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The Status of Rulings Issued by Judges Without Basic Conditions (With an Emphasis on Ijtihad) Based on Islamic Government Jurisprudence

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Abstract

The rulings issued by judges without basic qualifications, especially non-mujtahid judges, are investigated in this article to identify their position and evaluate it from the perspective of Islamic governmental jurisprudence using a descriptive-analytical method. After examining the views of famous jurists regarding the existence of judgment conditions and the need for a judge to possess the specialized degree of ijtihad and the ability to derive Shariah rulings from the sources of jurisprudence and evaluating their evidence, the conclusion was reached that the implication of their most important evidence, i.e. "consensus", "verses" And the traditions forbidding actions other than knowledge", "verses commanding the ruler to obey God", "narrations indicating the need for the judge to be knowledgeable" and "the principle of non-wilayah" are not complete and are confused. On the other hand, the arguments of the rival point of view, which considers the votes issued by mock judges to be valid, are stronger; What is the fact that the social view of Islamic jurisprudence and the approach of government jurisprudence also do not accept the invalidity of unqualified judges' opinions (ijtihad) and disruption of the social order of the society, putting people in dire straits and embarrassment, and these matters are not in line with Islamic teachings. Therefore, expediency, as the basis of the legislation of Islamic laws, requires that the opinions of mock judges appointed by the Mujtahid Jame al-Sharai't be considered valid and valid, so that the people's claims do not remain undecided and the resolution of people's disputes, which is a rational obligation, is not delayed.

Keywords: *Governmental Jurisprudence; Unqualified Judges; Maintaining The System; Difficulty and Embarrassment; Expediency; Judge Conditions*

A) Explanation of the Problem

The important position of Qadha in Islam is not hidden from anyone who has little knowledge of its jurisprudence system; Because the judge, by attaining this important position, is placed in the position of ruling on people's property, reputation, and life; For this reason, famous jurists have included several categories of inherent, scientific and practical attributes and conditions for its holder, such as Islam, faith, productive purity, ijtihad, justice, and manhood, in proportion to the risks of the said position. The validity of these attributes and conditions, especially the condition of ijtihad for the judge due to meritocracy and the placement of qualified people in important positions, although it is very appropriate

and necessary in its place; But there is a question whether those who do not have the above-mentioned conditions, especially judges who do not have the queen of ijtihad, cannot hold the position of judge under any circumstances, or is this prohibition related to judges who are not appointed and not authorized by the general mujtahid? If a mujtahid hires a person as a lawyer to make judgments or entrusts the position and position of judgment to him, will his opinions have the influence and credibility of Sharia? Is the validity of the mock judge's opinions the same in the case of discretion and emergency? To clarify the issue, it is necessary to remember that a non-appointed judge is chosen by the conflicting parties to judge a specific issue, which is called a consolidation judge or a general judge. The validity and legitimacy of the judges' opinions and their attributes are not discussed in this article; Rather, the article's view is exclusive to public judges. Among the public judges, those who have not been appointed by the comprehensive mujtahid to hold the position of judge, are not discussed by us; because no jurist has any doubts about the invalidity of the votes of the said group; Therefore, only the judges' opinions are the subject of discussion, which are not qualified and were judged by the mujtahid and with his permission.

The importance of the discussion of this issue becomes clearer when we pay attention to the implementation challenges of the invalidity of the mock judge's votes in the assumption of the establishment of an Islamic government; First of all, as it has been proven by experience, the number of validly qualified people is much less than the statistics of the necessary needs of the society to hold the office of judgement.

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The famous approach of jurisprudence, in which the individualistic view prevails in the derivation of Shariah duties, does not allow past the mentioned conditions; Therefore, the only reading that provides a basis for discussion about the mentioned conditions is the approach of "government jurisprudence". Therefore, the judicial system is forced to use judges who do not meet the requirements of Islamic jurisprudence to resolve disputes and prevent judicial chaos.

Therefore, the main question of the research is, what is the position of the opinions issued in the courts by the judges who do not have the first and valid conditions in the approach of the famous jurists, considering the view of the government jurisprudence? Can such opinions be regarded as the end of legal disputes and lawsuits based on Islamic Sharia or that the opinions are not supported by Sharia and the disputes will remain unresolved until the verdict is issued by qualified judges? To clarify the issue in question, the opinions and sayings of the jurists in this regard are briefly mentioned.

B) Terminology

The three terms "judge's condition", "jurisprudence" and "governance" are terms which, in addition to their key role in understanding this article, need to be explained in terms of application.

1. Judge’s Conditions

The initial conditions that Shi'a jurists have considered for the judge are the same as those outlined in the title of explaining the problem. The primary conditions of the judge in this article are those conditions that according to the evidence of "primary judgments" must exist in the person of the judge, i.e. conditions that regardless of the objections of secondary titles such as necessity, the judge must have to have credibility and influence of his judgments. Therefore, the question is whether in exceptional circumstances and based on secondary rulings the mentioned conditions are still necessary. For example, according to the first ruling, the judge must be a Mujtahid but is it permissible for a copycat to be a

Mujtahid in the required territory? so judging based on imitation science rather than having ijtihad can be considered a secondary condition.

The initial conditions that are considered by famous jurists for judges are numerous and are out of the mood of this article, so among these conditions, only the issue of sentences issued by copycat judges is considered.

2. Jurisprudence (Fiqh)

The word jurisprudence (fiqh) means understanding, knowledge, and intellect (cleverness) and in the idiom means knowledge of subordinate religious rulings based on their detailed proofs (Abd al-Mun'am, vol. 3, p. 49 and Sa'di:1987, p.289). Regardless of the meaning of jurisprudence, its application in the composition of "government jurisprudence" is more useful in this article. There are two types of signs: the one and the other. Fiqh is a fatwa of opinions and fatwas which are presented in fatwa books such as "Urwa al-Waqi", "Tahrir al-Wasilah" and "Manhaj al-Salehin"; However, argumentative jurisprudence is an ijtihad method that is argued on a jurisprudential issue or a jurisprudential argument that is weakened or invalidated by specific goals, foundations, and regulations. Books such as Jawaharl al-Kalam, written by Sheikh Muhammad Hassan Najafi, or Makasb by Shaykh Ansari. (2012, p. 55)

The meaning of this article in jurisprudence is not fatwa jurisprudence to be solely based on the fatwa views of the jurists and referring to the explanation of the issues of jurisprudents, but rather the second meaning of "ijtihad" means that it has its criteria, goals, and foundations and distinguishes it from other methods of ijtihad which are common and common.

3. Governmental Jurisprudence

The word "governance" is related to government and is an adjective for jurisprudence. Government jurisprudence is opposite to individual jurisprudence. The explanation is that jurisprudence is divided into individual jurisprudence and governmental jurisprudence in a general division. The subject of individual jurisprudence is "the individual, apart from the society in which he lives". In this approach, the jurist considers people without their collective identity, specifies their duties, and tries to solve the problems that occur to them in the way of executing rulings.

On the other hand, in the issue of government jurisprudence, "the individual is considered as a part of the society"; That is, apart from their identity, people also form a collective identity, called society, which is the subject of rulings that are discussed in government jurisprudence; (Haji Dehabadi: 2000, p. 103). The term government jurisprudence carries with it a kind of coherence and attention to the administration of society. (Ziaifar: P. 92) Therefore, in the definition of government jurisprudence, it can be said: "Knowledge of sub-shari'a rulings is based on detailed evidence in the framework of an organized organization based on the ruling power in a government-state." (Sarami: 2012, p. 121) According to the aforementioned definition, it is necessary to briefly mention the difference between government jurisprudence and other similar terms, such as jurisprudence, political jurisprudence, and social jurisprudence.

The difference between "Governmental Jurisprudence" and "Al-Hukuma Jurisprudence" is that in the combination of "Governmental Jurisprudence", being governmental is a description of the whole jurisprudence; While the jurisprudence of government refers to a part of the realm of jurisprudence which is the government; Just as commercial jurisprudence, penal jurisprudence, prayer jurisprudence, purity jurisprudence, etc. refer to parts of the realm of jurisprudence. Government jurisprudence is also different from "political jurisprudence" in terms of territory. Secondly, I believe that the word politics in the combination with political jurisprudence is considered an adjective for the whole jurisprudence, the difference between the two becomes clear from the precision in the words politics and government; This means that the definition of politics is focused on power (Abu Hamad: n.d., p. 11); But the definition of

government is focused on the exercise of power in a certain context; Therefore, the politics of those who do not hold power, but are somehow related to it and strive to seek it, will also be included. (Serami: previous,p. 139) The difference between the terms governmental jurisprudence and "social jurisprudence" also seems clear. If we consider the term social to refer to a part of the realm of jurisprudence, i.e. society, the difference between governmental jurisprudence and it will be the same as the difference with al-Hukuma jurisprudence. On the assumption that social jurisprudence refers to the whole of jurisprudence, the difference between the two becomes clear from the precision in the words government and society; Because society is the main platform of government and the exercise of power and management of government takes place in this platform. (ibid)

Therefore, it can be said that governmental jurisprudence is not a branch of jurisprudence, such as "administrative jurisprudence", "family jurisprudence" and "al-Hukuma jurisprudence". Rather, an approach that focuses first on the social aspect of jurisprudence and ijtihad, not on the individual aspect. Secondly, it is in the position of macro-management of the society and is based on principles such as the fusion of Islam with politics and the central role of the government in individual and collective happiness. Thirdly, government-oriented is one of the most important goals of government jurisprudence.

C) Opinions about Judgments Issued by Unqualified Judges

There are two general views about the position of the opinions issued by the mock judge, whether he judges with the permission of the Mujtahid Jame al-Shari'at or based on trust (Al-Ansari: 1994, p. 39). A large number of Islamic jurists do not consider such opinions valid from the point of view of Shari'ah according to their jurisprudential foundations; On the other hand, some others give credit to them. Each of these points of view is described separately below**.**

1. The Invalidity of Orders Issued by a Judge Who Does Not Have the First Condition

The majority of Muslim jurists, both Shia and Sunni, especially the jurists of the past, insist on the necessity of basic conditions for a judge; Therefore, the judgments issued by unqualified judges do not have Sharia validity, and as a result, such judgments will not be decisive and the end of lawsuits and disputes. For example, Aghazia al-Din Iraqi, one of the famous Shiite jurists, called the initial conditions of the judge consensus and considered the only difference between them to be science, the most certain of which is the science of ijtihad. Then, under the title of "Improperty of handing over the judiciary to impersonators", he considered the validity of the votes issued by unqualified judges to be invalid. (Al-Iraqi: 2001, p. 13); Also Sheikh Tusi, (Al-Tusi: 1985, vol. 6, p. 207), Allamah Hali, (Alama Al-Hali: 1992, vol. 3, p. 421) Ibn Saeed Hali, (Al-Hali: 1984, p. 522) Shahid I, (Al-Aamili: 1996, vol. 2, p. 65) Shahid Thani, (Al-Aamili: 1992, vol. 13, p. 328 and 1992, vol. 3, p. 62) Faiz Kashani, (Al-Faiz Al-Kashani: Beta, p. 118) Sahib Riaz, (Al-Hairi Tabatabai: 1997, vol. 15, p. 8) Imam Khomeini (Al-Mousavi Al-Khomeini: Beta, Vol. 2, p. 407) and Ayatollah Khoui (Al-Mousavi Al-Khoui: 1989, p. 6) are among those who considered ijtihad as a condition for holding a judgeship.

Sheikh Ansari, while confirming the view of famous jurists regarding the inadmissibility of the judgment of an authorized and appointed judge, considers the opinion of the non-influence of the judgment of an authorized judge by the general mujtahid to be stronger than the conditions of the fatwa. Even in the case of a mujtahid's ruling authorizing the signing of the mock judge's ruling and its enforcement, he doubts this enforcement. According to him, there is no difference between the possibility of access to the mujtahid and the possibility of access to the mujtahid. He also does not consider the judge's judgment as valid in controversial matters that do not require ijtihad and taqlid, or even if the issue is not a controversial issue, such as when the claimant makes a claim, the case will be decided in his favor. (Al-Ansari: 1994, p. 40)

Sunni jurists have two opinions about this. The majority of them: Malikiyyah, Shafiyyah, Hanbaliyyah, and some Hanafiyyah consider ijtihad as one of the inviolable conditions of judgment;

While the majority of Hanafi scholars do not consider ijtihad as a condition of judgment, rather they consider it permissible to make mock judgment based on the fatwa of mujtahids. (Al-Zohili: 1997, vol. 8, p. 5936 and vol. 6, p. 747)

1-1- Reasons for Invalidity

To prove the invalidity of votes issued by unqualified judges, it can be argued for several reasons; For example, "consensus", "verses and traditions forbidding action other than knowledge", "verses commanding the commandment of God's will", "narrations indicating the necessity of the knowledge of the judge", "the principle of no one's authority over another", "action to "Caution" and "suspending judicial rulings" are among the most important arguments of this group, which are briefly stated and analyzed.

1-1-1- Consensus

Although the first time was by Sheikh Tusi in the book of Khilaf, (Al-Tusi: op. cit., Vol. 3, p. 227), after him other jurists such as Shahid Sani, (Al-Aamili: 1992, Vol. 3, p. 69), Faiz Kashani (Al-Faiz Al-Kashani: Bita, Vol. 3, p. 247) and they have claimed "non-contradiction" about the judge being a mujtahid; But regardless of the transferability of the consensus, according to the views of the opponents, who are all great jurists, the consensus is discredited.

1-1-2- Verses and Hadiths Forbidding Actions Other Than Knowledge

A group of verses of the Holy Quran forbids us from acting on assumptions. (Holy Qur'an: Isra, 36 and Yunus, 36) It seems clear that a person who does not deserve a fatwa does not reach knowledge beyond suspicion; But the noteworthy point in this group of verses and narrations, which may confuse the reasoning about them, is that in this group of verses, it is forbidden to act without proof, not based on absolute suspicion; What if it is forbidden to act on absolute suspicion, then mujtahid's suspicion should also be prohibited; Therefore, if the mujtahid's fatwa is certain for the impostor judge, his suspicion is not of the non-authentic type and the mujtahid's fatwa brings praise and excuse for him.

1-1-3- The Verses That Command the Verdict Must be Based on What Was Sent by God

A group of verses of the Holy Qur'an strictly forbid ruling on anything other than " “what God has revealed” "; (Holy Qur'an: Ma'idah, 44) But it seems that, first of all, these verses only emphasize the legitimacy of the ruling, they are not in the position of expressing the conditions of the judge, and they do not consider whether he is a mujtahid or an imitator. Secondly, just as the verdict of the mujtahid is " what God has revealed ", the imitator ruling can also be considered as " what God has revealed " if it is with the permission and approval of the comprehensive mujtahid.

1-1-4- Hadiths Indicating the Need for a Judge to Be Knowledgeable

Except for the general evidence of the past, a group of traditions that are in charge of the proceedings and the conditions of the judge, specify the need for the judge to be knowledgeable. (Ibn Babouyeh al-Qami: 1992, vol. 3, pp. 4 and 5 and al-Har al-Amili: 1998, vol. 27, pp. 13 and 20) The command to make informed judgments or the prohibition of ignorant judgments is the common feature of all these types of hadiths. In the position of evaluating them, taking into account the degrees of human knowledge makes clear the inadequacy of reasoning; Because the meaning of science in this group of narrations cannot be epistemological certainty, otherwise the mujtahid would not have the condition of judgment due to citing the appearances of the book, tradition, and single news; Therefore, just as the opinion of the mujtahid is considered valid, the opinion of the mock judge also has the necessary validity because his rulings have the support of valid suspicion and also the validity of the fatwa of the mujtahid. (Najafi, Jawaharlal Kalam, vol. 40, pp. 15-17) Since the judges of the Prophet's time were scientifically

lower than the level of ijtihad (ibid., p. 18) and the judges of the time of the Prophet were lower than the level of ijtihad, the narrations related to the science of the time of the presence and absence of the infallible leader include the broader meaning of being a scholar. It is based on ijtihad and includes judges who know taqlid. (Golpaygani, Seyyed Mohammad Reza, Kitab al-Qada, vol. 1, p. 33).

1-1-5- Non- Guardianship

The most important reason for the invalidity of rulings issued by a non-mujtahid judge or someone who lacks some of the conditions of a judge is the principle of non-guardianship; because, according to the popular definition, judging means the guardianship of justice and the season of hostility. Since the principle and rule governing the relationship between people is the independence of each person, the principle is that no one has authority over another unless it is proven with a valid reason. If we doubt whether a judge without qualifications has the right to judge or not, the principle is that his judgment should not be influenced. (Al-Rashi: 1980, vol. 1, p. 49)

It is true that in such cases, despite the doubt, the principle of permissibility cannot be invoked, but the issue that can be raised here is that adherence to the principle of not falsifying the post of judge for a non-mujtahid is when there are no generalizations and no doubts. but according to the evidence of the next point of view, it is inferred that any person can be the administrator of the matter, except in the cases that have been made an exception. Among the relevant evidences is the narration of Abi Khadijah and Maqboolah of Ibn Hanzala, in which the word (man) is mentioned, which is a related noun, and it includes everyone and is not reserved for the mujtahid. Also, all the verses that indicate that the verdict should be with the Messenger of God, such as this noble verse which says: "And the verdict between them is with the Messenger of God", and addressing it to the Prophet of Islam does not lead to assigning the verdict to him. Because the obligation of ruling by God is not exclusive to him. (Marashi: 2006, vol. 2, p. 187)

2- Those Who Accept the Validity of Judgments Issued by Judges without the First Condition

Some jurists have stated that the judge doesn't need to have the queen of ijtihad through the explicit denial or insufficient reading of the arguments of the opposing group. Mohagheg Ardabili, (Elardbili: 1982, vol. 12, p. 20) Fazel Naraghi, (Al-Naraghi: 1994, vol. 17, p. 15) Sahib Javaher (Al-Najafi: 1983, vol. 40, p. 19-20) and Mirza Qomi (Al-Mirza al-Qami: 2006, vol. 2, p. 598) From the jurists of the past and some contemporary taqlid sources (Al-Mosavi Al-Golpaygani: 1992, vol.1, p.27, Al-Mosavi Al-Ardabili: 2002, vol.1, p.67, Tabrizi: Bita, v.1, p.424 and Fazel Lankarani: n,d., v.1, p.483) are among those who have the privilege of a judge They don't consider ijtihad necessary for holding a judgeship; On the contrary, they consider his authorization by the Mujtahid Jame al-Sharayat to be sufficient for holding the position of judge.

2-1- Reasons for the Validity of Judgments Issued by a Judge Lacking the First Condition

For the validity of this group of votes, it is possible to refer to maintaining the system, avoiding hardship and embarrassment, and other secondary titles, which are mentioned and examined separately.

2-1-1 The Principle of Maintaining the System

Maintaining the system is an important issue with different dimensions, such as maintaining the security of the society and the country against internal disruptors, maintaining the system of life and livelihood of the people, defending Islam and the Islamic land, and the lives and property of Muslims against foreign aggressors and maintaining and surviving It includes the Islamic government as a system that manages the society based on Sharia; However, the purpose of preserving the system in this article is to comply with things such as the closure of community service and treatment centers, which disturb the security of the community or people's lives.

Shia jurists have not discussed this issue separately, but from their statements in various cases, it can be seen that the obligation to preserve the social order is considered one of the absolutes of Shia jurisprudence; For example, in the science of principles, where the discussion is about the "cause of obstruction", caution is not only considered not obligatory, but also forbidden due to the implication of disruption in people's life system; Because maintaining the system is obligatory and disrupting it is forbidden, and if caution causes disruption of the system, it is forbidden. Shaykh Ansari explains the third reason for blocking: "Caution, even though it is necessary for the principle and rule of reason and narration when we have to block the chapter of knowledge in most jurisprudential issues, it is not obligatory for some reasons.

One of these reasons is the necessity of extreme difficulty and severe embarrassment in adhering to caution. Requiring the imitators to be careful in following the practical rulings is a task that takes up all the time of the mujtahid and the imitator, and people are caught in a dilemma in terms of teaching these things and learning them, which disrupts their livelihood system and resurrection. (Al-Ansari: 1998, Vol. 1, p. 404) Akhund Khorasani says in this regard: "There is no word in it regarding the non-obligation of full caution in cases where the difficulty and embarrassment of it requires disruption of the system." (Al-Akhund Al-Khorasani: Beta, p. 358) Khomeini also says: "Invalidity of caution in all events has been argued for two reasons. First, there is consensus on its non-obligation and secondly, that caution requires difficulty and embarrassment, but it is a disruption of the system. In short, if system disruption becomes necessary, there is no question about it; Because the disruption of the system is one of the things that the intellect condemns as ugly. (Al-Mousavi Al-Khomeini: 2012, vol. 1, p. 364)

Therefore, there is no doubt that what disrupts the life system and livelihood of the society is forbidden and the works that are necessary to maintain the system of the society are obligatory. The obligation to maintain the system is sufficient, and if it is determined for a specific person, it becomes an objective obligation. If there is a conflict between maintaining the system and other personal or social rules, maintaining the system takes precedence over them; Because maintaining the system is one of the obligations that the intellect understands independently, and the Holy Sharia is not satisfied with abandoning it in any way (Al-Rashti: 1980, Vol. 1, pp. 55 and 57). Therefore, the ruler of the Islamic society is obliged to prioritize the maintenance of the system in the position of maintaining the livelihood system of the people with other rulings; Therefore, if there is a conflict between the evidence of the need for certain conditions in the judge, such as ijtihad, remembrance, and faith, and the evidence of maintaining the livelihood system of the people and maintaining order and stability in the society, in the sense that the judge does not qualify for the existing conditions, or it is not possible to refer to them, it can be To prevent the disruption of the people's livelihood system, he referred to the judge who is closer to the mentioned conditions, and the legal guardian appoints other unqualified people to judge based on the viewpoint of government jurisprudence.

2-1-2 The Rule of Negation of Difficulty and Fault

The rule of difficulty and fault is one of the things that can be relied upon for the validity of the decisions issued by an unqualified judge. The meaning of the mentioned rule is that there are no duties that cause hardship and difficulty for the obligee in religion. Sheikh Ansari thinks that in the case of a person's urgency to refer to an unjust judge, the proofs of negation of harm and loss of legitimacy and enforcement of the judgment of an unqualified judge are confirmed. (Al-Ansari: 1994, p. 63) Considering the existence of various lawsuits and the society's widespread need for a judge, conditions such as ijtihad do not exist in most of the judges, and the obligation to refer to a qualified judge requires extreme hardship and hardship, hardship is also denied in Islam; Therefore, referring to a qualified judge is excluded. On the other hand, without judging the affairs of the society, it goes towards corruption; so, it is enough to refer to judges who are familiar with the laws and are trusted from a practical point of view.

The rule of negative negation, which is inextricably linked with government jurisprudence, has been argued for validity with various arguments. Among the documents of this rule is the honorable verse

"He has chosen you and has not placed for you any obstacle in the religion" (Holy Qur'an: Hajj, 78). There is a difference in the meaning of the mentioned verse, the negation of the controversial issue in religion or the negation of the rulings, and whether the negation of the ruling is specific to Jihad or it includes all the rulings; However, according to the context of this verse and the previous verse, which obliges the believers to bow, prostrate, worship God, and fight in the way of God, it is clear that it means the negation of harm in all the rules of religion. Its content is not limited to the issue of Jihad.

In addition to this verse, there are many narrations to prove this rule; Among the hadiths of Abdul Ali Mouli Al-Sam, the narrator asks Imam Sadiq (a.s.) that a person fell on the ground and his nail was cut off and his finger was tied with a cloth. In this case, how should he perform ablution? Hazrat replied: "The ruling of this case and similar cases is clear from God's book; Because God has said that no problem has been placed on you in religion; so, anoint it. (Kilini: 1986, vol. 3, p. 33) Imam (a.s.) argues that the absence of embarrassment and the absence of strictness in religious behavior is the general rule in Islamic law.

In addition to the aforementioned reasons, rational reasons can also be used for the validity of this rule and its extension to the judge's conditions; By stating that the rule of negation of hardship and hardship is a rational rule and the intellect considers any difficult task as impossible; Because the motivation of assignments is obedience and subjugation, and this goal is violated by assigning an "unbearable matter"; Therefore, stopping on the conditions that have been considered by the famous for the judge and emphasizing the judge's ijtihad due to the social situation and the lack of sufficient mujtahid judges is considered a critical issue for human society, and according to the rule of negation of difficulty and difficulty, such conditions are not legitimate.

2-1-3 Expediency

Imami jurists have different words about legitimizing expediency. In response to the question "if expediency requires that a person without qualifications be judged, is this tenure permissible and his rulings valid in lawsuits or not?" (Allameh Al-Halli: 1992, vol. 3, p. 422); That is, due to the lack of the conditions of a judge, it is not permissible for such a person to hold the said position; But according to the expediency, it is permissible. (Fakhr al-Muhaqqin al-Halli: 1967, vol. 4, p. 300 and Omidi Hosseini: 1995, vol. 3, p. 447); However, some other jurists state that it is permissible (Al-Qatan al-Hali: 2003, vol. 2, p. 342) and others consider it permissible to refer to unqualified judges in case of necessity. (Kashif al-Ghita: 2001f p. 14)

The general interest is the basis of the legislation of Shari'ah rulings (Fakhr al-Muhaqqeen: previous) and in government jurisprudence because the jurisprudence, in his macro and comprehensive view, is thinking of attracting the internal and external interests of the Islamic Ummah, which is influenced by the goals of writing or the writer himself follows, the position of expediency in the legitimacy and influence of the judgment of the unqualified cannot be ignored.

Conclusion

Considering the inadequacy of the famous Muslim jurists' arguments regarding the invalidity of votes issued by unqualified judges on the one hand and the small number of mujtahid judges and the existence of numerous and diverse lawsuits and the extensive need for litigation on the other hand, if the validity and influence of the judge's opinions If the unqualified person doesn't have influence and credibility, surely not only the society will be in severe trouble, but also the claims and disputes of the people will be closed and the life system of the society will be disrupted. The mentioned cases are things that Sharia is not satisfied with their occurrence in any way; Therefore, the general interest of the society requires that the opinions of unqualified judges, especially mock judges appointed by the comprehensive mujtahid, are valid and valid according to Sharia law. Based on this, the appointed mock judge must judge based on the fatwa of the designated mujtahid.

References

The Holy Quran.

Abd al-Moneim, Mahmoud Abd al-Rahman, The Dictionary of Al-Tirmidhom and Al-Alfaz Fiqhiya, First Edition, Cairo, Dar Al-Fadilah, 1998.

Abu Hamd, Abdul Hamid, Basics of Politics, Toos, Tehran, 8th edition, n.d.

Al-Akhund Al-Khorasani, Mohammad Kazem, Kefaiya al-Asul, 6th edition, Qom, Al-Nashar al-Islami Est., n.d.

Alama Al-Hali, Hasan bin Motahar, Qa'aab Al-Ahkam Fi Marafah Al-Halal and Al-Haram, first edition, Qom, Islamic Publications office affiliated with the Qom seminary teachers' community, 1992.

Al-Ansari, Morteza, Al-Qadaa and Al-Shahadat, first edition, Qom, World Congress of Honoring Sheikh Azam Ansari, 1994.

Al-Ansari, Morteza, Faraed Al-Asul, first edition, Qom, Majmael al-Fikr al-Islami, 1998.

Al-Ardabili, Ahmed, Majma al-Fedat wa al-Burhan fi Sharh Irshad al-Azhan, 1st edition, Qom, Islamic Publications Office affiliated with the Qom Seminary Society of Teachers, 1982.

Al-Faiz Al-Kashani, Mohammad Mohsen, Safina Al-Najat, Bija, n.d.

Al-Faiz Al-Kashani, Mufatih al-Shar'i, first edition, Qom, Ayatollah Murashi Najafi Library, n.d.

Al-Hairi Tabatabai, Seyyed Ali, Riyad al-Masal, first edition, Qom, Al-Al-Bait Foundation, 1997.

Al-Hali, Yahya bin Saeed, Al-Jamae Lal-Sharae, first edition, Qom, Seyyed Al-Shahada Al-Alamiya Institute, 1984.

Al-Harr al-Amili, Muhammad bin Hasan, Description of Shi'ite matters, first edition, Qom, Al-Al-Bait Foundation, 1988.

Al-Iraqi, Agha Zia al-Din, Book of Judiciary, first edition, Al-Najaf Al-Ashraf, Kashif al-Ghita Foundation, 2001.

Al-Mirza Al-Qami, Abul-Qasim, Rasail, first edition, Qom, Islamic Propaganda Office, Khorasan branch, 2006.

Al-Mousavi Al-Golpaygani, Seyyed Mohammad Reza, Book of Judiciary, first edition, Qom, Dar Al-Qur'an Al-Karim, 1992.

Al-Mousavi Al-Khoei, Seyyed Abul-Qasim, Taklama al-Manhaj, 28th edition, Qom, Madina al-Alam, 1989.

Al-Mousavi Al-Khomeini, Seyyed Ruhollah, Anwar Al-Hadaiya, 4th edition, Qom, Imam Al-Khomeini Editing and Publishing Foundation, 2012.

Al-Mousavi Al-Khomeini,Seyyed Ruhollah, Tahrir al-Wasila, first edition, Qom, Dar Al-Elam Press, n.d.

Al-Najafi, Mohammad Hassan, Javaher al-Kalam fi Sharh Shar'e al-Islam, 7th edition, Beirut, Dar Ahya Al-Tarath al-Arabi, 1983.

Al-Naraghi, Molly Ahmad, Al-Shi'a Documentary on the Laws of the Shari'a, first edition, Qom, Al-Al-Bait Foundation, 1994.

Al-Omili, Muhammad bin Makki, Al-Dros al-Sharia fi fiqh al-Umamiyyah, second edition, Qom, Islamic Publication Office affiliated with the Qom Seminary Society of Teachers, 1996.

Al-Omili, Zain al-Din bin Ali, al-Rawda al-Bahiya fi Sharh al-Lama' al-Damashqiyyah, (Al-Mahshi Kalanter, Davari Bookstore, first edition, Qom, 1992).

Al-Qatan Al-Halli, Muhammad Bin Shuja, Teachers of Al-Din in Fiqh al-Yasin, first edition, Qom, Imam Sadiq Institute, 2003.

Al-Rashti, Mirza Habibullah, Book of Judiciary, first edition, Qom, Dar al-Qur'an al-Karim, 1980.

Al-Tawsi, Muhammad bin Hassan, Al-Khalaf, first edition, Qom, Islamic Publications Office affiliated with the Qom Seminary Teachers Society, 1985.

Al-Zahili, Wahba, Islamic jurisprudence and justice, 4th edition, Damascus, Dar al-Fikr, 1997.

Fakhr al-Muhaqqin al-Halli, Muhammad bin Hasan, Izbah al-Fawadee fi Sharh al-Fawadit al-Qasas, first edition, Qom, Ismailian Institute, 1967.

Fazel Lankarani, Mohammad, Jame Al Masael, 11th edition, Qom, Amir Qalam, n.d.

Haji Dehabadi, Ahmad, Jurisprudence and Legislation, Qobsat Magazine, 2000, No. 15 and 16.

Ibn Babuyeh al-Qomi, Muhammad bin Ali bin Babuyeh, Man Laihzara al-Faqih, 2nd edition, Qom, Islamic Publication Office affiliated with the Qom Seminary Teachers Society, 1992.

Kashef al-Ghita, Hassan bin Jafar, Anwar al-Faqaha - Book of Judiciary, first edition, Al-Najaf al-Ashraf, Kashf al-Ghita Institute, 2001.

Saadi, Abu Jaib, al-Qamoos al-Fiqhi, language and terminology, second edition, Damascus, Dar al-Fakr, 1987.

Sarami, Saifullah, An introduction to governmental jurisprudence, an introduction to governmental approach to jurisprudence (collection of articles), first edition, Qom, Research Institute of Islamic Sciences and Culture, Spring 2012.

Tabrizi, Javad, New Esfattaat, first edition, Qom, n.d.

Umidi Hosseini, Seyyed Umiduddin, Kanz al-Fawad in solving the problems of rules, first edition, Qom, 1995.

Ziyaifar, Saeed, An introduction to the governmental approach to jurisprudence (a collection of articles and meetings), first edition, Qom, Research Institute of Islamic Sciences and Culture, 2012.

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