulings based on his *ijtihad*. Some issues are as follow:

A) Insurance and its appendix are some of the problems that emerge with the spread of science and societies. Imam Khomeini says: “Although insurance is an independent contract between the wise, some people study this issue under one of the famous titles in jurisprudence such as peace, guarantee and so on. While the jurist should examine this issue as it is common among the wise” (Khomeini, 1432: 4/453).

B) The development of science and society has led to the emergence of new rights that have not been raised before among intellectuals, such as copyright, patent rights, and other innovative works. Today, these rights interpreted as intellectual property, and Westerners have officially accepted it and consider anyone who does not respect these rights to be an aggressor (Sobhani Tabrizi, 1387: 151).

C) There are various and emerging issues in the medical sciences that a jurist must examine the medical issues with the help of experts for explaining its rulings. Essential topics such as gender reassignment, artificial insemination, rented uterus, organ sales, and transplantation, and awareness of time and time conditions is one of the things that can use for the social benefit, services, and the solution of society's problems.

D) Economic life and are among the issues that did not exist in the past. Some contemporary jurists have divided commercial companies into two categories: Personal companies and property companies. Personal companies include: joint liability companies, charity companies, and particular companies; and the most important types of companies from

Investigating the Effect of Time and Place on Contraction and Expansion of the Authority of the Islamic Ruler

real estate companies are mutual stock companies. Therefore, the jurist must deduce the ruling of these companies in the light of texts and rules (Makarem Shirazi, 1427: 217). So the change of decisions due to the difference in the social conditions is subject to the correct principles and rules and does not contradict other principles. Also, changing the rules in the light of these principles and regulations is not in conflict with the monopoly of legislation by God and the immortality of the states and other policies (Sobhani Tabrizi, 1387: 151). It seems that with the emergence of new issues, a new ruling should be issued by the jurists to prevent problems.

7. Time and Place and its Role in Discovering New Examples for Topics

Time and place are useful in changing the criteria and spreading the ruling to an issue that did not exist in the legislation age. And this change is due to a standard that we know exists in the new subject.

"Sangh" means to overtake and to fall, and "Ram Ayah" means to shoot. A "Sabgh" or race is when two or more people ride a horse to find out which rider is more skilled. And "Ram ayah" is for two people to shoot at each other to find out which shooter is more accurate. Islam has prescribed these two types of competitions, even with financial fraud, for the winners of the game, so that people can practice them and continuously maintain their combat readiness and be able to be effective in the battle against the enemies of Islam. Some jurists write: There is no difference between the jurists in the legitimacy of this contract, but the Holy Prophet (P.B.U.H.) has ordered it in many cases. Because this practice has one of the essential religious benefits and Muslims are thus victorious in jihad against God's enemies, which is one of the most significant pillars of Islam. Hence this practice is excluded from the affairs of debauchery - on which the transaction forbid (Shahid Thani and Mohaghegh Heli, 1413: 6/61).

Preserving Islam is a permanent thing; the following verse refers to this: and prepare against them to the utmost, such as armed forces and healthy horses and provisions for fighting, to frighten the enemy of Allah as well as your enemy (Al-Anfal/60). It is evident that in the past, the defence was by arrows, spears, swords, and the like. Still, today, thanks to the tremendous advances in science, military equipment, including artillery, tanks, armored vehicles, aircraft, and warships, knows about nuclear and other matters that can increase defense capabilities.

Ehtekar is the accumulation of what people need until their lives are in dire straits. Based on the *Lesan al-Arab*, Hukr, accumulating food, is waiting for the high price (Ibn Manzur: 1375, 3/389). And in jurisprudential terms, it is to imprison and collect food and expect it to become more expensive, even though Muslims need it, and it is necessary for them, and no one can give them enough for them (Khomeini, 1425: 2/359). According to the popular opinion of the jurists, hoarding belongs to a few goods. Sheikh Tusi and a group of jurists have also followed this view (Bahrani, 1985: 18/62).

The ruling criterion on the hoarding issue is that people are in a difficult situation. If any instrument order puts a person in trouble, it can include the verdict of sanctity, and there is no difference between food and non-food. Some hoarding narrations dedicate to some goods, which is the sample or required products at that time. So those narrations can be included in other than the mentioned cases.

Sahib Jawaher also confirmed this view, writing: "Saving everything that is needed by human beings," such as eating, drinking, wearing, etc., is like the rule of hoarding. The ruling on sanctity is not limited to a specific time or gender and a particular type of contract. Instead, it may be haram for a person to hoard abundant instruments, and people do not need it so that people will need it as it becomes more expensive. Instead, sometimes said that such a thing is haraam just because it intends to become more valuable and desirable, even if it does not mean to cause harm. So, some of the above cases may fall into the category of forbidden hoarding (Najafi, 1362: 22/481). Elsewhere, he says: "if people get used to a new food during a famine." Based on the hoarding rule in the traditions, the verdict of sanctity will also apply to this type of food. And in the narrations related to hoarding, some phrases show that the virtue of hoarding is in line with the needs of the people, although this matter has precise forms (Najafi, 1362: 22/481).

Another jurist has accepted this view and believes: "if Muslims need food and there is no one to provide it, hoarding that food means collecting and storing it to become more expensive is illegal. Hoarding accomplished by storing barley, wheat, dates, raisins, and oil; Also, as a precaution, hoarding is accomplished by storing olive oil and salt. Rather, it may say that hoarding achieved by storing any food that is not needed by the general public of one city to other cities, such as rice and corn" (Isfahani, 1352: 2/8).

Muhaghiq Haeri has spread hoarding to food and non-food and has said: "if necessary goods - other than food - such as medicine and fuel

Investigating the Effect of Time and Place on Contraction and Expansion of the Authority of the Islamic Ruler

are needed in the winter so that their hoarding will cause harm to Muslims. Regarding the evidence of harm, this is forbidden, although the word hoarding does not apply to it; and we may rely on the authentic narration of Halabi, who was apparently in the position of interpreting the ruling on the sanctity of hoarding. Therefore, according to the appearance of the narration, the interpretation mentioned above is due to a commissioned matter. The food must revoke because, according to the commissioning of this ruling, it is to protect the lives of human beings. Therefore, if the mentioned criterion finds in medicine; for example, there is no doubt that medicine also finds the ruling on food. so this perception causes the character that exists in the interpretation to abolish” (Morteza Haeri and Amrullahi Yazdi, 1394: 1/197).

Based on the above, it seems that the Saheb Javaher and “the Mohaghegh Haeri, as an emergency, have considered hoarding to be haram in these cases. Accordingly, the sanctity of hoarding in these cases will be a subsequent ruling. Still, the sanctity of hoarding is the first ruling that is the criterion of virtue and disrespect, comfort, and distress of the people. That is, if people are comfortable, imprisonment is permissible and otherwise forbidden. So the bottleneck caused by drug hoarding of patients and injured is not less than the pressure caused by salt and oil hoarding” (Hosseini Ameli and Allameh Helli, n.d.: 4/107; Khoei, 1430: 5/498).

8. Time and Place and its Role in Enforcing Sentences

Many hadiths have narrated about Anfal. Anfal usage has been straightforward before due to its essential tools and equipment. Regarding the expansion of societies and the development of exploitation tools, as well as the insatiable greed of human beings from Anfal, problems arise in society, which require an expert opinion and explanations of the time and place in explaining the rulings. For example, Imam Khomeini, in response to a letter from one of her prominent students who considered the Islamic government to be obligated to the appearance of texts and rulings and did not believe it its duty to respond to the particular situation of society, wrote this. Zakat is only for the use of the poor and other things mentioned. Zakat usage, nowadays, increased. Rahan is in the Sabgh and Ramayah in the archery, horse riding, and so on, which used in previous wars. And they used the same today. Shiites today can destroy forests without any obstacles with machines and destroy what protects the environment and endangers the lives of millions of people, and no one has the right to stop them. The

houses and mosques that are needed on the streets to solve the traffic problem and save the lives of thousands of people should not destroy. In particular, as you can see from the narrations, the new civilization must be destroyed, and the people must be nomads or live forever in the deserts (Khomeini, 1389: 21/34).

In the past, trophies distributed among warriors after paying the khums. In the past, these booties were bows and arrows, swords and spears, and so on. It was easy to divide trophies before, but in our time, in the shadow of the development and advances of science and war technologies, war booths such as cannons, tanks, planes, etc., which is difficult and complicated to divide among warriors. The jurist to implement this ruling must be able to solve this problem by considering the two elements of time and place so that there is no flaw in this regard.

One of the things about ijtehad in time and place is the study of the Tanfir rule from religion. This rule implies that it is haram to perform any action that causes disgust with faith. Even the Sharia practice requirement can lead people to turn away from religion, it can and must be avoided, except in the case of rulings that the lawgiver is by no means willing to abandon. (Mousavi Bojnordi, 1419: 5/250).

Execution of some Islamic punishments, such as cutting off a thief hand, killing with a sword and stoning, causes hatred of religion. Faqih performs rulings or changes the Islamic penal code disciplines to ruling discretionary based on the time and place conditions and social expediency. And this is one of the Vali-e Faqih powers. Therefore Imam Khomeini unofficially prevented the execution of the stoning sentence at the beginning of the revolution (Mousavi Tabrizi, 1394).

Another jurist explicitly issued a fatwa on the implementation of the Islamic penal code that causes the deception of Islam and the creation of hatred towards Islamic regulations. Some restrictions presentation with its exceptional quality in a or all specific region or at some point in time causes the hostility of public opinion towards Islam and its rules and weakens the basis of religion. The Muslim ruler or the custodian of the judiciary can implement that Islamic penal code until the justification of public opinion regarding Islamic rules and boundaries and the reason for its establishment (Montazeri Najafabadi, 1409: 2/510).

9. The Role of Time and Place in Governmental Ruling

The role of time and place in the governmental decrees based on materials and corruption and is not of the type of real and apparent decisions. There are some differences among the jurists about the

Investigating the Effect of Time and Place on Contraction and Expansion of the Authority of the Islamic Ruler

propaganda sentence and the governmental sentence. For example, pastures invasion by the Prophet to graze the horses that were in the hands of the government, Mohaghegh Helli considers it temporary and subject to materials. It violates its permission (Mohaghegh Helli, 1408: 4/794).

Some also find it necessary to make excuses and do not consider it permissible to break it (Tusi, 1387: 4/271). Therefore, determining and distinguishing government narrations from other narrations has been recognized by former jurists.

To understand governmental rulings, Imam Khomeini has specified the following rules: If a narration from the Holy Prophet (P.B.U.H.) or Amir al-Mu'minin (a.s.) has included in the word Qaza or a ruling or order and the like, it does not mean the expression of a moral decision. If such a purpose has intended, it will be permissible and guided by the divine decree.

This word has different meanings, including order or ruling as an Amir or a ruler or a judge or a religious ruler. Not because they are preachers of the divine commandments. Of course, other than Amir al-Mu'minin (a.s.), such interpretations may have been used because they did not have an apparent presidency and government, and it is because of the authority of the government and their real judgment. Orders may have been issued by the Prophet (P.B.U.H.) or Amir al-Mu'minin because of their situations without such words. In this case, the Halieh and Maghamieh evidence is appropriate to carry it out on governmental or judicial orders. For example, if a person has been appointed as the head of an army at narration with the word Qala person, based on the appearance, it is governmental order. And if two people judge with the same name in the position of conflict, it is the judicial order (Khomeini, 1414: 107-108).

Therefore, Imam Khomeini proposes two rules. Words (commands, rulings, judgments) and evidence that with these two, distinguished the governmental decision from the propaganda ruling. Prioritizing secondary topics upon primarily one can solve the problems that arise in society.

If there is a conflict between the primary and the second sentence in the execution process, the second sentence precedes the first because of the government or the customary assembly. Such as the precedence of the no harm and no hardness using on the rules of hurt and loss.

In this case, we can mention the issue of wife divorce in cases of hardship. It was one of the topics discussed by the Guardian Council

during the Imam lifetime. The jurists believed the obligatory for the husband to divorce a woman contrary to the Shariah. The Imam wrote a letter to answer this question: in the name of God. The precautionary measure is to force the couple to divorce by counselling and otherwise by force. And if it is not possible, divorce will be granted with the permission of the religious ruler. And if it was courageous, it was another law that is easier. (Mehrpour, 1371: 2/301).

Imam more natural view is divorce by the woman. Because when the husband refuses to divorce, after the advice and obligation of the religious ruler, there is no other way but separation by the wife.

If there is a real conflict between the actual sentences in the execution stage, if there is no thought for this case, the law may be lost, or there may be corruption in the society. Here, Vali-e Faqih, as the Islamic ruler, and because of his leadership, by considering the conditions, society interests and consulting with experts, to investigate and solve this problem regarding the governmental rulings. Ayatollah Sobhani has in this regard: If there is a conflict between the first rulings, one of them takes precedence over the other in the light of these secondary titles. Such as necessity and urgency, harm and loss, hardship and hardness, al-ham fal-aham, taqiyya, obligatory and forbidden preparations, public interests of Muslims. And this is done by the Islamic ruler and with the blessing of the province granted to him. These titles are keys for the Islamic ruler to resolve the conflict between the rulings.

So, “the time and place interference sense of the Islamic ruler decision is their effect to determine minorities, majorities, and original verdict. Therefore, the ruling of the Islamic ruler in presenting the majorities in the implementation of the initial decisions. And the provisions of the more critical degree and planning to maintain the system and not to disrupt it” (Sobhani, n.d., 49/61).

Vali-e Faqih, with the help of spiritual leadership, solves all the problems in life. Because the secondary titles are tools for jurists that can block the gaps in the Islamic society, some examples give in this regard to clarify the issue.

Preserving Islam and strengthening it is one of the Muslim duties, and weakening and humiliating Islam is one of the religious prohibitions. On the other hand, buying and selling tobacco is legal in Shariah. The contract with infidel countries that causes infidels domination upon Muslims is void, based on "way evil" ruling. At the time of Mirza Shirazi, the deal signed with a foreign company, and since they were Islamic authorities and rulers, they have imposed a ban on tobacco use.

Investigating the Effect of Time and Place on Contraction and Expansion of the Authority of the Islamic Ruler

And they considered it in the line of the war with Imam Zaman. Mirza Shirazi's real goal is to preserve the interests of Islam and the independence of the Islamic world, which can only achieve through this ruling at that time. Due to this, a foreign company forced to terminate that colonial contract.

One of the most essential and obligatory matters is preserving the lives of human beings, and on the other hand, people will undoubtedly seize their property and respect their property. The Islamic ruler can contract with the people to expand the streets, and with the consent of the people, can take these properties and pay the price to their owners. When the property owner is not satisfied, the Islamic ruler can seize the property without the owners' permission due to the priority of the most crucial thing, provided that pays the price of the owner property. Therefore, the Islamic ruler with her province can solve the problems by considering the interests of Islam and offering the most important.

Conclusion

The meaning of time and place does not mean that these two, like books and traditions, are one of the ijthihad sources. Issues recognition plays a leading role, and because issues are affected by the set of temporal, spatial, and non-temporal conditions, time and place are the two essential elements in ijthihad and deduction of divine commands. The meaning of the interference of the portion of time and place, the flexibility and submission of God's commandments to events, and the interpretation of God's commandments are not following those events. Instead, Islam's prediction, power, and ability to meet all the needs and requirements of human society are at various points in its life.

The association of ijthihad with the element of time and place has never harmed the original principles of the book and tradition and the ijthihad laws. Because the sub-principles and detailed rules extracted with the consideration of time and place in the light of discourses generalities, and the general principles of the Shari' a discourses are always valid. But the Vali-e Faqih can take the element of time and place, and in areas where there are problems in the society, he should solve the questions based on his ijthihad. The seizure of public affairs is due to the province of the Islamic ruler.

There are rules and regulations in Islamic jurisprudence that govern all other laws and regulations. Such rulings, which facilitate the application of the absolute Vilayat-e Faqih to the system problems, are known as

secondary rulings. One of the cases of applying absolute guardianship is the preference of the sharia most crucial over the importance, the choice of the collective interest over the individual attention, and so on. The absolute Vali-e Faqih can allocate, restrict, and even close such religious rulings due to the conflict and the necessity of maintaining the system and its suitability.

The ruler of the Islamic society, whoever he may be, has unique and necessary powers to govern the organization. And can work to regulate the affairs of society by enacting new regulations and issuing occasional orders. Or by restricting, allocating, and even temporarily suspending the rules of Sharia, regulating social relations in such a way that while maintaining the principles, he has responded to the particular needs of the time and place. The enactment of such regulations and the issuance of such orders have been called governmental decrees. And the obedience of them has become obligatory for the citizens.

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