

## Jurisprudential and legal review of expediency in determining punishment

Toraj Rouhani <sup>a\*</sup>, Alireza Ebrahimi <sup>b</sup>, Alireza Rostami ghafas abadi <sup>c</sup>

<sup>a\*</sup> Ph.D. Student Department of jurisprudence and principles Faculty of Islamic law, University of Qom, Qom, Iran. Email : [t070251361r@gmail.com](mailto:t070251361r@gmail.com)

<sup>b</sup> Assistant Professor . Department of Islamic law, Faculty of Management, University of Qom, Qom, Iran. [ali110qom@yahoo.com](mailto:ali110qom@yahoo.com)

<sup>c</sup> Assistant Professor . Department of Jurisprudence and principles of Islamic law, Faculty Theology and Islamic knowledge, University of Qom, Qom, Iran. [ali.ebnebrahim@gmail.com](mailto:ali.ebnebrahim@gmail.com)

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**Abstract:** The position of expediency for seeking benefit or avoiding corruption in Islamic jurisprudence is not hidden from anyone. The Shari'a is founded on the wisdom and expediency of the individuals that includes justice, mercy, and expediency. The salient feature of religious expediency is understanding and discovery, which is done with the help of definite intellect and literature. Considering intellect as the source of inference of rulings in jurisprudence had made it effective in discovering human expediency. Persistence in observing the first commandments is in some cases the opposition to religion, and it is not a sign of religiosity. The acceptance of the conditions of change and transformation of the first commandment into a second commandment does not mean the acceptance and desirability of the new conditions, but to preserve the most important expediency (survival of religion), it has abolished the important expediency and preferred the second sentence as a step in the balance of expediencies. The divine religion, without persisting in changing and timed instances, has ensured its survival and dynamism in the bed of extensive changes in human life by emphasizing the macro orientation and basic titles.

**Keywords:** jurisprudence, law, expediency, punishment, first sentence, second sentence

### Introduction

Rapid changes in technology have resulted in extensive changes in the fields of biosocial affairs, etiquettes, and finally culture of societies. The manifestation of the contradiction of the invariable rulings of religion with variables and new conditions and topics is always considered one of the main concerns of theologians.

The need for punishment for criminals is not hidden from anyone. Due to human limitations in discovering the real expediency and corruption of issues, the divine religions in the form of rulings, have fulfilled their mission in explaining and resolving individual and social issues of human beings in various steps of life; In particular, they have stated some cases in determining the punishment. Simultaneously with the wide social and cultural changes and developments, and on the other hand, the determination of certain punishments by the Shari'a, the possibility of the ineffectiveness of some of these punishments has arisen in the new conditions. This issue with confirmation by religious rulings on the one hand and extensive changes in social relations on the other, reveals the place of expediency in the dynamics of religion and the need to explain the rules appropriate to the new relationships. The religion of Islam, which by consensus of all jurists has considered intellect along with the Qur'an and Sunnah as sources of inference of divine rules, has considered the definitive rule of intellect to be expedient and corrupt and reserves the right to change the ruling in new circumstances for the ruler, in a way that these rulings take precedence over the first ruling. This issue benefits from its logical and defensible justification by looking at the rules of Shari'a systematically and comparing the divine rulings with the higher goals and purposes of Shari'a. The basis of Iranian law on jurisprudential principles has led to changes in some articles of Iranian criminal law, which shows the importance of the issue.

Now, considering the significance of the subject, the author seeks goals such as 1- Understanding the concept of expediency and its assessment tools 2- The use of expediency in determining punishment according to legislative developments. However, the questions that the author is trying to answer are: 1- To what extent is the function of intellect in discovering expediencies to issue rulings? 2. What is the

impact of secondary sentences on legislative developments governing punishment? We will answer the questions while addressing the issues. But the novelty of this work indicates the inadequacy of religiosity in conjunction with the new rulings of emerging issues in a systematic view of the supreme goals of the Shari'a.

Regarding the background of the research, it should be said that on the subject of expediency and its impact on the Shari'a rulings, various works have been written, such as books: 1- Jurisprudence and expediency written by Ayatollah Abolghasem Alidoost, 2- Customary expediencies written by Hossein Saberi, 3- Position of expediency in Imami jurisprudence written by Ali Tavallaei; and dissertations: 1- The role of expediency in legislating and enforcing specific punishments (Hadd) by Hamed Rostami Najafabadi, 2- The role of expediency in legislating rulings and its application in legislating by Meysam Tasoojian, 3- Examining the reason for expediency in deriving rulings from the perspective of Imami and Sunni jurisprudence by Sajjad Fazlali 4- The concept and principles of expediency in criminal law written by Taghi Borhani, 5- The effect of expediency in determining and enforcing punishment written by Seyyed Hassan Hosseini and 6- The study of expediency in the political system of Islam by Seyyed Mohammad Nasser Taghavi and so on.

### **The concept of expediency**

The expediency is the singular of the interests and is taken from the interest. It means anti-corruption, and seeking the interest is the opposite of seeking the corruption (Johari, 1989, vol. 1, pp. 383 and 384) and whatever is good in it, whether by obtaining like getting delights and benefits or by repelling and abstaining, such as avoiding harms and pains, should be called expediency (Al-Qamus Al-Muhit: 243/1).

The term expediency is that which agrees with man's intentions in worldly or otherworldly affairs or both, and the result is to gain the benefit or repel harm (Mohaghegh Heli 1987: 221). According to al-Ghazali, it is expedient to preserve the purpose of Shari'a from creation to five things: preserving the religion, life, intellect, generation, and property of the people. So anything that includes preserving these five principles is expedient and anything that destroys these five principles is considered corrupt and its avoidance is expedient (Al-Ghazali, 1992, vol. 1, pp. 139 and 140), and (Shatebi, 1996, vol. 1, p. 339 and vol. 2, p. 365), and (Ez Ibn Abd Al-Salam, 1993, vol. 1, pp. 11 and 12). "Expediency is a two-pronged thing, and its realization is sometimes in the form of gaining interests and sometimes in the form of repelling corruption. That is, it has both a positive and a negative aspect" (Shatebi, 1996, vol. 2, p. 5). Some have defined expediency as "repelling religious or worldly harm or gaining religious or worldly benefit" (Qomi, 1923, vol. 2, p. 85). According to Islam, interests are divided into two types, worldly and otherworldly. In non-divine schools, all laws and regulations that are based on the protection of the interests and benefits of society have only the purpose of human beings to achieve their material and worldly interests, but Islamic and religious laws and regulations should be in harmony with religious and Shari'a purposes (Moreschi 2006, vol. 1, p. 37).

"Expediency in Islamic society is an expediency that is related to the world of the people and their afterlife, both the good of this world and the good of the hereafter ... If something is for the benefit of the human world, but harms its hereafter, it is not expedient" (Javadi Amoli, 2000, p. 466). Essential materials are the materials on which human life, consistency, and survival of the Islamic society depend; As if not paying attention to the causes "disorder of the system" and chaos. Religion, soul, intellect, generation, and property are five valuable and necessary interests that their creation in the beginning and their preservation have been supported by the Shari'a (Shatebi, 1996, vol. 1, p. 19). "The expediency is the Shari'a, and wherever there is expediency, the divine Shari'a is there" (Rissoni and Barut, Bitu, p. 26). General jurists consider the criterion of expediency to be a religious criterion and believe that pure intellect and logic free from whims and desires have an important part and role in identifying it. "The presentation of the Shari'a relations and intentions of the jurist on pure intellect, even assuming the absence of Shari'a, leads to the conclusion that there is no Shari'a destination or occasion that is not approved by the intellect" (Ez Ibn Abd Al-Salam, 1993, vol. 1, p. 5). The rule of expediency means observing the public interest and overcoming the bottlenecks when it is difficult to implement the initial

rules and escape from the deadlock and the problems that arise from the arguments of the current situation and getting rid of these deadlocks needs special requirements” (Zanjani, 2010, vol. 3, p. 248).

Therefore, expediency is for the good and the benefit of this world and the hereafter, and it is beneficial for the religion and the world of the Muslims. Therefore, the above content shows that first of all, all Islamic rules have been set for human interests, and the expediency is an undeniable fact which is in line with Shari'a rules. Second, expediencies have general meanings that include worldly, otherworldly, individual, and social benefits. Third, the concept of expediency is based on goodness and benefits, and interests. Fourth, these expediencies are understandable for human beings in a way that all Muslims believe that God has a purpose in his works and all the Shari'a rulings are motivated by intentions and purposes, otherwise, any work will be in vain (Pirhayati, 2014, Ghezavat Quarterly, vol. 81, p. 136).

In this article, even though all the above definitions have strengths, but the definition of Ayatollah Javadi Amoli who considers expediency both in this world and the hereafter and on the other hand, assuming the conflict between worldly interests and the hereafter, the hereafter expediency is preferred as the selected definition.

### **History of expediency in jurisprudence**

Adherence to the rules of interests and corruption is one of the important issues that Shia and general jurists have considered. The meaning of interests and corruptions is what the presence or absence of the Shari'a ruling depends on, and it has been referred to as "foundations of the rules", "criteria of the rules" or "causes and requirements of the rules". The popular opinion of the judiciary is that the Shari'a rulings are subject to the interests and corruptions in the belongings. That is, before the verdict of the Shari'ah is suspended, the actions and objects have interests and corruption. This has led to the forgery of an appropriate sentence with it. In this regard, Qur'an, Sunnah, and intellect have been considered, which are described below:

**Qur'an:** The Qur'an considers the philosophy of some of the rulings as expediency and corrupt that exist in the verbs, such as: "Establish the prayer of My remembrance" (Taha, 14); "Prayer forbids indecency and dishonor" (Ankaboot, 45); "Fasting is decreed for you...Perchance you will be cautious." (Baqara, 183); "Do not draw near to fornication, for it is an indecency, and its way is evil." (Isra', 32); "Respond to Allah and the Messenger when he calls you to that which revives you." (Anfal, 24). These verses generally indicate that religious commands and teachings bring happiness to human beings.

**Sunnah:** Many narrations indicate the expediency and corruption in the matters of the rules. The Prophet (PBUH) said: "O people, I have commanded you to everything that brings you closer to Paradise and away from Hell, and I forbade you from everything that brings you closer to the Fire of Hell and away from Paradise." (Her Ameli, 1988: vol. 17, p. 45). The noble hadith is clear that the Shari'a rulings originate from the good and the bad in the belongings (actions) (Naini, Bitra, pp. 36-37).

The narrator asks Imam Baqir (AS): "Why did God Almighty forbid carrion, blood, pork, and wine?" The Imam replied: The prohibition and halalization of some matters were not because God was unwilling towards the forbidden matters and had a desire for Halal matters, rather, God, who created human beings, was aware of the essential needs of his body and what is good and beneficial for him, so he made them permissible and halal for him, and he was also aware of what causes him harm and loss, as a result, he has forbidden them to him (Ibn Babooyeh, 1992: vol. 2, p. 196). In this hadith, the Shari'a rules are considered to be subject to interests and corruption in actions.

**Intellect:** According to intellect, the ruling on sanctity, purity, cleanliness, impurity, correctness, and invalidity of action is due to the expediency and corruptions in which actions are present, otherwise it requires abrogation or preference that is not worthy and reasonable from God the Wise (Saedi, 2002: Vol. 29, p. 113). Abu al-Salah Halabi writes: "The subject of God's commands and prohibitions should have the appropriate commands and prohibitions, and if this is not the case, forgery of an obligation will not take precedence over acceptance and forgery of sanctity will have no preference over obligation or acceptance" (Rak, Shariat, 2001: p. 135). Therefore, the subjects of Shari'a rulings have advantages and disadvantages, that is, a ruling without criteria cannot be forged. This does not mean that wherever there

is expediency and corruption, the current Shari'a ruling should be forged; It may be the most important expediency that causes God to waive forging his rulings for some time. As the gradual expediency of the rulings required in the early days of Islam, being expedient or corrupting in some of the acts, the holy shari'ah would delay the forgery of the rulings until he expressed each ruling at a specific time and place. Therefore, although expediency and corruption in these cases are the necessary conditions for the forgery of the Shari'a ruling, but are not enough; Because the forgery of the ruling must be consistent with the purpose for which the ruling is being forged (making people religious and adhering to the rules of Shari'a). The expediency of facilitating the people and not harshly on them causes the Shari'a in some cases to waive the obligatory rulings. The Holy Prophet (PBUH) says: "Indeed, God was silent in some cases of expressing the duty, but this silence was not out of forgetfulness, but out of grace and mercy, so do not throw yourself into the task and hardship" (Wisdom 102 of Nahj al-Balaghah). Imam Sadegh (AS) also says: "What God has kept secret and unobtrusive from His servants has been taken away from them" (Ibn Babooyeh, 1925: p. 413)

Of course, sometimes action has a special interest or corruption in its nature, but with the pronouns of the new title, the situation changes, that is, it has an inherent interest and becomes corrupt in the new circumstances, or it is inherently corrupt and has an interest in the new circumstances; Or the current one has no expediency and corruption, but with the propositions of the new title, its status changes and it becomes expedient or corrupt. For example, the nature of truthfulness is expedient and the nature of lying is corrupt, but if truthfulness causes the death of a righteous believer, it is corrupt, and if lying causes his rescue, it is expedient. Also, the action that is not inherently expedient is obligatory in case of a vow or oath to perform it, and it becomes obligatory to do it. In such cases, the obligatory act should be considered and studied according to the propositions of the new title. Certainly, if it is obligatory, it is not devoid of expediency and in case of sanctity, it is not devoid of corruptor, and these cases cannot be considered against the main rulings (Adherence of the rulings to interests and corruptions). Expediency has a high status in Islamic jurisprudence. Islamic orientation against corruption and toward human expediency is in line with the Quran as it says: "Those who consume the wealth of orphans wrongfully, only consume fire in their bellies, and they shall roast in the Blaze." (An-Nisa/4/10) and says: "They ask you about intoxicating drink and gambling. Say: "There is great sin in both, although they have some benefit for people; but their sin is far greater than their benefit..." (Al-Baqara/2/219).

### **Criteria for issuing religious rulings and orders from a religious perspective**

Islamic scholars believe that the foundation of Shari'a is based on the wisdom and interests of the individuals, and all of it is justice, mercy, and expediency. Wherever there is expediency, the divine law is there, and wherever there is a divine law, the expediency is also there (Risni and Barut, 2013, p. 23). This view is confirmed in Imami jurisprudence by Sahib Jawahir that all the rulings related to transactions and other matters have been legislated to provide the worldly and otherworldly interests of the people, which mystics call expediency and benefit (Sahib Jawahir, 1983, vol. 22, p. 324). Although the obedience of the rulings to the interests and corruptions does not mean that the Shari'a rulings are a revelation of the previous interests and corruptions in it, but some Shari'a texts indicate the opposite, but it means that the definite interests must be gained and the definite corruptions must be avoided. Therefore, expediency, which also includes repelling and eliminating the corruptor, is the basis of Shari'a rulings, which is interpreted as the basis of expediency (Alidoost, 2013, expediency in Imami jurisprudence, jurisprudence and law, p. 47). However, some (Madkour, 1393, p. 291) believe that "if the text, consensus and other Shari'a arguments agree with the expediency, it will be acted upon, and if it is against the expediency, they will be allocated, and in case of conflict, the expediency will take precedence."

### **Source of expediency and corruption detection**

The philosophy of sending divine books and messengers means the same limitations of human intellect and understanding in recognizing the real interests and corruptions of human life issues. Religions by stating that the discovery of the relationship between worldly deeds and its impact and role in worldly and otherworldly happiness is beyond normal human intellect have communicated their commands to human beings in the form of divine commandments. On the one hand, due to the existence of the issue of the final prophet, which communicated its last instructions to human beings 1400 years ago, and on the

other hand, irreplaceable developments in various scientific, cultural and social fields in recent centuries, the transformation of some issues and conditions has occurred. The debate over the validity of divine judgments and, on the other hand, the vast changes in human life have posed a challenge to the effectiveness of some of the Shari'a rulings in the field of punishment. The question that comes to mind is, what is the philosophy of sending messengers and divine books, and is the expediency of measuring the intellect in the evolution of religious rules is necessary or not?

To solve this problem, it must be seen what are the interests and corruptions of the rulings that are the criterion of obligation and sanctity. Some believe that Islamic law today is so-called heavenly, while it is earthly; That is, it is based on the expediency and corruptions in human life, in the sense that it does not have a mysterious aspect and one hundred percent secret to say: God's judgment does not depend on these words, God has made law and he is aware of the mystery. Islam itself states that everything I have enacted is based on these interests, which are either related to your body or your soul, to your morals, to your social relations, to these issues; That is, it is not a so-called mysterious matter to which the human intellect has no access (Motahari Bita, vol. 21, p. 294). This issue, especially in cases where there is no history in the Shari'a, better shows the view of religion about the possibility of diagnosing interests. In one particular case, we may not have received an order from Islam at all, but the intellect, being familiar with the Islamic legislative system, knows that this is the view of Islam here, and immediately discovers the ruling. In cases where the Shari'a has a specific order, but the intellect discovers expediency or a corruptor contrary to it, the intellect can boycott the former halal or consider the former haram as halal, and this is the intra-religious way that Islam embedded in the body of religion to adapt to the requirements of time and dynamism (Motahari, Bita, vol. 21, p. 296). The most important feature of religious expediency is through understanding it. The sources of the discovery of the Shari'a are definite intellect, texts, and consensus. Expediency, which is the basis and origin of the Shari'a ruling, is legitimate when it is indicated by one of the aforementioned sources. Of course, the consensus in the Imami religion is valid and revealing when it is based on a Shari'a ruling. Therefore, the way of understanding the expediency desired by the Shari'a is limited to the texts definite intellect, according to which the custom and acceptance of the majority of society can not be the discoverer of the religious expediency unless this is due to the understanding of intellect and this is why the religious expediency is understood (Alidoost, expediency in Imami jurisprudence, jurisprudence and law, p. 42). Therefore, since reform and expediency have no place in the Shia jurisprudence literature, we must pay attention to the realm of power and authority of intellect from the perspective of religion, which has been accepted as one of the sources of inference in Shia jurisprudence.

### **Examining the status of intellect from the perspective of religion and its rules**

"Intellect is what prevents man from bad words and deeds, or intellect is like ignorance" (Ibn Fars Zakaria, 1983, vol. 4, p. 669) and "A wise person restrains his soul, and his intellect deprives him of what he does not deserve" (Tarihi, 1985, vol. 5, p. 425). It can be said that the meaning of intellect can be the prohibition of evil and ugliness and self-restraint. Imam Ali (AS) says: "God raised the messengers and sent His prophets to them one after another to force the people to fulfill the natural covenant they made with their Creator and to remind them of His forgotten blessing, and to fulfill their mission by propagating clear reasons, and to arouse the secret power of the minds of the people" (Nahj al-Balaghah, p. 1, translated by Allameh Jafari, sermon 1, N. 29, p. 60). With this in mind, there is no doubt that the intellect is used to distinguish issues and rulings to know the facts.

According to the Qur'an, "intellect" has a special place. In verses such as (163) and (164) Baqara, (12) Nahl, (4) Rad (24), (28) Room, (67) Mumunoon, (17) Hadid invites people to think and reason, and in other verses such as (37) Qaf, and (12) Lughman has interpreted from intellect and wisdom, sometimes to the heart and sometimes to wisdom, and also in verses (269) Baqarah, (7) Al-Imran, (20) Rad, (12) Zumar, (29) Sad, (53) Mumunoon, and (190) Al-Imran addresses the wise and prudent as "People with minds". The place of reason in the narrations is also described as very high and valuable. The Prophet (PBUH) said: "O Ali, no poverty is harder than ignorance and no property is not more beneficial than reason" (Klini, 2008, vol. 1, p. 58) and "Everything has a compound and compound of a man is intellect, and the system of life and human support is his intellect" (Ibid., P. 60). In the narrations of intellect titles

such as divine grace, the guide of the believer, the veil, the covering of secrets, wealth and friends, etc. have been mentioned. The jurists believe that, in the principles of the beliefs of monotheism, prophecy, resurrection, etc., there is no reason more useful and effective than an intellectual reason. There is a difference of opinion as to which of the earlier jurists first mentioned the rational reason from the foundations of *ijtihad* and jurisprudential sources. The oldest phrase we have found in this regard (rational reason) belongs to Sheikh Mufid. He does not consider rational reason as one of the evidence of rulings. "The principles of rulings are three: the book, the Prophetic Sunnah, the sayings of the Imams (AS), and the ways that lead us to these principles are three: language, news and the first of them is intellect. And he has said about the reason: and that is the way to know the authority of the Qur'an and the reasons for the news" (Muzaffar, 2008, vol. 2, p. 223).

Another narration states; "For the first time, reason has been introduced by the new Mujtahid of Shiite jurisprudence, Abu Ali Ibn Junaid, among the sources of *ijtihad* and the foundations of cognition" (Janati, Biti, p. 225). Fayz Ibn Idris is considered to be the first person to present a rational reason in a concise form, which later evolved (Fayz, 2012, p. 42). Muzaffar agrees with him and says that the first person to specify the rational reason is Ibn Idris, but he did not state the meaning of the rational reason (Muzaffar, 2008, vol. 2, p. 225). He writes in the definition of the rational ruling: " A ruling is rational that leads us to the Shari'a ruling and we are transferred from knowledge to the rational ruling to knowledge to the religious ruling" (Ibid., P. 227).

The ability to comprehend the right intellect, in achieving the rulings, assigns divisions to the rational rulings that "whenever the intellect understands the good and expediency of action and the ugliness of leaving it, its ruling is obligatory, and whenever the good of a deed and the non-ugliness of leaving it is understood it is considered as recommended, whenever intellect understands the advantage of leaving action and the ugliness of the action, the ruling is sanctity, and whenever it understands the goodness of leaving action and the non-ugliness of the action, the ruling of that is hatred, and whenever goodness and ugliness of action are equal, its ruling is precarious possession. Therefore, all the five obligatory rulings are in the rational ruling, but it must be said that not all those who believe in the rational ruling agree on the five rulings, and among those who deny the intellectual precarious possession is "Mirza, in the laws", because understanding the extent of equality of good and bad is outside the realm of intellect (Feyz, 2012, p. 61). The greatest gift of God to man is intellect, and it has bestowed upon man the incomparable Almighty, the crown of dignity and greatness of duty, in the light of the beautiful essence of intellect. So the history of the reason is the twin of human history. It is narrated from Hisham Ibn Hakam that Imam Kadhim (AS) said: "O Hisham, God has given two reasons to the people. The external reason and the internal reason; the prophets and imams are the external reasons and the intellects are the internal reasons" (Klini, 2008, vol. 1, p. 35).

### **Rational inference**

The validity of the ruling of intellect is its termination based on the Shari'a ruling that is cited, and this discontinuity must exist in the realm of real and non-real intellectual, as well as in the stage of discovering goodness and ugliness and in proving the connection between the ruling of intellect and Shari'a. "Reason or rational perception is the main and valid means of proving the legal statement... and complete awareness that does not have the possibility of error... As for incomplete mental awareness that is based on weighting and does not contain the element of certainty, it is not valid to prove any of the elements of the deduction process" (Sadr, 2016, p. 35). Rulings that are known as rational rulings are rulings that originate from common sense in matters that the human intellect has access to and can achieve a correct understanding of them. (Rahbar, Comparing the position of expediency in Imami and Sunni jurisprudence, Research Quarterly of Imam Sadegh (AS) University, p. 142). Early jurists considered the role of intellect in determining good and bad in actions as necessary, as Sheikh Tusi has pointed out in *Edat Al-Osool* and Mirzaye Qomi in *Qavanin al-Mahkamah*. Professor Muzaffar considers the issue of rational understanding of good and ugliness as famous and praiseworthy issues and believes that all rationals from every nation and religion acknowledge and rule on it. He has called the well-known propositions that must be accepted the obligations of acceptance and have called other disciplinary punishments the opinions of Mahmoud (Muzaffar, 2008, pp. 372 and 333). Good thoughts and beliefs are accepted by a human for the sake of preserving public interests and maintaining the social system and the survival of the human species. The only example related to it is the goodness of justice and the ugliness of oppression, the perpetrator of which is praised by the wise and the perpetrator of oppression is condemned by the wise (Feyz, 2012, p. 68).

The intellect has been accepted as one of the sources for inferring the verdict, which is beyond other sources, as a means of understanding expediency and corruption in matters, and this acceptance has advanced to the point that the famous rule "Whenever the mind rules..." has emerged". It is in jurisprudence. The problem that comes to mind here is how, according to some narrations, the intellect is unable to achieve expediency and corruption (Religion does not affect the minds.) and on the other hand, it is among the sources of inferring the ruling? In response, it should be said that, first of all, the intellect that has been prevented from discovering the rulings is the raw and undeveloped intellect that is unfamiliar with the rules and purposes of the Shari'a, which, because it does not have the necessary information and materials to analyze the rulings, will surely go astray. But the believing intellect, which has been cultivated in the lap of religion and is equipped with rules and ends and induced priorities by the Shari'a, can clear the way for human beings in some cases according to the rules, with the permission of the wise Shari'a. Secondly, if we do not want to accept the rule of intellect in solving new problems, we will inevitably have to deal with many problems in the bottleneck of new problems due to the lack of solution of intellect, which is especially important in social issues (The issue of the sanctity of selling blood or some of its products due to its impurity). If these changes, which have led to changes in the criteria for buying and selling blood, are not discovered and accepted by intellect, it will have harmful consequences for patients. The recognition of intellect as the source of inference of rulings by jurisprudence is its effectiveness in human interests.

A systematic and comprehensive view of the rules of Shari'a and considering the goals that the divine rules are necessary for comparison with them makes the jurist the right way when there is a conflict between the observance of conflicting interests according to the important rule and other related rules. To solve the problem. The point that may seem unfamiliar in this matter is the transition from the first sentence to the new conditions and in a way evokes the feeling of giving up the divine religion due to special conditions (Ahqaf/13). For this issue to reach a noteworthy answer, it remains to be seen whether renouncing the first ruling means weakness and, in other words, lack of perseverance in the realization of the divine religion and whether the religion itself is ordered to renounce the divine ruling in such circumstances. The next question is whether the new conditions, due to the fact that religion has a ruling for those special conditions, are associated with the approval and desirability of the new conditions? For example, if a person is forced to eat a corpse to survive due to getting lost in the desert, can do against the primary rulings. Regardless of the prohibition of eating a corpse, are these conditions also acceptable that the Shari'a has accepted it?

In response to the first question, it should be said that the Shari'a's order in certain circumstances is to renounce the first ruling, just as in a very serious matter such as the propaganda of the Imams (as), the Imams (as) have ordered to observe taqiya for higher interests. It is the opposite of religion, not a sign of religiosity. While accepting the conditions of change and conversion of the first sentence into a second sentence does not mean acceptance and desirability of new conditions, but the divine religion to preserve the most important interest (save a life) has abolished the important interest (not eating the corpse) and the second rulings are preferred, and if the situation returns to normal, the first ruling is preferred. In this example and other issues that exist in the discussion of disease and famine, danger to life, etc., special and new conditions do not mean that these conditions are desirable from the perspective of religion. The existence of emergency and secondary rulings and rules such as no harm or hardship, etc., all indicate that Islam has come for survival, not to be rejected and simply fit in the text of the history books of libraries .... and all this are for the realization of maximum guidance for humanity and the realization of the Merciful Shari'a in the light of a systemic view of the aims of the Shari'a.

It is clear that the emergency and secondary rulings have predicted conditions in jurisprudence and most cases it is possible to return to the first ruling; However, the main issue is related to cases of mysticism and non-worship in jurisprudence, in which changing the conditions of the subject and returning to the previous state is almost eliminated. For example, if in the 21st-century human culture stoning or specific punishment are considered to be a denial of religion or fundamentally unjust, this belief is the result of thousands of historical and cultural events that return to the previous state in the current world seems unlikely and therefore basically the return of the rulings will not be possible in the current situation, and therefore the transient and cross-sectional nature of such issues is ruled out. Issues such as this have led some to fundamentally oppose a change in the rulings, considering it as a change in the divine religion.

#### **A systematic look at the purposes of Shari'a in the light of intellect**

Religious scholars consider expediency as a benefit that the wise shari'a has considered for his servants, which includes the preservation of religion, life, intellect, generation, and property (Sarami, 2001, p. 68).

The Prophet (PBUH) said: "If a calamity befalls you, sacrifice your wealth for your life, and if the calamity goes beyond you, sacrifice your wealth and life for your religion; because an spoiled person is one whose religion is spoiled, and a ruined house is one whose religion is destroyed (Hindi, 1988, vol. 15). The purposes of Shari'a are divided into necessities, needs, and praises according to their importance, and the preservation of religion, life, intellect, generation, and property of the servants is considered necessities. Because of the aims of the Shari'a, as intellect testifies, not all interests lead to necessity, not all interests are in the same rank, and the most important interest is preferred over important ones. Preserving religion is the most important expedient and preserving the life, honor, and property are respectively in following ranks. But the issue that is worth considering in our discussion is that if a punishment is in conflict with the supreme goal of creation, which is guidance, worship, and divine knowledge, and on the other hand, if the mentioned punishment is prescribed, what is the most important expediency?

Solving the problem requires explaining the following issues; first: What is meant by preserving religion? Preserving religion does not mean preserving religious books and orders in the corner of libraries as a divine and intellectual school, but it should mean preserving the religiosity of religious people or creating a desire for the religiosity of new people. Second: Which society prefers the expediency and truth of preserving religion? If we look at the verses of the Qur'an, the polytheists and infidels will not be inclined towards Islam by any rule except what they like. The truth is that not everyone accepts every word, and for these denials and objections, there are reasons other than not knowing the philosophy of the rules of Islam. "He says: From My signs, I will turn away the unrightfully, arrogant in the land so that even if they witness every sign they would not believe it. If they see the path of righteousness, they shall not take it as a path; but if they see the path of error, they shall take it for their path because they belied Our signs and were inattentive towards them."(Araf/146) (Motahari, Professor's Responses to Criticisms of the Book on the Issue of Hijab Page 43). Therefore, changing the rulings to be believable and desirable

for all people is neither possible nor desirable for intellect and religion. Therefore, it is certainly not possible to change the rulings by changing the whims and desires of the people, but it means those changes that change the examples of concepts considered by the Shari'a such as justice. For example, if in ancient times the provision of water and bread for a nation by the ruler was considered a fair and pleasant behavior for the ruler, today, in addition to that, the supply of electricity, gas, internet, etc. is necessary for the fair treatment of the people for the ruler. Or, for example, if for the punishment of mankind 1400 years ago - who was typically trained and strong in heavy fighting with nature or tribal wars - a whipping was considered, for today's youth who could not bear a day of agricultural work condemning the punishment of whipping will not be the same from the society's point of view. Rather, in today's conditions, the same punishment of yesterday may not be considered a just punishment for human beings, but a kind of torture. For example, even though the adulterer's adultery has been accepted by religious and rational people, the stoning of this person or the shooting will have two completely different reactions in the society, and the former sees it more as torture and the latter as a just punishment. Or if yesterday a prisoner was received in a room free of facilities with daily meals, it would not be considered torture, while today, to torture him, he is placed in a much more affluent room than the former prisoner, and it is considered a kind of torture. Therefore, it can be said that despite the proof of the generalities of the Shari'a, such as justice, etc., without any change in the divine commands, the examples of these concepts can be changed and the divine religion without change on the examples can be changed and timed with emphasis on macro orientation and titles, and guarantee its survival and dynamism in the context of the vast changes in human life. Of course, this intra-religious approach that Shari'a has designed for its dynamism and efficiency is miles away from the views of some intellectuals in the tumult of modernity. As we have said, a change in the instances of the concepts considered by the Shari'a never means a departure and a change in the values that govern the divine laws, in other words, it does not conflict with the spirit that governs the divine commands. Of course, those who have spoken without precise knowledge of religious principles, instead of discussing a change in instances to a change in the values governing the Shari'a and its fixed laws, will never be approved, because then not only the philosophy of sending messengers and divine religions becomes meaningless, rather, the fundamental defect of the intellect in identifying and recognizing the real interests and corruptions, both worldly and otherworldly, will always remain unanswered.

### **Synchronizing the rights of the subject with the new expediency and corruption**

#### **1- Changing the law on stoning, Article 225 of the Islamic Penal Code approved**

The opinion of the jurists regarding this change: "Nouri Hamedani": Assuming the question, as we have already answered, the divine rule is not changeable and the quality of its implementation depends on the opinion of the ruler of Shari'a. "Makarem Shirazi": We have already said that in the current situation it can be replaced. "Jafar Sobhani": If the ruler of Shari'a feels that the execution of the sentence in this way has problems, he can execute the hadd in another way. "Mousavi Ardabili": The punishment of stoning cannot be changed, but if its execution is against the interests of Islam and Muslims, the comprehensive jurist can order its non-execution. "Alavi Gorgani": If the ruler of Shari'a recognizes that the implementation of this ruling causes the deception of Islam and disrespect for it and causes damage to the principle of religion, he can change it, but the principle of stoning is fixed in Islamic jurisprudence, even if it is not explicitly mentioned in the Qur'an and the principle of this ruling is unchangeable. "Hosseini Zanjani": If according to the comprehensive jurist, the execution of a sentence in society due to the lack of intellectual readiness of the general public weakens the belief and principle of Islam, then the preservation of Islam is important and the execution of the sentence should be silent until the firmness of beliefs. In addition, the rule of "contemplation of doubts" is current on this issue, although the jurists have stated the provisions of the rule in thematic doubts, but according to the submission and acceptance of this rule, which is derived from the same narration, doubt refers to doubt and includes doubt of wisdom. Judgment in a situation where social justice is not fully implemented is a source of doubt because the principle is justice that we are still a long way from it. <https://www.ekhtebare.com/>

2. Provide some additional penalties for some hadd punishments such as pimping. For example, 75 whippings is not enough for a person who has gathered dozens of forbidden men in the form of multiple

crimes. Perhaps under the influence of these facts, the concept of hadd have been transformed by the Islamic Penal Code, from what has been defined in jurisprudence so far. Article 6 of this law allows the judge to sentence a convicted person to additional punishments, if necessary.

## Results

As we have said, the definitive ruling of the intellect as one of the four sources of inference of the ruling in the field of non-worship is accepted in jurisprudence as it can make halal haram or haram halal. It was also proved that the Shari'a rulings are based on interests and corruptions, which are available to the intellect in the field of non-worship jurisprudence. We mentioned that a systematic view of religion and its ultimate goals can help the jurist in measuring the most important expediency. Just as the expediency of leading mankind to the divine religion and preserving the religion does not simply mean preserving religious texts in libraries, so the interests of other rulings are weighed against the expediency of this great goal. We further stated that the acceptance of new verdicts contrary to the first verdict is not associated with acceptance and satisfaction with the conditions prevailing in the matter. Finally, it was said that the examples of general concepts considered by the Shari'a, such as justice or oppression, can be changed by changes in the time and culture of the people, and this does not mean leaving and changing the values of divine laws, in other words, there is no conflict with the divine commands, so the change in the values that govern the Shari'a and its fixed laws will never be approved, because in this case, not only the philosophy of sending messengers and divine religions becomes meaningless, rather, the fundamental defect of the intellect in recognizing the real interests and corruptions, both worldly and otherworldly, will always remain unanswered.

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