



## Theory of Religious permission in Imami Jurisprudence

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### ABSTRACT

The prevailing spirit in doctrine and Sharia of Islam, from the beginning to tolerance, mitigation and disposal Distress and constriction, focused and grounded. Necessity to reductionist, in practice the provisions, variable and universal religion, in accordance with the principles of freedom and liberty, and the necessity of conflict with existing laws, including the reasons underlying the rule Religious permission, the legitimacy of the state of some of the laws, apply. Foundation legitimacy of discharge, the rules «Distress and constriction», and «no- damage» is Located. This study, in the light of legal texts, rules and principles, explain the rule Religious permission, as an important, focuses on Islamic law. In this regard, in addition to explaining the concept, and the status of the above, the expression and show some of it, of transactions, punishments and suspension provisions in the law, and the rules of civil law, criminal law and family law, encourages. The results of this study indicate that, approach the permissions, at present, according to the positions of «Obstruction of religious knowledge», and «Absence of religious texts», etc. necessity in solving «Updated issues», with a new approach in Demands of the time», is considered.

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### Introduction

Islam, as an eternal religion for all times and places have been sent, and man as a thinker and permanent, ongoing, in different aspects of cultural, economic and industry, and therefore the issues, problems and needs of intellectual and practical new, for he found that Islam should be accountable to them. Rules should be tailored to the needs of society, and issues Updated, and the public interest, according to new requirements, and the silence of the provisions of Sharia and Islamic law, and disagree jurists, and development of jurisprudence, easy, and yet efficient in practice and means for guidance, exploring the religious permissions. Now, despite the complexity of life today, and expectations of today's world of religion, and on the other, because Islam, from the beginning based on the utilization of constriction and stiffness is built, we will religion permission leads to the taking into account the public interest, and to fit the needs and requirements of society, many of the issues that are faced and silent, and history in the past and the infallible not, and society and their need is ensured, the answer would have, in other words, a set of fatwas, rulings and legal regulation that is based on tolerance, as Statutory laws.

Issues such as the dignity, freedom, equality, the principle of permissibility, the Holy Quran, the traditions of the infallible consensus and reason, as is permission basis. In fact, research results, Expedient's very necessary and important, consider that fatwa efficient and at the same time, its application in the fields of economic relations, cultural and social, and insist on the observance of negative effects, such as escape religious prevention shall, as great jurists and scholars of the Shi'ite doctrine, facilitate and encourage the interest of real interest provisions that criterion, lost more and more have stronger view.

### 1. Definition of Religious permission

Discharged in word, means convenience and easy, and departure means a serious decision on what plan is emphatic and dogma. (Ibn Fars: 1980, p. 308). In defining the term leave, scholars have offered various definitions. as Tajoddin Sabki Shafei, permission is defined as follows: "a religious ruling that, because of the barrier of difficulty, easily and readily alters, despite that caused the original sentence, he remains in force". (Ibn Sabki: 1994, p. 26), Persian reed, of the semantics general of Religious permission , writes: "In a general sense, the legislator in order to facilitate the provisions and to facilitate the operation, and removal of hardship and difficulty, permission to legislation said. "(Alfarsi: 1997, p. 579), Ibn Ashur, the religious order, so that the difficulty of removing it, and do it easily, it is a religious permission. (Ibn Ashur: 1984, p. 132), Therefore, permit, is to change the religious order, so that difficulty and hardness, easy to fix and do it. In the permission on different meanings, discussed.

### 2. Religious permission Conditions

Religious permission, several conditions that, under these circumstances examined.

#### 2-1. Maturity

Children and non-adults, the burden of moral responsibility, are free, although their supervisor, has legal responsibility for their actions. Thus in the system of Islamic morals, good deeds children, has a moral value and reward, but their moral vices, are not held accountable, and reward and punishment in the Hereafter, for them, is not followed. In the sacred texts of Islam, one of the basic conditions of moral and criminal responsibility, maturity is considered.

The legislator, following the opinion of the majority Shi'ite jurists, in accordance with Clause 1 of Article 1210 of the Civil Code, the age of puberty in boys 15 Lunar years,

and for girls nine lunar years, has announced. Meanwhile, San possession of criminal responsibility and punishment in accordance with Article 146 of the Penal Code, puberty Mentioned above, prescribed in Clause 1 of Article 147 of the Civil Code is, if the legislator in Article 49 of the Penal Code, adopted in 2013 stated, children free crime, innocent of criminal responsibility, and the provisions of this Article, has said, a child who, at the age of maturity is not that, as mentioned age of maturity, the same 15 years, the boys and 9 years for girls Is.

#### 2-2. Reason

In addition to the natural maturity, the wit, Another condition is Religious permission. Therefore, people who do not have the sanity, and are experiencing deficits in intellectual power, not moral responsibility, although their head, against losses as a result of their actions, to others, it is the legal responsibility. One reason for the necessity of wisdom on the subject, the role of reason in acquiring knowledge on the subject. The reason for this is that dementia is a normal person, a person who lacks wit, and suffering dementia disorder is called insane. (Shahid Sani: 1995, p. 11).

#### 2-3. Science or education possible

Another condition Religious permission, knowledge or education is possible. Science in the meaning of dogmas, accordingly, as well as the knowledge is used. Upon moral responsibility, to ugliness, and ban what they have to leave, and the well and deserve what they have to do and how to do it, knowledge is, or the possibility of acquiring the necessary knowledge to have; in that situation, be able to study the science. So many Muslims and non-Muslims who, knowing their ethical duties, but the possibility of obtaining such knowledge, there for them, to such acts of moral responsibility, and the punishment of the hereafter they would too. In contrast, those Muslims and non-Muslims that do not have access to such knowledge, they have no moral responsibility. In addition to the ethical, legal systems existing, individual awareness or the possibility of his consciousness, a condition of criminal responsibility count.

#### 2-4. the power

Power, ability or omission, volition and discretion, among Fundamentalists, is well known that the power of the public conditions, homework is considered, ie, if required fails, and fails Officer to the outside do any assignments found he is not, because of the absence of the condition, the condition may not be achieved. Under this condition, the human ability to adhere to what it does, whether verbal or moral responsibility not to leave, and on the Day of Resurrection, is not questioned and criticized. In the field of Islamic sciences under this provision as being absurd and obscene " Assignment unbearable " common proposition, and acknowledged everyone.

#### 2-5. Lack of urgency

Emergency, one of the secondary titles in Imami Jurisprudence is that, because the initial sentence is removed, urgency, sometimes in the act and sometimes on the left, it is in the other words, emergency forced to do voluntary action by dissatisfaction with the heart, or stripping All available means. Emergency, a state in which threat from outside the person is not, pressure from within him, he has to do something to force that, in comparison with the full consent is, that though the will to do it, but this will consent and satisfaction of internal and not like someone to treat her child

in distress to sell your home is, in this case, he does so grudgingly, and in an emergency, but strong-willed and willing to do that. (Shahid Sani: 1995 , p. 116)

#### 2-6. Not grudgingly

Reluctantly, when he realized that the person on behalf of a person or Violent group, the threatened, and unlike satisfied with your backend, forcing the omission or conduct current, which, morally obscene, as if to he thought that if it was not his day, his life is in danger, or if such a thing right than to say, the will be fired. Tradition called "Hadith fix" One of the things that is not a task for humans, " What they were forced to do", as that is, what to do or abandonment, are made. The distinctive feature of the reluctance of urgency in that, in an emergency threatening not work, but the overall situation is such that, to deficiencies in the individual imposed, and someone to "fix" the bad is inevitable, despite the moral duty to act slow. Reluctantly, one for "disposal" hurt and damage caused as a result of threats he has been noticed by others, is forced to act contrary to their moral duty.

#### 2-7. Intention and deliberate

Another condition Religious permission, which is one of the intention and the will to ignore their duty. Thus, when a person, as a result of errors and negligence of duty shall be left, no he would not be liable.

#### 3. Types of Religious permission

One of the most important divisions of Religious permission, from the perspective of scientific principles and religious jurisprudence, divided permission to obligatory, recommended, abominable and is permissible; let obligatory, such as: eating carrion when emergency because they eat carrion, because preservation is obligatory . Discharged recommended, such as: bath Friday on Thursday, for whom fear that the Friday, the water does not have, and like doing the action recommended by the dissimulation, for someone to leave the action recommended for he is no harm in trying. Leave abomination, such as eating fast passenger while fasting is not harmful to him, and as recommended withdrawal of the reservation. Leave permissible, such as Beye Salm and Oraya. In Beye Arieih, the palm tree is the product of its specific provisions, bought and sold. The Beye Arieih, tan on the tree, so that the expert, the amount of it in the drying estimates, the tan of the same tree or other trees, are traded. The sale, a wager that, due to the need for it has been prescribed. In some traditions, to permit the sale, it is stated, for example, has been narrated: and Licenses in Al-Araya. (Koleini: 1983, p. 275; Tusi: 1983, p. 143; Hor Ameli: 1986; p. 25)

#### 4. Instances of getting to Religious permission, in Imami Jurisprudence

##### 4-1. The principle of lawfulness

Buy and sell, and trade everything that has purpose and value wise, and religious reason not to encumber it is allowed. For example, being unclean, to prevent buying and selling there. (Ardebili: 1991, p. 39) perform any action, the usefulness and purpose of rational, such as weightlifting, track, wrestling and so on, if harmful not, and judge it is not open, the principle of lawfulness, is permissible. (ibid., p. 59)

##### 4-2. The principle of lawfulness

The principle of lawfulness, including legal rules, and the purpose of this rule is that, if we doubt the lawfulness anything, it is the principle of lawfulness, unless the reason for the prohibition is to be found. The principle of

lawfulness, in the sense of a license to possess, foreign objects, the lawfulness of the doubt. For example:

If a solvent or prohibition of eating anything suspicious, with the implementation of the principle of lawfulness, the lawfulness of the decision is given. Some of the scholars, the principle of lawfulness as synonymous considered permissible principle.

#### 4-3. loan repayment

Islam, the rights in society is very important. Meanwhile, back to the good relations and expand cooperation, most accurate social laws, the state has violated the rights of individuals are protected. For example, to assist the disabled community, and to prevent abuse of the rich over the poor, in the interest of sanctions. (Al-Baqareh: 287, 276, 275, and Al Emran 130), to pay the loan back, and in Sura Al-Baqareh, the most accurate of about lending and borrowing orders, to pay the lender, and the borrower preserved. Meanwhile, the debtors poor, the creditors, to wait and wait, until the attainment of power and payment options, command, and the rush and impose pressure on the weak forbids, and says: And if your debtor is destitute, to the opening deadline give her, and giving it is better for you, if you only knew. (Al-Baqareh: 280) If, tolerance, consideration of legislation, and not compliance, the debtor in distress in any way, the tribute was forced.

#### 5. Examples of obtaining to the Religious permission in the regulations

##### 5-1. The presumption of innocence in the constitution

Public trial one hand, and the fact is that the main person, hand on behalf of the whole community, to prosecute the accused, as the latter is the case. The main public trial, by nature represents, by all means necessary, to prosecute and eventually punish the accused enjoys, and for this purpose coercive forces necessary, to summon, The accused and to enforce penalties punishment on him, but charges against all of the possibilities, the prosecutor enjoys it, is only one possibility, and the possibility that the interpretation of the presumption of innocence, the Iranian constitution, in Article 37, it is reiterated. In addition principle, the principles of another, in connection with the presumption of innocence in the constitution of there. In this article the concept, principles and work of principle, and the quality of its support, in Iran and in particular the Constitution, is examined.

The realization of fair trial provisions of some specific procedures S, D and seen to be fair hearing, it is necessary to ensure the principles, rights of defense, on the one hand and defensive principles underlying the rights of the plaintiff, on the other hand is maintained. Rights of defense, is the main element of a fair trial. The first pillar of this right, the acceptance of the assumption of innocence, both in the legislative process, and in the proving stage (judicial), and the conditions of acceptance of the assumption of innocence, acceptance of the principle of duty, claims to prove the claim (Proof of the plaintiff) is.

##### 5-2. Permissible principle in the Constitution

Iran's constitution, adherence to Islamic law, it is permissible principle, as the basis for applying emphasizes licenses, as well as follow the teachings of the Convention, and rules of international law, the presumption of innocence to be considered. It was said that, although in Islamic law, the presumption of innocence has been mentioned, but it should not be a presumption of innocence, the rights to common sense is synonymous.

Today, the presumption of innocence, of the fundamental rights of individuals is considered. Centrality of this right, from the fact that, first and main sponsor of individuals, the administration is being considered. The defendant in its shelter, summoned without any reason is prohibited. The right to silence, the right to counsel, the prohibition of torture to obtain confessions, The exceptions being the deprivation of liberty, to prove the allegation of jurisdiction by a judge and court, etc., enjoys. These rights are based on the acceptance of the principle of presumption of innocence, MS, of the constitution of Iran, have been considered, and determine the quality of the laws. Laws, in some cases for not complying with the law, criminal sanction, and in some cases the sanction of administrative or disciplinary proceedings, have established, and it is natural that in accordance with general rules of law, anyone against the law, damage to anyone is responsible damages will be. Therefore, the civil remedies can be there. But it must not be imagined that the presumption of innocence enshrined in the constitutional way, and protections stipulated in the laws, the defendant completely, put under their protection. Developments over time, about the crimes occurred, and in some cases prove contrary to the principle of presumption of innocence, the prosecutor difficult, or impossible, ordinary legislation forced the departure of the presumption of innocence, in some cases, has made. Although these instances, considered contrary to the presumption of innocence, or not addressed here, and should be dealt with later.

##### 5-3. Custody in civil law

Other applicable legal permission, Article 1171 of the Civil Code Act of 1921, regarding child custody Mybashd.kh states that "in case of death of parents, custody of the child while alive, would be, however, that the deceased father of the child, and for her guardian have given." This decision, in 1981, as the transfer of custody of minor children or incapacitated to their mothers, in a matter was approved. The competence of custody for each parent, put it was, how to implement it, the boy or girl to seven years, the girl's father has priority. A group custody of the mother, the girl seven years, believe. Marriage Act in 1921, famous theory accepted, Article 15 of this Law stipulated that "to maintain the children's mother, has two years from the date of birth, will have priority. After the expiration of the fashion, the right to maintain with the Father, the female children, until the seventh, with the mother's custody will be".

Family Protection Law, the Court provided that, as appropriate and is suitable for children, determine what to do. Article 12 of the Law family support, the year 1936 was decided, "the court shall, in addition to the certification of non-adaptation, task foster care, after the divorce, determine, and if children, mother or other person stay arrangements maintenance and the cost of them, specify. children that their parents, before the enactment of this law, separated, in the event that the reassurance, the cost of maintenance and custody of them, not be subject to the provisions of this law will were." Article 13 of this law states: "In any case, the court, as announced by one of the parents or children closer, and the city prosecutor determines that the revised references to the custody of the child is necessary, in comparison with previous decisions themselves, will appeal. in this case, the court may give custody to anyone who deems appropriate, delegate, however, the cost of custody to someone who, by

virtue of a court decision, is obliged to pay. " The appearance of these articles, it seems that the legislation seeks to repeal the decree, priority parents, is in custody. What is in custody, is more important, material and spiritual status of children.

At a time when the child needs more care and compassion, the mother precedes that of father, and during the upbringing of children, most of his maintenance, father precedence. So what are the priorities on father or mother placed the child, not the mother or provide support for the head of the family. Thus, in article 1173 of the Civil Code, it was decided that, in some cases, physical health or moral education, is in danger, he sees whichever is appropriate, or other nonsmokers. (Emami: 2011, p. 210)

### Conclusion

Facilitate the people, the interest is important, and holy law to comply with the expediency required knows, and the hardness and put people to hate the religion and aversion leads, and one of its applications, imprisonment decontamination is, today, scientific and progressive approach adopted in solving social problems. As we leave, the official definition is, of the religious order so that the difficulty and it is hard to fix, and it is easy. So either because of a problem which, obligating events or tasks, Prosecutor follows that, in the interest of the initial sentence is dominant, and this rule in worship and transactions under hardship discharge, and includes nonexistent as it is, and if conflict with other legal rules, this rule ruling, and to identify instances it can take measures such as customs, interests and corruption, and judicial procedures used. Since, in many civil rights issues, lawmakers from the Shiite jurists, has followed. With a view to the spirit facilitatory Islamic law, if for implementing Shariah, one of the limitations is, the extent is he to be created, in such cases is permitted, within the framework of the provisions and principles of Shariah, so opening the work he has created be.

Foundation discharge legitimacy, the rule " nothing wrong », «no- damage», is located. Goal of getting the rules easier to protect religious purposes, and commitment to the management of public interests, and the philosophy and wisdom of. Also, respecting the interests of the public, not special interests in transactions, punishments, pay property relations arising from the contract should be easier selection criteria sentences. The imposition of severe and burdensome legal requirements, in today's world (that is inclined toward reductionism homework), thereby avoiding the further step of religion. Therefore, the approach of the permission, at a "separation zone», and «Absence of texts», Islamic societies is undeniable necessities. Expedient very necessary and important, holy law, in cases where the provisions of its actual discards, not to insist on the observance of the "true principles", regardless of good grounds ideological, cultural and social negative effects such as religion lead aversion. As the great jurists and scholars of the Shi'ite doctrine, facilitate and encourage the interest of expediency measures the actual sentences, lost, stronger and more considered. According to the legal rules governing the derivatives provisions, and spirit circuits law, in legislation, the provisions taken to facilitate and national permissions, as the basis for legitimacy, has prescribed. Dynamics necessity of diligence, religious permission on the road, and take advantage of all the achievements of Imami Jurisprudence (not just famous), in order to deal with the new situation, and the many events, reality scene full of them. This should be based on Islamic

law, and with the help of legal and rational reasons and arguments, be derived from the Qur'an and Sunnah. With this approach, the citizens of Religious permission, motor diligence to solve the problem of legislation, according to the holy law, which should be the solution deep, and fits open daily, compared to the needs expressed in the field of reality, in terms of quality to the desired level and promoted . Talk Religious permission, verses and traditions there, and this does not mean that every Diligent can be any way you would like the provisions of the Registration of choices, but criteria, the search criteria is deductive, and the uncertainty of sentences is easier; the necessity of preference , in obtaining orders easier, there is the need and wish, in obtaining the warrants is easier.

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