



## Jurisprudential Rule of Obligation [Arabic Ilzām]; The Basis for Interaction and Respect

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### **Abstract**

The present research studies an important jurisprudential rule. The evidences of this rule have been relied on in the Quran, *sunnah*, reason, and consensus and the relevant opinions have been presented by jurists and given the previous researches some conclusions have been drawn and presented humilatingly to resolve religious conflicts and even positive law. Under rule of obligation, not only can the followers of religions and denominations be obliged to act based on their beliefs and requirements, but also, whenever relevant, it is possible to put the effects of accuracy on their acts.

**Keywords:** Obligation; Interaction; Denominations; Religions; Positive Law

### **Introduction**

The jurisprudential “rule of obligation” is among international rules of Islam. In fact, it is among “general rules” which rely mostly on “rules of international law”.

This rule is meant to oblige the follower of a religion to commit to his religion and belief. Imamiyya jurists have considered this rule enforceable for the Sunni. But some of the jurists regard that it is applicable and enforceable for denominations and even other believers who commit to the dominant rules of the own society. The main questions of this article are as follows: what does it mean by the rule of obligation? What are its evidentiary proofs? Is this applicable to other divine religions or other positive laws, in addition to the interaction between Imamiyya and the Sunni? Our assumption gives positive answers to the above –mentioned questions.

Therefore, the rule of obligation has a specific position in demonstrative jurisprudence and according to the view of some researchers it does not belong exclusively to a specific area. There are many branches of jurisprudential coexistence in contracts, unilateral acts, and religious practices which should be examined under this rule. Sheykh Ṭūsī was the first jurist who has judged on the meaning of this rule in his noble book “*Tadhhīb*”. He stipulates that if a Sunni man divorces his wife without

observing the reliable terms and conditions of the divorce, because he believes in such a divorce, the separation is put into effect and he is obliged to commit to the effects. Other jurists, each has relied on this rule in a specific area of jurisprudence.

This article takes the same traditional and dynamic method of research known as *Javaheri* research method. It will be considered a fundamental research as to proceeding the principles and jurisprudential purposes, and practically it is a legal and legislative research. It is also an applicable research for the students of jurisprudence and law to become more acquaintance with it.

It should be added that the research uses mainly the writings of the honorable professor and great son of Professor Fāḍil Lankarānī which is a source of great gratification for me.

### ***The Literal and Technical Meaning of Obligation***

*Ilzām* (English: obligation) is derived from the Arabic word *luẓūm* which literally means permanent companionship or association of one thing with another. *Ilzām* (obligation) means to oblige someone to do something and to make it obligatory for him. *Iltizām* means to accompany and to be committed to an affair or property and to take charge of it. (Ṭūsī, 1416, v. 6, p. 162; Rāghib, 1412, p. 240)

The technical meaning of *Ilzām* (obligation): if a person performs a dealing or contract in a proper manner according to the popular religion, although it is not correct according to Immamiyya religion, the Shi‘a person may put the effects of accuracy on it and oblige him to accept the requirements of his act.

### ***Documentations for the Rule of Obligation***

#### A) The Quran

1. Quran: 5/47: “The followers of the Gospels (the New Testament) must judge according to what God has revealed in it. Those who do not judge by the laws of God are evil doers.”  
Different possibilities can be derived from this holy verse which here there is no space for details. The denotative meaning of the verse: “The followers of the Gospels (the New Testament) must judge according to what God has revealed in it” is in consistent with the rule of obligation.  
If we believe that the Gospels contain some law (which the same superficial meaning is understood from the verse), then the followers of the Gospels must have acted according to that law. Allah orders that if the followers of the Gospels do not accept the religion of Islam and do not succeed to act according to Islam, after the revelation of the Quran and advent of Islam, they must judge by the laws of their book. The verse has been interpreted by the late professor Mughniyah to mean: “The Glorious Allah states that whoever accepts a religion and believes in a scripture must act according to it and must be committed to its law”. “*Qad amara subḥānahū kullu man yudinu bi dīnin, wa yu‘minu bi kitābin min kutubillah subḥānahū an ya‘mal bihī wa yulzimu nafsahū bi aḥkāmihī...*”. (Muhammad Javād Mughniyah, 1434, v. 3, p. 64)
2. Quran: 3/85: “And whoever desires a religion other than Islam, it shall not be accepted from him, and in the hereafter he shall be one of the losers.”

Relying on this verse, some believe that by the advent of Islam all other religions have been abrogated and according to the content of the verse the acts of their followers according to their religions shall not be accepted from them.

It should be noted that by “shall not be accepted” in the above-mentioned verse it means that they shall not be accepted because of the fact that their acts are inconsistent with their real duties and this is not contradictory to the rule of obligation. Obviously, it is only the Islamic law that is in fact the true preferable law, but this is not contradictory to the fact that the previous religious laws are obligatory as the true secondary law to those who have not accepted Islam. If, for example, they have got marriage according to their own law, it is, in our view, a correct marriage contract. In another word, the evidences of the rule of obligation in a supervisory/ruling manner (*bi nahwi hukumat*) states that if an act is not based on the reality, whenever it is performed by a person who believes in its accuracy, the effects of accuracy is put on it. (Muhammad Javād Fāḍil, 1391, p. 59)

### ***Narrative Documentations of the Rule***

#### **A) Sunnah**

There are two classes of narratives on this rule:

The first group of narratives clearly mentions the word “obligation”. The second group of narratives contains the contents of the rule of obligation. In fact some of the narratives do not mention the words “*ilzām* or *iltizām*”, but they are indicative of the contents of the rule of obligation as in some other cases of rules like the rule of negation of distress and constriction; some of the narratives mention the words “distress and constriction” and others do not mention, but indicate the content of the same rule.

#### **B) Narratives that use the stem of the verb “*lazama*”:**

1. In a narrative from ‘Ali ibn Ḥamzah quoted from Imam Kāẓim (A.S) he was asked about a woman who has not been divorced according to the true tradition and the legal terms and requirements of divorce as to whether another person can perform a marriage contract with her? Imam stated that: oblige him to act according to whatever she is committed to. In another word, if the Sunni are committed to this type of divorce and regard it correct, get them to commit to their belief. You can marry this woman and there is no problem with your marriage and it is correct. “*An ‘Ali ibn Ḥamzah annahū su‘ila Abal Ḥassan ‘an al-muṭṭallaqa ‘alā ghayri al-sunna ayyatazawwajuhā arrajulin faḡāla alzamūhum min dhālika mā alzamūhu anfusihim wa tazawwajūhunna flā ba’sa bidhālika.*” (Ḥurr ‘Amulī, 1409, v. 22, p. 72)

The narrative has a weak chain of narrator (*sanad*) due to ‘Ali ibn Ḥamzah whose trustworthiness is a matter of disagreement and has been weakened by the famous scholars. In addition, if the *sanad* mentions “from some of the companions of ‘Alī (*‘an ba’ḍi aṣḡābi ‘Alī*)” or “except one of the companions of ‘Alī (*ghayri waḡidīn min aṣḡābi ‘Alī*)” one can not judge on the trustworthiness of the narrators, rather the “*ba’ḍ*” will be unknown. Some of the scholars like ‘Allamah Majlisī regards this narrative as *mursal* (hurried) or it is regarded elsewhere as an authentic or a weak one. (Muhammad Bāqir Majlisī, 1406, v.15, p. 313; Muhammad Javād Fāḍil, 1391, p. 69)

Regarding the implication of the narrative also, due to the word “*min dhālika*” it has been regarded as an exclusive indication of divorce, but since the customary law does not treat it as an indication, a general rule can be understood of it. (Muhammad Javād Fāḍil, 1391, p. 69)

2. ‘Abdullāh Ibn Ṭāwūs said in the presence of Imam Rizā (A.S) that: I have a nephew who has married my daughter. He is a wine drinker and always speaks of divorce and tells my daughter that you are a divorced woman. Imam (A.S) asked: is he among your Shi’a brothers? If he is among your brothers (i.e.

the Shi'a) the word of divorce is invalid but if he is among the common people separate her from him; because he has intended to divorce her. Ibn Tāwūs also asks Imam (A.S): has it not been quoted from your grandfather Imam Ṣādiq (A.S) that avoid the women who has been triply divorced in one session because they have husbands? Imam stated that: it is about your Shi'a brothers but not them (the Sunni people). In another word, whoever accepts a religion he is obliged to accept the laws of that religion. "*faqāla dhālika min akhawātikum lā min hā'ulā annahū man dāna bi dīni qawmin lazimtahū aḥkāmahum*".

It is worth mentioning that triply divorce in one session is accepted from the Sunni view, but it is not accepted by Imam Riḍā. Therefore, irrevocable divorce has been accomplished after triply divorce and it is not revocable.

According to this rule, everyone is obliged to commit to whatever he believes. Therefore in the view of Imam, triply divorce is not accomplished in one session (it is not regarded as irrevocable divorce) and this type of divorce will not be accepted from one who believes in Imamiyya jurisprudence, but if he is among common people his triply divorce is accepted and he should be committed to it. (Ḥurr 'Āmilī, the book of divorce, 1409, chapter 30, h. 11) The problematic point of this narrative is its *sanad*, 'Abdullah Ibn Tāwūs, whose trustworthy is not clear. Regarding the implication of the narrative, the general major premise under the narrative is a clear evidence for this rule.

3. Muhammad 'Aalavī says: I asked Imam Riḍā (A.S) about women who have been triply divorced in one session whose divorce is invalid in the view of Shi'a, but is accepted in the view of common people. Imam stated that: if this triple divorce is performed among you it has no effect and others can not put any effect on it. But their divorce is lawful for you; because triple divorce has no legal effect for you, but this is the cause of real divorce for the common people. (Ḥurr 'Āmilī, the book of divorce, 1409, chapter 30, h. 9 and 10) This narrative has been quoted by the late Ṣadūq as a *mursal* (hurried) hadith (without mentioning the name of Imam Riḍā). He also added that one, who believes in the religion of a people, should be committed to the law of the same religion (*man kāna yudīnu bi dīni qawmin lazimtahū aḥkāmahum*). (Muhammad Ibn Ali Ibn Bābiway, 1413, v. 3, p. 406)

4. The fourth narrative has been transmitted from Muhammad Ibn Muslim. He says: I asked Imam Muhammad Bāqir (A.S) about the religious law. He states that: whatever is lawful for the people who believe in a religion is permissible and effective. It should not be interpreted as "*ḥalāl*" (lawful) and "*yastaḥillūn*" (to consider it lawful), rather it means that everything is constant in every religion: "*yathbitūna baynahum*". *Muhammad Ibn Muslim 'an abā Ja'far qāla sa'altuhū 'anil aḥkām qāla yujawwizu 'alā ahli dhī dīnin yastaḥillūn*. (Muhammad Ibn Ḥassan Tūsī, 1407, v. 9, p. 322)

5. The fifth narrative relates to a matter asked by Ibrāhīm Ibn Muhammad Hamidānī from Imam Jawād. Imam answered that: I understand whatever you have sent me about your daughter and his husband. May Allah prescribe whatever is right for her. They (the common people) swear that if x event happens the woman will be divorced. Now, if the event happens the divorce has been accomplished in their view and you can put it into effect, because they intended to do so, therefore the divorce has been implemented. While if it has been done by a friend of mine (a Shi'a person), it can not be put into effect. (Ḥurr 'Āmilī, 1416, v. 22, p. 72, h. 1)

6. '*An 'Abdul Rahmān al-Baṣrī 'an abī 'Abdillah qāla qultu lahū imra'atun ṭallaqta 'alā ghayri al-sunna faqāla tatazawwaju hādhihi al-mir'at lā tatrūk bighayri zawjin*. (Muhammad Ibn Tūsī, 1407, v. 8, p. 58)

The narrator asks about a woman who has been divorced based on the judgment of the Sunni people. Ḥaḍrat Ṣādiq (A.S) states that: She [should] marry. Woman should not remain without husband. This is a valid narrative and implies that the real accuracy of divorce of the Sunni people has its own effects and others may marry that woman.

7. The seventh narrative: ‘Abdul A‘lā asked Imam Ṣādiq (A.S) about a man who triply divorced his wife in one session. Imam stated that: if he undermines divorce..., then the divorce should be put into effect and his wife must be considered unlawful for him. *In kāna mustakhaffan biṭṭalāq lazimtahū dhālika*. (Ḥurr ‘Āmilī, 1407, v. 8, p. 57) By undermining (*istikhfāf*) it means not to observe the reliable terms and conditions of divorce.

8. Eighth narrative: Ayyūb wrote a letter to Imam Kāẓim (A.S) and asked him: can we take the religious law of our opponents regarding the law they take of us? Imam answered: It is permissible. (Muhammad Ibn Ḥassan Ṭūsī, 1409, v. 26, p. 158, the chapter on *bābun ‘alā mirāthi akhūhu wa ajdād*, h. 3)

9. Ninth narrative: Ḥaḍrat Imam Riḍā (A.S) stated that: temporary marriage is lawful for those who consider it legal according to his/her religion, but it is unlawful for those who do not believe in it according to their religion. It is clear that unlawfulness here is due to the rule of obligation and is consistent with it. Of course, here unlawful may be considered an abominable act (*makrūh*). *Qāla Al-Riḍā (A.S) Almut‘a lā taḥhillu illā liman ‘arafahā wa hiya ḥaramun ‘alā man jahalahā*. (Muhammad Ibn ‘Ali Ibn Bābiway, 1413, v. 3, p. 459)

10. Tenth narrative: Ḥalabī quoted from Imam Ṣādiq (A.S) that if a pure (*mudhakkā*) glass of water and a dead animal (*maytah*) are mixed together in a way that the individual components of the mixture can not be differentiated, one can sell the mixture to anyone who consider it lawful and consume its money. *Sami‘tu Abā ‘Ābillāh yaqūl: idhā ikhtalaṭa aldhakī wa almaytah bā‘ahū mimman yastaḥillu almaytah wa akala thamanahū*. (Ḥurr ‘Āmilī, 1407, v. 7, p. 100, chapter 7, h. 1)

**Contextual study of narratives:** The narratives on the rule of obligation are numerous enough to deduce the reliability of the issuance of narrative. According to the view of those who consider the reliability of the issuance of narrative enough for the authority of an isolated hadith (*AL-Khabar AL-Wāḥid*) this is sufficient and there is no need for the discussion of its *sand*. Perhaps *fatwā* on the claim of *tawatur* in wording and *tawatur* in meaning (*ijmāl tawātur or ma‘nawī tawātur*) of these narratives is not unlikely, let alone the claim of certainty of issuance of the narrative that has a clear citation. As ‘Allamah Bujnūrdī said: *“falinṣāfu annahū idhā idda‘ā aḥadun alqaṭ‘u biṣudūri hādhal kalām ‘anhum (A.S) laysa mujāzifatan fīmā yadda‘thi”*.

The remaining problem is the weakness of *sanad* of some of the popular narratives that is removed by compensating the weakness of *sanad* with the act of famous. Therefore, there is no need for the discussion of *sanad* both on the basis of reliability of the issuance of narrative and of *tawatur* in wording and *tawatur* in meaning as well as compensating the weakness of *sanad* relying on act of famous. (Muhammad Javād Fāḍil, 1391, p. 63)

The cases of jurists' reliance on the rule:

- 1- Shiykh Ṭūsī: *“man ṭalaqa imra‘atuhū wa kāna mukhālīfan wa lam yastawfu sharā‘iṭa ṭṭalāq illā annahū ya‘taqidu annahū yaqa‘u bihil baytūtahū lazimhu dhālika”*. (Ṭūsī, 1407, v. 8, p. 58) If a man divorces her wife without observing the reliable requirements of divorce, since the man himself believes that this type of divorce brings up separation, he is obliged to be committed to the divorce.

- 2- Ibn Idrīs: “*in kāna al-muṭallaqu mukhālīfan wa kāna mimman ya‘taqīdu wuqūa ṭṭalāq alththalātha, lazimhu dhālīka wa waqa‘t al-firqahtu bihī*”. (Ibn Idrīs, 1410, v. 2, p. 685) If a Sunni man triply divorces his wife and he believes in such a divorce, he must act according to his belief and put the separation into effect.
- 3- Muḥaqqīq Ḥillī: “*wa law kāna al-muṭallaq mukhālīfan ya‘taqīdu al-ththalātha lazimathu*”. (Ja‘far Ibn Ḥassan, 1407, v. 3, p. 9) If a man who divorces his wife is opponent of Immamiyya and believes in triply divorce in one session, she is obliged to be committed to it.
- 4- ‘Allāmah Ḥillī: “*law kāna al-muṭallaq mukhālīfan ya‘taqīdu wuqū‘a al-ththalātha ḥakama ‘alayhi bimā ya‘taqīdu*”. (Ḥassan Ibn Yūsuf Ḥillī, 1420, v. 2, p. 53)
- 5- Muḥaqqīq Karakī: “*Zāhirahum annahū lā yujjawizu taghsīluhū ghusla ahli al-wilā’ wa lā ta‘rifu liaḥadin taṣrīḥan bikhilāfihī*”. (‘Ali Ibn Ḥussain Karakī, 1416, v. 1, p. 368)
- 6- Šāḥib Riyāḍ: “*Wa jāza lanā munākaḥati muṭallaqātihī kadhālīka bilā khilāfa yazharu baynanā bal idda‘ā ‘alayhi jamā‘atun ittifāqanā*”. (Sayyid ‘Alī Ṭabāṭabāī, 1418, v. 12, p. 233) Concluding marriage contract with Sunni divorced women is permissible without being illegitimate among us (the Shi‘a) and there is a consensus among a number of jurists on this judgment.
- 7- Fiyḍ Kāshānī: “*law kāna al-muṭallaq mukhālīfan ya‘taqīdu al-ththalātha lazimathū al-ththalātha ‘indanā linnuṣūṣi al-mustafīda wa kadhā kullu mā ya‘taqīduhū fainnahū ṣāḥiḥun yaqa‘u bihī bilā khilāfin ya‘rifu minnā*”. (Mullā Muḥsin Fiyḍ Kāshānī, n.d., v. 2, p. 316) If a non-Immamiyya man divorces his wife and he believes in triply divorce in one session he is obliged to be committed to it. The divorce is put into effect because of *nuṣūṣi al-mustafīda* with us and also their beliefs without being a known illegitimate act with us. It is important that this judgment extends to the cases other than divorce.
- 8- Mīrzayī Qumī: “If a believer performs ritual washing (*ghusl*) on the dead body of our opponents he should observe their practice of ritual washing.” (Abul Qāsim Qumī, 1417, v. 3, p. 293, The Islamic Propagation Office of Qom Seminary)
- 9- Marāghī: “*Inna al-kāfiru wa al-mukhālīfu yalzimu bi mu‘taqīdihī, kāna i‘tiqādahū fīhi al-ṣiḥḥa wa hādhal miqdāru yaṣīru hujjatan ‘alayhi fil khurūji ‘anil mulk wa yadkhulu fī ‘umūm alzimūhūm bimā alzimū bihī anfusahum*”. (Marāghī, 1415, v. 2, p. 722) Surly, unbeliever and opponent are obliged to be committed to their belief because their beliefs are correct and this is a sufficient evidence for their estates to being removed out of their property (in the case of religious endowment (*waqf*) although being without the intention of proximity to Allah) and enters the general rule of obligation.
- 10- Narāqī: “*Thumma inna al-mashhūru ‘alā fī sharhil qawā‘id annahū lā na‘rifu min aḥadin taṣrīḥan bikhilāfihī annahū yaghsilu ghuslahum liqawlihī; alzimūhum bimā alzamū bihī anfusihī*”. (Narāqī, 1417, v. 3, p. 113)

Several points are understood from the summing up of the words of the jurists. Since the time of Shiykh Ṭūsi there have been many narratives on the principle of the rule of obligation, apart from the extended or narrow areas of jurisprudence and its branches which have been referred to by him, specifically on divorce and heritage. On the cases outside the instances of clear texts (*manṣūṣāti miṣdāqī*) he has relied on them and has extended the area of *mulzim* and *mulzam* and one can claim that there is a consensus and a continuous practice (*sīratul mustamirrah*) in this regard.

## Conclusion

The rule of obligation is a jurisprudential rule on which most of Imamiyya jurists rely and in addition to *mulzim* it is applicable to *mulzam* as it is applicable to other religions in addition to two branches of Islam (i.e. Shi'a and Sunni).

Finally, is the rule of obligation applicable exclusively to the cases where someone is obliged, based on the divine religion, to be committed to some law, although it is a general rule and those who have been committed to the law of one country are obliged to do so? According to the view of a researcher (professor and great son of Professor Fāḍil Lankarānī, Muhammad Javād, p. 145, 1391) the evidences show that it is a general rule. The practice of the wise also includes commitment to the human law.

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