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Abstract

Expediency is an issue with a legal and jurisprudent nature and tone. The Expediency Council in the Islamic Republic of Iran has a political nature and is traced back to constitutional law as well. The basic question of the present research is to answer this question: what is the status of the expediency and its effects in the laws of Shiite and Hanfieh laws and the statute book? The basic assumption in answering this basic question is that Sunni jurisprudence, due to historical and ideological reasons, compared to the Shiite jurisprudence and statute book, has had more tendency to design and review of expediency as a way of fulfilling the decrees of Shariah. The research results showed that expediency is considered valid as a reason for deducing the religious decree for many Sunni jurisconsults which is interpreted as divine expediencies; however some Shiite jurisconsults don't consider them valid and it does not have a status for them in jurisprudence because they argue that divine expediencies which are among the suspicions following which is forbidden by god and there is no reason for it's being valid if it's not traced back due to the Quran and Islam or due to rationality. Such expediency is not applicable in the texts of Shiite jurisprudence and if a case similar to divine expediency is found in Shiite jurisprudence is certainly considered as expediency or it is generally complied with evidences and determination of subject.

Keywords: Expediency, Divine Expediencies, Shiite and Hanfieh Jurisprudence and Statute Book.
Introduction

Expediency is associated with peace and means benefit and anticorruption and sometimes a thing that leads to benefit and advantage when authorized and when it is applicable due to some cause. Expediency is one of the titles which have important statuses in the Islamic jurisprudence and its association with religious decrees is clarified while determining its concept and it specifies the authorities of the prudent leader. This concept can be discussed and reviewed from various aspects and dimensions and jurisprudent meditations have a long history in Islamic religions especially Shiite jurisprudence in terms of some of its theoretical dimensions. Newer interpretations of this concept and its applications in the domain of policy and governance are relatively new and don't have a long history and have been discussed and reviewed widely in the period of Islamic Republic of Iran and mainly by Imam Khomeini. This is only due to the lack of experience of formation of governance by Shiite jurisconsult in a long period throughout the history; whereas the application of "expediency" has been around longer in the jurisprudence of Sunnis given their special theoretical decrees (Farahidi, 1993).

The fact is that the discussion of jurisprudence and expediency is a comparable, interreligious discussion and a jurisprudent philosophy. The decree of the necessity of paying attention to expediency in jurisprudence has not denied any of the religions; also, none of the Sunni religions, even Malekieh, absolutely accepts expediency (Poor Hashemi, 2002).

Additionally, in political jurisprudence, expediency is a concept which is mentioned in all of the decrees and orders of Islam, whether constant or variable and regulations such as priority of the most important compared with the important, necessity of maintenance of the basis and decree of Islam, necessity of maintaining Islamic governance are the outcomes of this important regulation of the political jurisprudence.

From the perspective of political jurisprudence, expediency is traced back to "maintenance of religion, rationality, self, generation and property" and whenever any of these are the case, the prudent leader can cancel some of the secondary decrees of Islam temporarily so that the general expediency of the Islamic society would be realized (Kookhayi, 2011).

Undoubtedly, one of the secrets of immortality of Islamic Shariah is the presence of the element of expediency in it. The issue is this: what are the decrees of expediency and its application in political jurisprudence and Islamic religions? How is the status of validity of this rule in jurisprudence? In what way the governmental jurisprudence is based on expediency? Is the discussion of the rule of expediency in Shiite jurisprudence has been tended towards formation of political system only because of our need or is this rule deep and old? At the time of
the conflict of general expediency with a jurisprudent offshoot, what solution shall be selected? What is the role of experts, the council and so on in discovering the expediency?

There are various types of this concept due to presence of various meanings and dimensions in the concept of expediency have to be reviewed for expressing it and determining the status of expediency in Islamic religions and jurisprudence. Therefore, in this study, it has been attempted to review the status of expediency and its effects in the laws of Shiite and Hanfieh jurisprudence and the statute book.

**Primary assumption**

The Sunni jurisconsults, due to historical and ideological reasons, compared to the Shiite jurisprudence and statute book has had more tendency to design and review of expediency as a way of fulfilling the decrees of religion.

**Secondary assumption**

1. Status and role of expediency is deducing the religious decrees and governmental decrees and reviews issues such as: recognizing the concept of expediency, following the decrees of expediencies and corruptions, expediency in the manners of the holy figures, recognizing the concept of governmental decree and so on.

2. There are various types of this concept due to presence of various meanings and dimensions in the concept of expediency have to be reviewed for expressing it and determining the status of expediency in Islamic religions and jurisprudence.

**Research methodology**

In order to gather the basic information and the theoretical decrees, in terms of purpose, the library method was used for which purpose the reference libraries and social and penal laws, associated articles, databases and the available documents associated with the purpose of reviewing the status of expedience and its effects on the laws of Shiite and Hanfieh jurisprudence and statute book were used and notes were taken. In this research, the purpose is to review the status of expedience and its effects on the laws of Shiite and Hanfieh jurisprudence and statute book and the theory was searched and studied by using descriptive methods of argument, interpretation, deduction and comparison. Also, this study reviews the issue by using document methods and by using the rules, regulations and theories of the lawyers.
Research literature

Hassanpoor (2011) has reviewed "concept of expediency and its status in the legislation system of Islamic republic of Iran" in his article. In this study, it has been mentioned that the disagreement between the Islamic Parliament and the Guardian Council, in terms of the approvals of this parliament in some cases, leads to insisting each of the two mentioned controlling and legislative institutions, he has came to his conclusions. Repetition of this condition where the constitution law has been silent in this field requires a solution. Therefore, with the order of the holy Imam, the Expediency Council was formed. The legal status and performance of this new institution entered the constitutional law in 1989 in its reformations. Emadi (2011) has conducted a research called "review of expediency in the Shiite political jurisprudence". In this study, it has been mentioned that expediency is associated with peace and means benefit and anticorruption and sometimes a thing that leads to benefit and advantage when authorized and when it is applicable due to some cause. Expediency is one of the titles which have important statuses in the Islamic jurisprudence and its association with religious decrees is clarified while determining its concept and it specifies the authorities of the prudent leader. This concept can be discussed and reviewed from various aspects and dimensions and jurisprudent meditations have a long history in Islamic religions especially Shiite jurisprudence in terms of some of its theoretical dimensions.

Taheri and Khosravi (2012) have reviewed the "jurisprudent decrees of expediency and its status in the constitutional law of the Islamic republic of Iran". In this study, it has been mentioned that expediency means "attracting advantage and avoiding disadvantage" and it is one of the issue prominent in Shariah and it is recently considered as statutory law which has been accepted in Islam but also in all religions with various names and shapes.

Legal and jurisprudent decrees of the Expediency

In order for the clarification of the jurisprudent and legal expediency in the Expediency Council, a brief overview of some keywords of this issue is required.

Definition of expediency

Expediency is rooted in "good" and good is anticorruption (Zomokhshari, 2007). For example, when it is said "that thing become well"; it means that its corruption was eliminated. What is intended by expediency in the technical terms of jurisprudence is not only attracting advantage and avoiding worldly disadvantages, but it also means maintaining the objectives of Shariah such as religion, self, rationality and generation (a few researchers, 2002). Expediency is divided into two groups in terms of durability and continuity: constant expediency and variable
expediency. Constant expediency is always there and survives as time passes. Thus, decrees that are associated with these expediencies are also constant; such as prayer obligations which are necessary for anyone to do if the conditions are right. However, variable expediency can change in the substrate of time and place and in proportion with the two; therefore its decree shall also be variable. Imam Sadegh said to one of his companions: "if this year I told you general traditions and the next year you came to me and I told you the opposite, which will you consider when you are acting?". His companion said: the new tradition. Imam said: "God bless you" (Klini, et al. 1986). As it is seen, Imam considers the later order to be more influential since it has been said with the new conditions; because each time and place has some requirements in terms of action which shall be considered.

Ways of achieving expediency

Now, we mention some ways of achieving expediency:

1. Custom: custom is the traditions and customs common in public and is caused by their individual and social expediency and the legislator has not announced his disagreement with that too.

2. Manner of the wise: if the wise people agree on something due to attracting advantage or avoiding disadvantage since they are "wise" and this agreement is not opposite of the theory of the legislator, their opinions is valid in Shariah. Therefore, the human interpretations which are provided with the motivation of maintaining public expediencies are valid and valuable. And in order to maintain the system and to avoid its disorder, it is necessary for the Manner of the wise to be desirable for the legislator too and that is why, in some cases, the secondary decrees govern the first decrees because of having stronger expediency and maintain the social system of mankind and they are the priority at the time of conflict. Of course, custom might loosely be called Manner of the wise as well (Velayi, 2008: 127).

3. The "La zarar va la Haraj" rule: in Islam, being harmed and harming others have not been forged: "la zarara va la zerara fel Islam" (Shaykh Horre Ameli, 1988: 14). And god has not regulated a decree for sin: "ma Yoridollaho leya'jalala alaykom men haraj" (Ma'edeh, 6). Therefore, in Islam, decrees that require hardship and sin, have not been forged; because the intention behind forging decrees is to provide a plan for life and guiding mankind towards happiness which has went through the road of the divine target and objective with ease and continues down the road by committing to good deeds.

Expediency in Islamic governance

According to Shariah and constitutional law, the prudent leader can give some responsibilities to others. The great and prudent lesaer determines the general frameworks and
lines of movement of the country and in identifying the expediencies, he needs experts and specialists; because a person cannot enter all of the economic, governmental and political issues and give his opinion without consultant. Accordingly, Imam Khomeini gave the responsibility of identifying expediencies to the expert institutions among which are the Guardian Council and the Expediency Council. Determining six of the jurisconsults of the Guardian Council for leadership tasks whose responsibility is to comply with the approvals of the parliament with the constitutional law and Shariah so that the expediencies of the country and Islam shall not be forgotten as well. The Expediency Council also announces the final opinion in cases when there is a disagreement between the parliament and the guardian council. In addition to his order to form the council, Imam Khomeini announced that: "these men shall consider that expediency is one of the important affairs neglecting which sometimes causes the failure of the dear Islam. Nowadays, the Islamic world considers the Islamic republic of Iran as the display of all of the resolutions of his problems. The expediency and people are important affairs resisting which might question the Islam of the barefoot on the earth in the short and long time...". Undoubtedly, the jurisprudent basis of the establishment of the council shall be traced back in the thought of Imam Khomeini who considered the necessity of maintaining the Islamic system and religion to be a rational necessity; a necessity which shall be executed as a very important decree when in conflict with other decrees (familiarity with the constitutional law of the Islamic republic of Iran, P277).

It is necessary to say that the intention of the Expediency is to maintain the system and maintaining the system means guarding Islam and also regulating the institutions and structures within the society and creating a rational and logical relation between structures and people and the outcome of this order is peace and safety of the society. Imam Khomeini, in the book "Ketab al-bey"’, says: "execution of divine decrees is not possible other than by maintaining the system so that there would be no chaos. Maintaining the system is one of the most significant obligations and people shall avoid disorder and dispersion and chaos of the society" (Imam Khomeini, 2000: 619). Thus, maintaining the system has the intention of executing the divine decrees. The most important application of this maintenance is social justice which is compatible with the spirit of Shariah. Imam Ali says: "certainly, the best sedative of the heart and the eye of the leaders is developing and establishing justice in the country” (Sharif Al-reza, 1993: 433).

Maintaining the system depends of expediency evaluation and expediency means maintain the objectives and targets of the holy Shariah of Islam just as the decrees are based on expediency and corruption and all of the divine orders have been issued based on these criteria. In the tradition of the holy prophet and the manners of the innocents, we have several governmental decrees which are issued based on the requirements of time and place and have the intention of maintaining the expediency.
Responsibilities of the Expediency Council

The responsibilities of the Expediency Council can be classified as follows:

a- Solving the disagreements of the parliament and the Guardian Council according to the principle 112: the text of this principle is as follows: "the Expediency Council is formed with the order of the leadership for identifying the expediency in cases where the issuance of the Islamic parliament is considered as opposite the rules of Shariah or the constitutional law by the Guardian Council and the parliament do not provide for the Guardian Council by considering the Expediency and consultant in matters which are given to them by the leadership and other responsibilities which have been mentioned in this law. The constant and variable members of this council are determined by the leader. The regulations associated with the council will be provided and approved by the members themselves and they will be confirmed by the leader". Accordingly, this principle of the constitutional law, the council is formed with the order of the leader and its members and chairmen are determined by the leader himself. Thus, the council shall be considered as one of the institutions depending on the leadership institutions in which the three forces do not directly intervening in any way.

b- Consultation in affairs which are passed by the leader, which include consultation with the leader in determining the general policies of the system and consultation with the leader for reviewing the constitutional law. What is meant by the general policies of the regime is the inclusive policies and policies and objectives based on which the three forces; the government (the executive force), the parliament and the judiciary make their decisions. In other words, general policies mean policies and objectives in economic, political, cultural and governmental dimensions.

c- Solving the problems of the system which cannot be solved with normal solutions. In this case, the leader acts through the Expediency council; in such way that the council develops the related law in the problems of the system after getting the permission of the leader and the approvals will be executable after the leader's validation.

Role of the Expediency Council in legislation

One of the issues which have been encountered by the legal and political assemblies after the foundation of the council and has been the focus of the conflicting ideas is what is the role of this Supreme Consultation institution of the leader in the legislation process? And in other words, does the Expediency Council basically have the right of independent legislation or not? Because of the following causes, it can be said that the Expediency Council does not have the right of independent legislation:
Firstly: legally, in none of the principles of the constitutional law, no sign of the council having such permission is seen.

Secondly: in terms of origin of foundation, where it is mentioned: "the Expediency Council for solving the problems of the system and consultation with the leader in such way that no other force has power...". In this order, Imam Khomeini expresses the most important responsibilities of the council without referring to the authorities of legislations. In addition to the fact that this has been his concern that the council shall not be a secondary to other forces so that the council would not be considered as the fourth branch and naturally, if it was supposed to be in line with the other branches, it is closer to the legislation branch than other branches and it intervenes in legislation. However, these cases were negated explicitly by the founder (Malek Afzali, 2007: 83).

However, sometimes in the position of solving the disagreements of the parliament and the Guardian Council on one or some articles of a law, the council attempts to reform, correct, change or eliminate the other articles. In article 28 of the internal regulation of the Expediency Council (approved in October 24, 1997 and supported by the great leader in November 25, 1997) it has been mentioned that: "in cases of conflict between the Guardian Council and the Islamic parliament, which lead to the reformation of the article or the articles in conflict, the council will apply these reformations as much as it is necessary".

It seems that in article 29 of this regulation, the content of the article above has been repeated; except that getting the great leader to agree with such reformations is considered to be necessary. Also, in article 187 of the internal regulation of the parliament about the process of the working cycle of the parliament, the Guardian Council and the council, it has been mentioned that: "the council is obligated to absolutely comment in cases of conflict and other cases associated with it and report it to the chairman of the parliament for the next steps to be taken". It is clear that the attempt of the council in this respect is not legally considered as legislation; because although the subject of review are the council, identifying the expediency and solving the disagreement between the parliament and the guardian council; but the ultimate opinion of the council is nothing but one of the following three assumptions: either the approval of the council confirms the opinion of the parliament or it confirms the opinion of the Guardian Council or it provides a third opinion as expediency. It is natural for the article or the articles in conflict to be reformed, changed or corrected which will not bring a problem to mind and not only the council is qualified to identify the expediency and it is not necessary for confirming the opinion of the parliament and the Guardian Council but it might even think of an expediency which has not been achieved by the parliament. However, this issue shall be considered that the Expediency Council has the authority of dependent legislation based on the 110th principle of the constitutional law in association with solving some of the problems of the regime which are
ordered by the great leader and it can incorporate reform or approve some laws; because in the eight paragraph incorporated with the 110th principle, the title "solving the problems of the regime" gets the permission of the Expediency Council to intervene in any of the authorities of the three branches in any case without mentioning the evidences in general and the phrase "it cannot be solved through normal methods" paves the way for any kind of avoidance of the system regulated in the constitutional law. In fact, it can be said that even in such cases, the Expediency Council does not directly attempt to legislate, but it is consulted with the leader and he announces his opinion; because in fact, according to the 8th paragraph of the 110th principle of the constitutional law, resolving the conflicts is the authority and responsibilities of the leader which is done by the Expediency Council (Hashemi, 656: 1999).

Conclusion

Expediency is one of the titles which have an important status in the Islamic jurisprudence. The role of jurisprudence is undeniable as the supporter of the jurisprudent decrees and the words of the great figures and Ash'arites who naturally deny the advantages and disadvantages and the decrees are canceled and rejected in opposition to the opinions of famous thinkers and due to various reasons.

Expediency is sometimes considered as the indication belonging to the jurisprudent decrees and it is expressed that jurisconsults consider such status for expediency and have referred to it in various jurisprudent offshoots. Surely such expediency is not unconditional but it has some specific features and these features shall be expressed by verbal and rational reasons and have to be considered.

Expediency is considered valid as a reason for deducing the religious decree for many Sunni jurisconsults which is interpreted as divine expediencies; however some Shiite jurisconsults don't consider them valid and it does not have a status for them in jurisprudence because they argue that divine expediencies which are among the suspicions following which is forbidden by god and there is no reason for it's being valid if it's not traced back due to the Quran and Islam or due to rationality.

Such expediency is not applicable in the texts of Shiite jurisprudence and if a case similar to divine expediency is found in Shiite jurisprudence is certainly considered as expediency or it is generally complied with evidences and determination of subject.

Suspicious divine expediencies for whose validity there is no reason, cannot be compared with the governmental decrees have with valid and absolute reasons and also with rational reasoning which are based on the absolute decree of rationality and there is no similarity between the divine expediency and governmental decrees and rational reasoning.
To conclude, among the three statuses which were mentioned for expediency in Islamic jurisprudence, the first two statuses are accepted by the Shiite but the third status which is based on the opinion of Sunni jurisconsults is rejected by the Shiite ones.
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