SAHIH and AAM in transactions with the approach of Imam Khomeini

Farahzad Joursara*
Department Law and Jurisprudence, Babol Branch, Islamic Azad University, Babol, Iran
*Corresponding Author Email: f_joursara@yahoo.com

Ali Faghihi
Department Law and Jurisprudence, Babol Branch, Islamic Azad University, Babol, Iran

Abstract

In this paper, the goal of which is verifying SAHIH and AAM in transactions with the approach of Imam Khomeini, first we will discuss in introducing this debate and its role in the principles of jurisprudence and will bring the methodically debates, then transactions terms and null and correct transactions will be researched, that Like many other jurisprudence topics has been attract less attention. In this section of Imam Khomeini's views on the topic of transactions is used during some of the issues of jurisprudence or principles like religious truth or ambiguous and suggests that have been implicitly subject to debate. Imam Khomeini raised this argument argued in his book independently and under an independent title that is SAHIH and AAM and most of the principles discussed this topic under this heading in their own book.

Keywords: Imam Khomeini (RA), SAHIH, AAM, transactions, religious truth.
Introduction
SAHIH and AAM debate is one of the important issues in Islamic principles. More jurisprudents, before entering the main discussion topics, propound some topics as an introduction. The reason is that these arrangements are not considered under principle science. Rather, it includes a number of side issues which their main position are in other sciences but these topics are mentioned incomplete and concise in that science or they are not mentioned at all. Principles fans call these premises as “basic principles” that one of them is SAHIH and AAM. These introductions are called principles because Sharia precepts is not dependent for them, but learning some things such as KHatab and MOHAVERE is dependent for them. Discussing about SAHIH and FASED are introduction of SAHIH and AAM. Lexical and customary meaning of these two are complete and incomplete (Mortazavi Langroudi, 1997, P259).

Introduction of SAHIH and AAM
SAHIH and AAM is assigning worship and transactions words for their correct meaning or correct and null meanings. The meaning of the words of worship, such as crops and Zakat, and transactions such as the sale in the application legislator, its correct meaning; This means that the worship and a transaction that its components are full, So that the use of the term in the incomplete sense (in the absence of valid component or condition) will be allowed, or its purpose is whether correct or corrupt. In some Sciences special meanings are presented for valid and null, For example, in jurisprudence, the right to worship is said to a worship that have no recourse and renewing and valid transaction is said to some transaction desired effect applies on it. For example, the correct sale is a sale that makes the seller owner the price and the customer owner of the sales. In theology the say that: valid, is an act that is according to the sharia and in medicine it is Moderation in bowel and corrupt is against it (Hashemi Shahroudi, unknown).
The late Akhund Khurasanisays, SEHAT among masters of these sciences Means integrity, and corruption means the loss and believes that this difference in interpretation are because of effects and purposes in any desired science (ibid, ,52). SAHIH and AAM in terms of transactions.
We will follow the discussion in two contexts:
The first place: to say that the names of the transactions are reasons
It means the names of the transactions is for effective transactions (affirmative and accept) (Mortzavi Lankaran, 2002).

This position consists of two forms:
The first position: Mohageg Khorasani religious and practices differences are not in the sale concept but the difference is in the case. On this basis, we can easily grasp this method when we doubt on participle or conditioning. Because law maker has said: Allah has permitted sale, and a sale in mystics is like sales for law maker and the only difference between them is in case. So if the custom call the prison transaction, transaction too, or call a transaction which is not in Arabic a transaction too, so these are transaction for lawmaker too, because we said that there is no deference between customary and religious in the sale concept (Khorasani, 1999).
Second position: if we say that the deference between religious and practices is in the context, it will be a little difficult. For example the law maker says: sale is where the object of sale is clean and is not unclean like pig or must have allowed benefit. In this case the sale is different form sale in custom and we do not know without a prior of offer on acceptance the sale is acceptable for Islamic law maker or no (though the sale is the norm). So even if we likely that these terms are different in sharia cannot act suspicious in terms of generalities (If
we be sure that the words of sharia are different, there is no doubt that we cannot act
generalties .the topic is about suspiscious).

**And which can be said to solve this problem:**

Sheikh has mentioned this before the sale topic and the sum has two introductory remarks:

First introduction: law maker wants to approve the custom sale by telling “Fulfil to your
transactions “or “Allah has permitted sale” , then has omitted some cases with reasons like
sale of Alcohol, pig and gambling machines (Mortzavi Lankarani , 2002). The second
position: this is that the transactions names are for cause of the names (things that result in the
sale contract by means of property). In the second place, we say: suspiscious is in two forms:

Sometimes our doubt is in assigned. This means we know that sales is the name for an
inheritance and marriage is the name for parity And that the holy legislator has approved all
sales but likely has prohibited hanging sale, Sometimes doubt is due to whether it is there any
condition in cause or not, for example we are not sure whether the law maker has conditioned
the priority of offer or sureness (Parvazi, 1996).

We believe that we can appeal generalities in causes too. (In discussing the causes, the reason
of appeal was that the cause in custom route to reason when Sharia, but what came out at night) but in our dissection that the transactions name is for causes we say that the reason of
peal is that law maker has approved the causes and this is a sign for his acceptance of the
causes. (In causes discussing we used routing and in under cause discussing we used concomitant) so if something is sale in custom we say the approving of the custom cause with
signing the lawmaker unless something that goes out of that with reason, if is not approved
verses and traditions will be canceled. So in transactions we can use generalities whether
transactions names are from causes or from under causes, so if the legislator has excepted
usury sale, and doesn’t approve it as definite, then we can use generalities and say that
decisiveness is not necessary in sale and suspended sale is correct too (Mozaffar, 1998).

Mohagheg Naiini in this tipis that the transactions names is for under cause has mentioned
some differences and says: if the under cause has only one cause in custom or if it has some
causes and there is not any defined one among them and all are involved, in this case,
approving the under cause is associated with approving the cause. Of course his explanation is
for second category (where the doubt in under cause is because of the doubt that there is any
other condition or not) but if there are different causes that some are definite and some are
not, we can’t peal to generalization but should just enough to sure. Because definite is as an
explanation that has come from legislator (Abde Saleh, 1983).

MAGHAMIE generalizations are some constraints within that tradition does not pay attention
to them. Custom pays attention to something like intention of complying but doesn’t pay
attention to something like act attention that means an act for necessity or recommendation
and so intent on understand (distinguishing obligatory than recommended) and so on. These
are concerned by philosopher not custom. If legislator made the distinguishing intent
necessary in worships, then it should be stated because otherwise the norm not pay attention
to them. Now that the legislator did not mention them, we can understand of his silence that
these are not necessary. If something was important in religious terms, but was not considered
the norm, such as in the case of divorce must be said: you are divorced. In this case, the sharia
should express and with no expression, when there is some suspiscious, will allow as to act
according to MAGHAMI generation (Discussions between the two sides that do not know
what is unclean says : It is said that if you want a quick obedience we can no longer
distinguish obey intend and distinguish intent so quick obedience is not valid. Then says as
an answer, this obey and distinguish intend is not necessary because the MAGHAMI obey is
removed here.) (Lankarani, 1999, 165). In short, in the names of transactions we can use term generations (because of routing and conditioning) of course we can use MAGHAMI generals too and the outcome is that we will omit the suspicious and conditions.

**Proof of religious truth in transactions**

Discussing about SAHIH and AAM is subject to proof of religious truth but in transactions we don’t have any religious truth. Transactions are some relationships among wise and sharia only defined it. Because of that there is no religious truth for transactions, transactions are some religious truths that sharia have approved them and have wise relationships have been signed by the sharia. Moreover, if we don’t accept the religious truths in transactions the answer is that the religious truths are enough and transactions are religious truth with no doubt. Muslims juristic traditions have been recorded as religious truth from Imams (AS) and his companions and followers time (Ebn Shahid sani, 1977). The independence of SAHIH and AAM from religious truths .The quarrel image according to first quotes (proof of religious truth)

The quarrel image according to first quote is completely clear and even some people who believe that the discuss of SAHIH and AAM is and independent say that only some people who believe in religious trut can take part in SAHIH and AAM discuses , therefore, this issue is clear and needs no explanation (Khorasani, 1999).

The conflict between the SAHIH and AAM is in whether the words of worships and transactions contains SAHIH or is AAM FROM valid and corrupt? The quarrel image in SAHIH and AAM discussions according to promise is clear from proof of religious truth, with the expression that when legislator wanted to impose terms for religious meanings, For example, when imposing the term “SLA” to pray, if expressed it for a complete and valid pray or for all pry or for both the right and corrupt ones (not and qualified). The quarrel image according to second quote (Denial of religious truth) .Some people deny the religious truth and say that legislator has not imposed worship and transactions words for religious meaning, but these words are used by founder and by a contextual help, figuratively in religious meanings (Khorasani, 1999). It may be said that according to some opinions for denying the religious truth the conflict between SAHIH and AAM does not make sense and some people have used words OF late AKHOUND in Kefaee because he said at first that “at last what is possible can be said in the subject…” that means hi expressed the SAHIH and AAM discussion according to deny of SAHIH and AAM opinion but has said at the end: “ And they have to prove such case” (ibid).

**Transactions names:**

*Transactions names are twofold:*

Some of them are tools names like “Fulfil your transactions” because transaction means “tug of war” in Arab word that means tying two threads together , this verse alludes to offer and acceptance, likely that two are like threads that tie them together. Some of our teachers have denied that this verse is related to the transactions. The owner of MASABEH AL MONIER said the contract is meant as an emphasized contract. Again Sheikh Ansari at the beginning of sale at the divination has achieved this meaning. According to this meaning the emphasized contract, contains some contracts like swear and promise and doesn’t contain contracts, because there is not any emphasized promise in contracts. We say, this is not true because Qur'an itself, in relating verses has called contract as offer and acceptance and say: If a man wants to divorce his wife and a dowry is also should be mentioned.” But that exempt or forgive whose marriage contract is in his hand “. The word “contract” has been called in marriage too. So the owner of MASABIH AL MONIER has defined contract by case and
clear (Shabani, 2003). Some part of contracts name is the under cause name, that means what is come out of offer and acceptance like (marriage is my tradition), marriage in this Hadis doesn’t mean offer and acceptance but is the outcome of the offer and acceptance or like (divorce is for someone who gets the ankle” or “Allah has permitted trading” and “Magistrate permissible between Muslims”. Contracts names means effective contract (offer and acceptance) (Nemati, 2011).

This position consists of two forms:
First form: MOHAGHEG KHORASANI believes that the religious and custom difference’s is not in sales concept but the difference is in the case. On this basis, we can easily apply generality when doubt in detail and conditioning, because God has said: “Allah has permitted trading” and sale in custom is like the sale in sharia and the only difference is in the case. So if the custom conclude the prison contract as a contract too, or call a contract that is not in past tense as a contract then these are contracts for holy legislators too, because said that there is no dispute between customary and religious law in the sale. Second form: if we say that the difference between practices and religious is in the in the context, we will face with some problems, for example the legislator says: sale is where the object is clean and should not be unclean like pigs and should have allowed interest. In this case the legislator sales is something other than sales in custom and we do not know without a priority of offer to acceptance, the sale is done foe legislator or not (though it is sale in custom) (Shabani, 2003). So even if these terms are likely to be different for legislator, we can’t act according to generalities in suspicious (If we be sure that the words are different for legislator, there is no doubt that we can’t act according to generalizes. Discussion is in doubt) (Nemati, 2011).

The terms of the transactions
Every transaction including contract or unilateral obligations have a cause and a under cause, what is meant by the offer and acceptance in contract and contract composition is in unilateral obligations. The under cause is the expected effect of this contract and unilateral obligation (for example, ownership is the effect of sale, and the parity is marriages effect and the separation is the effect of divorce (unilateral obligation).

There are two bases in a position of transactions:
A: The issue of transactions words is causes
B: The issues of transactions words are under causes

Now we say that on the bases of first issue, the conflict between SAHIH and AAM arises in transactions too in this form that if the words of transactions are for complete transactions only r for all including incomplete and partial ones , For example, if the contract has made for valid offer and accept or both correct and incorrect ones, but based on second issue ,there is no conflict for valid and corrupt because the cause (such as inheritance and marriage, etc.) are simple matters, and they realized or not-but there is good and bad in them (Nemati, 2011, 55).

The meaning of transactions and three types of them
Transactions are three meanings: 1- Transactions against worships which include contracts and unilateral obligations and laws and rules and Diya affair.2- Contracts and unilateral obligations. Had and Diya are called political among early scholars. 3- Transactional contracts that include the sale and lease only. From recent history researchers perspective, that is the correct meaning of transactions which are contracts that are traded and there is interaction between the two sides (Mousavi Khomeini, 1994, 170). The great leader says: if we believe that transactions names are for causes, the sharia’s view will be different from customs conceptually, and the difference is not in case. In terms of sharia a contract is an offer and an
acceptance with the common characteristics and it can be effective and there is not such a thing is custom. An offer and acceptance with these characteristics cannot be seen in practice so effective contract in sharia is something different from effective transaction in custom (Mousavi Khomeini, 1994).

His point of view is correct when the religious contract is different from custom one which all of contracts are contractual but differently after MOHAGEG SANI which is the founder of this view, we believed that contracts have two forms: Trading contracts and MUATATII contracts. So if we say that MUATATII contracts are lawful then the sharia and custom are the same, but it is different in trading contracts, first it is a contract in custom too but that is done in a short form, for example when speaking in the introduction of trading is in the contract’s truth and being in past tense, telling it in Arabic and special formula is not necessary. This getting and giving which is done in the first part of transactions by words, is contract. But being in past tense and Arabic is necessary in great leader’s opinion in marriage with all scholars, though there is any reason for this. So first the contract is done in custom, second transactions are MOATATI third there is a common idea that transactions accepted by sharia and when there is not a compliance, transactions won’t be accepted by sharia (Mostafavi, 2012).

Trading in Islam and custom has come in different meanings: trading in the narrow sense and trading in the medium between particular and general sense. Transaction in a general sense actions and tasks that the intention to become nearer to god is not valid in them even the real intent is necessary or not, such as clothing and body cleansing, sale and marriage and divorce Trading in the narrow sense, the actions and tasks that the intention to become nearer to god is not valid but need to give them the intention of complying parties, such as marriage. Trading in the medium between particular and general sense means actions and tasks that the intention to become nearer to god is not valid in them but the real intention is necessary at least from one side like divorce (Mousavi Khomeini, 1994).

The late Imam Khomeini also said: “sale is of meaning categories and not the term. Offer and acceptance (verbal) is not sales although they refer to. Words (offer or acceptance) is not reasonable to be effective in ownership, because ownership and parity and other than these two that have validity nature that are orthogonal to the credibility of the wise (take place and survival) and basically don’t have any truth and identity except this validity. Because it is necessary that the words of transactions become effective in wise people, though the foundation of validity is in keeping oneself, and it is not reasonable that make words of them, let alone the fact that the convention's terms. Is the perfect cause (Mostafavi, 2012, 121). Also in the modern tradition of Iran, the transaction is used as purchase and sale.

The sale word

The sale word, means the buying and selling and is of opposites thus, we may say” He sold this dress”, “I gave him and took the price” as this is said “He sold that outfit “,” I bought it from him and gave him a price “that the sale word is sale in first sentence and means buy in second one ((Louis Maalouf, 1983. 126) the late Sheikh Ansari has defined sale as “exchange of property to property” (Ansari, 1996:79) and after him a lot of scholars have chosen this definition. Imam Khomeini, after examining various definitions, have said in their sale book: “then the sale truth is exchanging of property to property” (Mousavi Khomeini, 1996). This means the sales fact is the exchange of property to property. Shahid aval has also defined sale

1 In English language the word “sale” is for buy and invalid, null and void are for corrupt and words irregular and defective are for spoiled, when explaining void sale, invalid sale, and defective sale and so on are used.
as “Offer and acceptance that leads to property exchange with an unclosed award.” This means the sale contract the offer and acceptance, indicating the change in the transport properties for a known award.” (ibid: 2).

Review the above definitions, the definition of Iran's civil law regarding the definitions of the definitions of Islamic jurists seems appropriate, Iran's civil law has defined sale as “owning property for a known award” (Iranian Civil Code, Article 238) and the owner of "law terminology" choosing this sense, added that the sum of salesperson and customer is sale as the act of seller alone is a sale too (Mortazavi Langroodi, 1989).

For sale have enumerated types, including: Sale (TOLEH, HAL, HESAT, KHIARI, RABAVI, SELF, SALAM, SHAYE, SHAKHSI, SHART, SARF, AGHDI, EINIE, GHARARI, GHEIR AGHDI, GHAT, KALI BE KALI, KOLI, MOAJAL, MOAJAL BE MOAJAL, MOHABATI, MORABEHE, MOSAVEME, MOSHAA, MOSAVAMEH, MOATAT, MADOM, MOGHAZABE, MOVAZAEE, MOUZOUN, NESIEH, NESIEH BE NESIEH, VAZIEH, VAGHF) each is reviewed in its place (Shahid Sani, third volume, 424).

The irregular word

The irregular word has meaning like spoiled and rotten. In Arabic the word is considered equal to invalid. The word void that its sum is insignificant is unjust, ineffective, vain, absurd and anti-right (Amid, 898). In Arabic Persian dictionary it is vicious, corrupt and little. The concept of the word is not far from literally means and consists of: “Any legal action against the legal provisions that the law doesn’t accept any legal effect on it, such as miner sale. The object of this legal act is invalidity that can be used in front of validity. Validity also includes uninfluenced. For example, contracting under reluctance, other contract on beside of person, are valid but uninfluenced (law terminology, no 805).

In Iranian law, the authors follow the Jurisprudence, void and corrupt contract was, are in a sense (Shahidi, 2007). But the Hanafi jurisprudence, these two titles are distinct from each other. Hanafi scholars view is quoted as: void is a contract the necessary elements are not met in it, and is Illegitimate in principle like gambling and insane marriage but a corrupt contract, is a contract that have the necessary elements and is legitimate in principle, but there is a corrupt in one of the elements that there are no eligible (legit mate from principle not in objects), such as a sale that its price is unknown (sobhi, 1968). Therefore, a corrupt contract that a void contract is one of them is a corrupt contract in itself, and void and corrupt contracts are equivalent in Shiite jurisprudence. Since the Corrupt contract lacks legal effect which is expected by the parties, if the subject of the contract surrendered to the other side, in accordance with Article 365 (civil law) which says: “Corrupt transaction has no effect on acquisition”, this acquisition is void and under Article 366 of civil law: “whenver a person acquire a property with a corrupt sale, must refer it to its owner and if it became lost or imperfect will be owned for it and its benefits.” Obviously, if the property become lost or imperfect he customer should be turned into the owner of the property; it is like of it in likely properties and in provable properties is its price, and if an act is done its wage and if a defeat or lose is done its compensation is to the customer. Because receiver of the property in this case is not the owner, unlike Trustee which not as long as he doesn’t do abuse or wastage, doesn’t have any responsibility for owner, jurists refer to two rule “principle and vise “for explaining trustee and not owner hand (Shahidi, 2007). The two rules are:

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2 Irregular, defective
Any contract that is liability by its valid will be liability by its corrupt, and any contract that its valid is not liability, it's corrupt will not liability too, here on the occasion of the debate of the crumbling sales, we briefly examine these two principles together.

Corrupt sale and in warrant rule

The most important result of corrupt sale, is the liability of someone who the property is in hand, the reason for his liability is this rule so we will discuss it as need. The plot of this rule by Shia clerics open at least to the fourth century AH. Among the scholars of this period that invoked this rule Shaykh Tusi (Tusi, 1972: no, vol 3, 85,243) and Ibn Idris helli (helli ,1853: 157) can be noted. Different reasons have made in IMAMIEH Jurisprudence for the “what make liability with its valid, makes liability with its corrupt too” or corrupt contracts of guarantee. Most important reason is “hand” rule that that almost all jurists who have provide proof of this has been noted this among the reasons. Another reason is “LA ZARAR “ Hadis , EGHDAM rule, Muslim property respect, stolen slave narratives, priorities, wise conduct, does not fit the right one and go Hadis and consensus.

Base on hand rule

This rule is based on the famous Prophetic Hadith that says: “On the hand that take it to the owner” Its reputation is such that nobody has doubts about it. Based on this rule a person who achieves a property under a corrupt contract actually take possession of another person's property and is liable for that property because of the generality of this rule, As a number of scholars have been noted, The word “on” means “the establishment” and the emergence of the establishment in liability is conditional decree and is not only for positive decree (Khomeini, 1984).

The ACT rule

According to this rule the receiver of the property from a corrupt transaction was obliged to submit the subject in the contract, so he proceeded to conclude a contract and that the transaction subject is not free and must give some price for it, so he warranted it. This idea has received some protests like, what parties has done for, is named price and sharia has not signed it and what we want to prove is the real price or the price of achieved property that the parties didn’t want it (Ansari,1996: third volume:189). In rejecting these forms of answers provided by some jurists, including the person wanted the named price and this action has two things: first acting for general price and second acting for given price. In other words achiever has promised that doesn’t get it without price and second specified the price in the contract talks. However, with the discovery of invalidity of the transaction the achieved liability has aborted only for specified price not the general liability. Therefore, the liability still exists and must pay the real price (itself or like) (Mousavi Khomeini, 1984s, first volume: 271, Katouzian, 1992).

Conclusion

Imam Ramah Allah believes that this excretions are neither consistent with custom nor terminology, because SAHIH sometimes is used opposite of void, corrupt and sometimes spoiled and etc. Apparently, there is a confrontational relationship of the conflict, between valid and invalid, while the opposition between complete and incomplete is of MALAKEH and therefore cannot mean the valid and invalid as complete and incomplete. Validity and invalidity are some subjects that are specialized to everything according to their external existence and with respect to general harmony with nature or lack of coordination. In transactions there is a cause
and under cause, for example the cause is doing the marriage words and under cause is the contract that happens and the consequence is the owning the sale subject and the price that the seller and the customer does. Imam Khomeini believes that sale is from mean not word, so when an offer and acceptance takes part in words it is not sale even if it is referred as sale.
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