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A Comparative Study of "Contradiction of Shariah Permission and Coercive Guarantee" in the Jurisprudence of the Five Islamic Schools of Thought

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Abstract

The compatibility or incompatibility of Shariah permission and compulsory guarantee in the jurisprudence of the five Islamic schools of thought (Imamiyah, Hanafi, Maliki, Shafi'i and Hanbali) has been the subject of different reflections and trends. This article believes that the meaning of permission in the "Rule of Contradiction of Shari'i Permissibility and Compulsory Guarantee" from the three possibilities of "primary ruling", "secondary ruling" and "both primary and secondary ruling" has become the basis for the emergence of various views about the aforementioned rule. The descriptive-analytical method and the collection of library materials, show that "legal permission" in the mentioned rule means "absolute, real and primary legal permission". The same meaning in the stage of foundations (real and inherent expediency of rulings) contradicts with compulsory guarantee not "permission" in the sense of "secondary real order and state of inevitability". In the same sense, the views and arguments of the jurists are harmonized, and the relationship of the rule with other jurisprudential rules, especially the harmless rule and the emergency rule, is also explained.

Keywords: *Primary Permission; Secondary Ruling; Absolute Permission; Condition of Health; Contradiction of Permission and Guarantee; Islamic Jurisprudence*

Introduction

1) Problem Design

Whenever the legislator has permitted doing or omitting something, a person does it or refrains from doing it and it causes damage to another person, the issue of coexistence or irreconcilability of "shari'a permissibility" (obligatory ruling) and "compulsory guarantee" (situational ruling) is raised. Despite the emphasis of Hanafi, Maliki, Shafi'i and Hanbali jurists, and the tendency of a group of earlier Imamiyyah jurists on "contradiction of Shariah permission and coercive guarantee", in the interpretations, reasons, conditions, examples and exceptions to the rule, there are hiddenness and complications which sometimes shakes the authenticity and truth of this rule and opens the way for the navigation and acceptance of its opposite. The vagueness and mixing of some jurisprudential phrases in this context also adds to the darkness and late finding of the relationship between Shari'a permission and compulsory guarantee. The obvious failure of jurists to pay attention to the nature of "Sharia permission" as a primary

or secondary ruling has made the field of vision and judgment more dusty and unstable. While if "Sharia's permission as the main and primary ruling" is incompatible with compulsory guarantee, its story will be very different from the negation of Sharia's permission as an emergency secondary ruling. In addition to all this, the way of presence and absence of "harmless rule" and "emergency" has an effect on the relationship and rule of "legislator's permission" and "guarantee", which it seems that the jurists have not entered into a detailed discussion. This is where the question of the status of "the rule of contradiction of Sharia's permission and compulsory guarantee in Islamic jurisprudence" appears. It seems that in addition to how, "jurisprudential logic and logical reasons of the rule", the secret of its solution lies in the conditions of the rule, especially "the nature of Shariah permission in the rule". By revealing the fact that the meaning of "permission" in the rule is the real first ruling (not the secondary and emergency ruling), the ambiguities and disputes surrounding it will be reduced.

Relying on the various aspects of the issue, it is necessary to first point out the different concepts and interpretations of the contradiction between the Shari'a permission and the compulsory guarantee in the jurisprudence of the five Islamic schools (the first topic), Then the reasons of the opponents and supporters of the issue should be explained so that the level of stability and shakiness of the rule is not hidden (the second topic) and then the conditions, especially the nature of Shariah permission, should be studied in the rule, and by recognizing its nature as a primary or secondary real ruling, the contradiction or non-contradiction of Shariah permission and compulsory guarantee can be justified and also, its relationship with some secondary rules, such as: the rule of harmlessness and urgency, should be investigated as much as possible to solve the cases of "non-contradiction" (the third topic).

Diagram of the arrangement of the content of the rule of contradiction of Shari'a permission and compulsory guarantee:

Concept and interpretations of the rule:	Reasons for the rule:	Rule conditions:
Different concepts of the rule	The reasons of opponents of the rule and their criticism	Shari'a permission is not tied to health
Various interpretations of the rule	The reasons of the supporters of the rule and their review	Do not lead to the loss of someone else's property; The real and primary ruling of Shari'a permission

2) Topic 1: The Concept and Interpretations of the Rule of Denial of Shariah Permission and Compulsory Guarantee

Expressing the meaning of the rule reveals its ambiguous aspects and prevents incorrect and ambiguous perceptions. For this reason, it is necessary to address the "contradictory concept of Shariah permission and compulsory guarantee" (first section) and the jurists of the five Islamic schools of thought have expressed the mentioned rule in different formats. Referring to their interpretations shows the universality of the rule (second section).

Section1: Concept of the Rule of Contradiction of Shari'a Permission and Compulsory Guarantee

The jurists have two definitions of the rule: many of them introduce the said rule as "the incompatibility of self-permissibility with the guarantee" (a), while others consider "an act derived from a permissible act as incompatible with the guarantee" (b).

a) Contradiction of the Self of Absolute and First Shariah Permission with Compulsory Guarantee

Using the sum of the expressions of the jurists, the rule can be expressed as follows: The "Shari'i primary permissibility" negates and rejects the "compulsory guarantee". Whenever there is an absolute and original permission of the Shariah, the responsibility is not realized. Any act or omission of an act that is permitted by the Sharia as an absolute and primary ruling, is placed in the form of permissible or mustahab, or obligatory or even abominable, if a person does it under the same conditions and there is harm to another person from it, that person is not responsible for this loss (Ministry of Awqaf and Islamic Affairs, 1427 AH, vol. 16, p. 228; Zoheili, 1427 AH, vol. 1, p. 539). Of course (as will be seen) the meaning of "permission" is "primary and absolute verbal or actual permission", not "secondary permission and emergency conditions" because the permission to eat other food during an emergency is not incompatible with the guarantee. Therefore, the words of the author who took the permission in the general sense and even the permission after the ban as incompatible with the responsibility (Saidan, 1417 AH, p. 151), is far from the jurisprudential reality.

b) Contradiction of an Action Resulting from a Permissible Action with a Guarantee

Some jurists have depicted the rule in a different way: when a person performs an action subject to the permission of the legislator (any action other than haram) and from that action, another matter emerges that was not the subject of the initial permission of the Sharia and the action of which was not justified independently, its effects deteriorate. If the result of the act is a religious sin, even if there is permission, that sin does not arise, and if the result is the right of the servants and a loss is caused to the right of another, the doer is not responsible for compensating the loss (Abd al-Latif, 1423 AH, Vol. 1, p. 415). This definition is different from the first definition and expands the scope of the Shari'a permission rule. If a person performs an authorized action, and this action is accompanied by an "unauthorized independent action", and the second action becomes harmful, the performer is not responsible for this loss. Shariah permission allows both the action and its outcome. In any case, the famous example of the rule is as follows: a person digs a well in his property away from the passage of others for proprietary use, and another person or animal or other objects fall into it and suffer loss, the person digging the well is not a guarantor because the possession of his property and property was lawful and right. The first and absolute permission of the Shari'ah is subverting and negating responsibility. His action was neither based on urgency nor on violation of another's right (Zolmei, 2014, p. 234). However, in Imami jurisprudence, this issue has forms and the ruling of each form requires separate investigation (Ansari, 1415 AH, Vol. 8, p. 413).

Section2: Different Interpretations of the Rule of Conflict between Shari'a Permission and Compulsory Guarantee

The jurists of the five schools of thought, relying on their jurisprudential vision and method, have used various interpretations to express the mentioned rule:

- Imamiya: a group of jurists, especially the predecessors of the Imamiya, such as: Sheikh Tusi (1387 AH, vol. 3, p. 103), Ibn Idris Helli (1410 AH, vol. 3, p. 373), Allameh Helli (1414 AH, vol. 14, p. 270), Mamaqani (1417 AH, p. 342), Mirzae Qomi (1385 AH, Vol. 2, p. 985), even Fakhr al-Muhaqqin (1387 AH, Vol. 2, p. 213), Simiri (1420 AH, Vol. 1, p. 281), Al Asfour (1417 AH, Vol. 11, p. 402) and Shahid Thani (1413 AH, Vol. 3, pp. 205 and 246, Vol. 7, p. 65 and 262). Vol. 12, pp. 326 and 328, Vol. 14, pp. 472, Vol. 15, pp. 370 and 376) have tended to "repudiate Shariah permission and compulsory guarantee" and they have the interpretation of "legal permission is not accompanied by a guarantee" (Simiri, 1420 AH, vol. 1, p. 281. Al-Asfour, 1417 AH, vol. 11, p. 402), "there is no responsibility for the spread of damage from a permissible act" (Tusi, 1387 AH, vol. 3, p. 103). And some have attributed the concept of "legal permission is contrary to guarantee" to Shahid Thani (Araki, 1413 AH, p. 103).

- Hanafians: Hanafi jurists interpret the rule as "arising from the action of the authorized person, it is not guaranteed" (Kasani, 1406 AH, vol. 7, p. 305). "Sharia validity is incompatible with responsibility" (Haider, 1423 AH, vol. 1, p. 81. Ibn Abedin, 1412 AH, vol. 5, p. 523).

- Maliki: Maliki scholars have used the following expressions: "Any person who commits a lawful act, and a loss occurs from his act, is not a guarantor" (Gharnati, 1417 AH, p. 221). "The doer who performs the permitted action in the right way and causes destruction or deficiency to another's property, does not have a guarantee" (Jandi, 1429 A.H., Vol. 8, 339) and "there is no responsibility, because it arose from a permissible and permissible act" (Qarafi, 1994, vol. 12, p. 257).

- Shafi'i: Shafi'i scholars say that "permissible action has no effect on them, unlike prohibited behavior" (Zarkashi, 1405 AH, Vol. 3, p. 163). And "satisfaction with something is also satisfaction with its outcome" (Siyuti, 1403 AH, p. 141).

- Hanbalis: Hanbali jurists usually use the following interpretations: "There is no guarantee of what is permitted" (Maqdisi, 1418 AH, Vol. 4, p. 337), "Contagion of damage from a permissible act is not responsible" (Ibn Qudama, 1997, vol.7, 432) and "Damage arising from the permissible matter is not responsible" (Ibn Qayyim, 1423 AH, Vol. 3, p. 261).

3) Topic2: The Reasons of the Opponents and Supporters of the DENIAL OF Shari'a Permission and Compulsory Guarantee

The stability and acceptability of any theory and rule depends on its documents and logical reasons. First, "the reasons and documentation of the opponents of the contradiction between Sharia's permission and compulsory guarantee" are presented and examined (section1), then, "the reasons and arguments of the supporters of the contradiction between Sharia's permission and compulsory guarantee" are discussed (section2)

Section1: Reasons of the Opponents of Contradiction between Shariah Permission and Compulsory Guarantee

The appearance of the writings of a large group of Imamiyyah jurists, especially the later and contemporary ones, show opposition to the aforementioned rule and say that "non-contradiction of Shariah permission and compulsory guarantee" is the rule; There is no customary or Shariah connection between lawful permission and lack of guarantee (Kashif al-Ghata, 1422 A.H., vol. 23, p. 137). Neither a forbidden act has a guaranteed result, nor is every permissible act permitted by Shari'ah inconsistent with responsibility (Hosseini Maraghi, 1417 AH, Vol. 1, p. 337) and basically, permission is not one of the factors of guarantee (Yazdi, 1410 AH, vol. 1, p. 39); In many jurisprudential issues, civil responsibility and forced guarantee have coexisted (Hosseini Maraghi, 1417 AH, vol. 2, p. 513. In their eyes, beyond the permissibility of the action, there is the desirability of the action (Najafi, 1404 AH, vol. 15, p. 439), and even the obligation (ibid., vol. 22, p. 118) and the necessity of the action - unless the necessity is a kind of conflict with the principle of guarantee- (Mousavi Sabzevari, 1413 AH, vol. 21, p. 337 and 338). The state of benevolence (Najafi, 1404 AH, vol. 43, p. 132) and non-obligation (ibid., vol. 26, p. 101) are not contrary to compulsory guarantee because in removing the conflict between permission and acceptance and the obligation to act with prohibition, it is enough to remove the mandatory ruling (sanctity) and sin and the hereafter punishment, and it is not time to conflict with the conditional ruling (guarantee). Whenever the Shariah allows the performance of an action or makes it recommended or obligatory, without a doubt, engaging in that action is not haram and there is no sin and they do not suffer the punishment of the hereafter, but "lack of guarantee" does not arise from them. Doing that act may or may not be accompanied by civil liability, because permission in a general sense includes both guarantee and non-guarantee.

However, according to one of their views, some contemporary jurists of the Imamiyyah have introduced the permission and non-permission of the Shariah as the rule and criterion of non-guarantee and guarantee. There is no civil liability wherever there is Sharia permission, and there is liability whenever Sharia permission is not obtained. However, the totality of both rules will not be free of problems (Imam Khomeini, 2013, vol. 2, p. 604. Rizvani Mofrad, 2014, p. 78).

Opponents of "contradiction of Shariah permission and forced guarantee" have cited: (a) the Quranic verse, (b) hadiths, (c) method of the wises and (d) intellectual rulings.

A) Quranic Verse

Some of the writers have considered the Quranic verse as the reason for the compatibility of Shari'a permission and compulsory guarantee. First, the argument is presented and then it is criticized.

1- Reasoning based on the Qur'anic verse: In verse 92 of Surah An-Nisa we read: "It is not permissible for a believer to kill a believer, except by mistake; Whoever kills a believer by mistake must free a slave and pay the blood money to his people. Some authors have argued as follows: a mistake is a Shariah excuse, a Shariah excuse is one of the examples of permission, and a person in this situation, even though there is no prohibition, is responsible according to the said verse. Therefore, Shariah permission and forced guarantee are not contradictory (Farahnak, 1401, pp. 51 and 52).

2- Criticism of reasoning: In criticizing this perception, we can remind that permission is one of the situational rules, Abaha is one of the obligatory rules, and it is possible to use each one of the other; First, the dependence of permission on consent: If the killing by mistake is "permitted", it means that the lawgiver has a satisfactory permission to kill by mistake. This meaning is not compatible with God's mercy and gratitude.

Second, the discontinuity of the exception: Due to the lack of permission and Shariah permission in killing by mistake, some commentators and jurists have taken the exception as disconnected, not connected, they have considered "by mistake" as an adjective for the omitted infinitive (except murder by mistake), neither the passive nor the present tense (Fazel Moqdad, 2013, vol. 2, p. 387) so that it does not smell permitted. The exception is interrupted in the sense that the word before the exception was complete and ended, then it was stated: "If the killing is due to a mistake, the verdict is like that" because if the exception is connected and true, it requires the order and permission of wrongful killing. While none of it is allowed (Tabarsi, 1372, vol. 5, p. 294). The commentators who, relying on the appearance of the word, saw the exception as connected and true in the mentioned verse, inevitably got caught up in justifications (Fazel Javad, 1365, Vol. 4, pp. 225 and 226. Zamakhshari, 1407 A.H., Vol. 1, p. 548. Fakhr Razi, 1420 A.H., Vol. 10, p. 175). For example: "A believer never needs to kill a believer because he knows that he is a believer" (Allameh Tabatabayi, 1352, Vol. 5, p. 39) so that they do not fall into the theory of "God's permission in wrongful killing".

Thirdly, the importance of Muslim blood: It is possible that guarantee in a mistake murder is due to the "importance of Muslim blood" that the Shariah is not satisfied with "wasting it" (Mustafawi, 1421 AH, p. 129. Borno, 1416 AH, p. 240). It is not because of the coexistence of Shariah permission and compulsory guarantee. That is, "noneintentional homicide" is not permitted by Shari'ah; If it happens, there is responsibility, because the life of a Muslim is important. In this case, the blessed verse will not be related to the conflicting or non-contradicting discussion of Shari'a permission and coercive guarantee.

B) Traditions

One of the arguments on the compatibility of Shariah permission and compulsory guarantee is based on hadiths:

1- Expressing Reasoning to Hadiths

From the point of view of Imami scholars, "narratives representing the responsibility of the common agent" can be considered the most important reference in this field: In a group of traditions, the joint agent (makers, dyers, goldsmiths, washer men, weavers, carpenters, camel drivers, renters, captains, shepherds and porters) has been introduced as a guarantor (Hor Amili, 1416 AH, vol. 19, p. 148 onwards). For example: Zayd, the son of Ali, narrated from their fathers: "The porter who was carrying a large container of oil broke, they made him responsible, and they said: Every joint agent (general worker) who spoils something is a guarantor." I asked: What does common mean? They said: "One who works for me, you and another" (Tusi, 1986, Vol. 7, p. 222).

This group of hadiths understands that public employees (professionals and service providers) although they are allowed to perform their actions, if they cause damage, they are responsible. Some of the Sunnah narrations also provide guidance on the guarantee of "joint hire", such as: "When a joint hire takes something, he is a guarantor (Ibn Abi Shaiba, 1409 AH, Vol. 4, p. 310). Or Abu Hanifah narrates: “We were at Shoreih when a man brought a dyer and said: I gave my clothes to this man and his house is burnt, what do you think? Shareih said: "You have to pay the compensation for his clothes" (Abu Yusuf, 1417 AH, p. 156). The joint tenant is considered responsible despite the Shari'a permission and owner's permission in possession, so there is no contradiction between Shari'a permission and responsibility.

2- Criticism of Reasoning

This reasoning is also not far from the circle of criticism, in the examination of the opinion of the Imamiyyah scholars, it can be said: First, the lack of documents: Narratives of the responsibility of the common agent, such as Zayd's report about their fathers, are subject to weak documentation and it is better not to be used as the basis of the rule (Mohseni, 2012, p. 233) and it should be followed only in the case of narration. Secondly, the variety of expressions: the narrations related to the guarantee of the hirer (common agent) and the lack of guarantee of the trustee (the common agent is considered the trustee), there are ten tribes: Non-guarantee of the trustee (including loss, not waste), prohibition of the trustee's accusation, the validity of the trustee's words regarding the trust, non-guarantee of the trustee with the surety, guarantee of the trustee in case of requirement, guarantee of hire except by providing proof of non-trespass, detailing between the existence of a customary rule on loss without excess and its absence, detailing between accused and non-accused hire (trust and non-trust), hire guarantee regarding loss (including non-trespass and excess) and absolute hire guarantee (including loss and wastage). The combination of these groups cannot explain the compatibility of coercive guarantee and Shariah permission, because the above-mentioned narrations do not benefit from such an application that includes the guarantee of the trustor and the hirer. Although the case is not specific, but passing from the case of the narration to other cases is done by canceling the specificity, which is dependent on the cause and rule. Such a rule is not seen in this field. It is better to be satisfied only with the narration.

Thirdly, permission conditional on health: when the permission is accompanied by responsibility and conditional on health, there is no doubt about the responsibility of the possessor or joint agent. The wording of some of the narrations of the chapter shows "permission conditional on health": the joint agent is recognized as responsible if he has "concern for the people" (Kilini, 1363, vol. 10, p. 310) or "concern for the property of the people" (Tusi, 1365, vol. 7, p. 219). Also, the purpose of handing over the goods to the agent is "to improve and restore, not to create a deficiency or to destroy" (Har Ameli, 1416 AH, vol. 19, p. 143). All this means that in the area of the common factor, the permission was conditional on health

and no harm, and the relationship between pure permission and responsibility cannot be understood from that.

In criticizing the Ahl al-Sunnat's interpretation of hadiths, it should be said: such hadiths are not established through Ahl al-Sunnat (Bihaghi, 1412 AH, vol. 8, p. 338). Narratives have no citation value. For this reason, from the point of view of Sunni scholars, common wage earner (someone who works for the general public, such as artisans, dyers, and clothes washers), Hanbali and Shafi'i in their more acceptable view, most of the Hanafians consider him to be the equivalent of a special hireling, only a guarantor during transgression and extravagance but the authors (Abu Yusuf and Shibani) and Ahmad Ibn Hanbal in a narration, and Malikian consider the common agent to be the guarantor (Nisaburi, 1430 AH, vol. 11, p. 185. Bayhaqi, 1412 AH, vol. 8, p. 338).

C) The Way of the Wise

The scholars have cited the compatibility of Shariah permission and coercive guarantee based on reason:

1- Expressing reasoning in the way of the wise: Religious people and other wise people judge the "combination of Shariah permission and compulsory guarantee" and from their point of view, the mere presence of Shariah permission and permission does not indicate the absence of civil responsibility; A group of behaviors benefit from Shariah permission, but in the case of another loss, they are the cause of civil liability. Wise people in their lives give permission to others to use their property, but they do not take pure permission in the sense of absence of responsibility. They have the same attitude towards Sharia permits. This is where some Imamiyyah jurists consider the phrase "lawful permission does not follow a guarantee" to be a loose statement and write: "the combination of customary and Shariah between Shariah permission." And there is no lack of guarantee" (Kashif al-Ghata, 1422 AH, vol. 23, p. 137).

2- Criticism reasoning: In criticizing this argument, it is possible to refer to the argument of the proponents of the contradiction between Shari'a permission and compulsory guarantee: they believe that the minds of the wise do not accept the coexistence of legal permission and compulsory guarantee, and they see a kind of contradiction in it. On the other hand, despite the existence of various narrations on guarantee and non-guarantee, it is not valid to refer to the procedure.

Supporters of the non-contradiction of Shari'a permission and coercive guarantee have also sought help from rational reason:

1- Expression of reasoning by reason: Reason does not rule on the ugliness and distastefulness of "coercive guarantee with Shariah permission" and considers the nature of permission to be compatible with guarantee and non-guarantee. Some Imami jurists have written: "There is no rational or narrative reason for accepting the contradiction between permission and guarantee, but reason and narration testify that permission includes the lack of guarantee" (Mousavi Sabzevari, 1413 AH, Vol. 21, p. 309). If the rule of contradiction between Shariah permission and compulsory guarantee is accepted, many cases in jurisprudence will go out of its scope and then we will have an empty rule of examples (majority allocation), and the intellect refuses to like and accept it. They write: "The principles and rules of guarantee show that not every forbidden act is a cause of guarantee nor every permissible act of Shari'ah is a proof of lack of guarantee because there are many cases of the existence of Shariah permission and compulsory guarantee in jurisprudence" (Hosseini Maraghi, 1417 AH, vol. 1, p. 337).

2- Criticism of Reasoning

It is very difficult to argue with a rational verdict in the issue of "non-contradiction of Shariah permission and compulsory guarantee". It does not cause the allocation of the majority, because basically, the examples they want are from the secondary rulings and are not included in the rule. In addition, the secret of the issue is in the "nature of permission". If what is meant by "permission" is the real ruling of the first one, then the reason is the "incompatibility of Shariah permission and coercive guarantee" and if the permission has the nature of a secondary real ruling, the intellect will rule on non-contradiction. It seems that the intention of this group is "non-contradiction of Shari'a permission and civil liability", permission in the sense of a secondary ruling and an emergency situation, not permission as a real ruling of the first one. In addition, the examples given by them are either the permission subject to the condition of health and responsibility, or related to the secondary ruling and unavoidable circumstances. The explanation will come in the discussion of conditions.

Section2: The Reasons for the Supporters of the Existence of a Contradiction between the Shari'a Permission and Compulsory Guarantee

The acceptors of the rule of contradiction between Shari'a permission and compulsory guarantee have brought various reasons and documents to prove it. In addition to the Quranic verses, "prophetic narrations" and "rational judgment", they also refer to "jurisprudential consensus", "wises' understanding" and the first principle.

A) Quranic Verses

It is necessary to mention their reasoning first, and then the criticism of the reasoning:

1- Expressing reasoning: In verse 61 of Surah Noor, eleven or fourteen groups (counting the blind, the lame and the sick) have the Sharia permission to eat food and similar possessions from certain houses. According to the interpretation of Imamiyyah and Sunni religious scholars, there is no need for "express permission of owner" in this context (Zoheili, 1411 AH, vol. 18, p. 307). Of course, obtaining permission from the owners of those houses is not a condition, because even with the owner's permission, the food of any person can be used, and these eleven (or fourteen) groups have no characteristics. The inclusion of the mentioned verse also negates the condition of achieving the inner satisfaction of the food owners (Makaram Shirazi, 1992, vol. 14, p. 554). Undoubtedly, eating food by the mentioned groups is not associated with civil responsibility. This means that whenever there is a "shari'a permit", "compulsory guarantee" does not enter into it. In addition to the mentioned verse, some other verses have also been cited, such as the verse of charity (Toba/91) which is a permissible representation of charity and accepting damages will be incompatible with charity. The opposite concept of countermeasures verses (Baqarah/194, Nahl/126 and Shura/40) which introduced the demand for damages from the examples of transgression and crime, and the opposite concept of the three verses, becomes as follows: If it was not trespassing, rape or blackmail, don't retaliate. Whenever a person performs the permissible action, none of the three titles will appear and it should not be countered in kind (claiming damages), but if there is a guarantee when there is Shariah permission, it will be an example of trespass and crime (Talafaha, 2006, pp. 7 and 8).

2- Criticism of reasoning: Such an understanding of verse 61 of Surah Noor is not acceptable, because in it, user groups and service providers are specified and he understands that only in these fourteen or eleven cases there is no compulsory guarantee, it is possible that it is not so in other cases. For this reason, "It is unlawful to use another's property without the owner's permission" (Nisaa/29) and the mentioned verse is considered an exception (Naraghi, 1415 AH, vol.15, p.40). And contrary to the principle, you should be content with it (Shahid Sani, 1410 AH, Vol. 7, p.

342). Therefore, the rule of negation of Shariah permission and compulsory guarantee will not be based on the provisions of the mentioned verse.

Reasoning to Ayah Ehsan (Toba/91) is outside the scope of discussion. Citation of the three verses of countering similar (Baqarah/194, Nahl/126 and Shura/40) is related to the concept of condition and adjective. The condition has an opposite meaning when it is the "exclusive cause for the nature of the ruling" (Shahid Sadr, 1430 AH, Vol. 1, p. 71), and the adjective has no opposite meaning at all (ibid., Vol. 1, p. 197). Therefore, it is not possible to rely on the concept of condition in verse 194 of Baqarah and 126 of Nahal, because “the condition is not exclusive cause of rulling". Sometimes the warranty appears without violation, so the concept of condition does not work. Just as the concept of adjective in verse 40 of the Shura will not be able to be cited, because the adjective is not the owner of the concept. As a result, no document can be found from the Qur'anic verses for the conflict between the Shari'a permission and compulsory guarantee.

B) Prophetic Narrations

Proponents of the conflict between Shari'a permission and compulsory guarantee have considered various narrations as the reason for this rule. Their reasoning is discussed and criticized:

1- Expressing of Reasoning

First, some news from the Sunnis are mentioned, then some of the traditions of the Imamiyyah are mentioned: Ahl al-Sunna narrative communities, in a chapter entitled "When a man gets a tooth and his front teeth fall out", contains such narrations: "A man bit another man's hand, this man pulled his hand out of his mouth with pressure, the victim's front tooth fell out. They argued with the Prophet (PBUH), and he said: "One of you bites his brother like a male (predatory) animal?! There is no blood money for him" (Bukhari, 1410 AH, vol. 10, p. 314). Narratives like this can be seen in Nasa'i traditions (Nasa'i, 1417 AH, p. 493). It has been narrated from the second and fourth caliphs: "Whoever dies due to the execution of hadd or retribution, does not have blood money" (Bihaghi, 1417 AH, vol. 3, p. 225). Sahih Bukhari has given a narration from the Prophet (PBUH) about "the one who digs a well in her own land does not guarantee (the life and property of another)": "Death in a mine is a waste, in a well it is a waste, and by an animal is a waste, in Rakaz (buried treasure) is Khums" (Bukhari, 1410 AH, Vol. 4, p. 173). Sahih Bukhari has narrated three narrations in the book of Dayat (Chapter of the one who looks into people's house and blinds his eyes, he does not deserve the price of blood). Among them: "If someone looks at you without permission, you throw a pebble at him and destroy his eye, there is no sin (damage) on you" (ibid., Vol. 4, Vol. 10, p. 319).

The method of reasoning is as follows: in the aforementioned traditions, civil liability is negated, because the person causing the damage has a legal permission in performing the act, a man who pulled his hand out of a tooth picker's mouth and destroyed his front teeth, or a person who performed hadd or retribution and caused damage, a person who dug a well in his own land and suffered damage from it, or a person who caused damage to another in the protection of his privacy, all of them have benefited from " "Sharia permission" and in the hadiths, their guarantee has been denied. Therefore, Sharia's permission is incompatible with civil responsibility.

Two groups of Imami traditions are worth mentioning in this context: (1) Traditions of eating passers-by (narratives indicating the right of passers-by to use the products of gardens and fields): In the narrative books of Imamiya, there is a group of hadiths with the title "Permission of a passer-by to eat fruits" (Hor Ameli, 1416 A.H., vol. 18, p. 226). Like when Imam Sadiq (a.s.) was asked: "A person passes by a date palm, a wheat field, and a fruit line, is it permissible to eat from them without the permission of their owner for need or not? and Imam answers: "There is no obstacle" (ibid., p. 226). Imam Sadiq (a.s.)

said: "One who passes by the gardens, there is no obstacle to eat their fruits and take nothing from those fruits with him" (Ibn Babaweih, 1413 AH, Vol. 3, p. 180).

All the above-mentioned narrations are from the "Mursalah" document (the narrator narrated from Masum without facing him), many narrations with the same theme can be found that do not have the superiority of a document. Many hadiths with the same themes can be found that do not have the superiority of a document. Nevertheless, they have been described as "mustafiz" (Naraghi, 1415 AH, vol. 15, p. 47) and perhaps the weakness of the documents can be compensated for by the popular practice of following them.

- Narratives of lack of damage: In Imamiyyah narrative principles, "lack of blood money" (Keliny, 1363, vol. 7, p. 290), damage caused by the execution of retribution, legitimate defense, protection of privacy (ibid., vol. 7, p. 290 and 291), and the narratives related to non-guarantee of the trustee (Nuri, 1408 A.H., vol. 14, p. 16) indicate the conflicting relationship between forced guarantee and Shariah permission.

2- Criticism of the Reasoning

In criticizing the interpretation of the contradiction between Shariah permission and compulsory guarantee from Sunni traditions, it is worth mentioning:

Firstly, some of those traditions are from "Gharaib" (Ibn Jozi, 1425 AH, Vol. 2, p. 306); The narration "Death in the well is waste", based on the following, "Khums is in the buried treasure" seems ambiguous.

Secondly, the text of all the above-mentioned traditions refer to "special conditions" or are related to the legitimate defense and protection of one's life (such as the narration of removing fingers from the recipient's mouth either it is related to the protection of privacy (like the narrative of making the viewer blind) or it shows the ease of implementing Sharia limits. This special situation is the context for "lack of guarantee". The debate on the conflict between Shariah permission and civil responsibility is in a normal state and without context not in the place where the Shariah permission is accompanied by context and evidence.

Thirdly, on the assumption of accepting the understanding of the Sunni scholars from the above-mentioned traditions in conflict with legal permission and civil responsibility, this understanding will be valid only for their followers. As a result, one of the reasons for disagreement among Sunnis is the religious scholars' interpretation of hadiths.

Also, it is difficult to accept the interpretation of the conflict between Shariah permission and compulsory guarantee from the narrations narrated in the books of Imamiyyah because: First, most of them are related to duty ruling, they do not look at removing situational judgments (guarantee). Secondly, each of the aforementioned narrations is related to a specific case, a specific situation, and a specific permission (subject to no guarantee). The emergence of the general rule from their language will not be very close to the language of conventional jurisprudence. Finally, the narrations in Sunni narrative books, assuming the authenticity of the document and the abolition of the attribute, become one of the reasons for the incompatibility of compulsory guarantee and Shari'a permission.

C) Rational Judgment

Rational reasoning has also been used by the converts of the conflict between Shari'a permission and coercive guarantee, which is explained and then criticized:

1- Statement of reasoning: It can be understood from the words of some Imamiyyah jurists: the same intellect that declares "possession of another's life and property" as tyrannical and distasteful, does not see any ugliness and displeasure in the possession with the legal permission and consent of the owner and it allows harmful occupation. All the proofs indicated the sanctity of taking possession of another's property, and they guide the decision of taking possession when consent and permission are given (Collection of researchers, 1423 AH, vol. 2, p. 135. Naraghi, 1415 AH, vol. 15, p. 48). Then, if the law permits a behavior from one side and that behavior is guaranteed from the other side, it is considered a form of oppression in the eyes of reason. That is, reason considers the combination of permission and guarantee to be ugly. Therefore, from the point of view of reason, "legal permission" and "compulsory guarantee" have a conflicting relationship.

In the belief of some Sunni writers, the rule of "contradiction between Shariah permission and guarantee" is derived from rational reasoning. Responsibility appears when "trespass" (violation and oppression of another) is realized. The rule of trespass is doing a harmful act without the right and permission of Sharia. Therefore, whenever the action is permitted by Shari'ah, there is no violation, without violation, there is no reason for guarantee. In this case, narrations should be considered as evidence of rational reasoning (Khairi Jabari, 2020, pp. 23 and 24). In fact, Shariah permission justifies the action, from the point of view of reason, responsibility cannot be realized without a cause.

2- Criticism of Reasoning

Such an argument cannot be accepted: First, reason not only does not judge the incompatibility between permission as a secondary ruling and compulsory guarantee, but also sees them as compatible as a real secondary ruling. It is not possible to take the solution after the sanctity as the reason for the rule. Secondly, reason does not rule the ugliness of absolute cohabitation with legal permission and civil responsibility. From the point of view of reason, the permission to occupy conditional on a guarantee is not oppressive and obnoxious. For this reason, exchange guarantee and guarantee condition in performing reasonable behavior is reasonable. Of course, common sense sees a contradiction between Shariah permission and Shariah prohibition, and as a result, when Shariah permission is granted, it is not a mandatory ruling (prohibition or even punishment). Nevertheless, the intellect cannot accept the coexistence of Shari'a permission in the sense of the first real ruling and coercive guarantee, because such permission, which is based on "interest", cannot be compatible with the guarantee, which is a type of harm. It is difficult for the intellect to accept that the Shariah both gives permission (as the first ruling) and guarantees the performer of the permitted act. So, if this expression is meant, it can be considered as a proof of the conflict between the Shari'a permission as the first ruling and the compulsory guarantee.

D) Jurisprudential Consensus

One of the important reasons for those who accept the contradiction between Shari'a permission and compulsory guarantee is "jurisprudential consensus". It will be necessary to refer to the expression of the reasoning and its review:

1- Statement of reasoning: Some of the old Hanafi jurists have based the consensus on the lack of responsibility in the transmission of injury from authorized action and have taken the reason of "contradiction between authorization and warranty" as the jurists' consensus (Kasani, 1406 AH, Vol. 7, p. 305). Usuli scholars from Ahl al-Sunna have defined Ijma as "the consensus of the mujtahids of an era from the Ummah of the Holy Prophet (PBUH) on the Shari'i matter" (Ibn Amir Hanafi, 1403 AH, Vol. 3, p. 102). Relying on their basis in the pillars and conditions of consensus, it is possible to take the "consensus of the mujtahids" as the reason for the conflict between Shariah permission and compulsory guarantee because First, the agreement of the existing mujtahids in one age is sufficient to achieve consensus, and the agreement of the jurists in all ages is not required. Such an agreement can be seen in the rule of "contradiction between

Shariah permission and coercive guarantee", otherwise this ruling would not have taken the shape and stature of a rule.

Secondly, Ijma is a Shari'i proof and an independent source of the rulings of Islamic law, which is forbidden to oppose it. The consensus of mujtahids is reflected in the rule of "contradiction between Shariah permission and forced guarantee" and is its independent reason. Thirdly, the authority of a silent consensus: not only the express consensus (expressing a favorable fatwa by the mujtahids of an age) which, according to many of them (Hanafis, Malikis, Hanbalis, unlike the Shafi'is). A silent consensus (statement of fatwa by a group of jurists, silence of other jurists without acceptance or denial) is also considered as proof. Again, in addition to the silent consensus, there is an explicit agreement in the negation of Shari'a permission and compulsory guarantee.

Fourthly, the value of a documentary consensus: in the principles of Sunni jurisprudence, not only is a documentary consensus valid, but the consensus of the mujtahids must be based on a Shariah reason (even if it has not reached others) (Zoheili, 1427 A.H., Vol. 1, pp. 227-234). The consensus of Ahl al-Sunnah in the way described can be the support of the rule of negation of Shariah permission and coercive guarantee. It is one of the surprises and confusions of writing and research that one of the authors of the rules of jurisprudence has taken "consensus on the validity of legitimate defense" as a document of this contradiction and wrote as a reason: "The consensus that when someone pulls a weapon with the intention of killing another person, he defends himself and kills the attacker, there is nothing against the defender" (Abd al-Latif, 1423 AH, Vol. 1, p. 421). He considered the "consensus on the lack of guarantee in legitimate defense" as the reason for the conflict between Shari'a permission and forced guarantee and did not see the gap between the claimant and the document. Some Imamiyyah jurists have considered that "the coercive guarantee does not go hand in hand with the Shariah permission" as one of the absolutes of jurisprudence (Mamghani, 1417 AH, p. 342) and from the words of some in other cases, such as: performing permissible actions that are habitually beneficial, for example, discipline or treatment according to "the consensus of the tribe" (Ibn Zohra, 1417 AH, Vol. 1, p. 402). Or they have insisted on "non-contradiction" (Mirzai Qomi, 1385 A.H., Vol. 2, p. 985) in the permissible and necessary behavior of owners, and this jurisprudential harmony can be considered as the reason for the conflict between Shari'a permission and compulsory guarantee.

2- Criticism of the reasoning: In criticizing Sunnis' arguments for Ijma, it can be said: It reveals two basic points about the weakness of the aforementioned Ijma: In criticizing Sunnis' arguments for Ijma, it can be said: It reveals two basic points about the weakness of the aforementioned Ijma: At least some of the jurists have not accepted the conflict between Shariah permission and compulsory guarantee, and the same non-acceptance has continued throughout the ages. Therefore, the agreement of all the mujtahids of an era is not reached until the consensus is realized and becomes the basis of the argument, unless it is said that the consensus of the mujtahids of a religion is sufficient for its jurisprudential verdict.

Secondly, the non-opposition of consensus with the Qur'anic text, narration and previous consensus is a condition for its validity, because consensus is in the second order of evidence and cannot conflict with first-hand evidence (Zuheili, 1427 A.H., Vol. 1, p. 227). From some hadiths (joint wage guarantee), the coexistence of sharia permission and coercive guarantee is taken, and its validity will be doubted on the assumption of consensus. Despite all this, Ensaf judges that the considered opposition to the aforementioned consensus is not seen in Sunni jurisprudence, and they have emphasized the said contradiction since the beginning of jurisprudence until now. On the other hand, the narrations of guaranteeing common wages (as it will happen) have not been proven through them to break the consensus. Therefore one of the important reasons can be considered consensus in this matter. In criticizing the arguments of Imamiyyah jurists for consensus, it can be noted:

First, the lack of consensus: a large group of jurists do not see a contradiction between compulsory guarantee and Shariah permission, so consensus does not emerge Secondly, the evidence of

consensus: assuming the existence of consensus, such coordination will be a proof and dependent on other reasons, so the proof of agreement must be seen and of course, most consensuses are proof (Hashmi, 1441 AH, Vol. 2, p. 162). Thirdly, the value of consensus is dependent on the discovery of the infallible point of view: consensus will have an argumentative value that somehow discovers the "infallible opinion" and otherwise, the consensus will not be valid (Hosseini Shahroudi, 1379, vol. 3, p. 206. Fadel, 1390, vol. 2, p. 43). There is no consensus representing the opinion of the Imam (a.s.) in relation to Shariah permission and compulsory guarantee.

E) Intellectual Understanding (Customs, Intellectual Practice and the Way of People of Sharia)

The method of the wise is very important and the converts have cited the contradiction between the Shariah permission and forced guarantee:

1- Statement of reasoning: The majority of Ahl al-Sunnah scholars have actually considered the correct custom as a legal proof. With the difference that according to the Hanafi, Maliki and Ibn Qayyim Hanbali schools of thought, custom is an independent Shari'i proof, but the Shafi'is consider it a proof if the Shari'a has guided its validity (Zoheiili, 1427 AH, Vol. 1, p. 227). In general, from their point of view, correct custom is considered a shari'i reason when there is "lack of text and consensus" (ibid., vol. 1, p. 269).

A great number of Imamiyyah jurists have considered the "reference to the understanding of custom" as a clear, correct and acceptable way among all religions because the audience of the legislator is the people, and the understanding of the audience will be the criterion for understanding the words of Sharia (Kashif al-Ghata, 1419 AH, p. 35). To determine the appearance of religious speeches and to understand the intention of the legislator, there is no other reference other than custom (Saifi, 1429 AH, vol. 1, p. 333). The Holy Quran (Ibrahim/4) also emphasizes: "The only language for messengers is the language of the people" (Ibrahim/4). In a word: from the infallible Sharia, irrational rulings cannot be issued.

Relying on the aforementioned introduction, it can be argued: People's customs understand the conflict between the two by "the existence of legal permission and compulsory guarantee". And the minds of the wise and the religious are caught in a tense surprise from the coexistence of legal permission and forced guarantee as, despite the law's permission in doing the act, if it is accompanied by a responsibility, the ruling will not be considered rational. In other words, the wise mind of religious people finds "combination of Shariah permission and coercive guarantee" contradictory and refuses to accept it. Therefore, whenever there is a lawful permission to perform or refrain from a behavior, and it causes harm to another person, from the point of view of rational and legal customs, it will not be civil liability. This understanding is the basis of a rational and legitimate way of life. For this reason, wise people (in better words: the wise mind of religious people) do not hold the owner responsible if his conventional possessions in his property cause another loss. Such a method of the wise (religious people and those who do not know religion) is a proof of the contradiction between legal permission and compulsory guarantee.

2- Criticism of the reasoning: In the criticism of this argument, it can be recalled: "referring to the common sense in the understanding of the Sharia" is acceptable, but when the Shariah has not established and expressed the "new understanding". In this context, there is a jurisprudential rule: "Every case that is not defined (Sharia's definition), the rule is custom" (Ansari, 1415 AH, Vol. 8, p. 68). Customary appearance plays an important role in correcting the proof and understanding of Shari'i texts and is considered as an oral evidence connected to the word. In order to obtain the appearance of proofs, one should refer to common taste (Center for Research and Scientific Studies, 1430 AH, vol. 5, p. 37). Therefore, custom is a helper in distinguishing issues and examples and clarifying the meaning of Shari'a addresses and reasons, not a legislator of Shari'a ruling. Many Imamiyyah jurists, who have emphasized the authority of custom in understanding

Shariah addresses, are not supporters of the conflict between Shariah permission and civil responsibility. In any case, the validity of correct customs and the method of the wise has conditions: from the point of view of Ahl al-Sunnat, custom if the six conditions are met (generality, prevalence, existing at the time of composition of possession, mandatory, not opposing the statement to the contrary, not opposing the reliable Shari'i reason), it is "the way to prove the Shari'i ruling" (Namleh, 1430 AH, Vol. 3, p. 1021). The most important conditions for the validity of the custom are two conditions: "the generality of the custom" and "the non-contradiction of the custom with the text or consensus" (Zoheili, 1427 A.H., vol. 1, p. 268). In the relationship between Sharia permission and compulsory guarantee, there are various texts against the contradiction.

However, there is fairness in judgment: From the point of view of Ahl al-Sunnat, custom (the way of the wise and religious) is one of the reasons for conflicting between lawful permission and responsibility. According to the rules of men's science and hadith, the texts do not represent the guarantee of joint or fixed wages, or they are justified as an exception. The opposition of some of the Imamiyyah jurists since it relies on unsettled texts (from their point of view), does not harm the reference. From the point of view of Imamiyyah jurisprudence, in the customs and practices of the wise and religious, the discovery of the consent of the Infallible (AS) is a criterion (Kashif al-Ghata, 1419 AH, p. 20). Despite some of the narrations (narratives of common agent guarantee which will be discussed in the next discussion) on "combination of coercive guarantee with Shariah permission" it is not possible to obtain the consent of Sharia from the way of the way of Shariah and in this way we reach the incompatibility of Shariah permission and civil responsibility.

F) The first principle (no guarantee)

The first principle and acquittal can be used by the Imamiyyah and the Sunnis for the conflicting principle of Shari'a permission and compulsory guarantee:

1- Statement of the reasoning for the acquittal of the guarantee: According to the belief of some Imamiyyah jurists, despite the Shari'a permission to perform an act (or to refrain from an act), at least, coercive liability is doubtful. For this reason, some jurists, by proposing the implementation of the practical principle from both perspectives (conflict and non-conflict), have changed the principle in favor of the theory of conflict (Farahi, 1430 AH, p. 64). In the responsibility of the skilled doctor with permission, authorized disciplinarian and issues of this category, they cited the principle of acquittal and added: This principle cannot be waived, except with a reason representing a guarantee, similar to the Sukoni narration (where the narrator's situation is clear), it is not considered a reason (Moqaddas Ardabili, 1417 AH, Vol. 13, p. 381), even some of the jurists who are not inclined to conflict between Shari'a permission and forced guarantee, consider the first principle as "no guarantee". In the issue of spraying water on the road that accidentally causes harm to passers-by, she criticized the fatwa of those who, relying on some narrations, took the sprinkling of water, even though it was for the comfort of passers-by, as a cause of responsibility. They write: "In this case, it is better not to guarantee because of the principle after Shari'a permission, which is stronger than Maliki's permission in avoiding responsibility" (Najafi, 1404 AH, vol. 43, p. 128). Therefore, whenever the guarantee is doubtful despite the Shariah permission, the principle is acquittal of the responsibility. The principle of acquittal is one of the accepted principles among the Hanafi scholars (Ibn Najim, 1405 AH, vol.1, p. 203), Maliki (Shushawi, 1425 AH, vol. 2, p. 540. Uthaymeen, 1417 AH, p. 616), Shafi'i (Siyuti, 1403 AH, p. 53. Ibn Abd al-Salam, 1411 AH., vol. 2, p. 55. Zarkashi, 1421 AH, vol. 4, p. 410) and Hanbali (Ibn Qudama, 1419 AH, vol. 1, p. 580. Namleh, 1417 AH, vol. 5, p. 337). There is no objection to the acceptance of eternal absence or original acquittal, such as the verdict of acquittal from Shariah obligations and people's rights until there is a proof of preoccupation (Zahili, 1427 A.H., vol. 1, p. 262). In any case, they believe that "auditory rulings cannot be understood by reason,

but reason is the proof of innocence" (Ghazali, 1413 AH, p. 159) that is, "Reason is incapable of proving Shari'a rulings, but it can be a reason for negating Shari'a rulings until the auditory proof comes" (ibid.). Therefore, the Sunnis can rely on the acquittal of the forced guarantee when there is no reason.

2- Reasoning criticism: This reason is not accepted according to the criteria of Imami jurisprudence, because: firstly, the principle of acquittal does not flow with the reason of the rule of waste (Sabhani Tabrizi, 2017, p. 250) and finally, this contradiction smooths the way for the principle of acquittal from responsibility, not that the aforementioned contradiction becomes a valid reason or a valid guarantee of coercion. When there is no reason, the principle is acquittal from responsibility, but this principle does not show the contradiction between the Shariah permission and compulsory guarantee.

4) Topic3: Conditions of Contradiction of Shariah Permission and Compulsory Guarantee

Shariah permission is contrary to compulsory guarantee when its conditions are met. All the authors of this valley have seen only two important conditions: "Sharia's permission not being tied to health" (section 1), and "not leading of Shariah permission to waste another's property" (section2) and In addition to that, it is necessary to explain another condition: "the real and primary ruling of Shari'a permission" (section3).

Section 1: Shari'a Permission not Being Tied to Health

Shariah permission is incompatible with compulsory guarantee when the permitted action is not bound to health. Some actions are not absolutely permitted by the Shariah, but "permitted in relation to health". In this case, if the condition of health is not observed and harm is done to the party, the Shari'a permission and compulsory guarantee coexist (Abd al-Latif, 1423 AH, Vol. 1, p. 461. Zarqa, 1409 AH, p. 339). In order to understand "conditionality of permission to act on health" criteria have been stated (Jisas, 1431 AH, vol. 6, p. 66; Qaduri, 1427, vol. 12, p. 6137), such as "the criterion of the customary possibility of performing an action with respect for health", "the criterion of the rights of others to the permissible action" (Sheikhizadeh, 1417 AH, vol. 2, p. 459; Asadi, 1432 AH, vol. 4, p. 124) and "the criterion of the lack of difficulty in performing the permissible act while respecting health" (Shibani, 1406 AH, p. 514; Zilaei 1313 AH, vol. 6, p. 146). The above-mentioned criteria are not agreed upon by all jurists, but all Sunni schools of jurisprudence agree on the "condition of health" and accept it: If the permissible action is conditional on the condition of health, the Shariah permission is not an obstacle and a contradiction to the coercive guarantee (Khairi Jabari, 2020, p. 38).

However, it is not necessary to deal with "permission not being bound by the health condition", because of the three types of permission and permission (permission bound by no guarantee, permission bound by guarantee and absolute permission), there is a clear agreement in the first two types: "Authorization subject to lack of guarantee" is considered to be one of the factors that destroy civil liability, because the Shariah itself has specified the lack of guarantee (Hosseini Maraghi, 1417 AH, Vol. 2, p. 514). "Permission bound by a guarantee" removes the obligatory respect, but a forced guarantee is based on its own due to the generality of the proofs of guarantee, and the absence of the responsible agent (Collection of researchers, 1423 A.H., Vol. 8, p. 314). The speech in the third type is "absolute permission = permission free of guarantee and non-guarantee", which the jurists have explored different views of contradiction and non-contradiction. In addition, some of the examples mentioned in this case have the title of secondary permission. It is evident that the permission does not conflict with the guarantee in the second order because its real and first benefit does not conflict with the responsibility.

Section2: Not Leading to the Loss of Someone Else's Property

One of the conditions of the rule of contradiction between Shari'a permission and compulsory guarantee is that the permission does not cause the loss of another's property. If "permissible action" is equal to "wasting someone else's property for oneself", then it comes out of the negation of guarantee (Zoheili 1427 AH, Al-Qisas al-Fiqhiyyah, vol. 1, p. 539). This limit is related to "the emergency rule does not invalidate another right". The reason for this rule is that it states: "The rule of necessity allows as much as necessary". The story goes like this: the rule of "necessities justify the forbidden" is not absolute; it accepts the interpretation of the rule "necessity is allowed to the extent of necessity". The implementation of this rule requires the deterioration of "God's right", not the removal of "the rights of servants".

That is, the difficulty is solved by the deterioration of the duty ordain and there is no need for the fall of the situational ordain. If an act is forbidden by nature and is permitted due to necessity, only the obligatory ruling will fall and the situational ruling (guarantee) remains firm, because "loss does not decline with loss" (Khairi Jabari, 2020, pp. 38-40). This condition is further explained in the section3.

Section3: The Real and Primary Ruling of Shari'a Permission

The most important condition of contradiction between Shari'a permission and compulsory guarantee which the jurists have referred to but they have not included it as a separate condition is that Shari'a permission means "the real and first ruling" is that Shari'a permission means "the real and first ruling". For explanation, it is necessary to refer to "the concept of real first and second ruling". In order to understand the "conditionality of the permission to act on health" (Jissas, 1431 AH, vol. 6, p. 66; Qaduri, 1427, vol. 12, p. 6137), criteria have been stated, such as "the criterion of the customary possibility of performing an action with respect for health", "the criterion of the rights of others to the permitted action" (Sheikhizadeh, 1417 AH, vol. 2, p. 459; Asadi, 1432 AH, vol. 4, p. 124) and "the criterion of the lack of difficulty in performing the permissible act while respecting health" (Shibani, 1406 AH, p. 514; Zilaei 1313 AH, vol. 6, p. 146). The aforementioned criteria are not agreed upon by all jurists, but all the Sunni schools of jurisprudence agree on the "condition of health" and have accepted: when the permissible action is conditional on the condition of health, Shari'a permission is not an obstacle and does not contradict a compulsory guarantee (Khairi Jabari, 2020, p. 38). However, it is not necessary to deal with "permission not being bound by the condition of health", because of the three types of permission (permission bound by no guarantee, permission bound by guarantee and absolute permission), there is a clear agreement in the first two types: "Authorization subject to lack of guarantee" is considered to be one of the factors that destroy civil liability, because the Shariah itself has specified the lack of guarantee (Hosseini Maraghi, 1417 AH, Vol. 2, p. 514). "Permission bound by guarantee" takes away the sanctity, but forced guarantee is based on its own, due to the generality of the evidence of the guarantee, and the absence of the responsible agent (Collection of researchers, 1423 AH, Vol. 8, p. 314). The speech in the third type is "absolute permission = permission free of guarantee and non-guarantee", which the jurists have explored different views of contradiction and non-contradiction. In addition to that, some of the examples that have been stated in this case have the title of secondary permission, it is evident that permission does not conflict with guarantee in the order of secondary ruling, because its real and first expediency does not conflict with responsibility.

In the meantime, the two rules of "harmless" and "emergency" in the secondary factual ruling are directly related to the rule of "refusal of Shariah permission and coercive guarantee" in the first factual ruling. First, it refers to the relationship between "Sharia's permission and the harmless rule" (a), then "Sharia's permission and the emergency rule" (b).

A) Shariah Permission and the Harmless Rule

Whenever there is a "shariah permission", it negates the compulsory guarantee, provided that this permission does not cause another abnormal loss If the use of lawful permission becomes the basis for the harm of another person who does not like the custom, the flow of the rule of harm is provided and In fact, the legal permission deteriorates and there is no legal permission to prevent the emergence of civil liability. Here, the article is justified by the relationship between the harmless rule and the reason for the first one's Shariah permissibility. Sunni jurists have written in the explanation of the rule of "doing no harm": "Harm to another is not permissible in Shari'a" (Zarqa, 1409 AH, p. 165). From the examples given, it is understood that this rule does not invalidate the guarantee. Jurists believe that without a doubt, the proof of harmlessness precedes the proofs of the first rules and binds it to the state of no harm, but the speech is presented in the method and proof (Zarei Sabzevari, 1430 A.H., vol. 8, p. 161) which mentioned various species (Shaheed Sadr, 1420 AH, p. 349). The three methods of presenting the proof of the rule of harmlessness over the proof of the rule of negation of Shariah permission and coercive guarantee should be mentioned:

1- Precedence of the harmless rule over the Shari'a permission regarding allocation: According to the opinion of the scholars who return "negation of harm" to "negation of preparation for harm" and conclude from it the "necessity of compensating the loss" (Tony, 1415 AH, p. 194), although the rule of non-harm has the nature of a sentence related to compensation and brings the responsibility of the person who caused the loss but the implication of Shari'a permission takes precedence over the acquittal of the guarantee in terms of allocation. If the Shariah permission was general, it would cover the cases of no loss and unusual loss. The hold harmless rule makes it unique to non-conventional no-loss cases. The same justification is valid in other views of the meaning of the narrative of harm (Makaram Shirazi, 1370, vol. 1, p. 78).

2- Precedence of the harmless rule over Shari'a permission by the government: According to the opinion of scholars who interpret the hadith "No harm and..." (Kilini, 1363 AH, Vol. 5, pp. 292 and 293) as "negation of a harmful ruling" (Ansari, 1428 AH, Vol. 2, p. 460) or "negation of a ruling in the language of the negation of the subject" (Akhund Khorasani, 1430 AH, Vol. 3, p. 160), preceding the rule of harmlessness over the rule of "contradiction between Shariah permission and compulsory guarantee" is a matter of government because the reason of the rule of harmlessness, with its verbal implication, supervises and governs the reason of the rule of "non-existence of legal permission and responsibility". It interprets without established conflict and despite gratitude, there is no way other than government (Ansari, 1428 AH, Vol. 2, p. 460). Therefore, contradicting Shari'a permission with compulsory guarantee is a loss in other cases. When the authorized action becomes harmful, it is not incompatible with civil liability. Government means "supervision of one of the two reasons over the provisions of the other reason." which interprets its subject or predicate by its clarity or appearance." and it expands or narrows it" (Badri, 1428 AH, p. 137).

Precedence due to the inalienability of the harmless rule: According to the theory that the mentioned narration means "negation of the signature of harm in the legislative world", the submission is not from the direction of the government, but because the rule of harmlessness cannot be assigned because it is in generous position of gratitude and blessing, and it does not mean that things are out of gratitude or that the appropriateness of the sentence and the subject in this rule is so rooted in the minds that the human nature refuses to assign it in any way. Of course, "harm in right" will have a topical and specialized departure from its scope, because it is actually a right, not a harm (Makaram Shirazi, 1370, vol. 1, pp. 79 and 80). One of the jurisprudential rules that is directly related to the rule of negation of Shariah permission and compulsory guarantee, but is considered one of its examples, is "the rule of the owner's control over his property". The meaning of its positive and negative aspects is as follows: "Each

owner has the right to possess any possession of his property, and no person should limit or prohibit the owner's possession of his property."

The jurists consider the rule of the owner's sovereignty over the property as one of the rational and natural rules and consider the hadiths as a guide to the deep-rooted method of the wise in this rule (ibid., vol. 2, pp. 29 and 30). Of course, the extensive and arbitrary control of ownership accepts sharia and rational limitations and does not conflict with legal boundaries. This is where the relationship between the rule of the owner's sovereignty over her own property and the rule of harmlessness emerges, and jurists have provided various explanations and discussed criteria such as: "the degree of need", "ignorance of the contagion of damage to other property" and "conditions of action = climate" (Mohaqeq Sabzevari, 1381, Vol. 2, p. 636). In the adequacy of community of all factors or one factor, they have disagreed (Collection of researchers, 1423 A.H., vol. 24, p. 417). Some jurists have given the criterion of "conventionalism" in the lack of guarantee for many issues, such as: hitting an animal, disciplining a child, and disciplining a wife (Ibn Qadamah, 1428 AH, p. 332).

According to the customary concentration, the rule of "conventionality" can be used as a criterion for mastery and possession. When the proprietary possession becomes unconventional, the rule of harmlessness removes the Shari'a permission, and it is not permitted to destroy the guarantee. For example, leaving the owner's possession will cause a significant loss to the owner himself. If the owner does not raise his wall, he will have a significant loss, and if he raises the wall, it will cause damage to the neighbor. Losses conflict and fall, the rule of dominance represents the permission with the criterion of rational possessions. However, if the possession of property is futile or has little interest, or is done with the motive of harming another and causes obvious and greater damage to the neighbor, Like when a person digs a sewage well in his house and penetrates into the neighbor's water well, or turns his shop into a blacksmith's in the line of perfume sellers, or makes his house a leather workshop or a kitchen (Makaram Shirazi, 1370, vol. 2, pp. 38 and 39), in this case, it is not permissible to negate the guarantee.

B) Shariah Permission and Emergency Rule

Emergency is "an unconventional stressful atmosphere in which a person without directly threatening another person, in order to avoid harm, deliberately performs an action that is harmful to another person" (Saifi, 1425 AH, Vol. 4, p. 10). Sunni jurists have written: "When a person, on the basis of emergency, allows the encroachment [use] of another's property... the guarantee of the lost property, whatever the type of loss, is obligatory on the owner" (Zolmi, 1394 AH, p. 232. Abdul Latif, 1423 AH, vol. 1, p. 289). Some of them have chosen the phrase "There is no obligation in the case of reward and no prohibition in the case of necessity" for the rule of urgency (Saidan, 1417 AH, p. 47). The ratio and method of presenting the rule of urgency on the first evidence is the same as the rule of harmlessness. The rule of urgency removes or rejects the principle of the first ruling or the effects of the first ruling (Khoei, 1418 AH, vol. 36, p. 323). The jurists consider the generality of the rule to mandatory rulings, if the conditions for its implementation are available,with the exception of certain cases (which the Shariah never consents to contrary to, such as: the destruction of the Islamic system or the permissibility of bloodshed), they have accepted it (Collection of Researchers, 1423 AH, Vol. 13, pp. 464-467). In the emergency situation and the supremacy of the emergency criterion, there is no question about the rule of this rule over the evidence of the first rulings, but it should be noted about the conflict between the emergency Shari'a permission and the compulsory guarantee. Famous jurists consider emergency permission to be ineffective in removing civil liability, that is, they do not consider emergency permission to be in conflict with compulsory guarantee, and they have given the following reasons:

1- Incompatibility of the lack of compulsory guarantee with the state of gratitude: The reasons for the emergency show the people's comfort and ease. If the permissibility of an emergency is contrary to a compulsory guarantee, it will mean that a person in an emergency has the right (without compensation) to cause damage to another. This is contrary to everyone's gratitude. For this

reason, they have clarified that the cancellation of the state order (guarantee) due to emergency will be contrary to God's extensive mercy and blessing, and loss will not be removed (Khoei, 1418 AH, vol. 36, p. 323; Mughniyeh, 1379, vol. 5, p. 49).

2- Sufficiency of liquidation of compulsory order in an emergency situation: The jurists have clearly stated: the rule of urgency only causes the deterioration of mandatory rulings and Shariah punishments, not conditional rulings and compulsory guarantees (Taskhiri, 1431, vol. 2, p. 100). For this reason, they have pointed out in the permissibility of emergency: there is no contradiction between the deterioration of the mandatory ruling and the survival of the conditional ruling (Mousavi Sabzevari, 1413 AH, vol. 21, p. 366).

3- Existence of adequate guarantee in case of emergency: In the atmosphere of inevitability, the mandatory sentence collapses, because the reason for it is the narrative of removal, but it is not a reason for the decline of coercive guarantee, but the rule of yid and domination over another's right will be necessary for the proof and survival of the guarantee (Wasei Zanjani, 1358, p. 113). The results of the arguments of the jurists show that the permission due to unavoidable conditions only has the effect of removing the compulsory sentence, and it coexists with the conditional sentence (compulsory guarantee). This is where it becomes clear: one of the important conditions of the rule of "contradiction of Shariah permission and coercive guarantee" is that the "permission" is the real ruling of the first one, not a real secondary order and caused by an emergency. For this reason, in the following examples, there is no incompatibility between Shari'a permission and compulsory guarantee:

- Eating food during an emergency: When a person is forced to eat another food due to unbearable hunger, it is permissible for her to use that food to the extent of blocking the way of the effect of hunger but he is a guarantor for what he has used, because harm is not compensated by harm (Sarakhsi, 1414 AH, 26, p. 146; Qaduri, 1427 AH, vol. 7, 3324; Hakim, 1429 AH, p. 142). From the point of view of Imami jurisprudence, in the years of famine and unavoidable times, eating food from another person is permissible in Sharia, but it is accompanied by civil responsibility because there is no conflict between lawful permission (as a secondary ruling) and compulsory guarantee (Iraqi, 1339 AH, p. 408; Karmi, 1428 AH, vol. 2, p. 510; Dajili, 1425 AH, p. 497).

- Reluctance to waste another's property: a person is forced to waste another's property due to insurmountable reluctance (forced reluctance), his wasteful act is permissible and is not a sin but this permission is not an obstacle to guarantee, rather it is recognized as a reluctance to be responsible (Ansari, 1415 AH, vol. 6, p. 16; Amir Hanafi, 1403 AH, vol. 2, p. 272. Abiari, 1434 AH, vol. 1, p. 819; Ibn al-Laham, 1430 AH, p. 68).

- Wasting another's property to save the ship: when the ship is in danger of sinking, the captain of the ship can throw other people's goods into the sea to lighten the load. But he is responsible for its likeness or price (Zoheili, 1427 AH, vol. 1, p. 287. Hosseini Ameli, 1419 AH, vol. 26, p. 200. Ibn Rajab, 1417, p. 36).

- Preventing the increase of flames: If someone's house catches fire, it is permissible for him to use the neighbor's property to prevent the fire from spreading or extinguishing it but he will be responsible for it (Zarqa, 1409, p. 452. Ansari, 1415 AH, vol. 11, p. 194). Sunni jurists have interpreted "permission as the first real ruling" as "absolute permission" (Zoheili, 1427 AH, vol. 1, p. 539) or "main Shari'i permission" and have written: At the beginning, it seems that this rule is in conflict with the emergency rule... but this conflict is resolved by combining the two rules because here there are two types of Shariah permission: one is based on a main Shariah reason and the second is an exceptional Shariah permission based on an

> excuse for leave. Therefore, emergency permission is the same as exceptional permission based on permission due to the excuse of necessity. This type of permission does not conflict with the guarantee, but the guarantee is obligatory in it... but the permission that is contrary to the guarantee is based on a fixed right" (Zalmi, 2014, p. 233).

By analyzing this condition, it is possible to reconcile the opinions and statements of the jurists in this field: The followers of "contradiction between Shariah permission and forced guarantee" (who are famous Sunnis and a group of Imamiyya jurists), mean "permission", "permission as the first real ruling". The famous Imami jurists, who are inclined towards "non-contradiction of Shari'a permission and coercive guarantee", they mean "permission", "permission in the sense of a secondary real ruling" or it is "permission conditional on health". However, returning their phrases and interpretations to this justification will be accompanied by difficulties and tolerances.

Conclusion

1) In Islamic jurisprudence, the word "permission" has three uses in the rule of "contradiction of Shariah permission and coercive guarantee": One, the "first real ruling" which is subject to the real, inherent, real and primary interests of the subject and cut off from secondary complications. Second, is "secondary real ruling" which appears as secondary real and temporary and inevitable state. Third, the general meaning that includes the real first and second ruling. The difference in the usages of the permission has become the basis for the difference of views in the rule.

2) The use of "permission" in the "rule of contradiction between Shariah permission and coercive guarantee" is not reduced of the three possibilities (primary, secondary or general ruling). For this reason, most Imamiyyah jurists have taken it in the meaning of "secondary real ruling" and have tended to "coexistence of Shariah permission and coercive guarantee". Another group has used the permission in the general sense (including the real first and second ruling), and sometimes they have expressed the compatibility and sometimes the incompatibility of the two. The Ahl al-Sunnats have referred to it as "the first ruling" and have adopted the view of "contradiction of Shariah permission and compulsory guarantee". While "permission" in the above-mentioned rule means "first real ruling" and in this sense, different views tend to harmonize.

3) Permission as a "first real ruling" is incompatible with "compulsory guarantee" in the stage foundation. The real and inherent expediencies (the foundation of Permission) does not accept any "harm and guarantee in its own subject" and negates any responsibility.

4) The reasons of the opponents of the mentioned rule (Nisaa/92, the traditions of guarantee of the common agent, the method of the wise and the ruling of reason) ultimately indicate the non-contradiction between the permission in the sense of the secondary real ruling and the coercive guarantee not on the negation of permission as the real ruling of the first one with civil liability. The arguments of those in favor of the rule (Nur/13, prophetic traditions, rational ruling, jurisprudential consensus (on the creed of Ahl al-Sunna) and rational understanding) provide the incompatibility of permissibility in the form of the first ruling with a coercive guarantee, not the contradiction of permissibility in the form of the second ruling.

5) Among the conditions of the rule, “the Shari'a permission is not bound to health”, and “the permission does not lead to the loss of another's property”, and the condition of "the real and primary ruling of the permission" are important because it shows the ratio of the rule with the important Sharia rules, such as: the harmless rule and the emergency rule. The "harmless rule" rules over the reasons of the "rule of negation of Shariah permission and coercive guarantee" and

causes the deterioration of permission and then there is no Shariah permission to cancel the compulsory guarantee. For this reason, when ownership control and possession causes another abnormal loss, shari'a permission declines. The rule of urgency is only in conflict with the obligatory sentence, not the conditional sentence and the lack of compulsory guarantee in the state of emergency is not compatible with the state of gratitude. Therefore, in times of necessity, Shariah permission (as a secondary ruling) is accompanied by compulsory guarantee. In the end, permission in the meaning of "real first absolute permission of the legislator" contradicts with compulsory guarantee.

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