

Accuracy Principle of Judge Commandment and Exceptions of it

Majid Bashirie

M. A., Department of Religious Jurisprudence and Islamic law, Karaj branch, Islamic Azad University, Iran

E-mail: Gawarood@yahoo.com

Ramin Porsaid

PH. D, Department of Religious Jurisprudence and Islamic law, Karaj branch, Islamic Azad University

Abstract

If you doubt to judges commandment (with each reason), accuracy principle is present commandment. We can understand from jurisprudents talks that expedience of judge's supervisory is judges ability, otherwise supervisor doesn't mean without obey. Naturally, judge commandment and his ability don't change the reality, because commandment is ability just evidently, unless it becomes the reality and he can't change the law. We must accept the commandment evidently, but in some situations like cases that disagree with ejtehad and.... It's recommended even obligatory to conflict with it and have determined ways to trace it.

Introduction

When authors and glossarists compose the book alqaza they talk about permit or don't permit of non specialized Moslem judgment most of sheia jurisprudents believe that non specialized Moslem has not permission to judge (Alsheikh mofid, 1989);(Alterablosie, , 1985), and some of unknowns believe that non specialized Moslem has permission to judge (Alnajafie, 1989),but there are a lot of persons among these two groups that believes non specialized Moslem can judge by mean of proxy and their judgment is in emergency situations (Mohaqeq helie & sheik jafar sobhanie).

First principle, is power of God and no one have dominance to another unless by God's permission and ability of profits and angels is by of mean of God's permission, as judges commandments that are under control of God's commandments. This principle is an absolute principle and there is no doubt to it, but there is no enough place to talk about it more than now. There is no doubt that complete jurisprudents need permission of God to launch commands and there are a lot of narratives that identify it (Mohammadie gilanie, 2002). By investigation of jurisprudents talks we can find that judgment is a branch of profits tree and this position is a donation from God. By mean of these statements, we can understand that in special situation that there is no complete jurisprudents we must refer to non specialized Moslem judge (Rashtie, 1987), but we must not forget that this commandment is a secondary

commandment and if there are complete jurisprudents we must refer them to solve our problems. And this article is about complete jurisprudents judgment.

Subjectivism And Sufism Of Commandment

There is a discussion that governor's commandment has subjectivism or Sufism. On the other hand if judgment is a position to solve problems between sides or adjudication of sides? This means that judge has authority by his own knowledge to decide about topics.

If we tell that commandment have subjectivism, it means that wrong commandment is not reviewable and by this conclusion we can find that repleader is against the law and religion even if we prove that commandment is wrong.

Narratives like "everyone who reject judge's commandment is like a person who reject profit's commandment" from omar ben hanzale confirm subjectivism of commandment but on the other side verses like verse 45 "Surrah Maeda" confirms Sufism of commandment. How we can investigate between these two groups? By return to this problem that if court's opinion is absolute like sentence? Dr mohammad jafar langrodie: when you say court's opinion is absolute it mean that if this opinion wasn't against the law, it's not reviewable.

We know that mistakes in ideas not avoidable because of human's fault's, governor in a mankind too, that's why there is second judge, but may be second judge commit a mistake too, for this reason there is a review court. By this comments, if a judge commit a mistake in commandment, it's not allowable again.

The conclusion of sentences above is that everyone who believes subjectivism he/she must agree with every ideas of judges. Imamie ulema believes to proscription and they believe that God leaves proven commandments and for each even there is an ideas that is constant for everyone, (Moslem, kaffir, crazy,...) and we must obey these commandment, but sometimes jurisprudents idea is as same as God's idea and there is no problem, but in a few position there is no obvious engage between God and jurisprudent's idea, in this situation he and his follower are excuse. Shia ulema who accept proscription are: there are two rewards for obedient and just one reward for proscription (karamie&shokrie, 1389).

Forebear of special reason, we can say the first principle is as same as accuracy principle otherwise we have special reason for disability because Imamie and a group of hanbalie agree with proscription theory, it means, they believe that religion's law is constant. But this belief have no relationship with elements, it's first nature needs assistance, it means that if everyone believes proscription he will believe that if judge leaves a commandment, his idea is correct where as his idea becomes advice.

Briefly, the first principle have ability although we follow proscription is but commandment must be effective, it's possible that commandment is different from reality, we say in answer that we can leave principles and in these situation ineffectiveness of commandment is an

excuse for public advice. It means where as we doubt to accuracy of commandment, accuracy principle of commandment is valid and commandment is dominant obviously and we must do this commandment and observe apparent but if we are sure that commandment is wrong, here on conflict of commandment have another way that law determine it. If Ejtehad is not correct, commandment is not dominant and it means that in judicial system of Islam, judge can't try to eliminate animosity, he wants to do adjudication and if judge leave a commandment, it is acceptable unless we prove that judge leave a wrong commandment or don't observe judicial principle. Like Imam Ali reject shoreih (a judge) commandment the topic is: shoreih in judicial investigation have not observant and he swear the denier and shoreih leaves commandment and it finished quarrel. Imam Ali after knowing this problem said: you must first interrogate then swear libelee (Alnorie altabarsie, 1988).

If shoreh observe this judicial principle, his commandment was dominant. Mr. Golpayegonie said: there is no doubt that judge's commandment is dominant due to defendant. After commandment leaving of judge, claimant can't complain again to the judge or other judge (Mosavie golpayeganie, 2002). As it is known Mr. Golpayeganie use from omar ebn hanzaleh advice and in another place he said: mounted judge by means of Imam have supervisory to people and his commandment is dominant. As you consider someone state about dominant of commandment and even it's not reviewable. These are ideas of a group of jurisprudents that state judges supervisory. It's obvious that supervisory without obey is meaningless.

If everyone is supervisor then his commandment must be obeyed else he is not supervisor at all Saheb doros also told about this topic that everyone who is in supervisory position must have jurisprudence supervisory (Shahide aval, 1993). In masalek also imply to this subject and it means everyone who has allowance to leave advice (Fatwa), then he can become supervisor (shahide sany, 1993).

Ashtiane said: After determination of commandment allowance and enmity elimination from judge, principle doesn't allow to reject commandment (Ashtianie, 1998). It means that he know complete the dominant reasons and commandment allowance.

Then he believes the domination of judge's commandment. Naturally you can find that we said commandment is pervasive but it doesn't mean that commandment is absolute and if everyone becomes sure that commandment is wrong, it's not pervasive more.

If sides of quarrel know the reality, in this situation judge's commandment is no referable, because commandment is not pervasive and have no finality.

Jurisprudents say an example: If in a court spouses do divorce and there are intuition there, after that judge leave the commandment, another person who knows that evidence was baseless can't marry with this woman because divorce haven't done .

Saheb javaher said: commandment of judge is impressible by mean of evidences and if evidences are wrong at this time judge's commandment is not pervasive at all (Alnajafie, 1989).

Prophet said: some of you refer me to judge between you, I listen to your statements and intuition statements, after that I leave a commandment that is not absolutely right, so everyone who knows it must tell me the truth (Horamelie, 1989).

Another reason is about enjoining the right and forbidding the sin that is recommended so if commandment is wrong, it must be reviewed because of forbidding the wrong, it means that these reasons are dominant to judge's commandment.

Sheikh tosie said: I told that if judge's commandment is right, it's pervasive but if it's not right, it's not pervasive more (Altosie, 1930).

First Group: Commandments Those Are Disagree With Legality

A) commandment disagree with absolute reasons:

Defiance of religion and Quran and tradition is not acceptable in each situation and even a group that are disagree with review, they don't talk more in this situation and they are agree with review in this situation (Adabie, 2009).

B) commandment disagree with suspicious reasons:

Majority of jurisprudents believe that if judge leaves a commandment by mean of his marji of Taqlid fatwa (advice), and this advice is disagree with advice that leave from marji of Taqlid advices of second judge, in this condition commandment is accurate. But if commandment have conflict with holy Quran, it's wrong even if commandment that have leaved is disagree with marji of Taqlid advice (fatwa) of sides, it can be review (Ahangaran, 2008).

C) mistake in Ejtehad:

Most of jurisprudents know that conflict reason is just for commandment that are agree with Ejtehad and those commandments that are disagree with Ejtehad are wrong absolutely.

Rashtie said: Ejtehad in commandment leaving position have finality (Rashtie, 1987).

Judges commandment even though derivative from complete jurisprudents but if judge have mistake in introductions this rule is wrong (Rahmanie, 2001).

D) Defiant of judicial principle:

If we prove that judge's commandment is against the religion principles, if number of evident is few or judge leave commandment by mean of women's evidences, this commandment is futile even this commandment agree with reality or judges is stupid (Esmaeel abadie).

Second Group: Commandment That Is Against The Reality:

A) if claim that evident have not condition for this level if after commandment leaving, you find that evident said lie, in this condition review of commandment is allowance (Alnajafie, 1989); (Alame helie, 1992).

B) Evident retrieve his evidence

Ebn hamzeh tosie in Alvasile book said: when evident return of their evidence there are three shape, if they return before commandment leaving, there is no problem, if they return after commandment leaving and before rule accomplishment, commandment become futile but if

they return after rule accomplishment they must pay damage and if they are several persons, damage divides between them (Ebn hamzeh tosie).

C) To prove that evident said lie

Fakhr Almohagheghin in Aizah Alfavaed said: If we prove that evident said lie, they must pay damage and if commandment is murder, in this situation nemesis is destiny of evident.

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