

# THE RULE OF NECESSITY IN ISLAMIC SHARIA AND LAW

## حكم الضرورة في الشريعة الإسلامية والقانون

Abul Firdaus Bayinat Basha Al Bajali\*

\*Ass. Professor, Faculty of Arabic and Islamic Studies, College of Islamic Sciences, International Islamic University for Sharia and Humanitarian Studies

أبو الفردوس بينات باشا البجالي

مؤخرة. أستاذ قسم علوم القرآن والتفسير كلية العلوم الإسلامية الجامعة الإسلامية العالمية للدراسات الشرعية والإنسانية

\*Corresponding Author:

abulfaradeesatnet@yahoo.com

### Abstract

Worship includes every human movement in life, and accordingly a person's quest to take care of himself and his society is an obligatory matter, and he is rewarded for it as long as he adheres to what he must do in it. The research has been called the rule of necessity in Islamic Sharia and law; because the meaning of necessity is a comprehensive meaning that touches on many matters, and a person must be characterized by reconciliation with himself and with others. I have dealt with in this research some of the provisions of necessity in a number of the following issues:

- The rule of necessity in Islamic law
- The rule of civil liability in case of necessity in Islamic law
- The rule of necessity and its impact on responsibility in the law
- Comparison between Sharia and Law in the Rule of Necessity

Then I interpreted the verses and explained the hadiths, criticism and deduction, and listed the opinions of scholars and tried to explain the most correct one. 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:** rule, necessity, sharia, law.

### ملخص البحث

إن العبادة تشمل على كل حركة من حركات الإنسان في الحياة، وعلى هذا فإن سعي الإنسان إلى العناية بنفسه ومجتمعه أمر واجب، وهو مأجور عليها ما دام يلتزم بما يجب عليه فيها، وقد سميت البحث بحكم الضرورة في الشريعة الإسلامية والقانون؛ لأن معنى الضرورة معنى شامل يتطرق إلى أمور كثيرة، والإنسان يجب أن يتصرف بالإصلاح مع نفسه ومع غيره، ولقد تناولت في هذا البحث بعضاً من أحكام الإضطرار في عدد من المسائل الآتية،

- حكم الضرورة في الشريعة الإسلامية.
- حكم المسؤولية المدنية في حالة الضرورة في الشريعة الإسلامية.
- حكم الضرورة وأثرها في المسؤولية في القانون
- المقارنة بين الشريعة والقانون في حكم الضرورة

ثم قمت بتفسير الآيات وشرح الأحاديث والنقد والاستنباط وصرود آراء 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: الحكم، الضرورة، الشريعة، القانون.

### **The first requirement: the rule of necessity in Islamic law**

If the word judgment is used to mean the effect of committing the forbidden, and through our review of some of the crimes of necessity in Islamic jurisprudence, we found that necessity permits taking the forbidden and committing the forbidden in Islamic Sharia, because this is proven by the Book of God Almighty and the Sunnah of His Prophet Muhammad bin Abdullah, may God's prayers and peace be upon him. The consensus of the Muslims. He mentioned many verses that indicate this ruling in the Holy Qur'an, including the Almighty's saying: (ثُمَّ رَأَوْا كَمَا اتَّخَذَ اللَّهُ لِكُلِّ قَوْمٍ سَبِيلًا) and saying: (كُلُّ شَيْءٍ حَلَالٌ إِذَا كُنَّ لِلْغَنَاءِ وَاجِبًا) The jurists of Islamic Sharia have laid down many jurisprudential rules that express this meaning and these rules have become widespread and common among the jurists, for example their saying: "Necessities make prohibitions permissible." The explanation of this rule and its likes have passed at the beginning of this book.

These rules remained Muslim and the subject of care and consideration among the jurists of the famous schools, until their position was drawn up after they were codified, and the refinement and refinement of their formulas took place, and all this is due to the jurists' presentation of this subject through what they knew of its great impact in lightening the perceptions and raising the legal faculty .

This is what the scholar Qutb al-Din al-Sunbati refers to by saying: "Fiqh is knowledge of analogies." The rule that we are dealing with, which is: "Necessities make prohibited things permissible." It is understood that the rule of necessity permits everything prohibited based on the generality learned from the apparent meaning of this rule.

But the truth is that this rule is not on this apparent initiator. And the clarification of that is that of the forbidden is that whose sanctity is never forfeited and is not permitted by necessity, but remains on the rule of prohibition, and the jurists like this type of the inviolability of killing an infallible human being unjustly on the pretext of necessity.

The generality, then, is not intended in this rule, and the permissibility of prohibitions in what is permitted by the state of necessity differs in its meaning and ruling. Does it mean removing the character of prohibition from the forbidden and making it permissible accordingly, there is no sin on the forced doer because he did what is permissible for him, or is the purpose of permitting the forbidden to remove the sin only from the forced doer while the character of prohibition remains?

### **The Hanafis and those who agree with them make the prohibition permitted by necessity two types:**

The first type: necessity makes it permissible, i.e., the character of prohibition is removed from it, and the next is that there is no sin on the one who does it. The rule of necessity for this type of prohibition is to remove the character of prohibition from it and remove the sin from the one who does it. Adopting it may sometimes be an obligation to save the soul from destruction, such as forbidden foods and drinks.

The second type: Necessity does not remove the character of prohibition from him, but rather removes the sin from the forced doer, as it is like the permissible in terms of the sin being removed from the doer, and like the forbidden in terms of the persistence of the character of prohibition in it. They represented this type of blasphemy when coerced, and destroying the money of others when compelled.

And the jurist Abu Ishaq Al-Shatibi, in his approvals, went to the fact that necessity calls for licensing, and the ruling on the license permits the prohibition that is related to it by removing the attribute of prohibition from it, and not its rule is to remove the sin only while the prohibited remains on the prescription of prohibition. This means that Al-Shatibi does not recognize the binary division of the tap, as it is permitted by necessity.

Al-Shatibi inferred his statement with a set of evidence and then cited an objection to himself that the scholars stipulated that the compelled should eat dead meat if he fears death for himself. : "The one who is in need, who cannot find what is lawful to protect himself, is permitted to eat dead carcass with the intention to relieve him of embarrassment, and to protect himself from the pain of hunger. The words of Al-Shatibi, that eating dead meat for the compelled is viewed from two sides:

First: On the one hand, the wise legislator authorized it after being prohibited from it, and from this aspect it is considered permissible according to the license. Permissibility, then, is the ruling on the license that was called for by the state of necessity.

The second: It is seen from the point of view that it is a revival of the soul, so it is obligatory, because the revival of the soul is commanded by the verse he mentioned. In his view, the obligation is derived from other evidence, not that it is the ruling on the license here.

Whatever the difference in the matter of this jurisprudential adaptation of the ruling of what is called for by necessity, the agreement is that the one who is forced is legally authorized to eat dead meat and the like, which is prohibited originally due to the state of necessity in which he is. Likewise, the agreement is based on the necessity of adopting what necessity calls for in some cases - such as eating dead dead meat for the compelled - whether we say that this

obligation is the rule of necessity in this case - or we say that its rule is permissibility, but the obligation is derived from another evidence.

It concludes from all of the above that the rule “necessities permit prohibitions” is not general and not apparent. Because necessity does not permit all prohibitions, but some, and that what is meant by this permissibility is the well-known permissibility, which is the equalization of action and abandonment, and this is according to the opinion of Al-Shatibi and those who agreed with him.

As for the opinion of the Hanafis and those who agreed with them, this permissibility of what is permitted by the prohibited means what al-Shatibi said about some of the prohibitions, and it means the removal of sin only in some others, while the character of prohibition remains in it. The truth is that the contemplator in both of the previous two opinions sees the preponderance of the opinion of the Hanafis and those who agree with them, and this is what we tend to because of his agreement with the texts, whether in the Book or the purified Sunnah of the Prophet. It is forbidden for a Muslim, his blood, his wealth and his honor.”

The money of a Muslim is forbidden to take except with the permission of its owner, unless a person is forced to do so. harmful to its owner, and it contains rhetoric.”

From this text, it becomes clear to us that the one who is compelled to eat from the money of others is permissible and he must restore his breath, and save himself by eating from the money of others as much as necessary without adding anything more.

**The second requirement: the rule of pain Civil liability in case of necessity in Islamic law**

As for civil liability in case of necessity, the compelled person is civilly liable whenever his action is prohibited even if the penalty is lifted, and he is not liable whenever his act is permissible. This saying applies in the case of the destruction or the taking of the money of the obliged one.

In this case, the one who is forced to take the money or to destroy it will have to pay the appropriate compensation to the owner of the damaged money. Al-Bayhaqi narrated in Al-Sunan Al-Kubra on the authority of Yahya bin Abdul Rahman bin Hatib, he said: Two boys of Hatib bin Abi Balta'ah in Al-Alia hit a she-camel of a man from Muzaina, so they committed suicide and confessed to her, so Omar sent him to him So he mentioned that to him and said: “Those I worship you have stole. They committed suicide, the she-camel of a man from Muzayna, and they confessed. He commanded many of the crucifixes to cut off their hands. Then he sent after he left and called him, and said: Were it not that I thought that you would starve them until one of them came, God would not have forbidden their hands, I would have cut off their hands.” But by God, if you leave them, I will pay you a fine for them that will hurt you, so he said, “How much is it?” To Al-Muzni, he said: “I used to withhold it from four hundred.” Omar said, “Give him eight hundred...”

Imam Malik, may God be pleased with him, said, commenting on this report: We do not have to do this work in weakening the value, but the matter of our people has passed that a man is fined the value of a camel or an animal on the day he takes it. By paying him the appropriate compensation.

The fuqaha' have discussed this issue under the heading: Is it obligatory to spend money without compensation?

According to the Hanafi school, the guarantee is not forfeited due to necessity, and they said: “Whoever suffers a severe headache, it is permissible for him to take the money of others, and he is a guarantor.”

And they justify the necessity of guaranteeing the jurisprudential rule: “Necessity does not nullify the right of others.” Their commentators say in this rule: “If compulsion allows the compelled to take and destroy the money of others without entailing punishment, it is not a reason for liberation from the guarantee.”

According to the Malikis, there are two sayings, but Al-Dasouqi in his entourage made the two sayings in the forced person who has no money. As for the one who has money, he is not obligated to give without compensation. As for the Shafi'is, he is only required to pay compensation, and thus cut off their audience and they have a weak saying in the doctrine that it is obligatory to give for free. They decided that the allowance is not required without compensation And Imam Ibn Taymiyyah chose the detail and said that it is obligatory to give free of charge if the compelled is non-existent, as it was mentioned in Ibn Taymiyyah's choices: "

The meaning of this speech is that if the obliged person has money, he must pay compensation for this money that he took or destroyed. This opinion has merit, and therefore I tend to it and prefer it.

This and the amount of consideration for the money spent on the compelled - if we say that compensation is required - is the price of the like, so the owner must sell it to him at this price.

Imam Ibn Taymiyyah, may God have mercy on him, said: “He must sell it, and his sale should be for the value of a like, and if he refuses from them, he is forced upon them.” Likewise, the Shafi’is said that he did not sell it except for more than the price of a like, because the extra was forced to give it unjustly. .

The consideration is not required to be expedited. Rather, it may be a debt that is owed if the needy person does not have any money present.

**The third requirement: the rule of necessity and its impact on responsibility in the law**

If the state of necessity exists, and the previous conditions required by law are met, the offender shall not be held criminally responsible for the crime of necessity he commits, whether it is a felony, a misdemeanor or a contravention. Just because the conditions stipulated therein are fulfilled, even if there is no proportionality between the danger that threatens the person and the harm resulting from the crime committed in defense of him.

This may lead to unpalatable results, but there is no trick in it with the frankness of the text and its generality, and this is what led some jurists to say, to oblige the offender in cases where the danger is not directed to him, or to whom he is concerned with, to investigate the balance between danger and crime to choose the lesser of two evils. And although it is desirable, it is an obligation that is not required by the text And there are those who say that punishment of the perpetrator should be abstained when the conditions of necessity are fulfilled, whether the behavior of the offender is positive or negative, and whether his crime is intentional or sinful, and whether it is against oneself, money, or something else.

But if the perpetrators are multiple and the conditions of necessity are fulfilled for one of them, his punishment is prohibited alone, but for the other, his punishment is not prevented simply because he is a contributor with him, but it is necessary for that to complete the conditions of necessity for him as well. And since the crime of necessity harms an innocent person and nothing has occurred that necessitates this harm, Article 168 made a civilian for this person to request compensation for the damage he has suffered. And the one who pays this compensation is the perpetrator of the crime of necessity.

If the crime was committed by the perpetrator in order to prevent harm that was threatening to others and not personally threatening to him, then he may, after paying compensation, return its value to the person for whom the crime was committed in accordance with the rules of virtue established in the Civil Code in accordance with Article 195 of the Civil Code, if the source of the damage paid With the crime of necessity, an act of a human being, not an act of nature, the perpetrator of that crime had the right to refer to this person as well for the value of the compensation he was obligated to. staring at him or others, he shall not be bound except by such compensation as the judge deems fit.”

And that is on the grounds that he resorted to committing a harmful act in order to protect himself or others from imminent harm that is more dangerous, and in this respect it is the easiest of liability and the lightest of the burden. It is noted that this text includes a restriction not included in the text of Article 61 of the Penal Code, which is that the damage paid is greater than the damage of the crime, thus avoiding the shortcomings of the criminal text previously mentioned.

As for the effect of force majeure or a major accident: Come, the criminal jurisprudence differed in the nature of the effect on each of them. Some argue that both force majeure and the sudden event negate the moral element in the crime because the criminal offense is absent, while others say that their effect is related to the material element. Whether we take this view or the other, in both cases the crime was not completed and therefore there is no punishment for the absence of the crime.

**Comparison between Sharia and law in the rule of necessity**

After reviewing some applications of the state of necessity in Islamic jurisprudence, and looking at its evidence, whether in the Book, the Sunnah, or the consensus of the nation, and after it became clear to everyone with two eyes, that necessity permits taking what is forbidden and committing what is prohibited in Islamic law, and for that, the famous rule was established: “Necessities permit prohibitions”.

We have talked about it enough as this rule removes the status of prohibition and makes it permissible for some crimes, and removes the sin while maintaining the status of prohibition from the other side. A felony, misdemeanor, or violation.

As for civil compensation, it was approved by the Islamic Sharia, and it was ruled by the one who committed a crime that harmed or damaged the money of others, and it was urgently resorted to by it, and even the rules were laid down for it, and from that they said: “The compulsion does not invalidate the right of others.” The positive law followed the same direction and moved that It was decided that the perpetrator of the crime of necessity should pay civil compensation in accordance with Article 168 of the Civil Code.

Thus, the law followed the approach taken by Islamic law, with the difference in source, objective and precedence.

### Research results:

- If the word judgment is used to mean the effect of committing the forbidden, through some crimes of necessity in Islamic jurisprudence,
- Necessity makes it permissible to take what is forbidden and commit what is forbidden in Islamic Sharia, because that is proven by the Book of God Almighty and the Sunnah of His Prophet Muhammad bin Abdullah, may God's prayers and peace be upon him, and the consensus of Muslims.
- The rule "Necessities make prohibited things permissible" is understood from it that the rule of necessity permits everything prohibited based on the generality learned from the apparent meaning of this rule.
- The rule "necessities permit prohibited things" is not general and not apparent.
- Necessity does not permit all prohibitions, but rather some, and that what is meant by this permissibility is the well-known permissibility, which is the equality of action and abandonment, and this is according to the opinion of some scholars.
- It becomes clear to us that the one who is compelled to eat from someone else's money is permissible, and he must restore his breath, and save himself by eating from someone else's money as much as necessary without extra.
- If the obliged person has money, he must pay compensation for this money that he took or destroyed.
- The consideration is not required to be expedited. Rather, it may be a debt that is owed if the needy person does not have any money present.
- If the crime was committed by the perpetrator in order to prevent harm that was threatening to others and not personally threatening him.
- That: "Whoever causes harm to others in order to avoid greater harm to him or to others, he is only obligated to pay compensation that the judge deems appropriate."
- "Forcing does not nullify the right of others." Positive law followed the same direction and moved that direction, so it was decided that the perpetrator of the crime of necessity should pay civil compensation in accordance with Article 168 of the Civil Code.

### Margins:

- Verse 173 Surah Al-Baqarah.
- ( ) Verse 119 of Surat Al-An'am.
- ( ) Verse 3 Surat Al-Ma'idah.
- ( ) Fragments of Gold in Akhbar Min Gold by Abi Al Falah Abdul Hai bin Al Imad Al Hanbali Volume 6 p. 57 Edition of Dar Al Masirah - Beirut.
- ( ) Rules in Jurisprudence by Badr Al-Din Muhammad bin Bahader bin Abdullah Al-Zarkashi [manuscript] Source from Al-Zahiriyyah Library No. 2869-1.
- ( ) Facilitating the editing of the jurist Muhammad Amin, famous as Amir Bad Shah, volume 2, p. 387. Facilitating access to the science of assets by Sheikh Muhammad Abd al-Rahman Abd al-Mahlawi, p. 250 and beyond.
- ( ) Approvals by Al-Shatby, H.1, Pg. 307 and beyond.
- ( ) Verse 29 Surat An-Nisa.
- ( ) Narrated by Muslim from Abu Huraira. Sahih Muslim Brief. Hadith No. 1775 pg. 473 Investigated by Muhammad Nasir al-Din al-Albani.
- ( ) The Collector of the provisions of the Qur'an by Al-Qurtubi, Volume 2, p. 225 and beyond. Balaghah - with the inclusion of the baa and the sukoon of the lam - is what one attains in life, and it is conveyed with this, i.e. it is sufficient for it.
- ( ) Al-Sunan Al-Kubra by Al-Bayhaqi, volume 8, p. 278, compiled by Abd al-Raziq, volume 10, p. 238.
- ( ) Muwatta' of Imam Malik, narrated by Yahya bin Yahya Al-Laithi, p. 530.
- ( ) Al-Mabsoot Sarakhsi, Volume 24, p. 73.
- ( ) Explanation of the Journal of Judicial Judgments by Professor Ali Haidar, Volume 1, p. 38.
- ( ) Differences by Imam Al-Qarafi Al-Maliki Volume 4 p.9.
- ( ) Sheikh Al-Desouki's footnote, volume 2, p. 126.
- ( ) Al-Nawawi's total volume 9 pg.
- ( ) Al-Mughni by Ibn Qudamah al-Hanbali Volume 8 pg. 602.
- ( ) Choices of Ibn Taymiyyah, Volume 4, p. 191.
- ( ) Majmoo' Fatwas of Sheikh Al-Islam Ibn Taymiyyah, volume 29, p. 186.
- ( ) Al-Nawawi's total volume 9 pg.
- ( ) Al-Mughni by Ibn Qudamah, previous reference.
- ( ) Al-Majmoo' by Al-Nawawi H9 p. 45, p. 51.
- ( ) Dr. Al-Saeed Mustafa Al-Saeed in the General provisions pg 426.
- ( ) Dr. Dr. Muhammad Mustafa al-Qali in criminal responsibility, p. 419. Ali Rashid in the principles of criminal law. In Crime and Criminal Liability No. 686.
- ( ) Dr. Awad Muhammad in the Penal Code - General Section 518.
- ( ) Dr. Ramses Bahnam in the general theory of crime p. 909.
- ( ) Dr. Ramses Bahnam in the General Theory of Criminal Law, p. 909.
- ( ) Dr. Al-Saeed Mustafa Al-Saeed in the General provisions pg 427.

**Resources and References**

- [1]. Fragments of Gold in Akhbar Min Gold by Abi Al Falah Abdul Hai bin Al Imad Al Hanbali Volume 6 p. 57 Edition of Dar Al Masirah - Beirut.
- [2]. Rules in Jurisprudence by Badr Al-Din Muhammad bin Bahader bin Abdullah Al-Zarkashi [manuscript] Source from Al-Zahiriyah Library No. 2869-1.
- [3]. Facilitating the editing of the jurist Muhammad Amin, famous as Amir Bad Shah, volume 2, p. 387. Facilitating access to the science of assets by Sheikh Muhammad Abd al-Rahman Abd al-Mahlawi, p. 250 and beyond.
- [4]. Approvals by Al-Shatby, H.1, Pg. 307 and beyond.
- [5]. The Collector of the provisions of the Qur'an by Al-Qurtubi, Volume 2, p. 225 and beyond. Balaghah - with the inclusion of the baa and the sukoon of the lam - is what one attains in life, and it is conveyed with this, i.e. it is sufficient for it.
- [6]. a Sunan al-Kubra by al-Bayhaqi, volume 8, p. 278, compiled by Abd al-Raziq, volume 10, p. 238.
- [7]. Muwatta' of Imam Malik, narrated by Yahya bin Yahya Al-Laithi, p. 530.
- [8]. Al-Mabsoot Sarakhsi, Volume 24, p. 73.
- [9]. Explanation of the Journal of Judicial Judgments by Professor Ali Haidar, Volume 1, p. 38.
- [10]. Differences by Imam Al-Qarafi Al-Maliki Volume 4 p.9.
- [11]. Sheikh Al-Desouki's footnote, volume 2, p. 126.
- [12]. Al-Nawawi's total volume 9 pg.
- [13]. Al-Mughni by Ibn Qudamah al-Hanbali Volume 8 pg. 602.
- [14]. Choices of Ibn Taymiyyah, Volume 4, p. 191.
- [15]. Majmoo' Fatwas of Sheikh Al-Islam Ibn Taymiyyah, volume 29, p. 186.
- [16]. Al-Mughni by Ibn Qudamah, previous reference.
- [17]. Dr. Al-Saeed Mustafa Al-Saeed in the General provisions pg 426.
- [18]. Dr. Dr. Muhammad Mustafa al-Qali in criminal responsibility, p. 419. Ali Rashid in the principles of criminal law. In Crime and Criminal Liability No. 686.
- [19]. Dr. Awad Muhammad in the Penal Code - General Section 518.
- [20]. Dr. Ramses Bahnam in the general theory of crime p. 909.
- [21]. Dr. Al-Saeed Mustafa Al-Saeed in the General provisions pg 427.