



Rules for Resolving Conflicts of Public and Private Interests in the Laws of Afghanistan and Iran

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Abstract

Public interests are the good, usefulness, and rational necessities that are directly related to the general public and its direct goal is to secure social-national interests, although sometimes indirectly it is possible to satisfy the interests of private individuals. Private interests are the benefits, goods, and necessities of the private life of individuals and it is possible to indirectly secure the interests of society and the general public in this way. Sometimes there is a conflict between public and private interests, which includes conflict (incompatibility in the position of legislation) and interference (incompatibility during implementation and compliance). In Iranian and Afghan law, there are rules that whenever a conflict occurs between social and individual interests (public and private interests), the conflict is resolved with the help of these rules. This article, titled "Rules for Solving Conflicts between Public and Private Interests in the Laws of Iran and Afghanistan," aims to find rules to solve this problem and uses an analytical-descriptive method to find the answer to the question: What are the solutions in the event of a conflict between public and private interests? Although it is not possible to draw a clear line between the rules of the conflict and interference, because each rule provides a solution in both cases, based on their dominant nature, rules have been presented to resolve the interference of interests. Interference is a type of conflict that occurs in the fulfillment of two mandatory orders (implementation of two laws) and the lack of power of the person obligated to simultaneously perform two duties. To solve the problem of conflicting public and private interests, the laws of Iran and Afghanistan were studied comparatively. The results and findings obtained in the constitutions and laws of the two countries indicate that rules and solutions such as giving priority to the more important over the important, public order, good morals, preserving the essence of Islam, preserving the Islamic system, compliance with the standards of Sharia, not opposing the standards of Sharia, not disrupting the system; are rules that if individual rights or public interests conflict public interests take precedence over private interests.

Keywords: *Confrontation; Interference; Rules for Resolving Interference; Public Interests; Private Interests; Iranian Law; Afghanistan Law*

Introduction

The discussion of conflict in Islamic jurisprudence and the principles of jurisprudence is one of the most important and precise topics. In the principles of jurisprudence, discussions related to the foundations, examples, effects, and solutions to conflict have been discussed in detail. However, the approach is more individual. The examples mentioned in the principles of jurisprudence are on the subject of worship, such as the conflict between the obligation to immediately purify the mosque with prayer at the end of the time or saving two drowning people. However, the conflict between individual rights community rights and social interests has been discussed less. In today's societies, we are faced with all kinds of interference, especially in the field of exercising individual or social rights. An individual may interfere with the rights of another individual or with social rights and interests in exercising his or her rights. If there is a conflict in the exercise of one's right with the rights of other individuals, general legal principles and rules of ownership do not allow the owner of the right to violate the rights of others under the pretext of exercising his right. Jurists believe that whenever a person wants to occupy his property in a way that disturbs his neighbors, such occupation is prohibited. It is obvious that this possession, assuming no harm, is an example of a person's control over his property, but due to the interference with the rights of others, the scope of his control is limited. A person has the right to exercise his or her rights to the extent that it does not harm the rights of others, but what should be done when individual rights conflict with social rights or social interests? Should social rights be given priority? To prioritize one right over another, we need a priority. What is priority and what institution or authority has the authority to determine priority?

In jurisprudence and principles, the more important and important rule (preferring the more important right over the important right) in cases of conflict of rights is a rational and rational principle that all humans and societies - regardless of religion, tradition, or school of thought - consider and practice. In this research, we seek to find solutions to solve the problem of conflict of public interests with private interests from the perspective of Iranian and Afghan law in a comparative manner, which solutions are foreseen in both legal systems in the field of law enforcement, and the general legal rules and principles of Iran and Afghanistan regarding the resolution of conflict are proposed based on developmental research and using the descriptive-analytical method, based on the law of the two countries.

Section 1. Concepts

It is essential to explain the meanings of some key terms used in the title and text of the research, because the verbal and spiritual similarities and multiple meanings of a word are often misleading and may cause problems for the reader. These terms should be explained so that the course of the discussion is clear.

1. The Concept of Conflict

A. The Concept of Conflict in Arabic Lexicography

In Arabic lexicography, conflict is a root word derived from the word "Tazahom". The linguists have said about the meaning of "Zahm": "zahmah" means "congestion". Zahmah means "put him in difficulty and distress", and "congestion" means "the people were in difficulty and distress", (Ibn Manzoor, 1405 AH, Vol. 12, 262; Al-Turahi, 1403, Vol. 6, 78). Also, congestion in the dictionary means "a group gathering around something", "the turbulence of waves", and "driving some of them into a strait" (Dehkhoda, 1390, 736; Zobaidi, 1414, Vol. 313, 16).

B. The Concept of Conflict in the Scientific Terminology of Law

The term meaning of conflict varies depending on the type of conflict, because as we will say, in general, three types of conflict have been proposed in the sources of principles: legal conflict, compliance conflict, and preservation conflict (Al-Mansouri, 2009, 11). In terms and from the perspective of most scholars of principles, conflict means the incompatibility and opposition of two rulings (two reasons), [two laws] resulting from the lack of power of the person obligated to carry them out. Perhaps the meaning of the term that is mentioned in the sources of principles is derived from the literal meaning. Most jurists have defined it as follows: "Conflict is a contradiction between two rulings due to the inability of the person obligated to agree between them in the matter of compliance" (Kazemi, 1404 AH, Vol. 4, 794; Al-Shirazi, 1421 AH, Vol. 1, 311; Fayyaze, 1422 AH, Vol. 3, 205). Martyr Sadr has chosen the famous definition of compliance conflict:

Conflict is the contradiction between two rulings due to the inability of the obligated person to reconcile them in the matter of compliance (Hashemi, 1417 AH, Vol. 4, 26). In other words; conflict is where the obligated person cannot combine two religious rulings in the position of compliance (performing a duty) (Naeini, vol. 1417, 1, 317; Sadr, 1417, 26), conflict means the incompatibility of two reasons in the position of compliance and implementation of the law due to the inability of the obligated person to simultaneously perform two duties. Therefore, according to the definitions of conflict and conflict presented by famous scholars of the principles of jurisprudence, the difference between the two is as follows: Conflict is the contradiction and incompatibility of two or more verbal reasons in the position of legislation and legislation, but conflict is the incompatibility in the position of compliance, meaning that it is not possible to perform both at the same time and place due to the inability of the obligated person (Naeini, vol. 1, 317).

The concept of interests is the plural of interests. In Arabic literature, it is derived from peace and is against corruption (Ibn Manzur, 1414, vol. 2, p. 516) and it also means to consider good and consider good (Shartuni, 1403, vol. 1, 656). In general, based on the literal meaning, the meaning of interest is a deed that has good in it (Tabatabai, 1422, 14, 271). In terminology, it means the cause of reaching the goal of the lawgiver and obtaining it, whether it is worship that is related to the lawgiver's right or non-worship that is for the benefit of the servants and the regulation of their livelihood and conditions (Hakim, 1418, 381). When talking about interests, one of the following two meanings and concepts is intended: First: The real interest based on which God Almighty has forged the fixed rules of the law. Basically, from the Imami perspective, divine obligations and prohibitions are subject to "real interests and harms" based on which the wise legislator forges the law; because this group of interests and harms, especially the interests and harms that are the focus of forging religious religious rules, is beyond the reach of the jurist. Second: The benefit that is determined by the mujtahid who is aware of the conditions and requirements of the time and place (Isfahani, 1374, Vol. 3, 439-446) and is often raised in non-religious matters and social and political issues. This benefit, which does not necessarily correspond to real interests, undergoes transformation and transformation in different circumstances. The rulings that the ruler of a society issues based on this type of expediency are called "governmental rulings," in contrast to the first category, which is called "primary rulings."

3. The Concept of Public

Means universal, general, general and what belongs to the public (Dehkhoda, 2011). Therefore, the adjective "public" in "public interests", which is an adjective, means the development of the concept of interests to the public or the majority of people, potentially or actually (Omid Zanjani, 2010, 564). In short: public interests are the provision of rights, preservation of values and realization of human goals in various situations (Hassan Zadah, 2010, 53). The independent concept of public interests is the observance of the common good and welfare of society, which implies the observance of the rights, values and goals of a political system and requires the adoption of various decisions appropriate to the

situation. The term public interests refers to those interests and benefits in which most people in society are interested.

4. Types of Conflict

Conflict is a common verbal term between three meanings.

A. Conflict of Compliance

Conflict of compliance is a contradiction between two rulings at the actual stage, in which the person obligated in the position of compliance (performing the duty) cannot combine between two religious rulings, and the term conflict refers to this type of conflict (Kazemi, 1417, vol. 1, 317).

B. Legal Conflict

Criterion conflict is a case of conflict between evidence, but at the same time, due to its similarity to true conflict, it is distinguished from other instances of conflict and requires independent discussion about itself. The late Akhund, in his discussion of the combination of command and prohibition in *Kifayah al-Usul*, and the late Na'ini, in his discussion of the combination of command and prohibition in *Fawad al-Usul*, mention it under the title "conflict of two necessary and effective criteria" (Kazemi, 1417, vol. 1, 317; Khorasani, 1409, vol. 1, 155-157). Therefore, criterion conflict is a situation in which a matter, due to the presentation of different titles, contains multiple criteria, each of which has different requirements from the other in making a ruling about that object, such as one criterion requiring popularity and the other requiring aversion. In such a case, it is said that criterion conflict has occurred in the matter (Kazemi, 1417, vol. 1, 157).

C. Conflict of Preservation

This type of conflict is not seen in the works of ancient jurists and fundamentalists. The originator of this term is Martyr Sadr, who introduced it into the knowledge of principles and in fact, it is used to express a new image of the apparent ruling (Hashemi, 1417 AH, Vol. 4, 203-205). According to Martyr Sadr, the interference of memory is when one or more matters are subject to a ruling, and there is no conflict between the rulings, even in terms of the inability of the obligated person, to become obligated in terms of an unknown ruling, so that the obligated person remains bewildered and does not know whether one or more matters are subject to obligation or exemption (Hashemi, 1417 AH, Vol. 4, 303).

Among the three types of interference, the first type, namely conformal interference, is discussed in this study, and most definitions of interference also look at this type of interference.

5. Conditions for the Realization of Conflict Between Two Rulings

For the realization of conflict in jurisprudence and principles, conditions have been considered that when these conditions are met, conflict arises. In general, the existence of two conditions causes conflict between rulings:

1. The existence of two or more rulings at the same time
2. The lack of the power of the person obligated to combine them in the position of compliance.

If one of the aforementioned conditions is not present, the case is excluded from conflict (Kazemi, 1417, Vol. 1, 316)

Section 2. Theoretical Foundations of the Rules for Resolving Conflict Between Public and Private Interests

To resolve the conflict between social interest and individual interest, there is a need for preferences that prefer one over the other due to its advantages and strengths. To find the preferences, we first turn to the principles of jurisprudence to see what rules and regulations are proposed in the principles of jurisprudence for preferring one of the conflicting interests over the other, what are the opinions of the jurists on this matter, and what solutions they have proposed to resolve the conflict. Here, I will briefly present some of the preferences proposed in jurisprudential and fundamental sources:

A. The Preferential Principles of Conflict

The late Meshkini mentioned several cases in his book *Mostalha Aosul* as the Preferential Principles of Conflict, which are briefly discussed here:

1. The first preferable case is that one of the two rulings is more important than the other. This importance is either certain or probable, such as two people drowning and there is no chance of saving both of them, but only one of them can be saved. Now, which one should be saved? One of them is a believer and the other is a sinner. The first, the believer, is preferable to the second, and saving the believer is preferable to saving the sinner.
2. Where two rulings have been issued by the authority but the person obligated can carry out one and does not have the power to carry out the other, in that case, the one that the obligated person can carry out takes precedence over the one that he does not have the power to carry out.
3. The third case is that one of the rulings has an optional alternative and can be performed later, such as the conflict between a broad obligatory prayer and a narrow obligatory prayer, such as performing the prayer at the beginning of its time and purifying the mosque, which is immediate. In this case, the narrow obligatory prayer is performed, therefore, removing impurity from the mosque precedes the first prayer of its time.
4. Another case is that one of the two rulings has an emergency alternative, but the other ruling does not, such as if someone is a Mohdith (one who has become impure), and his clothes or body are impure, but he does not have enough water for both. Therefore, since it is possible to perform Tayammum (taking ablution with dust) to remove the Hadath, in this case, he purifies his clothes or body with water and performs Tayammum to remove the Hadath.
5. The fifth case is that one of the two rulings is an objective obligation (An obligation that each individual is specifically responsible for.), but the other is a kifaei ruling (collective obligation), such as interfering with the end-of-time prayer by preparing and burying a dead body. If he prays, he will not be able to prepare the dead body. In this case, since preparing the dead body is an obligatory kifaei obligation and if someone else prepares the dead body, he is relieved of his obligation and in this situation, the person who is obligated should pray.
6. That the means of compliance of one should be prior to the other, that obligation whose means of compliance is prior should be performed (Meshkini, 1416, 109)

It has been discussed sporadically in Jurisprudence and the Principles of Marjhat by the late Muzaffar in *Usul al-Fiqh* (Muzaffar, 1370, Vol. 2, 191-193).

The late Akhund discussed the basic principles of conflict in his *Kifayah* and other fundamental sources, but these principles cannot solve the problem of conflict between public and private interests because these principles are formulated with an individual approach and can only determine the obligation and solve the problem in the case of conflict between two obligations for an obligated person.

However, they are not effective in the case of conflict between social interest and personal interest and cannot be preferred. Therefore, more practical principles and solutions must be sought to solve the problem.

B. Criteria for Preferring Social Interests Over Individual Interests

In various chapters of jurisprudence, some titles and criteria are of great importance to the legislator and are also important from the point of view of rational criteria, and through these criteria, social interests can be preferred over individual interests. These criteria are summarized as follows:

1. Maintaining public security
2. Maintaining public order and preventing disruption of the system
3. Maintaining social chastity and public prohibitions
4. Maintaining the reputation of Islam
5. Maintaining the essence of Islam and its rituals
6. Maintaining public rights
7. Maintaining intellectual and social unity against seditions and group misguidance, etc.

The importance of these titles stems from two criteria and criteria:

1. The criterion of religion and the importance of spirituality in the life of human society
2. The criterion of the world and its importance in the social life of man (Al-Saffar, 2007, 220)

These criteria are divided into two parts: worldly criteria and religious criteria. The most important religious criteria that are considered in the context of the conflict between the interests of society and the individual is the preservation of the essence and reputation of Islam. The most important worldly criteria according to reason and Sharia are the following: sedition, corruption, chaos, and disruption of the system. However, all of these matters come back to sedition. If an individual or social action or a government contract or a government policy entails questioning the essence of Islam or tarnishing the image of Islam or causing sedition on earth, then such an act is forbidden and impermissible (Al-Saffar, 2007, p. 247).

C. Criteria for Determining the Most Important

After it has been clarified that the most important is given priority over the important in the opinion of all scholars in the position of conflict and the mention of the most important, the question arises: what is the way to determine the most important over the important and what is the criterion for determining the most important?

The late Naeini mentioned several criteria for determining the most important, and if these criteria exist in a ruling, it is the most important ruling. He says: "The definition and determination of the most important varies due to the difference in evidence that may be used, but in general it can be said: anything that is for the preservation of the essence of Islam, the protection of people's rights, the rulings related to temperature and humidity takes precedence over others. In addition to these cases, the use of importance requires consideration of the case (Kazemi, 1417, Vol. 1, 335)

D. Aspects of Prioritizing the Most Important Over the Most Important

In the previous section, it was said that the most important is given priority over the most important, but the reason for its priority and aspects were not mentioned, and in what way the most important is given priority over the important. Here, some cases are raised as aspects justifying the priority of the most important over the important.

1. The dominance of the quantity and quality of social interests over individual interests. Social interests are important in themselves, but they are more important in comparison to general interests and social goals. Although individual interests are important, in the case of conflict with social interests, individual interests are degraded and become less important, unlike social interests, which are dissolved into collective and general interests. Ultimately, social interests are more numerous in terms of quantity and more intense in terms of quality than individual interests. Therefore, social interests are always greater and more important than individual interests.

2. The Ugliness of Prioritizing Individual Interests Over Social Interests

The promise of prioritizing individual interests over the interests of society removes it from the most important and important issue and places it within the issue of selfishness and profiteering, and this title itself is ugly, and if it entails harming the rights of others, it is also forbidden by Sharia.

3. Disruption of the System

The submission of individual interests over the interests of society entails the creation of chaos and disruption of the system, and disruption of the system is rationally ugly and strictly forbidden.

The result is that in the conflict between social interests and individual interests, it is obligatory to consider the criteria raised, such as the disorder of the system, the dominance of quantity and quality, and the rational ugliness of prioritizing individual interests over social interests. In addition to the cases we have mentioned, some Islamic jurists have issued fatwas on the precedence of social interests over individual interests in numerous cases (Al-Saffar, 2007, 309-311)

Section 3. Basics of the Rules for Resolving Conflict in the Laws of Afghanistan and Iran

So far, the issue of conflict has been generally clarified that what we are discussing is not a primary and primitive conflict that the considerations mentioned in the principles of jurisprudence can solve the problem of conflict, but the conflict we are discussing is a conflict in the position of compliance with rulings that are approved in all respects, but in the field of practice, two obligations collide that cannot be resolved by any of the considerations mentioned in the principles of jurisprudence, but there must be considerations outside the mandatory ruling itself that these considerations cause the other party to be illegitimate, and the conflicting parties lose their legitimacy, in which case there will be no binding ruling for one party so that conflict occurs. These factors that legitimize a mandatory ruling or a legally enforceable right in the laws of Afghanistan and Iran exist in legal sources, which are explained in detail in two parts.

A. Rules for Resolving Conflicts in the Laws of Afghanistan

In Hanafi jurisprudence and Afghan law, there are rules for resolving conflicts between public interests and personal and individual interests, the most important of which help us in resolving conflicts and have effects and consequences in jurisprudence and law, and are referred to in this study. In general, where public interests and interests conflict with individual interests and interests and a decision is made between whether to give priority to public interests or to consider individual interests in the implementation, when we look at the customs of human society and the wisdom of the world, the customs

are that they prioritize public interests over individual interests. The reasons and evidence for this preference vary according to different human societies and may have different bases in this case. In this section, we will discuss the bases for prioritizing public interests over individual interests from the perspective of Afghan law:

1. Public Order

The most fundamental rule that can be invoked to resolve conflicts in Afghan law is public order. The term public order is widely used in domestic and international law. Basically, in the realm of law, public order is directly related to the interests and concerns of society. Also, the concept of public order has a deep connection with the ruling ideology, political policy, and social, economic, and moral considerations of each society, and as a result, it has a very broad and variable meaning and scope. Public order can be considered a general concept applicable to social security and the protection of individual life and freedom, life, honor, and property of individuals in society. In all cases where public order is invoked, the goal is to prevent the implementation of an order that conflicts with the general interests and concerns of society.

It is obvious that the interests and benefits of society are not fixed and are changing and evolving, meaning that public order will be a relative concept that will be determined by considering all social, economic, cultural and political factors of a society. The scope of public order is wide and includes all social areas. A rule related to public order includes matters on which the system of society depends in the economic, political, administrative, cultural and moral fields, and violating these matters damages and disrupts this system and makes the ruling power unable to establish that system. One of the most important characteristics of public order is the need to observe it by all members of society. Therefore, public order includes political public order, administrative order, judicial order, family order and public economic order.

1) Public Order in the Constitution of Afghanistan

In Chapter 2 of the Constitution of Afghanistan, the general rights and freedoms of citizens are recognized, meaning that Afghan citizens have the right to freedom of expression, belief, work and employment, travel, education and training, holding protest meetings, etc., and they can exercise these legitimate rights and freedoms within the framework of the law. However, the limits and restrictions for the exercise of these rights and freedoms are mentioned in the Constitution, such as public interest, the rights of others, or public security and observance of the law (Articles 24-59). The explanation of the matter is that if a person wants to exercise freedom of expression, this freedom is an individual and personal right and interest. Sometimes, exercising the right to freedom of expression or another right conflicts with the freedom of others or public interests. On the one hand, according to the law, a person who has the right to exercise freedom of expression has this right as a mandatory requirement. No one has the right to prevent the exercise of this right. On the other hand, there is the issue of the interests of society and social interests. In this case, there is a conflict between the interests of the individual and the interests of society. It will be done.

What is the solution? Should individuals be allowed to use their freedom in any way they want, even if it violates the freedom of others or collective interests, or if it violates the freedom of others, the freedom of another person is prevented? From studying and examining these articles of the Constitution and analyzing them, we come to this conclusion: the use of individual and social rights and freedoms is permitted to the extent that public order is not violated and there is no disruption to social order; because by observing and maintaining public order, public interests, public interests, public security, and the rights of citizens are ensured.

2) Public Order in Civil Law

In the civil law of Afghanistan, observing public order in concluding contracts and agreements performing legal acts and applying the laws of other countries in Afghanistan has been raised as a limiter of the will of individuals in contracts.

Public order is mentioned in the Afghan Civil Code in different articles and with different functions. It is foreseen in articles 9, 35, 404, 436, 467, 502, 590, 592, 598, 1310, 1482 and 1536 of the Civil Code. Since this principle is directly related to the interests of the supreme system of the country and the security and stability of society are indebted to order and the sovereignty of the will of individuals is considered to have no legal effect in the opposite direction and public interests and interests are related and no one can perform acts contrary to public order (Katouzian, Vol. 1, 159).

The guarantee of legal enforcement for the protection of public order is that contracts contrary to public order, in whatever form and title, are void. For example, the validity of contracts requires that the parties to the contract be mature, sane, mature, and free from coercion or coercion. If these conditions are not met, the contract is void, because the rules related to contractual capacity are among the mandatory laws and have a direct relationship with public order. Therefore, whenever individuals want to conclude a contract, they must have full capacity (283 and 287 BC), otherwise, due to its relationship with public interests and public order, such a contract is void and has no legal effect. Also, the subject of the obligation must not be legally prohibited, otherwise it will be invalid due to its opposition to public order; such as public property (B2, 482 BC) and endowment property (343 BC). The Civil Code has stipulated in Article 590 regarding the subject of the obligation: "If the subject of the obligation is against the public order, it is considered invalid." Also, Articles 590 and B2, 502 of the Civil Code refer to the legitimacy of the subject of the contract. Another matter that is directly related to public order is the purpose of the transaction in contracts. The purpose of contracts must be legitimate and legal. If the purpose of the transaction is not legitimate, it is invalid due to its conflict with public order and public interests (592 BC). Here, public order takes precedence over personal interest to ensure public interests. If the contract does not meet the conditions of validity, it is considered invalid due to its opposition to public order (B2, M 502 BC).

3) Public Order in the Criminal Law

The Afghan criminal law also emphasizes maintaining public order, and the establishment of criminal regulations is basically to maintain public order and prevent disruption of order. Whenever individuals want to ignore social norms and break the norm, society and, on its behalf, the government are extremely sensitive to norm-breakers and react seriously to those who disrupt order public order and security. One of the important goals of establishing criminal regulations is to maintain order. Article 3 of the Afghan Penal Code states the objectives of this law. Paragraph 3 states: "Ensuring criminal justice and maintaining public order and security." In the Penal Code, Book II, under the title of Crimes against the State, Public Security and Immunity, crimes against internal security have listed the cases and examples of these crimes (Articles 237-343 of the Penal Code). Also, Chapter 3 of the law, under the title of Crimes against Public Security and Order, has listed the cases and examples that such acts are crimes against public security and order (Articles 344-369 of the Penal Code). Public order and public security are very important to the legislature, and in this regard, strict and severe criminal provisions have been considered against those who disrupt public security and order. It is not acceptable and justifiable from the perspective of the law that someone, under the pretext of exercising their right to citizenship or freedom, commits an act that undermines and disrupts public order and security. Therefore, no personal or individual rights are respected in the face of public order and social security.

2. Good Ethics

Another case that can be used as a solution to the conflict between public and private rights is good ethics. There are many definitions of good ethics provided by jurists; however, the preferred definition of good ethics is the ethics based on nature that is rooted in the values and religious beliefs of the Islamic society. In other words, good ethics are the same acceptable habits and customs that result from religious ethics and customs that have remained unchanged in all times and places. In the laws of Afghanistan, the observance of good ethics in the performance of contracts is mentioned in many cases and it can be chosen as a solution to the conflict of conflict. In Article 3 of the Constitution of Afghanistan, a general criterion has been established: "No law in Afghanistan can be against the beliefs and provisions of the holy religion of Islam." This article stipulates that in Afghanistan, no law against the beliefs and provisions of Islam has legal value; It is inferred from this article that when a law is enacted by the legislative body and is contrary to the rules and regulations of Islam, it has no legal value. Therefore, any legal and non-legal actions that individuals and entities perform must not conflict with Islamic values, otherwise, they have no legal and legal value. Good ethics in an Islamic system are the moral and religious values of society, which are called acceptable ethics. After this article is used, any legal action that is contrary to the beliefs, that is, the religious and moral values of society, has no value.

Article 9 of the Civil Code stipulates that a person who uses his right but causes harm to another is liable for compensation for the harm, and violation of the right is liable in the following cases, including acts contrary to custom and custom. Article 35 stipulates that the laws of foreign countries are applied in Afghanistan if they are not contrary to public order and good morals. Article 404 of the Civil Code also states that the acts of associations that operate contrary to the law and good morals are considered invalid. Article 436 of the Civil Code also states that the resolutions of associations that are contrary to good morals are suspended. Article 502 of the Civil Code states that one of the conditions for the validity of a contract is that the subject matter of the contract is not contrary to good morals. Article 590 states that if the subject matter of the obligation is contrary to public order and good morals, this obligation is void. Article 592 states that if the cause of the obligation is contrary to public order and good morals, the contract is void. Also, in Article 598, a condition included in a contract is invalid if it is contrary to public order and good morals. And other articles in the Civil Code that relate to good morals.

3. The Rule of Bearing Special Harm to Prevent Public Harm

One of the solutions to the conflict between public interest and private interest is to use the rule of bearing special harm for the sake of public harm. In the Civil Code of Afghanistan, this issue is raised as a general rule that special harm is borne to prevent public harm. Article 786 of the Civil Code states: "Special harm is borne to prevent public harm." In jurisprudential books and also in the Journal of Laws, this rule is stated in the phrase "Acceptance of special harm to prevent public harm" (Mughniyah, 1978, Vol. 5, p. 352; Article 26 of the Journal of Laws). One of the rules that are used in the conflict between public and private interests and provide a reasonable solution and solve the problem of legislators in the legislative capacity and the problem of law enforcers in the executive capacity is the rule of "bearing special harm to prevent public harm." In the conflict between two harms, jurists and all the wise men of the world believe that the rule of bearing a specific harm to ward off general harm prevails, and certain individuals and persons must bear it to prevent greater harm from occurring to the general public because the harm that affects individuals and persons is less than the harm that affects the entire society or a large part of society.

4. The Rule of Diminishing Severe Harm with Minor Harm

One of the rules that can be relied on is the rule of averting severe harm by enduring minor harm. The Afghan Civil Code on self-defense states that if someone feels that if they do not stand up to the attacker and defend themselves, they may suffer severe harm, or the law allows them to defend themselves even if the attacker is harmed. In Article 785, the Civil Code stipulates: "Severe harm is

averted by inflicting minor harm. A person who, to protect himself, causes more harm to others than the harm he has suffered, shall be sentenced to pay compensation for the damage that the court deems fair (Al-Hasfaki, 1415, 491).

This general provision of the law is used, that the legislator has allowed the bearing of minor damage to avert severe damage, and this provision can be used to conflict between public interests and private interests. Just as an individual is allowed to bear minor damage to avert severe damage, this provision can also be used in society because the damage to society is greater and more severe than the damage to the individual. Therefore, in the event of a conflict between public and private interests, public interests are given priority to avoid committing more severe damage, and committing minor damage that is individual is permitted.

In jurisprudential books, this rule is stated in the text “The severest harm is removed by the mildest harm” (Al-Hasfaki, 1415, vol. 6, 491; Article 27 of Majlis Al-Ahkam). This rule that severe harm is repelled by mild and small harm, meaning that to repel and prevent greater harm, we should bear lesser harm, is an important jurisprudential rule, as reason also dictates. This rule has provided a solution to the conflict between social interest and individual interest. If we abandon social interest for the sake of individual interest, we have endured more severe and greater harm, while the rule dictates that a lighter harm, meaning that individual interest should be ignored, should be endured to bear a milder harm. In addition to resolving the conflict between the interests of two or more people, it also resolves the conflict between public and private interests.

B. Conflict Resolution Rules in Iranian Law

The conflict resolution rules in the Iranian legal system and the Imamiyah school of jurisprudence are slightly different from the conflict resolution rules in Afghan law, and some of the legal rules such as public order and good morals mentioned in Afghan law are also cited in Iranian law. The conflict resolution rules in Iranian law must be extracted and inferred from the principles of the Constitution and the articles of the Civil Code and the Islamic Penal Code. In general, several titles in Iranian law have been emphasized a lot. One title is “Islamic standards” and “not disturbing the foundations of Islam”, “maintaining the system”, “public interests and public benefits” and “order and security” are among the most frequently used words in Iranian law, especially the Constitution and the Islamic Penal Code. The author’s understanding is that these titles are an obstacle to the implementation of private rights. If the use of private rights conflicts with public order or conflicts with good morals or with the principles of Sharia, then the law, customs and common sense of the world will definitely prioritize social interests:

1. The Rule of Maintaining the System

The most important rule of resolving conflicts that is at the forefront of the rules for resolving conflicts between public and private interests in Iranian law is maintaining the system. If the issue of maintaining the system conflicts with personal rights or the rights of individuals, then certainly maintaining the system is more important than the rights of individuals and maintaining the system takes precedence over all other matters. Therefore, rights that conflict with maintaining the system will not be given effect. To further investigate this issue, we will first define the system, what is meant by the system?

A. The Concept of a system

“System” are two infinitives of the verb “Nazm (Order, regulation), (Ibn Manzur, 1414 AH, vol. 12, 578). Arab philologists have said in defining system: “Al-Nazm al-Ta'alif, (Al-Zubaidi, 1416 AH, 687); whenever two things are connected, a connection is created between them, and in Arab literature, it is called system.” The word system comes from the root system, which means to arrange, decorate, string pearls, a habit, and a method (Amid, 1375, vol. 2, 250). Ibn Manzur, in explaining the lexical meaning of

system, said: System means to compose, collect, and match something to something else, and the thread with which a pearl or any other thing (such as a bead) is strung in order. He also used the term “system” in the sense of “gift”, “character”, and “habit.” (Ibn Manzur, 1414 AH, Vol. 12, 578) The term “system” has also been defined in jurisprudential texts. One of the authors has defined the “Islamic system” as follows: The Islamic system refers to the organization of religion, its existence and establishment of its rule, which is usually interpreted as the core of Islam. In another interpretation, it includes the ideology and content of religion, the organizations responsible for it, the objective existence of religion in society and the state of dominance, the ruling atmosphere, and the spiritual and executive influence of Islam in the objectivity of society (Amid Zanjani, 1375, Vol. 8, 35). One of the experts, in expressing the terminological concept of system, writes as follows: “A system means a set of elements with action and reaction”, “a set of goals with relationships between goals and between their properties”, “Any set of elements that can somehow interact with each other can be viewed as a system. Galaxies, football teams, legislative bodies and political parties are each a system.” (Alem, 1383, 149).

According to some sociologists, a system has characteristics such as order and interdependence of its components, preservation of the boundaries of the environment, tendency to spontaneously maintain order or balance, and tendency to self-preservation. (Reuters, Beta, 133 and 1349) Some have said in expressing the concept of a system: The system is the order and form that gives a society its personality. The system is the way of social life in society. The system means a whole that today we see in pieces due to habit. The system is at the same time the form of life of a society, lifestyle, moral preferences, social form, form of government, form of government and spirit of laws. (Strauss, 1373, 38). After stating the definitions of the system from the perspective of lexicography, jurisprudence and political and social sciences; A system can be defined as follows: "A system is a set of elements that are interconnected to achieve a common goal, and if a problem arises in one of these components, the entire system will be disrupted." Types and levels of the term system concept include organizing the lives and livelihoods of people, the existence of an Islamic country and Muslims, the existing government or political regime, and each of the political, economic, social, and cultural subsystems.

Among these types and levels, what is meant by the rule of preserving the system is the essence of the Islamic state and Muslims, meaning that whenever the enemies of Islam and Muslims seek to destroy the Islamic state and attack the borders of the Islamic state, in these cases it is said that the state is in danger and jihad becomes obligatory on the people. The purpose of preserving the system is to maintain Islamic sovereignty and prevent it from being undermined by internal and external enemies of Islam, which can be understood as the same meaning or a meaning close to this, and for this reason, the late Naeini has called it protection from foreign interference and caution against the usual tricks in this regard and the preparation of a defense force and military capabilities and other things. This meaning, in the language of the scholars of the law, is called preserving the seed of Islam and other nations, preserving one's homeland. Sometimes it also means maintaining order within society and establishing discipline among people and social organizations and systems. Maintaining order in this sense is used in the face of disorder and chaos (Kalantari, 1999, p. 212).

B. Rational and Transcendental Evidence for Maintaining the System

One of the important evidence that indicates the necessity of maintaining the system in the Muslim society and the Islamic government is the conscientious and rational evidence, and that maintaining the system of the Muslim society and safeguarding its independence depends on avoiding the tricks and malice of the enemies and being careful and constantly vigilant about their decisions and movements. The protection and preservation of the Muslim system is one of the most important matters that the Holy Law has paid attention to and has considered obligatory on the state and the people. Therefore, preparing its preparations is also considered obligatory according to the ruling of reason and human nature. The necessity of maintaining the system, in addition to being a necessary and obvious matter, is also used in the concept of many hadiths and religious news (Montazeri, 1408 AH, Vol. 4, 296).

In addition to the necessity and rational obviousness, numerous narrations indicate the necessity of maintaining the Islamic system (Ameli, 1409 AH, Vol. 15, 30). In jurisprudential texts, the discussion of maintaining the system and preventing system disruption has also been widely discussed. Two important topics on the subject of "jihad" are evident in the works of Islamic jurists.

First, regarding the obligation of jihad, all Islamic jurists unanimously say that in the absence of the infallible Imam or his special representative, the obligation of jihad is waived, unless fear and danger threaten the Islamic system. Secondly, war and jihad with an oppressive sultan are forbidden and not permissible, unless fear and danger threaten the Islamic nation, or failure to accompany the oppressive sultan causes the downfall of the "seed of Islam". In this case, accompanying the oppressive sultan and fighting with him is permissible and sometimes may become obligatory and necessary (Tusi, 1387, vol. 2, 8; Na'ini, 1382, 40; Mirzaei Qomi, Bi Ta, vol. 1, 376 and 377; Khomeini, 1415, vol. 2, 619)

In the case of the conflict between maintaining the system, which is a public interest, and private interests or benefits, Islamic jurists have considered maintaining the system to be prior to private interests. Regardless of the jurists' point of view, reason gives precedence to maintaining the system over individual and personal interests, and maintaining the system takes precedence over other matters. Maintaining the system takes precedence over other matters; because if the system is maintained, the rights and interests of all will be ensured. One of the jurists clarifies the precedence of maintaining the system over individual rights and freedoms: If maintaining the system depends on detaining and arresting individuals confiscating their property and obtaining information and secrets from them that help maintain the system, individuals can be arrested and detained (Muntaziri, 1409 AH, Vol. 2, 481). Another jurist was asked whether a jurist can seize property that is more than the needs of the believers, to what extent, and what is the criterion. In response to the inquiry, he says: A jurist does not have such a right unless necessity demands it and the preservation of the Islamic system and Muslims depends on it (Golpaygani, 1413, 45).

Another issue for the sake of order and security in the Islamic Penal Code regarding retribution is a provision that if the family members of the deceased cannot pay the blood money of the murderer or do not have the share of the other holders of the right to retribution if it is in the interest of carrying out retribution, the prosecutor can ask the head of the judiciary to pay the blood money from the treasury and the murderer will be retaliated against. Article 428 of the Islamic Penal Code states: "In cases where a crime disrupts public order and security or hurts public sentiments and it is in the interest of carrying out retribution, but the person seeking retribution cannot afford to pay the blood money or the share of the other holders of the right to retribution, upon the request of the prosecutor and the approval of the head of the judiciary, the aforementioned amount will be paid from the treasury."

2. Compliance with Islamic Standards

The Constitution has spoken of Islamic standards in several principles. First, in the preamble to the Constitution, it is stated: "Our nation was removed from the dust and rust of the tyrants during its revolutionary evolution, cleansed itself of alien intellectual mixtures, and returned to the original Islamic intellectual positions and worldview, and now it is determined to build its model society with Islamic standards... In principles 4, 20, 21, 24, 26, 125, 110, 161. The term Islamic standards is mentioned. In the Civil Procedure Code, it is also stated that the ruling issued by judges must comply with the standards of Sharia. The term Islamic standards is mentioned in the Constitution, but in the conversations of Islamic jurists and jurists, and the terminology of the Guardian Council, Sharia standards are mostly used. Although Islam differs from Sharia in terms of meaning and concept; because Islam is submission to a God who is worthy of worship, Sharia is literally called a path that leads man to his destination, and in terms of terminology, it is practical and moral teachings that are related to the individual and social life of man. In any case, whether "Islamic standards" or "Shari'a standards" are used, their meaning is the same. The word "Islamic standards" or "Shari'a" which is mentioned in the Constitution and other laws is very

important. "Shari'a" is the plural of "mizan" meaning a criterion and a benchmark; that is, any action taken from writing laws or other actions must be measured against the standards of Sharia and Islam to ensure that it does not contradict. In several other principles, emphasis is also placed on not opposing Islam or violating the foundations of Islam because the sacred system of the Islamic Republic is an Islamic system. Certainly, any action, whether legislative or in the executive and judicial arenas, must be in accordance with Sharia. There is one governing principle that governs all principles. In the fourth principle of the Constitution, it is stated that all laws and regulations of the country must be based on Islamic principles, and its meaning is the necessity of all governing laws to be in accordance with Islamic principles. This principle governs the other principles of the Constitution. This principle states: "All civil, criminal, financial, economic, administrative, cultural, military, political and other laws and regulations must be based on Islamic principles.

This principle governs the generality or generality of all principles of the Constitution and other laws and regulations, and the determination of this matter is the responsibility of the jurists of the Guardian Council. Due to the importance of Islamic principles, the constitution provides for the formation of the Guardian Council. Article 91, is responsible for the heavy responsibility of safeguarding the rulings of Islam and the Constitution in terms of ensuring that the resolutions of the Islamic Consultative Assembly do not conflict with them. In proportion to these two types of responsibility, the members of the Guardian Council are divided into two parts: Six of its members must be just jurists who are aware of the requirements of the time and current issues so that they can be responsible for determining whether the resolutions of the Assembly are in accordance with the rulings and principles of Islam.

Article 94 of the Constitution states: "All resolutions of the Islamic Consultative Assembly must be sent to the Guardian Council. The Guardian Council is obliged to review them within a maximum of ten days from the date of receipt for compliance with Islamic principles and the Constitution, and if it finds them inconsistent, return them to the Assembly for revision. Otherwise, the resolution is enforceable." Article 105 of the Constitution states that the decisions of the councils must not be contrary to Islamic principles, and the councils are obliged to comply with Islamic principles in all stages of decision-making and action as a doctrinal principle governing the councils. Accordingly, the Islamic Councils Organization Law, which is responsible for determining the conditions for council elections according to Article 100 of the Constitution, has made belief in and commitment to Islam a prerequisite for those elected, thereby excluding any movement that is opposed to Islamic principles from the field of action of Islamic councils (Amid Zanjani, 1421, 482). Even in Article 110 of the Supreme Leader's Authority, it is stated that pardoning and commuting sentences of prisoners by the Supreme Leader upon the proposal of the judiciary must also be based on Islamic standards.

Another important aspect of Islamic standards is that Article 61 emphasizes that the rulings issued by the courts must comply with Islamic standards. The aforementioned article states: "The judiciary is exercised by courts of justice, which must be formed according to Islamic standards and must resolve disputes, protect public rights, expand and implement justice, and establish divine limits." Therefore, the Islamic judicial system is governed by nothing but divine power and will, and the only limitation of the judge is that his rulings and opinions must not exceed the limits of the standards of Sharia and the rules of jurisprudence (Amid Zanjani, 1421, 351) Article 105 of the Constitution states that the decisions of the councils must not be contrary to Islamic principles, and the councils are obliged to observe compliance with Islamic principles in all stages of decision-making and action as a doctrinal principle governing the councils. Accordingly, the Law on the Formation of Islamic Councils, which is responsible for determining the conditions for the elections of councils according to Article 100 of the Constitution, has made belief and commitment to Islam the basis for compliance with this principle among the conditions for those elected and has thereby removed any type of movement contrary to Islamic principles from the field of action of the Islamic councils. Article 105 of the Constitution is interpreted as the non-contradiction of the resolutions of the Islamic Consultative Assembly with the rulings of Islam. At first, it seems that the non-contradiction of the enacted laws with the standards and rulings of Islam has a concept

of conformity with it, because perhaps new laws and regulations that are not contrary to the rulings of Islam, but due to the lack of a subject and background for those laws, do not have a legal precedent in Islam and a similar ruling cannot be found in Sharia. Such as laws related to aviation matters, inventions, guidance and driving, and the like. For this reason, some have thought that the meaning of the phrase: "It must be based on the standards of Islam" is the same as non-contradiction with Islamic rulings (Amid Zanjani, 1421 AH, Vol. 1, 401).

3. Non-contradiction with Islamic Principles

In the third chapter of the Iranian Constitution, individual and social rights and freedoms are discussed, and individual and social freedoms are emphasized in various principles. There are two negative and positive interpretations of the Constitution. One is that laws and regulations must be in accordance with Islamic principles, and the other is that the exercise of fundamental rights and freedoms is subject to the condition that they do not violate the principles of Islam. For example, Article 21 of the Constitution obliges the government to guarantee women's rights in various ways, but the limits of those principles are Islamic principles, which means that granting rights to women must be in accordance with Islamic principles. The text of the aforementioned principle is as follows: "The state is obliged to guarantee women's rights in all aspects in compliance with Islamic standards..." However, in several principles, the negative aspect of the issue is raised, that laws have been enacted or the enjoyment of permitted rights and freedoms is permitted to the extent that it does not contradict Islamic standards. In Article 26, the freedom to form parties, associations and groups is recognized, and individuals have the right and can form parties and groups, provided that they do not violate the principles of independence, freedom, national unity, Islamic standards and the foundation of the Islamic Republic. Islamic standards are the red line and the limits of the activities of parties and groups.

In Article 24, freedom of expression and publication in the media and the press is recognized and it is stated that citizens of the country are free to express their opinions in the country's publications unless it violates the principles of Islam; this means that Islam is the red line and the limit of freedom of expression.

In Article 27, the formation of assemblies and holding large protest marches and rallies without carrying weapons is permitted, provided that it does not violate the principles of Islam. This article also contains a negative clause that the assembly and protest do not violate Islam.

In Article 28, the freedom of employment of individuals is recognized, which states that everyone has the right to choose the job they want and want, provided that it does not contradict Islam. The aforementioned article states: "Everyone has the right to choose a job that they want and that is not against Islam and the public interest and the rights of others. The government is obliged to create the possibility of employment and equal conditions for obtaining jobs for all individuals, taking into account the need of society for various jobs. There are many cases of application of the measure in the law.

4. Maintaining Public Security and Order

After maintaining order and observing Islamic or Sharia standards, the issue of public security and order is one of the most important and vital issues in society, for this reason, legislators and statesmen have paid serious attention to it, and criminal regulations have been enacted in the Criminal Code to maintain order and maintain social security. Criminal regulations have been enacted mostly for those who somehow endanger social order and security. In fact, punishment is a kind of reaction of society towards criminals. In criminal policy, one of the criteria for a fair trial is in favor of the accused; Public hearings are for private cases. Media professionals and impartial individuals who are aware of the defendant's rights should monitor the quality and manner of the court's proceedings. However, sometimes circumstances require that these rights of the defendant be ignored and a closed trial be held. Article 165 of the Iranian Constitution states: "Trials shall be held in public and the presence of individuals is free

unless, in the court's judgment, their public nature is contrary to public decency or public order, or in private cases, the parties to the case request that the trial not be held in public." In jurisprudence, there have also been numerous cases in which maintaining order and preventing disruption of order have been advocated (Montazeri, 1409, Vol. 2, 382).

Article 975 of the Iranian Civil Code is a clear example of this rule, which also exists in every other country: "The court cannot enforce foreign laws or private contracts that are contrary to good morals or that are considered contrary to public order due to their offensiveness to the feelings of society or for any other reason; even though the enforcement of such laws is permitted in principle." The preference of the more important right over the less important right in cases of conflicting rights is a rational and rational principle that all humans and societies, regardless of their religion, practice, or school of thought, consider and practice.

Summary and Conclusions

From the study of the lexical and terminological concept of conflict, its types and theoretical and practical foundations, we concluded that conflict in the field of action and compliance is one of the serious problems that cannot be solved by the obligated parties without providing a reasonable and logical solution. Although the principles of jurisprudence have mentioned some alternatives to resolve the conflict between two mandatory rulings, these alternatives are the first and second in the conflict of interest. In the discussion of the conflict of public interest and private interest, these alternatives cannot solve the problem of conflict. In the principles of jurisprudence, people like the late Naeini raised issues and topics that could be used as a solution to the problem of interference. Based on the rules and regulations of Afghan law, the basic and ordinary laws of Afghanistan should be studied and investigated, and in the case of interference between public interests and private interests in Afghan law, concepts such as public order, good morals, and maintaining the system of preventing severe harm due to severe harm, etc., were used as a solution to the problem of interference between two mandatory provisions. In Iranian law, in addition to public order and good morals, the standards of Sharia, disturbing the foundations of Islam and public security are among the titles that were used as a solution to the interference between public and private interests.

The rule of maintaining order is one of the rules that prioritizes public interests over private interests. This rule has received more attention in the law of the Islamic Republic of Iran. The rule of bearing specific losses to prevent public losses and the rule of reducing severe losses to minor losses are not considered rules in Iranian law. The rule of non-contradiction of the rule of will with public order is one of the priorities of public interests over private interests accepted by the nature of Iranian and Afghan law.

In general, in Iranian law, in addition to the existence of rules for resolving the conflict between public interests and private interests, with the superiority of public interests in some cases, a kind of balance is established between the interests of individuals and society, but in Afghan law, despite many rules, an extreme tendency to prioritize public interests over private interests is seen.

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