



**International Journal of Biology, Pharmacy
and Allied Sciences (IJBPAS)**

'A Bridge Between Laboratory and Reader'

www.ijbpas.com

**AN INVESTIGATION OF GOVERNMENTAL INJUNCTION (PUNISHMENTS)
BY VELAYET-E-FAGHIH (GUARDIANSHIP OF JURIST)**

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ABSTRACT

Velayet-e-Faghihis a term for Islamic governance system, after the pure Imams. Velayet(Guardianship) means to govern society`s affairs and Velayet-e-Faghih (Guardianship of Jurist) is to rule the Islamic community by a person who has achieved the position of ijtihad (diligence) in Fiqh (jurisprudence) and is qualified with the necessary conditions of Islamic community`s leadership. The main essence of Velayet-e-Faghih includes “what should be done at the absence of Imam Zaman (ajtf)?”, “should Islamic nation be without any leader?”, or “should the leadership of tyrant be accepted?” or “should the best person in terms of knowledge, management, piety, and virtue be selected as the ruler of Islamic community?” the objective of the present paper is to find the answer for the mentioned questions. The required data has been gathered using library method by studying books, articles and related references in order to draw expected conclusions.

Keywords: Velayet-e-Faghih (Guardianship of Jurist), Absolute Guardianship of Jurist, Governmental Injunction, Islamic Ruler

INTRODUCTION

Velayet-e-Faghihis Velayat-e-Fiqh, knowledge and justice of him so that Velayet-e-Faghih also follows Fiqh and passed a command that he is also obliged to obey it. His command is operative until his justice is established. His command will lose its operability as his justice is disappeared. As infallible Imam (as) also obeys the commands of God and obeying the command of Infallible Imam and Vali-ye faqih (Guardian Jurist) is binding in order to ensure the chastity and justice of Vali-ye faqih (Guardian Jurist). According to the fifth principle of Iranian Constitution, in Islamic Republic of Iran, the nation is governed by the fair, pious, courageous, elite, prudent, and knowledgeable at the absence of Imam Zaman (ajtf), based on the 107th principle.

The well-known narration about Velayet-e-Faghih (Guardianship of Jurist) and its interpretation

The late Kulayni, relying on Omar-Ibn-e-Hanzale, narrates his question from Imam Saidq (as) asking that is it admissible for two Shia to refer to unfair judge in case of having any conflict about religion and heritage between them? Imam Sadiq (as) answered that referring to unfair judges is in fact referring to tyrant; so, the judgment which is based on his illegal command will be void

although the command is the certain right of one party, since the judgment is based on the decision of tyrant; while according to God's command, tyrant judge should not be accepted and recognized. Hanzale asked that what should be done then? Imam Sadiq (as) answered that it should be referred to fair Shia judges who obey Islamic commands and accept them as judge. Such people are assigned as judges and their decisions should be accepted and in case of rejection, God's command will be degraded and ignored and it is considered paganism towards God (Osole-Kafi, VI, p. 67; Vasaal-al-Shia, v18, p. 98). Therefore, Imam Sadiq (as) introduces referring to tyrant judges as unlawful and their commands are considered as void and null although they are correct decisions. Also, qualified jurisprudents are obliged to meet social and judicial needs of Shia. The phrase of "Such people are assigned as judges" clearly indicates the establishment of fair jurisprudent for government in all political, social and judicial affairs.

The difference between Velayet-e-Faghih (Guardianship of Jurist) and absolute Guardianship of Jurist

There is not essentially difference between sanctity of jurisprudent and absolute guardianship of jurist. The only difference is

associated with the attitude and the way of utilization of these terms. When guardianship of jurist is used without the adverb of “absolute”, it refers to governing the society’s affairs which is assigned to qualified jurist (courageous and fair) at the absence of Imam Zaman (ajtf) based on various Islamic versus and narrations. But absolute guardianship of jurist refers to the domain of sanctity of jurist’s authorities, deputies and responsibilities; otherwise, there is no difference in essence to prove the guardianship for qualified jurist and guardianship of jurist. According to Imam Khomeini (rah) ’s statement regarding the authorities of guardian jurist accepted by most of Shia jurists, jurist has all the authorities undertaken by infallible Imams but those attributes which are specific to them (infallible Imams) only such as chastity, creational guardianship and some authorities specific to the prophet Hazrat Muhammad (sal).

In other words, absolute guardianship of jurist means that if important social issues of Muslims conflict with one of their socially lower-graded basic principles of Islamic commands, guardian jurist who is responsible for protect superior interests of Islamic society can prioritize the important interests of society to the basic principles of Sharia.

For example, destroying mosque is unlawful in Islamic Fiqh (jurisprudence). Now, what should be done if a mosque is needed to be destroyed in order to make a street? According to the opposed view of absolute guardianship, the mosque destruction is not allowed merely due to socially important interest and it should not be destroyed until it is highly necessary. But based on the opinion of absolute guardianship, it is not necessary for Islamic governance to wait to some extent that mosque destruction becomes a critical problem. So, it can be stated that absolute guardianship is a principle removing conflicts and absolute guardianship solves the conflict between commands and socially important interests; absolute guardianship is restricted to some concepts such as interest, being social and being important, i.e. jurist is not allowed to act without considering the interests of the society.

DISCUSSION

Governance of the jurist

The plan of Islamic government based on guardianship of jurist proposed by Imam Khomeini at the climax of Pahlavi’s authoritarian regime created a certain and organized motivation in Muslims. Being Islamic is the fundamental feature of this revolution compared to other recent movements of Iran. This Islamic movement

paved the way for Muslim fighters inside and outside of the country. The goal of Islamic revolution is to grow human towards divine system in order to provide the opportunity of manifesting the talents and spiritual dimensions of human. Based on continuous pontificate, Constitution provides the opportunity of the qualified jurist's leadership recognized by people in order to guarantee lack of deviation of nations and organizations following their main Islamic duties. When jurist is qualified to establish Islamic governance, his authorities are similar to the authorities and responsibilities of the prophet and infallible Imams to manage society's affairs and all people are obliged to obey him. In other words, the considered guardianship is to govern society and execute divine principles. Islamic governor, whether he is the prophet or infallible Imams and/or their representative at the absence of Imam Zaman, is in charge of executing divine principles and commands. In other words, governmental authorities are related to religious and legal governance and these authorities are nothing but the necessities to manage society and all governments possess them. Guardianship of jurist has the same responsibilities determined by God for the prophet and infallible Imams with this difference that guardianship of jurist is not determined regarding a person and is

fix on the title of fair scholar (Imam Khomeini, Guardianship of jurist, p. 55).

To describe the theory, Imam Khomeini adds "stating that the guardianship at the absence of Imam Zaman is kept by fair jurist does not mean all jurists are the same infallible Imams since the considered matter is not position but guardianship; i.e. governing country and executing Islamic principles which is an important duty but not a superior and atypical position. Guardianship of jurist is an arbitrary and rational credit issue; when a person is assigned as jurist, there is no difference between the guardianship of the Prophet, infallible Imams and jurist. Governor is responsible to execute divine orders, whether he is the Prophet or infallible Imams or jurist (Imam Khomeini, Guardianship of jurist, p. 56).

The responsibilities assigned by God to the qualified jurist are similar to the responsibilities undertaken by the Prophet and infallible Imams including protecting Islamic commands from deviation, propagating and executing Islam, improving Muslims' affairs, guiding Muslims, defending them against tyrants, and establishing social justice. As fulfilling such activities offers an absolute power and government to infallible Imams, it also offers an absolute power to jurist governed society; otherwise, many commands

and principles will be suspended and cannot be executed.

Therefore, although favorable Islamic government is the government governed by infallible Imam, such favorable government does not allocate to the time of the Prophet and infallible Imams; i.e. Islamic commands are everlasting and should be executed at every time and place. At the absence of infallible Imam, the most similar government to his government should be sought. A government should be similar to the government of infallible Imam in three cases including: knowledge of Islamic commands and orders (jurisprudence), moral and spiritual competence, in such a way that it does not influenced by temptations, threats, and corruptions (piety); efficiency as the manager of society possessing the attributes of political and social understanding, awareness of international issues, courage against enemies, distinguishing preferences. Such person is the same fair jurist who is able to manage society at macro level; he is qualified to direct society toward favorable perfection. Such person is distinguished by experts and he should be obeyed as he established his government.

Accordingly, it should be noted that Islam takes the entity of government into consideration and makes plan for governing

society. Islamic government is a government in which the principles have been determined by God and all the determined orders are necessary to be followed. Islamic principles and commands do not belong to a specific time and place and all are executable at the absence of Imam Zaman. When these principles exist at the present time, there is a need of a government or entity to guarantee and execute the principles. Additionally, social system of Muslims requires an entity to manage the society and avoid any chaos. Moreover, protecting Islamic lands in which Muslims live freely and worship God is necessary rationally and religiously and defending their borders is not possible but through the responsible entities and organizations. Hence, guardianship of jurist is a necessity to establish Islamic government at the time of Imam Zaman`s absence. In *Al-Bai* book, Imam Khomeini stated that the reason of pontificate is the reason of establishing governance at the absence of Imam Zaman. Since Islamic governance is legal governance and it is governed only by divine orders and aims to expand justice among people, the governor should possess two attributes which are the base of each legal government including knowledge of Islamic law and justice. Accordingly, Muslims who are surrendered to God`s orders are obliged to

obey fair jurist in order to execute God's commands in society and move towards perfection and happiness. On the other hand, Islamic government establishment insufficient necessity for fair jurists. So, whenever one of jurists achieves to establish government (due to people's support), other jurists are obliged to follow him. In other words, it should be noted that undoubtedly, God has not left Muslim's society and presented the best government pattern at the time of the big absence, i.e. guardianship of jurist in Islamic society. In such period, western and other communities have been misled and selected kingdom and other incomplete and anti-salvation forms. Islamic religion considers guardianship of jurist as the best pattern of government the the absence of Imam Zaman. According to Imam Ali (as), the most qualified person to govern Islamic society is the most knowledgeable and the most powerful of them. As Hazrat Mumammad (sal) stated, scholars are the heirs of the prophets. Again, Imam Ali (as) stated that it is essential for people to select a virtuous, pious, fair, and knowledgeable leader for their society before fulfilling any action. Imam Sadigh (as) said that people should be careful to select jurist who follows Islamic commands.

Te authorities of guardian jurist

The governor of Islamic government is responsible to execute religious principles in Islamic society and all orders issued by him are called governmental commands. According to the definition provided by Allame Tabatabaei, government decrees are decisions enacted and executed by jurist based on religious principles and public interests. The so called principles are necessary to be obeyed and are reliable and valid just like divine orders. The only difference between these principles and divine order is that they are changeable based on the interests of Muslims. Therefore, Islamic principles are of two categories; the first category includes divine orders and religious principles which are constant and unchangeable, and the second category entails the decisions made and executed by guardianship based on interest. Notably, the principle 109 and the principle 110 of Islamic republic of Iran's Constitution have determined the conditions and attributes of leader and his authorities clearly. So, government decrees are issued by governor sometimes directly and sometimes indirectly, i.e. triple powers of legislative, executive and judiciary fulfill this task.

To make a better understanding about the mentioned definition, some examples of governmental decisions are presented:

1. Contracting Hodaibie settlement from the Prophet Hazrat Muhammad with heathens in the sixth year of Hijrat.
2. Exiling HakamIbn-e-As by the command of the Prophet Hazrat Muhammad (Abbas Ghomi, Safinat-al-Behar)
3. The command of MirzaShirazi to boycott tobacco. In this regards, Imam Khomeini said that the command of MirzaShirazi to boycott tobacco was a government decree and was necessary to follow for other jurists.
4. The command of MirzaTaghiShirazi to war against colonizers
5. Preventing Islamic republic of Iran from pilgrimages to Mecca and banning it for three years followed by wrong deeds of the governance of Arabia
6. The command of Imam Khomeini to execute apostate Salman Roshdi
7. The command of Imam Khamenei based on not to fabricate and use nuclear weapons

Guardianship of jurist and government decree are of fundamental principles and the stability and adornment of Islamic government depends on a pious and fair jurist governed the society and all affairs of people. As mentioned earlier, there are many reasons

indicating that Muslims` leader is a person guaranteeing the stability and adornment of Islamic government and keeps guardianship of Islamic nation. Verse 55 of MaedeSura is the evident of this statement. So, jurist of Islamic society should make careful decisions by considering public interests and his decisions should be followed and obeyed necessarily.

Islam is a natural religion. It encompasses both affection and anger without any tolerance. In Islamic government, guardian of jurist is assigned to fulfill this system and execute religious and enacted principles. Religious principles are affairs determined by holy legislator such as limits and enacted principles involve the principles specified by Islamic governor to manage society such as the principles related to drug use. In other words, government decrees entail a set of principles issued by Islamic governor based on religious and rational principles directly or indirectly to execute divine orders and manage Islamic society in its various dimensions and regulate its internal and external relations.

CONCLUSION

When jurist is qualified to establish Islamic governance, his authorities are similar to the authorities and responsibilities of the prophet and infallible Imams to manage society`s affairs and all people are obliged to obey him.

In other words, the considered guardianship is to govern society and execute divine principles. Islamic governor, whether he is the prophet or infallible Imams and/or their representative at the absence of Imam Zaman, is in charge of executing divine principles and commands. At the time of jurist`s governance, judicial authorities transferred from infallible Imam to guardian jurist have been assigned from jurist to judges. Therefore, at this time and the current conditions, divine order should not be distorted and the commands should be executed as exactly as it has been ordered. Criminal legislation in Islam have widely been discussed in Quran and tradition of the prophet`s family.

To sum up, it is worth to note that Islamic legislative authorities should enact the principles based on holy Islam religion and call for accurate execution of law from executors. As the necessary conditions of taking responsibility in Islamic governance, piety should be considered along with knowledge. With respect to the mentioned discussion, obeying the orders and commands of Islamic governor or guardian jurist guarantees to obtain any achievement and success in knowledge and piety.

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