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Extent of Governmental Decree Issuance: Comparative Analysis of Imam Khomeini and Shahid Sadr's Opinions¹

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Abstract of comprehensive

Research Paper

Scope of governmental ordinance, a discussion that is mostly discussed in the books of jurists under the title of "guardianship of the jurisconsult" (Wilayat-e-faqih), before Imam Khomeini were mostly analyzed under the title of dignity of enforceability and against the dignity of issuance in the jurisprudential books. Maybe the lack of tenure of government by jurists played a role in placing this discussion under this title in jurisprudence books. Therefore, we can't find a book that independently deals with this issue under the title of the scope of governmental ordinance. But there are two articles in this field: "*The scope of governmental ordinance*" by Esmaeil Ne'matollahi and "*The truth and the scope of governmental ordinance and its role in solving new issues of society*" by Mohammad Eshaq Shirdaghi. The first article dealt with the scope of the authority of the ruling jurist (Walyy-e-faqih) and the scope of the effectiveness of his ruling; however, it has not addressed the basic discussion that is the scope of issuing the rule of ruler. In the second article, has focused on the essence of the governmental ordinance and whether it is primary ordinance or secondary ordinance or merely enforceable ordinance. This article also has not addressed the scope of issuing of rule of ruler. The present article tries to analyze the scope of issuance of governmental ordinance that is prior to the essence of these rulings and the spheres of its influence. This is the main topic and other discussions in this field are its subtopics. By proposing the theory of the absolute authority of the jurist, Imam Khomeini opened a new

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horizon in Islamic jurisprudence and Islamic law. This horizon was the ability of the Islam to make systems and civilize. This ability depends on the authority to issue a governmental ordinance, with that scope that Imam Khomeini proposed. This authority gives the ruling jurist the ability to enforce secondary rulings by recognizing their themes and prevent primary rulings by recognizing expediency. This expansion that make Imam Khomeini unique in proposing this theory and enforcing it in the direction of strategizing and paving the way for Islamic law in the field of governance, had no precedent until then, except in the thinking of Imam Khomeini and perhaps the foundations of this thought can be found in the thinking of Martyr Sadr and his theory of the free zone (Mantaqat-al-faragh). Naturally, what legitimizes the basis of this theory and its scope is the legitimacy of the issuance of governmental ordinance from the point of view of intellect and tradition and having an enforcement guarantee. In general, there are three theories related to the scope of issuance of governmental ordinance, each of them has its own proponents and evidence. These three theories are: dignity of enforceability of government ordinance, dignity of issuance in free zone and dignity of issuance with recognizing the wise element of expediency. The third theory is one of Imam Khomeini's innovations. He put forward strong arguments for its admissibility and legitimacy, and by proposing this theory, he showed the dynamism and reliability of Islamic jurisprudence in the field of government. In the present article, due to the lack of an independent debate on the scope of issuance of governmental ordinance in the books of jurists, in order to independently analyze this debate and analyze its role and its relationship with the dynamism and ability of Islamic law and jurisprudence to answer questions in all individual and social fields; With the method of explaining and analyzing the issue and elicitation from related sources, we investigate these questions and uncertainties:

- How is the legitimacy of issuing these ordinances based on traditional evidences?
- Is there any intellectual reason for the legitimacy of issuing these ordinances?
- What is the guarantee of enforcement for governmental ordinances and is it permissible to punish against opposing these ordinances?
- What is the scope of issuing these ordinances? Is it limited to the permitted things, or does it include all obligatory and non- obligatory rulings?
- According to Imam Khomeini's opinion, what is the essence of the ruling?

After discussion and investigation, we came to these answers for the above questions:

1. It is permissible to issue governmental ordinances based on traditional and intellectual evidence.
2. These ordinances have the enforcement guarantee: the obligation of obedience and the permission of punishment against opposing these ordinances.
3. The scope of issuing these ordinances based on the theory of free zone is

limited to the permitted things. While according to the theory of absolute guardianship of the jurisconsult generally includes obligatory and non-obligatory rulings.

4. According to the theory of wilayat-e-hasba, governmental ordinances have enforceable dignity and in cases of expediency, the jurist is allowed to issue governmental ordinances within the general scope of obligatory and non-obligatory rulings. While the theory of absolute guardianship of the jurisconsult gives such permission and authority to the jurist from the beginning.
5. From Imam Khomeini's point of view, the essence of governmental ordinances consists of elements of time, place and expediency in jurisprudence.
6. The authority to issue governmental ordinances by the jurist based on the requirements of time and place and expediency shows the dynamism of Islam and its ability to answer questions in all times and places.

In this article the conclusion that we reach after the discussion and investigation is that the scope of governmental ordinances is something that Imam Khomeini dealt with independently in creative and innovative way. It is one of the hallmarks of his thinking. Imam Khomeini's view about Islam, on the one hand, in its dynamism, trans-temporal and trans-spatial, and on the other hand, in the accountability of jurisprudence for the administration of human life and society from birth to death, is certainly effective. A jurist who considers jurisprudence to be responsible for the affairs of man and society in all dimensions, definitely deals with theory design in the direction of its accountability, reliability and dynamism in relation to all times and places. By the way, what was noticed by the author in this article was the peak of growth and path-breaking of Imam Khomeini's theory in the administration of society and Islamic government; A matter that none of the jurists had paid attention to before him.

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