

## RULES FOR PAYING HARM AND REMOVING HARDSHIP IN ISLAM

### قواعد دفع الضرر ورفع المشقة في الإسلام

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### Abstract

Necessity is the compelling situation to take what is forbidden by Sharia, and this exclusion may be the act of others, as in coercion and the like. It may be due to emergency circumstances and force majeure, such as the hunger in which a person is, or the general famine in which people are. And what is forbidden by Sharia, who is forced to take it, may be a vaccine or a drink. It may also be killing a person, committing an indecency or destroying money, and the purpose of committing the prohibited may be to pay the death of a person, damage money, or commit indecency. This research has been called the rules of repelling harm and removing hardship in Islam; because the meaning of harm is a comprehensive meaning that touches on many matters, and a person must be characterized by reconciliation with himself and with others. For this reason, the jurists set many rules to ward off harm and remove hardship from the servants and in order to preserve and maintain oneself in order to live a free and healthy life, far from everything that damages it or detracts from its value, even if that leads to the commission of taboos or compromising the rights of others and the most important of these rules Which

- The harm is removed. Necessities allow prohibitions. He commits the lesser of two harms to ward off the greater.
- He bears the specific harm to pay the general harm - the necessity is estimated according to it - the hardship brings facilitation - the matter if it narrows, expands.

I have interpreted the verses and explained the hadiths, criticism and deduction, and listed the opinions of scholars and tried to explain the most correct of them. Using the analytical method, then it showed the teachings to which the verses guide us, which must be applied in dealing with people through the applied approach.

**Keywords:** rules, payment, harm, hardship, Islam.

### ملخص البحث

إن الضرورة هي الحالة الملجئة لتناول الممنوع شرعاً، وهذا الإلجاء قد يكون بفعل الغير كما في الإكراه ونحوه. وقد يكون بسبب ظروف طارئة وقوة قاهرة كالمخمة التي يكون فيها الإنسان، أو المجاعة العامة التي يكون فيها الناس. والممنوع شرعاً الذي يضطر إلى تناوله قد يكون مطعوماً أو مشروباً. كما قد يكون قتل نفس أو فعل فاحشة أو إتلاف مال، والغرض من ارتكاب المحظور قد يكون دفع هلاك النفس أو تلف المال أو ارتكاب الفاحشة. وقد سميت هذا البحث بقواعد دفع الضرر ورفع المشقة في الإسلام؛ لأن معنى الضرر معنى شامل يتطرق إلى أمور كثيرة، والإنسان يجب أن يتصرف بالإصلاح مع نفسه ومع غيره،

ومن أجل تلك العلة قعد الفقهاء قواعد كثيرة لدفع الضرر ورفع المشقة عن العباد ومن أجل المحافظة على النفس وصيانتها لكي تعيش حياة حرة صحية، بعيدة عن كل ما يتلفها أو ينقص من قدرها حتى ولو أدى ذلك إلى ارتكاب المحرمات أو المساس بحقوق الآخرين وسنين أهم تلك القواعد وهي:

- الضرر يزال - الضرورات تبيح المحظورات - يرتكب أخف الضررين لدفع أعظمهما.
  - يتحمل الضرر الخاص لدفع الضرر العام - الضرورة تقدر بقدرها - المشقة تجلب التيسير - الأمر إذا ضاق اتسع.
- ولقد قمت بتفسير الآيات وشرح الأحاديث والنقد والاستنباط وصردهم العلماء ومحاولة بيان الراجح منه. مستخدماً المنهج التحليلي، ثم بينت ما ترشد إليه الآيات من تعاليم يجب العمل بها في التعامل مع الناس من خلال المنهج التطبيقي.

الكلمات الافتتاحية: قواعد دفع الضرر، المشقة، الإسلام.

**Explanation of each of these rules in detail with a mention of some of the branches that fall under each rule.**

**The first requirement: Explanation of the first rule: the harm is removed**

This rule is one of the most important and most important rules in Islamic jurisprudence. It has wide applications in various fields of jurisprudence and the origin of this rule is its evidence and it is the text of a noble prophetic hadith on the rank of Hassan, which was included by Malik in Al-Muwatta on the authority of Omar bin Yahya on the authority of his father, and he said, peace be upon him: "There is neither harm nor harm" and it was taken out by Al-Hakim in Al-Mustadrak, Al-Bayhaqi and Al-Daraquni from The hadith of Abu Saeed al-Khudri, may God be pleased with him, as narrated by Ibn Majah from the hadith of Ibn Abbas and Ubadah Ibn al-Samit, may God be pleased with them. No harm or harm. He who harms God harms him, and he who makes God hard, God will make him hard." The other part of the hadith was mentioned in Sahih al-Bukhari, which is: "He who is hard, God will make it difficult on the Day of Resurrection...". Damage: inflicting an absolutely harmful effect on others. And harm is inflicting a corrupting act on others, not on the face of the lawful penalty. And harm is the opposite of harm by harming or inflicting a corruption on others on the opposite side, and some of them interpreted it: that a man does not harm his brother from the outset or recompense. The hadith is a text prohibiting harm, because negation without subjugation benefits the prohibition of all kinds of harm from the law, because it is a type of injustice, except for what is specified with evidence such as limits, penalties and cases of necessity. Its results are in financial compensation and punishment, and it is also a support for the principle of reclamation in bringing benefits and warding off evil, and it is the number of jurists, their pillars and their balance in determining the legal rulings of accidents. On this basis, many chapters of jurisprudence are built: such as responding with faults, choices, severing all kinds of stone, preemption, retribution, punishments, expiations, guaranteeing the spoils, appointing imams and judges, repelling the attacker even if it leads to his killing, fighting the polytheists and transgressors other than what is in the wisdom of its legitimacy to ward off harm. Because there is no harm or harm, because the text of this rule negates harm, it must be prevented absolutely, whether that harm is general or specific, and it also includes lifting it after its occurrence with the possible measures that remove its effects and prevent its recurrence, as well as pushing and preventing it before or during its occurrence, and then it was Inflicting legitimate penalties on criminals does not contradict this rule, even if it results in harm to them, because it contains justice and a defense of a more general and greater harm. It is intended for its own sake, but it is resorted to by necessity. Whoever destroys the money of others - for example - it is not permissible to be compensated with the destruction of his money because this is an expansion of the harm without benefit, and it is better than including the damaged in it what he damaged, unlike the felony against the soul or the body, which is initiated by retribution, because felonies are only guaranteed by a punishment of its kind. Likewise, it is permissible, for example, to imprison those famous for prostitution and corruption until their repentance appears, even if a specific offense has not been proven against them by judicial means in order to ward off their evil. The scholar Ibn Al-Atheer said in "Al-Nihaya": "No harm: that is, a man does not harm his brother, so it detracts from him something of his right, and harm: is effective from harm: that is, he does not recompense him for his harm by adding harm to him." This is the rule that expresses the meaning of the aforementioned hadith. Evidences from the Qur'an and Sunnah have combined to explain and support it. Imam al-Shatibi was very thorough in his saying that the aforementioned hadith is "neither harm nor harm" although it is one of the presumptive evidences under a definitive origin in this sense; Since harm and harm are forbidden in all Islamic Sharia in facts of particulars and general rules: such as the Almighty's saying (بِذُنُوبِهِمْ) :and the Almighty's saying (بِذُنُوبِهِمْ) : (and from it is the prohibition against transgression against souls, money, honor, anger and injustice; Everything that is in the sense of harm or harm; Under it is the felony against the soul, the mind, or the offspring, as it is a very general meaning in Sharia, there is no doubt or doubt, and if you consider the news of the Sundays, you will find it so...." And also the Almighty's saying (وَيُحْيِي بَطُونًَا نَا) :This noble verse urges tenderness and compassion for the newborn, and denies harm between spouses. Al-Qurtubi - may God have mercy on him - said: The meaning: "The mother does not refuse to breastfeed him to the detriment of his father or ask for more than a wage like her, and it is not permissible for the father to prevent the mother from that, despite her desire." In breastfeeding." This principle is proven to be prohibited in all other rulings, and the purpose of that precaution is to preserve the wealth of the weak and infirm, as mentioned by Imam Al-Razi and others in their interpretations. For example, what the people of Sunan narrated: that a man had a tree on someone else's land, and the owner of the land was harmed by the entry of the owner of the tree, so he complained about this to the Prophet, peace be upon him, and he ordered him to accept its replacement, or donate it to him, but he did not do so, so he gave permission to the owner of the land He uprooted it, and said to the owner of the tree: "You are only harmful".

Based on that, we say: This general rule "harm is removed" indicates its implementation in the texts of the Qur'an and Sunnah and the consensus of the nation.

**The second requirement: Explanation of the second rule: necessities permit prohibitions**

This is a legal rule that was taken from what the Most High said: After mentioning the taboos in Surat Al-Ma'idah (ذُذُّرُ) (ذُذُّرُ) and from the Almighty's saying also in Surat Al-Baqarah (كَيْفَ كَيْفًا نُنْذِرُهُ) :And from His saying, Glory be to Him, in Surat Al-An'am (وَأُولُو الْأَرْحَامِ وَالْأُولَادِ وَالْأُولَادِ) :and from His saying also, Exalted be He, in Surat Al-Naml (ذُذُّرُ) : (ذُذُّرُ) :The one who is in need is permitted, in the event of necessity, to obtain from the forbidden to the extent that it is warded off by necessity, and he does not want to eat it or use it beyond his need, and he does not return to finding these taboos neglected and eats them or uses them above the need. Al-Sudda said: It is not unreasonable to eat it with desire and pleasure, and it does not return to satisfying food to the extent of satiety (ذُذُّرُ) That is by uttering and applying the word disbelief on his tongue rather than his heart in order to save himself from destruction and damage that is almost inflicting on him, so resorting to it is prohibited, and uttering the word blasphemy is out of compulsion, which God pardons His servants for, and He justifies



This is evidenced by the Almighty's saying (تَوَيْتُ لِي بُيُوتِي نِي نُذِ يَ...): The same applies to what the companions of the Messengers of God - may God's prayers and peace be upon him - transmitted about the hypocrites." This is a summary of the evidence from the Noble Book of God regarding this noble rule. The mosque and the Messenger (may God bless him and grant him peace) left it alone until it emptied. And to what Imam al-Bukhari narrated in his Sahih:

1 -On the authority of Abdullah bin A. Tabbah that he heard Abu Huraira telling: that a Bedouin urinated in the mosque, so the people revolted to him to fall for him, so the Messenger of God, peace and blessings be upon him, said to them: "Leave him and pour water on his urine – or a log of water – for you have been sent as facilitators and you have not been sent as facilitators." Narrated by Muslim in his Saheeh.

Imam Al-Nawawi said in his explanation of the hadith: "And it includes kindness to the ignorant, and teaching him what he needs without violence or harm, if he does not commit the violation out of disrespect or stubbornness.

One of them: that if his urine was cut off, he would be harmed, and the origin of the impurity has occurred, so the possibility of increasing it would take precedence over inflicting harm on him.

### **The second: The impurity occurred in a small part of the mosque.**

#### **The fourth requirement: Explanation of the fourth rule: He bears the private harm to pay the general harm**

This rule is implicitly included in the previous three rules, even if it is a more specific one, and it is an important rule on the legitimate purposes in the interests of the people, which the mujtahids extracted from the consensus and the reasonableness of the proliferating legislative texts from the Qur'an and Sunnah, as explained previously. The Shariah came to preserve the people's religion, their lives, their minds, their lineage, and their money, so everything that leads to a breach of one of them is harmful and must be removed as much as possible. The limitation of drinking is in order to preserve the mind, and retribution and killing an apostate are for the preservation of souls and religions, provided that this rule applies in every issue ranging from private and public harm, so the specific harm is incurred to ward off the public harm, and this rule was mentioned in "Taysir al-Tahrir" with the following formula: Proof of personal injury. Based on this rule, some jurists issued a fatwa forbidding the ignorant doctor, the disloyal mufti, and the bankrupt Makari from practicing their profession, for fear of harm from the first in the body, from the second in debt, and from the third in money. Also like this: killing the harmful magician and the misleading infidel; Because the former fascinates people; The second invites them to disbelief and destroys their religion for them, thus bearing the most specific harm to ward off the more general harm. Including: If the buildings are in danger of collapse and collapse, the owner is forced to demolish them for fear of falling on passers-by.

Likewise, it is permissible to price the values of the needs, in order to prevent the sellers from agreeing to sell the goods by being unjust and harming the common people.

#### **The fifth requirement: Explanation of the fifth rule: Necessity is estimated by its value**

Among the rules that complement the previous ones are their saying: "What is permissible for necessity is to be estimated according to its measure." This rule is learned from the Almighty's saying: (يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قَامْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ وَارْتَأْسُوا بِرُءُوسِكُمْ إِلَى الرِّجْلِ وَالْأرجلُ إِلَى الْكَبَدِ) the verse And the transgressor: here he eats dead carcass more than the need, and the normal one: he eats it with the presence of others, and this is not permissible for some, because the condition for them is: it does not exceed the limit of necessity to the limit of choice, rather it is done from the forbidden act as much as the necessity pushes it without excess or extravagance and whoever exceeds the limit He was considered a transgressor, and this is clearly forbidden by the verses in the Holy Qur'an. This and the consequences of this rule issues: including: that a false oath is not permissible out of necessity, but it is permissible to expose the rush to harm him.

Including: that the compelled does not eat of dead meat except as much as filling the stomach.

Including: that if a breastfeeding woman has a pregnancy and her milk is cut off, and the father of the young child has nothing to rent a nurse, and the child cannot be dispensed with without his mother's breast, and there is fear that the child will perish. They estimated that period at one hundred and twenty days, but it is permissible here to spoil the pregnancy because it is not in a human being, so it is permissible to protect the human being, but it is not permissible after the lapse of one hundred and twenty days because it is the killing of a respectable soul in order to preserve another soul.

#### **The sixth requirement: Explanation of the sixth rule: Hardship brings ease**

This rule is considered a great asset of the Shariah. Most of the licenses are based on him. Rather, they are one of the pillars and foundations upon which the edifice of Islamic jurisprudence is based. It is a general jurisprudential and fundamental rule; It was originally cut off due to the availability of evidence.

And hardship in the language: fatigue from the Almighty's saying: (يَا أَيُّهَا الَّذِينَ آمَنُوا إِذَا قَامْتُمْ إِلَى الصَّلَاةِ فَاغْسِلُوا وُجُوهَكُمْ وَأَيْدِيَكُمْ إِلَى الْمَرَافِقِ وَارْتَأْسُوا بِرُءُوسِكُمْ إِلَى الرِّجْلِ وَالْأرجلُ إِلَى الْكَبَدِ) meaning its fatigue. It means hardship, refraction, effort and trouble. And facilitation in the language of ease and softness It is said: the matter is easy if it is easy and because of it the honorable hadith: "The religion is ease" i.e. easy, tolerated, a little strict, and ease against hardship. The overall linguistic meaning of this is: "Difficulty and trouble become a reason for facilitating," and the idiomatic legal meaning of the rule: "The rulings whose application results in embarrassment for the taxpayer and hardship in himself or

his money. Imam al-Shatibi - may God have mercy on him - said: "The evidence for removing hardship in this nation has reached the level of cutting." This rule contains an explanation of the rulings in which facilitation and flexibility were taken into account, and that the Sharia did not impose on people what they could not, or what would put them in embarrassment, and in a way that was inconsistent with their instincts and natures, and that consideration, facilitation and mitigation are the will and demand of the wise legislator. This is evidenced by this rule, and some other sub-rules - which are an extension of this solemn rule - texts from the wise Quran, and the hadiths of the Noble Prophet, may God bless him and grant him peace.

We explain here in a nutshell. Among the noble verses:

- 1- The Almighty's saying: (وَأُوذُوا وَوُذُوا).
- 2- The Almighty's saying: (وَأُوذُوا وَوُذُوا).
- 3- The Almighty's saying: (ثُمَّ ذُنُوبُهُمْ كَثُرَتْ).

The evidence in it and in other verses - which have combined on this subject - is that the Islamic Sharia always seeks to relieve people of embarrassment, and nothing in its rulings exceeds the weak powers of man. These texts indicated that for the general meaning. Based on it, the jurists deduced this rule, and made it as a beacon to light when calamities and facts, and deal with many issues and issues on its basis. And it came in the interpretation of Al-Manar when the Almighty says: (وَأُوذُوا وَوُذُوا): "The verse feels that it is better for him to fast if he does not suffer hardship or hardship, because the reason for the permit is no longer valid. The reason is that God does not want people to be helped by His rulings, but rather He wants ease for them and their goodness. This is an origin in religion that goes back to others, and from it they took the rule "hardship brings facilitation."

As for the pure Sunnah, if you browse through the hadiths, you will find many of them that state or refer to the meanings of this legal principle. There is no evidence for this that the Messenger, may God bless him and grant him peace, described this religion as the tolerant Hanif. There are narrations received in this form, the best of which is: "The religion with God is the tolerant Hanifiyya, not Judaism or Christianity." It was called - that is, the religion - by the Hanifiyyah, because of the ease and facilitation it contains.

And it came in the hadith of Osama bin Sharik Al-Taghlabi - may God be pleased with him - he said: "I came to the Prophet - may God's prayers and peace be upon him - and his companions as if birds were on their heads. God puts the hardship except for a person who has borrowed from another unjustly, then that one will go out and perish." Imam al-Bukhari - may God have mercy on him - compiled a chapter in his Sahih entitled "Religion is easy and the Prophet, may God bless him and grant him peace, said: "The most beloved religion to God is the tolerant Hanifiyyah"; In it, he dealt with what was narrated on the authority of Abu Hurairah on the authority of the Prophet, may God's prayers and peace be upon him, who said: "Religion is easy, and no one will make religion difficult except that he will overcome him. Imam Ibn Hajar - may God have mercy on him - said: "The religion was called ease as an exaggeration in relation to the religions before it, because God removed from this nation the insistence that was on those before them, and one of the clearest examples of him was that their repentance was by killing themselves. And the repentance of this nation is through abandonment, determination and regret."

Third: What has been proven from the legality of licenses in Islam: This is a definite matter, and from what is known in the religion of the nation by necessity, such as the licenses of minors, breaking the fast, gathering, and eating forbidden things. It causes the interruption of business, and if the lawgiver intended to make it difficult, then there would be no authorization or mitigation.

Fourth: The unanimity on the non-occurrence of the task of hardship: It indicates that the Lawgiver did not intend it, and the evidence for the tolerance of Sharia is more than can be counted. Okhrahm and ward off evils from them. For the sake of the interest of the servants and to ward off the great hardship for them, the wise legislator permitted looking at the nakedness of a foreign woman to the doctor with the intention of treatment, including the permissibility of four women in order to facilitate the man and the women due to their large number, and the legality of divorce because of maintaining the marriage with disharmony of hardship, and the legality of penance in zihar and oath in order to facilitate for those who are charged. And all the other licenses that God legislated to make it easier for His servants, which is what is meant by this rule that we are dealing with.

#### **The seventh requirement: Explanation of the seventh rule: If the matter becomes narrow, it expands**

This rule is quoted on the authority of Imam al-Shafi'i - may God have mercy on him - and Imam Izz al-Din bin Abd al-Salam said, referring to this rule: "This Sharia is based on the fact that when things are narrow, they expand." We mention another rule beside this rule, which is: "If the matter expands, it becomes narrow." Imam Al-Ghazali combined the two rules in his saying: "Everything that exceeds its limit is reversed to its opposite."

These two rules are opposite, and their meaning is: "If hardship appears in a matter, it is excused, and if the hardship is removed, the matter will return to what it was." That is, if an accidental necessity arises for a person or group, or an exceptional circumstance arises with which the original ruling for ordinary cases becomes embarrassing for the taxpayers and exhausting them until it makes them in a narrowness of application, it eases them and expands them, so that it is easy

as long as that necessity exists, and if the necessity is removed and the ruling is returned to its origin. This is the meaning of "if it expands, it becomes narrow." The second rule: "If the matter expands, it becomes narrow" is considered as a restriction to the first rule, because if hardship calls for the expansion of the matter, it expands to the point of impulsive hardship; Then it goes back to its previous course after that hardship is gone.

And for these two bases there are many evidences from the Qur'an and Sunnah, among which we mention: The Almighty's saying: ﴿رَبِّهِمْ إِذَا حُذِرُوا بِاللَّحْيَةِ﴾ In these verses is evidence that God Almighty has relieved the believers when they are in a state of fear, so He permitted them to shorten the prayer and change the way it is performed.

Second: - From the Sunnah: What Abu Dawood narrated on the authority of Amra bint Abd al-Rahman who said: I heard Aisha say: "People from the people of the desert buried the presence of the sacrifice during the time of the Messenger of God, may God's prayers and peace be upon him. It remains." She said: When after that, it was said to the Messenger of God, may God's prayers and peace be upon him, O Messenger of God. People used to benefit from their victims, make love from them, and take water from them, so the Messenger of God, may God bless him and grant him peace, said: "And what is that? Or as they said: O Messenger of God, I forbade the consumption of sacrificial meat after three, so the Messenger of God, may God bless him and grant him peace, said: "I have forbade you for the sake of the warmth that has been warmed to you, so eat, give alms, and save." He, peace and blessings be upon him, forbade saving the meat of sacrifices for more than three or more than a third. When the matter became narrow for the need, and when the matter expanded and the need ceased, the matter returned to its origin, allowing them to save and benefit as they were before that.

### **The second topic: Justification of exemption from necessity in the law**

Exempting the offender from punishment in the event of necessity is a recognized matter in modern criminal legislation in general, rather in previous laws since the era of the Romans. The state of necessity refers to the rule of its sum "that hardship brings facilitation" and one of the popular sayings in this regard is "that when the matter becomes narrow, it expands." The meaning is that if the circumstances of reality narrow for people, the legislator must expand upon them in rulings in order to ward off hardship and remove embarrassment and necessity in its general sense. Or is it achieved by the mere occurrence of a danger that can only be triggered by a prohibited thing, and in this sense it is not bound by the extent of the danger, nor its source, nor the right that threatens it, nor is it bound by specifying the action that ward off the danger or not specifying it, so it is not a lesson in the person who is forced to do it. And there are those who justify abstaining from responsibility in case of necessity by stripping the will of freedom: if a danger threatens the accused or a person close to him, his instincts control him and push him to get rid of this danger, and every other path is blocked before him that is not related to this salvation, and then he is not in front of him Other than one or specific roads, he has no choice but to choose. But if the danger threatens a person with whom he is not related, such as a doctor who kills the fetus in order to save the mother: or if someone sees a person surrounded by fire and seizes the water owned by others to extinguish it with it, then the freedom of choice narrows its scope from a social point of view, as the traditions of the profession or the environment or the mere promise of social solidarity , causes a person to choose a specific path, and he is excluded from choosing another path, and this means that his will does not have the freedom to choose in a manner that is suitable for the responsibility to be carried out. The basic principle in this law is that each person takes possession of his own right to protect his right by all means, even if it would prejudice the right of others. The owners of this reason believe that if the positive law had replaced the natural law and ensured the protection of rights without it, then he did not eliminate it definitively, because the positive law is unable in abnormal conditions - including the case of necessity - to provide that protection, and then it returns to natural law Thus, it becomes the right of each person to protect his right by himself, even if he incurs a right for the sake of that of another. But I criticize this view on the grounds that it limits the scope of positive law to cases without conditions, and this is not true; The positive law in an organized society governs all its conditions, whether they are normal or abnormal conditions. It is not correct to interpret the rule of necessity by abandoning the positive law from performing its function and returning to the natural law, because this provision is established in the positive law itself and with an explicit text. It is known that freedom of choice is narrowed in the case of moral coercion, so that the compulsor must choose the lesser of two evils. Evil befalls him and evil befalls others, and there is no doubt that the lesser of two evils is what afflicts others. Because the survival instinct makes women compelled to be saved, which threatens his life by committing everything that would ward off the danger. The law cannot ignore human nature or entrust people with what they want to carry. The defect of this opinion is that it fails to justify the rule of necessity in some of its forms. If it is true in the cases in which danger threatens the person who is forced himself, then it is not correct in the cases in which the danger is focused on others. And among the jurists who justify the rule of necessity that the behavior that comes to the compelled person is the same as the behavior that the ordinary man would get if he was put in this position. The behavior that a person takes in case of necessity is all that he can do, he cannot be asked in this case to behave other than him, and then the moral pillar is lagging behind on his side and this opinion in its entirety is a repetition of the theory whose sum is that the moral pillar - intentionally or wrongly - is negated if Circumstances in which a person cannot be humanly able to do other than what he has done, that is, in which he is not expected to act in accordance with what is required by law, celebrate a person.

A group of jurists also goes to justify the rule of necessity by the absence of social harm. In the event of necessity, a right is sacrificed in order to preserve another right that is greater than or equal in social value. And if the right that is preserved is of greater value, then the act of necessity will have achieved a profit for society, and if the two rights are equal, then the

act did not cause the society a loss as long as the harm is inevitable, and the role of the act in this case is limited to merely transferring the harm from one right to an equal right, and this does not mean From the social point of view, the act of necessity is considered beneficial in the first case and harmless in the second, and in both cases it does not deserve punishment.

Also from the opinions that were said in justifying the rule of necessity, it is due to the absence of social danger, as the act of the forced does not indicate an underlying criminal danger in himself, but rather it is an accidental matter dictated by abnormal circumstances in which a person is excused for his presence. Since the criminal penalty is aimed at deterrence and reprimand, the author of the law decided to relieve the obliged from his stumble, and to overlook his crime in appreciation of his excuse and the futility of his punishment.

### **Comparison between Sharia and law in the cause of exemption from necessity**

In the previous chapter, we explained the reason for exempting the offender in case of necessity in both Sharia and law, and we showed the extent of the difference in determining the reason in the law over the different ages, ancient and modern, from the era of the Romans until our modern time. A person himself protects his right by every nine means, even if it would prejudice the right of others. And no idea of it was spared from derogation because it is man-made and is represented in them by the lack of infallibility in opinions and ideas, and even if most of them are not good at comprehending it, and if human minds are willing to place what a creature makes on the level of what another creature has made, then these minds do not, in any way, accept Conditions are to make what the creature does on the level of what the Creator made, because they realize the difference between the two industries, and feel the wide range between the craftsmen, and this is what prompted some legal scholars in the modern era to refer the reason in crimes of necessity to what Islamic Sharia has referred to in texts The rules that Islamic jurists and Muslim scholars deduced from their saying: "Hardship brings ease" and their saying: "If the matter becomes narrow, it expands." That is: if the circumstances of reality are narrow for the people, the legislator must expand upon them in rulings in order to ward off hardship and remove embarrassment. And unveiling the treasures and secrets of this true religion represented in the mercy and mercy of God to His servants, because the beholder of the spirit of the Islamic religion will find that one of its most important features and qualities is to relieve embarrassment, pay off hardship, and assign God to His servants what they can afford to do away from exhaustion and fatigue and raising costs for the servants of God. And Imam Al-Suyuti noted in Al-Ashbah, saying: "Know that the art of analogies and analogies is a great art, through which he learns the facts and understandings of jurisprudence, its intakes and secrets, and is skilled in understanding and recalling it, and is able to append and extract to know the rulings of issues that are not legend, and accidents and facts that do not pass through a passage time".

### **Statement of the most important results:**

- 1- That "whoever is afflicted between performing some of the pillars with or without reciting the Qur'an and between performing the gesture and praying by gesture, it is obligatory for him to perform the gesture by gesture, only that will suffice him. The beast, and praying with or without reciting a minor is not permissible without an excuse, and the one who is afflicted between the two evils must have the lesser of them."
- 2- It is permissible to remain silent about the evil if its denial would result in greater harm, just as it is permissible to obey the unjust ruler, if revolting against him would result in a greater evil.
- 3- It is permissible to slit the belly of the dead body to remove the father if it is hoped for his life if he is turbulent and moving, and in this is saving the life of an infallible person, and it is a greater benefit than the evil of violating the sanctity of the dead.
- 4- If a chicken swallows a precious pearl for another person, the owner of the pearl has the right to own the chicken for its value in order to slaughter it.
- 5- If the infidels shield themselves with Muslim boys or captured Muslims in the war, it is permissible to throw them and the infidels are intended.
- 6- It is permissible to price the values of the needs, in order to prevent the sellers from agreeing to sell the goods by being grossly unfair and harming the common people.

### **Margins:**

The Similarities and Isotopes of Sheikh Zain Al-Abidin Bin Ibrahim Bin Najim, Dar Al-Hilal Publications - Beirut, p.

( ) This is how al-Hakim pronounced it and said: This is a hadith with a sound chain of narrators on the evil of a Muslim, and they did not narrate it, and al-Dhahabi agreed with him on that. See Al-Hakim Al-Nisaburi, Abu Abdullah Muhammad bin Abdullah: Al-Mustadrak on the two Sahihs, and in the appendix there is a summary of Al-Mustadrak for Al-Dhahabi - India - Dar Al-Maaref Press, volume 2, pg. He said: Whoever harms, God harms him, and whoever causes hardship, God will harden him. See Sunan Abi Dawood with Awn al-Ma'bood, second edition of Madinah al-Munawwarah - the Salafi Library, p. 10, p. 64.

( ) Sahih al-Bukhari Fath al-Bari, edition of Dar al-Fikr, numbered by Muhammad Fouad Abd al-Baqi, vol. 13, p. 128.

( ) The General Jurisprudential Introduction of Professor Mustafa Al-Zarqa, Tarbin Press - Damascus, p. 10, p. 977.

( ) Explanation of Al-Ahkam Al-Adaliah Magazine by Al-Atassi - Homs Press in the year 1349 AH, H.1, p. 25.

( ) Al-Shabbah and Al-Nazaer by Al-Suyuti, p. 84, Al-Shabah and Al-Nazaer by Ibn Najim Al-Hanafi, p.85, as well as Al-Qa'ida by Ibn Rajab Al-Hanbali - Dar Al-Maarifa for Printing and Publishing Beirut, p. 26, p. 286.

( ) Al-Wajeez in clarifying the general rules of jurisprudence, d. Muhammad Sidqi bin Ahmed Al-Borno, Al-Resala Foundation Edition, p. 79.

- ( ) The general jurisprudential entry of Professor Mustafa Al-Zarqa, paragraph 586, adapted.
- ( ) The End in Gharib Hadith by Abu Al-Saadat Mubarak bin Muhammad, famous for Ibn Al-Atheer, first edition, investigation: Mahmoud Muhammad Al-Tanahi, Taher Ahmad Al-Zawawi, Al-Halabi edition in the year 1383 AH in the year 1962, vol. 3 p. 81.
- ( ) Verse No. 6 Surat Al-Talaq.
- ( ) Verse 231 Surat Al-Baqarah.
- ( ) Consents in the Fundamentals of Sharia, Abu Ishaq Ibrahim bin Musa Al-Lakhmi, Volume 3, Pg. 9, 10. Investigation by Muhammad Mohi Al-Din Abdel Hamid - Egypt - Sobeih Press.
- ( ) Verse No. 233 of Surat Al-Baqarah.
- ( ) Interpretation of Al-Qurtubi Abu Abdullah Muhammad bin Ahmed Al-Ansari: Al-Jami' Al-Ahkam Al-Qur'an Second Edition, Cairo - Dar Al-Kutub Al-Masryah Press in 1936 AD, pg. 167.
- ( ) The Great Interpretation of Fakhr Al-Din Muhammad Bin Amr Bin Al-Hassan Al-Razi - Second Edition Tehran - Dar Al-Kutub Al-Ilmia, Volume 9, p. 183.
- ( ) The collection of Fatwas of Sheikh al-Islam Ibn Tabmiyya, first edition - Riyadh, year 1381 AH, AH 28, p. 104. Imam Abu Dawud brought it out with another wording in a long hadith, in which the owner of the tree is Sahar bin Jundab, and the owner of the orchard is a man of the Ansar. It came at the end of it, and the Prophet ﷺ said: "You are harmful." And the Messenger (ﷺ) said to the Ansari, "Go and pluck his palms."
- Sunan Abi Dawood explains it to make the effort. Hafiz Abu Dawood Suleiman bin Al-Ash'ath Al-Sijistani - India - Nadwat al-Ulama Press in 1392 AH, and the same source explains Awn al-Mabood - third edition - Dar al-Fikr - Beirut in 1399 AH in 1979 AD 15 pp. 321 and beyond.
- ( ) Verse No. 3 Surat Al-Ma'idah.
- ( ) Verse No. 193 of Surat Al-Baqarah.
- ( ) Verse No. 145 Surat Al-An'am.
- ( ) Verse No. 115 of Surat An-Nahl.
- ( ) Verse No. 119 of Surat Al-An'am.
- ( ) Verse No. 106 of Surat An-Nahl.
- ( ) Al-Jami' Al-Quran by Al-Qurtubi, Volume 2, p. 225.
- ( ) Jurisprudence rules on Ahmad Al-Nadawy, first edition, Dar Al-Qalam, Damascus, p. 271.
- ( ) Explanation of Al-Ahkam Al-Adaliah Al-Atassi magazine, p. 55.
- ( ) Verse 29 Surat An-Nisa.
- ( ) Facilitating editing in the principles of jurisprudence by Sheikh Muhammad Amin, known as Amir Bad Shah, volume 2, p. 387, and facilitating access to the science of principles of theology of Sheikh Muhammad Abd al-Rahman Abd al-Mahlawi, Mustafa al-Babi al-Halabi Press in the year 1355 AH, p. 250 and beyond.
- ( ) Journal of Judicial Judgments of Atassi, Volume 56.
- ( ) Al-Muwafaqat by Abu Ishaq Al-Shatibi, Mustafa Muhammad Press, Cairo, Volume 2, p. 307.
- ( ) Al-Asbahah and Al-Nazaer Al-Suyuti, p. 87, the conclusion of Majma' Al-Haqiqa' by Abu Saeed Muhammad bin Muhammad Al-Khadimi, edition of the year 1308 AH - Al-Amrah Press - Istanbul, paragraph 311.
- ( ) The analogies and analogies by Abu Najm al-Hanafi, p. 89.
- ( ) Majmoo' Fatwas of Sheikh al-Islam Ibn Taymiyyah, volume 28, p. 129.
- ( ) Verse 25 Surat Al-Fath.
- ( ) from the verse 25 Surah Al-Fath.
- ( ) Verse No. 20 Surat Al-Qasas.
- ( ) Rules of Judgments by Al-Izz bin Abd al-Salam, volume 1, p. 114 and beyond.
- ( ) Fath al-Bari, Sharh Sahih al-Bukhari by Ibn Hajar al-Asqalani, Dar al-Kutub al-Ilmiyya edition - Beirut, numbered by Muhammad Fouad Abd al-Baqi, volume 10, p. 643.
- ( ) Sahih Muslim with the explanation of Al-Nawawi, previous reference, vol. 3, p. 190 and beyond.
- ( ) Ishabah and Al-Nazaer by Ibn Najim Al-Hanafi, p. 87, and Ishabah Al-Suyuti, p. 87.
- ( ) Tayseer al-Tahrir, an explanation of the book al-Tahrir fi Usul al-Fiqh, Muhammad Amin al-Husseini, Volume 2, p. 301.
- ( ) He is the one who accepts the rent and rents the animals, and he has no back to carry, and no money to buy the animals - the previous reference.
- ( ) The previous reference.
- ( ) Explanation of the Justice Journal of Al-Atassi, Muhammad Taher and Muhammad Khalid, first edition, Homs, year 1349 AH, H. 1 p. 36.
- ( ) Ibn Najim in Al-Shabah wa Al-Nazaer, p. 96.
- ( ) The Wise Paths in the Sharia Politics of Ibn al-Qayyim - Al-Sunnah Muhammadiyah Press, p. 243.
- ( ) Verse 173 of Surat Al-Baqarah: "So whoever is forced, not wanting to transgress, or repeat, there is no sin upon him." The verse.
- ( ) The provisions of the Qur'an by Abu Bakr Muhammad bin Abdullah, known as Ibn al-Arabi, edition of Dar al-Maarifa for printing and publishing - achieved by Ali Muhammad al-Bajawi, volume 1, p. 57.
- ( ) Al-Shabah and Al-Nazaer by Ibn Nujaim, p. 86, Al-Shbah and Al-Nazaer by Al-Suyuti, p. 84.
- ( ) The Fiqh Rules of Professor Ali Ahmad Al-Nadawi, p. 265.
- ( ) Verse No. 7 Surat An-Nahl.
- ( ) Sahih Al-Bukhari, Volume 1, p. 16, Publications of Dar Al-Shaab.



- ( ) Explanation of the Justice Journal of Atassi pg. 49 and beyond.
- ( ) The previous reference, pg. 50, adapted.
- ( ) Approvals by Al-Shatby, H.1, p. 231.
- ( ) Surat Al-Baqarah verse 185.
- ( ) Surat Al-Baqarah verse 286.
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- ( ) Interpretation of Al-Manar by Mr. Rashid Rida - Al-Manar Press, Cairo, year 1373 AH, AH 2 p. 164.
- ( ) Imam Al-Ala'i said in: "Al Majmoo' Al Madhhab fi Qa'id Al Madhhab." The second side: "The best of what we have narrated in the benefits of Abu Amr bin Mandah with an authentic chain of narration on the authority of Ubay bin Ka'b □ said: "The Prophet (ﷺ) taught me that the religion is with God, the tolerant Hanifiyya, Neither Judaism nor Christianity." See Al-Majmoo' The Doctrine in the Rules of the Doctrine - Salah Al-Din Khalil Al-Ala'i - Fundamentals of Jurisprudence - Baghdad No. 259, Library of the Awqaf Directorate. [Manuscript] referred to by Ali Ahmed Al-Nadawi, p. 267.
- ( ) Approvals by Al-Shatby, H.1, p. 232.
- ( ) It was included by Abu Dawud al-Tayalisi from the hadith of Ziyad bin Rila on the authority of Osama bin Sharik.. It was also narrated by Ibn Manea, al-Tabarani and al-Daylami. Al-Suyuti symbolized his health. See Fayd al-Qadeer, Sharh al-Jami al-Sagheer by Muhammad Abd al-Raouf al-Manawi, second edition - Dar al-Maarifa - Beirut in 1391 AH, 2 p. 418.
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- ( ) Al-Munthour fi Al-Qa'id by Badr Al-Din Muhammad bin Bahader Al-Zarkashi, first edition, Al-Khaleej Establishment for Printing and Publishing - Kuwait. Investigated by Tayseer Faeq Ahmed Mahmoud in the year 1402 AH in the year 1982 AD, volume 1, p. 93.
- ( ) The Fiqh Rules of Ali Al-Nadawi, p. 357, and Al-Wajeez in Clarifying the Rules of Fiqh for Al-Borno, p. 140.
- ( ) Verses 101, 102, 103 of Surat An-Nisa.
- ( ) Narrated by Abu Dawood in the chapter on sequestration of sacrificial meat, Hadith No. 2812, volume 3, p. 99.
- ( ) Dr. Al-Saeed Mustafa Al-Saeed in the General Provisions in the Penal Code, p. 418.
- ( ) Dr. Awad Muhammad in the Penal Code, General Section, pg. 498.
- ( ) Dr. Mahmoud Najib Hosni in the General Theory of Crime, p. 585.
- ( ) The previous reference.
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- ( ) The previous reference. This view is what Prof. Dr. Mahmoud Najib Hosni held, the previous reference, p. 585, in which he defended him by saying: "Even in cases where the danger is directed to others, the actor's freedom of choice is narrowed from a social point of view because the traditions of the profession or the environment or just a feeling of social solidarity In the simplest form, it forces a person to choose a certain path and distracts him from choosing another, and this means that he does not have the freedom to choose.
- ( ) Dr. Ramses Behnam, previous reference, p. 909.
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- [10]. The Great Interpretation of Fakhr Al-Din Muhammad Bin Amr Bin Al-Hassan Al-Razi - Second Edition Tehran - Dar Al-Kutub Al-Ilmia, Volume 9, p. 183.
- [11]. The collection of Fatwas of Sheikh al-Islam Ibn Tabmiyya, first edition - Riyadh, year 1381 AH, AH 28, p. 104. Imam Abu Dawud brought it out with another wording in a long hadith, in which the owner of the tree is Sahar bin Jundab, and the owner of the orchard is a man of the Ansar. It came at the end of it, and the Prophet ﷺ said: You are harmful." And the Messenger (ﷺ) said to the Ansari, "Go and pluck his palms."
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