

**Jurisprudential-Legal Reading of Law-Abiding and Fraudulent Enforcement of  
Laws with an Approach Based on Imam Khomeini's Views**

**Mahdi Mollaie<sup>1</sup>**

Doi: [10.22034/MATIN.2022.320397.1987](https://doi.org/10.22034/MATIN.2022.320397.1987)

Dor: [20.1001.1.24236462.1402.25.99.5.9](https://doi.org/20.1001.1.24236462.1402.25.99.5.9)


**Detailed abstract:**

**Research Paper**

Legislators in different countries initiate laws in order to establish order in the society. The ideal situation is when the aforementioned regulations are formulated based on reason, logic, expediency and the needs of society and all citizens are law-abiding and law-abiding. Despite this, it is possible that people with different purposes, while maintaining the appearance of the law, fraudulently implement it and while making it soulless, get rid of the guarantee of its legal implementation. Dealing with fraud against the laws with the aim of neutralizing its harmful results in the society, over time, experts and thinkers of jurisprudence and law have made them propose the theory of fraudulent implementation of the laws. Fraudulent implementation of laws is resorting or not resorting to a legal tool, in order to get rid of the duties or benefit from the privileges of another law, in such a way that there is no legal enforcement guarantee for it in the law itself. For the precise definition of the institution of fraudulent implementation of laws, it is necessary to explain the logical connection between the goal and the means. In this regard, four situations are envisaged. In the first case, the goal and means are legitimate. This is the most correct state and the possible damages caused by it are permissible. In the second case, the goal and means are illegitimate. In the third case, legitimate purpose; But it is an illegal means. In the fourth situation, the goal is illegitimate and the means is legitimate. Undoubtedly, the fraudulent implementation of laws is in this case. Here, a person uses another law to get rid of the duties of the second law. According to the above theory, if an action meets the mentioned conditions, the beneficiary can request the court to declare the legal action resulting from the fraudulent action as "indefensible" in some respects. In other words, according to the above theory, the fraudulent person cannot rely on the legal effects of the contract or fraudulent performance against the victim, which caused the victim to be deprived of his

---

1. Assistant Professor, Department of Law, Faculty of Management, Shahrood University of Technology Shahrood, Iran. E-mail: [Mahdi.Mollaie@shahroodut.ac.ir](mailto:Mahdi.Mollaie@shahroodut.ac.ir)

 0000000229520312

rights; However, due to the validity of the legal act, the aforementioned has the right to invoke other legal works against the injured party and other persons, and is reciprocally obliged to adhere to all possible obligations towards the injured party or the contracting party in good faith, and they can claim their rights. And the obligation of the fraudster to fulfill the obligations, rely on the validity of the fraudulent legal act. This issue is important because the progress of a country depends on rule of law. A basic question is raised here: Is the theory of fraudulent implementation of laws accepted by scholars and lawyers? What is the opinion of Imam Khomeini (RA) about it? In order to answer this important question, the combined method of hermeneutics, description and theme analysis has been used. Hermeneutics is a type of interpretive methodology that aims to methodize the interpretation of all the meaningful actions of people and the results of said behaviors, especially when they appear in the form of text. The mentioned science deals with the "process of understanding a work" and examines the way of receiving the concept from various phenomena such as speech, actions, written and artistic works. It seems that there is an ultimate meaning and final understanding of every work; The interpreter's duty is to try to understand the work, analyze various signs and modify the interpretation method to reach the final meaning. Hermeneutics has different approaches. In the approach of objectivism, the existence of fixed and unchangeable meaning is a basic principle. In Skinner's intentional hermeneutics, in order to analyze jurisprudential and legal thoughts, reconstructing contexts in order to discover the author's intention plays a fundamental role. Thematic analysis is a descriptive strategy for finding patterns from qualitative data sets. In the analysis of the theme, the researcher provides a comprehensive map of the mentioned themes by extracting the components, structural codes and key points and analyzing them. In terms of the history and background of the research, despite the importance of the subject, a comprehensive study has not been done in legal books and only scattered researches have been conducted regarding similar concepts. In jurisprudence books, most of the obligatory rulings of the subject in question are stated in terms of sanctity or permissibility of fraudulent acts, and the legal effects of fraudulent legal acts in terms of the validity or invalidity of the contract and the elements of the aforementioned institution have not been independently examined. Accurate demarcation and theorization of the institution of fraudulent implementation of laws from other similar institutions such as abuse of law, abuse of rights, collusion and formal contract, civil responsibility, legitimate skills, public order and good morals for the first time on the one hand and a comprehensive analysis of theory elements Relying on the thought of Imam Khomeini, using the method of theme analysis and hermeneutics, on the other hand, it is considered one of the innovations of this article. According to the results of this article, the general theory

of fraudulent implementation of laws in Iran's jurisprudence and subject law system has been acknowledged as an independent institution, and the inability to rely on fraudulent practice is considered a guarantee of its exclusive implementation. The efforts of scholars and lawyers have led to the establishment of an independent and moderate institution. Imam Khomeini's thought and way of life shows that while emphasizing on the formulation of Islamic and just law and the accurate and correct implementation of Sharia laws and rulings, he forbade cheating on laws and rulings and advised everyone to obey the law and rule of law. According to the findings of this research, if the court considers the case as one of the examples of the theory of fraudulent implementation of the laws, it is proper to declare the fraudulent behavior towards him indefensible at the request of the person affected by the fraud. Theory of fraudulent implementation of laws While dealing with trickery and fraud, it has many social, legal, cultural, and economic effects, and the rights of everyone around, including the injured person, the party in good faith, and the community are protected. It is suggested that the legislator approves a law in this regard and declares the status of the fraudulent implementation of laws as "inability to rely on fraudulent legal action"

**Keywords:** Imam Khomeini's thought, legal requirements, fraud, trick, legalism.

---

#### COPYRIGHTS

©2023 by the authors. Published by Research Institute of Imam Khomeini and the Islamic Revolution. This article is an open-access article distributed under the terms and conditions of the Creative Commons Attribution 4.0 International (CC BY 4.0) <https://creativecommons.org/licenses/by/4.0/>

---

