Proportionality of Shariah Forbidden Transactions with Legally Prohibited Transactions in Terms of Obligation and Status

Ali Khosravi[1]| Hossein Naseri Moghadam[2]| Seyyed Mohammad Hadi Ghaboli Dorafshan[3]

1. Ph.D Candidate in Department of Jurisprudence and Fundamentals of Islamic Law, Ferdowsi University of Mashhad, Iran
2. Professor, Department of Law, Ferdowsi University of Mashhad, Iran
3. Associate Professor, Department of Jurisprudence and Fundamentals of Islamic Law, Ferdowsi University of Mashhad, Iran

* Corresponding Author Email: naseri1962@um.ac.ir

Abstract

This article examines the comparative analysis of religiously prohibited transactions (manhiyyah shar'i) with legally forbidden transactions from the perspectives of deontic (taklifi) and situational (wad'i) rulings in Imami jurisprudence and Iranian law. The primary objective is to uncover the relationship between religious prohibitions and legal bans in transactions, determining the enforcement mechanisms if a transaction is prohibited by the Shari'a or the legislator. Conducted through descriptive, analytical, and comparative approaches using library methods, the research reveals that the Iranian legislator ensures public order with enforcement measures lacking direct jurisprudential precedents, while Imami jurisprudence operates based on worldly and otherworldly benefits and harms. Findings indicate fundamental differences between the two systems, particularly in the situational rulings of prohibited transactions, where jurisprudence is limited to invalidity, validity, or detail, but Iranian law divides into five categories: invalidity, non-penetration, rescindable, revocable, and non-opposable against third parties.

In the introduction, the sacred legislator, considering the benefits and harms for servants, commands beneficial acts and prohibits harmful ones. A religious ruling is divine legislation for regulating human life, conveyed through Shari'a addresses. The Iranian legislator adapts religious rulings to emerging needs, establishing rules for public order and good morals. A key challenge in Islamic countries like Iran is understanding the relation between jurisprudential rulings and legal statutes, especially in transactions where people align actions with religious rulings. Fundamental question: What is the relation between religious prohibition (Non-religiously) of transactions and their legal ban? Is there a necessary connection between religious prohibition and legal invalidity? To answer, deontic and situational rulings of prohibited transactions in jurisprudence and law are examined.

The research background shows related works in four categories: usuli works on the correlation of prohibition with transaction corruption; purely jurisprudential works on prohibited transactions (e.g., Sheikh Nasrabadi's article, 2015); legal works without a

jurisprudential approach (e.g., an article on the validity principle and corruption with Civil Code Article 10); and comparative jurisprudence -legal works (e.g., examining the illegitimate direction's impact on transaction validity). The present study lacks similar precedents, focusing on prohibited transactions, deontic, and situational rulings, filling a research gap.

In conceptualization, prohibited transactions (manhiyyah) are those forbidden by the legislator, like selling "what is not with you. Forbidden transactions are banned by the legislator, with “prohibition” more in jurisprudence, while law uses “forbidden.” Criminal transactions are a subset of forbidden, and forbidden in the broad sense includes prohibited and criminal.

In deontic rulings of prohibited transactions from a jurisprudential view, deontic rulings (obligation, recommendation, prohibition, reprehensibility, permissibility) are based on benefits/harms. Prohibited transactions are only examinable under prohibition and reprehensibility, as prohibition indicates harm. Deontic prohibition entails otherworldly punishment and may be situational (corruption). States of prohibition: solely deontic (e.g., sale during Friday prayer call), solely situational (buying insects lacking rational benefit), or both (usury, alcohol). Each transaction's ruling is deduced from specific evidence. Reprehensibility is a non-binding request to abstain, not indicating corruption. Approaches to reprehensibility: listing causes (leading to prohibited, lowly profession, doubt) or enumerating instances (currency exchange, shroud selling, hoarding, slaughtering, weaving, cupping with wage, animal breeding, child-earned money business). Reprehensible examples: wage for Quran teaching based on Hassan's narration.

From a legal perspective, prohibition and reprehensibility are jurisprudence -specific; law uses “forbidden” and “crime.” Criminal transaction is closest to prohibited (e.g., drug trade), but forbidden is not always criminal (e.g., sham transactions to evade debt). Synthesis: Jurisprudence focuses on deontic sanction; prohibition under tahrimi prohibition. The law emphasizes public order; forbidden transactions lack religious punishment, but criminals may face punishment.

In situational rulings, situational is the opposite of deontic, indirectly affecting acts (validity, invalidity, conditionality). Corrupt and invalid contracts in Imami jurisprudence are synonymous, meaning no effect, unlike Sunnis distinguishing. In Iranian law, no difference between corruption and invalidity; the principle is validity (Civil Code Art. 223).

From a jurisprudential view, the prohibition's effect on transaction is disputed: absolute validity (prohibition not indicating corruption, invalidity only in usury by consensus); first detail (prohibition in cause no corruption, in effect yes, as dominion over property is lost); second detail (prohibition to essence/intrinsic transaction causes invalidity); absolute corruption (prohibition eliminates situational permissibility). Suspended contract (mura'i) if an illegitimate obstacle, invalid, or non-penetrating.

From legal view, situational ruling in five categories: invalidity (irreparable corruption in pillars, e.g., lack of intent, capacity, legitimate direction, forbidden object) with states

of prohibition from contract essence (gambling, public property, drugs), pillars (illegitimate waqf, insane transaction), non-essential conditions (waqf delivery, lease without term), corrupt invalidating conditions (contrary to requirement, ignorance of considerations); non-penetration (ratifiable, e.g., minor's transaction, duress, unauthorized); rescindable (options, bankrupt trader's fraudulent transactions); revocable (court-annulled, e.g., company managers' non-procedural deals, tax evasion transfers); non-opposable against third parties (valid inter partes, invalid to third, e.g., real debt evasion transaction). Synthesis: the jurisprudence-law relation is general-absolute particular; the last three are specific to law. Judicial challenge: Ruling invalid a Jurisprudentially valid transaction not evidently contrary to Shari'a.

Conclusion: Prohibited transactions in jurisprudence are prohibition-bearing; in law, ban-explicit. Deontic jurisprudence rules prohibition/reprehensibility depending on prohibition type; legal only in illegitimate direction. Situational jurisprudence complex (validity/invalidity/non-penetration with details); legal six-fold with research innovation in categorization. Differences indicate faint jurisprudence utilization in law.

Keywords: mandatory rule, status rule, religious prohibitions, legal prohibitions, illegal transactions.

References

Books

1. Akhound Khorasani, Mohammad-Kazem bin Hossein (1988). ***Kifayat al-Usul***. Qom: Tab’ Āl-al-Bayt.
2. Allameh Helli, Hasan bin Yousef bin Motahar Asadi (1999). ***Tahrir al-Ahkam al-Shari’ah ’ala Madhhab al-Imamiyah***. Qom: Mo’asseseh Imam Sadeq.
3. Ansari, Masoud & Taheri, Mohammad-Ali (2005). ***Daneshnameh Hoghoogh-e Khosusi***. Tehran: Mehrab-e Fekr. [in Persian]
4. Ansari, Morteza bin Mohammad-Amin (2007). ***Fara’id al-Usul***. Qom: Majma’ al-Fikr al-Islami.
5. Ansari, Morteza bin Mohammad-Amin (2013). ***Ketab al-Makasib: al-Moharrameh (Jeld 1), Virastari Ahmad Payani***. Qom: Dar al-Hekmeh.
6. Araqi, Dia al-Din (1996). ***Nihayat al-Afkar***. Qom: Daftar-e Entesharat-e Eslami.
7. Ashtiani, Mohammad-Hasan bin Jafar (2008). ***Bahr al-Fawa’id fi Sharh al-Fara’id***. Beirut: Mo’asseseh al-Tarikh al-Arabi.
8. Bahr al-Olum, Mohammad bin Mohammad Taghi (1982). ***Belgat al-Faqih***. Tehran: Maktabat-e Sadegh.
9. Bahrani, Al-Asfour, Yousef bin Ahmad bin Ebrahim (1984). ***Al-Hada’iq al-Nadhira fi Ahkam al-Itrah al-Tahira***. Qom: Daftar-e Entesharat-e Eslami.

10. Bayat, Farhad & Bayat, Shirin (2021). ***Sharh-e Jame' Qanun-e Madani***. Tehran: Arshad. [in Persian]
11. Boroujerdi, Hossein (1994**).** ***Nihayat al-Usul***. Tehran: Tafakor.
12. Emami, Hasan (2004). ***Hoghoogh-e Madani***. Tehran: Eslamiyeh. [in Persian]
13. Fazel Mohahedi Lankarani, Mohammad (2002). ***Osool-e Feqh-e Shi'eh***. Qom: Markaz Feqhi-e A'emmeh-ye Athar (A). [in Persian]
14. Ghadiri, Abdullah Isa Ibrahim (1997). ***Al-Qamus al-Jami' lil Mustalahat al-Feqhiyah***. Beirut: Dar al-Rasool al-Akram.
15. Haeri, Seyed Ali bin Mohammad Tabatabai (1988). ***Al-Sharh al-Sagheer fi Sharh al-Mukhtasar al-Nafi' – Hadiqat al-Mu'minin***. Qom: Ketabkhaneh Ayatollah Mar'ashi Najafi.
16. Hosseini Ameli, Seyed Javad bin Mohammad (1998). ***Miftah al-Karameh fi Sharh Qawa'ed al-Allamah***. Qom: Daftar-e Entesharat-e Eslami.
17. Hosseini Maraghi, Seyed Mir Abdul-Fattah bin Ali (1996). ***Al-Anawin al-Feqhiyah***. Qom: Daftar-e Entesharat-e Eslami.
18. Irvani, Ali (1991). ***Nihayat al-Nihayah fi Sharh al-Kifayah***. Qom: Daftar-e Tablighat-e Eslami-ye Howzeh Elmiyeh Qom.
19. Jafari Langaroudi, Mohammad-Jafar (2013). ***Mabsut dar Terminology-e Hoghoogh***. Tehran: Ganj Danesh. [in Persian]
20. Juzairi, Abdulrahman (2005). ***Al-Fiqh 'ala al-Madhahib al-Arba'ah***. Beirut: Dar al-Kitab al-Arabi.
21. Katouzian, Naser (2009). ***'Uqud-e Mo'ayan***. Tehran: Ganj Danesh. [in Persian]
22. Katouzian, Naser (2009). ***Hoghoogh-e Madani Qava'ed-e Omumi-ye Gharardadha***. Tehran: Behnashr. [in Persian]
23. Khoei, Seyed Abolqasem Mousavi (1996). ***Misbah al-Faqahah (al-Makasib)***. Qom: Ansarian.
24. Khomeini, Rouhollah (2014). ***Resaleh Tozih-al-Masa'el***. Tehran: Mo'asseseh Tanzim va Nashr-e Asar-e Emam Khomeini. [in Persian]
25. Mohaghegh Damad, Mostafa (2002). ***Qava'ed-e Feqh (Bakhsh-e Madani 2)***. Tehran: Sazman-e Motale'e va Tadvin-e Kotob-e Olum-e Ensani-ye Daneshgahha. [in Persian]
26. Mohaghegh Karki (Thani), Ali bin Hossein (1993). ***Jame' al-Maqasid fi Sharh al-Qawa'ed***. Qom: Mo'asseseh Āl-al-Bayt.
27. Montazeri, Hossein-Ali (1994). ***Dorasat fi al-Makasib al-Moharrameh***. Qom: Tafakor.
28. Moshkini Ardabili, Ali (1995). ***Estelahat al-Usul va Mo'zam Abhath-ha***. Qom: Al-Hadi.

29. Mozaffar, Mohammad-Reza (2009). ***Osool al-Fiqh, Tarjomeh Abbas Zera'at va Hamid Masjed-Sara'i***. Tehran: Jangal. [in Persian]

30. Naeini, Mohammad-Hossein (1973). ***Ajwad al-Taqrirat***. Qom: Matba'eh al-Erfan.

31. Naeini, Mohammad-Hossein (1992). ***Al-Makasib wa al-Bay'***. Qom: Daftar-e Entesharat-e Eslami.

32. Sadr, Mohammad-Bagher (1997). ***Dorous fi 'Ilm al-Usul***. Qom: Eslami.

33. Safaei, Seyed Hossein (2005). ***Dowre-ye Moghadamati-ye Hoghoogh-e Madani (Qava'ed-e Omumi-ye Gharardadha)***. Tehran: Mizan. [in Persian]

34. Saheb Javaher, Mohammad-Hassan (2009). ***Javaher al-Kalam fi Sharh Shara'i' al-Islam***. Beirut: Dar al-Turath al-Arabi.

35. Shahid Awwal, Mohammad bin Makki Ameli (1979). ***Al-Qawa'id wa al-Fawa'id***. Qom: Ketabforushi Mofid.

36. Shahid Awwal, Mohammad bin Makki Ameli (1998). ***Dhikra al-Shi'ah fi Ahkam al-Shari'ah***. Qom: Mo'asseseh Āl-al-Bayt.

37. Shahid Thani, Zayn al-Din bin Ali bin Ahmad Ameli Jeb'ai (1992). ***Masalik al-Afham ila Tanqih Shara'i' al-Islam***. Qom: Mo'asseseh al-Ma'arif al-Islamiyah.

38. Shahid Thani, Zayn al-Din bin Ali bin Ahmad Ameli Jeb'ai (2007). ***Al-Rawdah al-Bahiyah fi Sharh al-Lum'ah al-Dimashqiyah***. Qom: Majma' al-Fikr al-Islami.

39. Shahidi, Mehdi (2004). ***Hoghoogh-e Madani (Osool-e Gharardadha va Ta'ahodat)***. Tehran: Majd. [in Persian]

40. Shahidi, Mehdi (2007). ***Hoghoogh-e Madani (Tashkil-e Gharardadha va Ta'ahodat)***. Tehran: Majd. [in Persian]

41. Shahrakani, Ebrahim Isma'il (2008). ***Mu'jam al-Mustalahat al-Feqhiyah***. Qom: Dhawi al-Qurba.

42. Shirazi, Mirza Mohammad Taghi (1991). ***Hashiyah al-Makasib***. Qom: Moshourat-e Sharif al-Radhi.

43. Subki, Taj al-Din (1991). ***Al-Ashbah wa al-Naza'ir***. Beirut: Dar al-Kutub al-'Ilmiyah.

44. Tousi, Abu Jafar Mohammad bin Hasan (1967). ***Al-Mabsut fi Feqh al-Imamiyah***. Tehran: Al-Maktabah al-Murtadawiyah li Ihya' al-Athar al-Ja'fariyah.

45. Tousi, Abu Jafar Mohammad bin Hasan (1986). ***Al-Khilaf***. Qom: Daftar-e Entesharat-e Eslami.

46. Vahid Behbahani, Mohammad-Bagher bin Mohammad Akmal (1998). ***Al-Rasa'el al-Feqhiyah (Lil-Vahid Behbahani)***. Qom: Mo'asseseh Allameh Vahid Behbahani.

Articles

47. Alishahi Ghal'eh Jooghi, Abolfazl & Hamidi, Masoumeh (2017). Barrasi-ye tasir-e jahat-e namashroo' dar sahih va fasad-e mo'amelat. ***Feqh va Osul***, 49(4), 69–88. [in Persian] Doi: 10.22067/jfu.v49i4.24467

48. Ghabooli Dar Afshan, Seyed Mohammad-Hadi; Vafakhla'i, Mohammad Taghi & Haeri, Mohammad Hassan (2016). Zemanat-e ejra-ye gharardad ba jahat-e namashroo' dar hemayat az nezm-e omoomi-ye sonati va eqtesadi. ***Do-Faslnameh Elmi-Pajuheshi-ye Daneshnameh Hoghoogh-e Eqtesa***di, 23(9), 1–29. [in Persian] Doi: 10.22067/le.v23i10.33593

49. Ghavvati, Jalil & Safari, Esfandiar (2020). Nesbat-e asl-e sahih va fasad ba maddeh 10 Qanun-e Madani va asl-e azadi-ye gharardadi. ***Jostarhaye Feqhi va Osuli***, 6(18), 181–206. [in Persian] Doi: 10.22034/jrj.2020.51273.1445

50. Izanloo, Mohsen & Shariati Nasab, Sadegh (2012). Motale'e tatbighi adam-e ghabeliat estenad dar hoghoogh Iran va France. ***Do-Faslnameh Hoghoogh-e Khosusi***, 9(2), 35–66. [in Persian] Doi: 10.22059/jolt.2013.35159

51. Mohammadi Mir-Azizi, Payam & Salehi Mazandarani, Mohammad (2020). Nesbat miyan-e aqd-e estenad-napazir va aqd-e gheyr-nafez-e marai. ***Motale'at-e Hoghooghi***, 12(4), 205–234. [in Persian] Doi: 10.22099/jls.2020.37588.3951

52. Nik-Nejad, Javad (2020). Vazi'at-e feqhi-hoghooghi-ye mo'amele mo'arez ba shart-e fasikh. ***Motale'at-e Hoghoogh-e Tatbighi-ye Mo'aser***, 13(27), 237–264. [in Persian] Doi: 10.22034/law.2021.39210.2575

53. Parsapour, Mohammad-Bagher (2020). Kafayat-e rezaayat-e bateni-ye malek dar nofooz-e mo'amele be mal-e gheyr. ***Motale'at-e Hoghoogh-e Tatbighi-ye Mo'aser***, 11(21), 47–66. [in Persian] Doi: 10.22034/law.2020.12630

54. Sheikhi Nasr-Abadi, Majid-Reza & Mohammad-Mehdi Yazdani (2015). Jostari dar ravesh-shenasi-ye hormat-e taklifi-ye mo'amelat-e mamnoo'eh az didgah-e Emam Khomeini. ***Feqh va Osul***, 47(3), 89–108. [in Persian] Doi: 10.22067/fiqh.v47i22.33257