



Conditions of Necessity in Islamic Jurisprudence

شروط حالة الضرورة في الفقه الإسلامي

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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 is obligatory. The research was called the conditions of necessity in Islamic jurisprudence. 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. These conditions are:

- Necessity must be compelling
- The necessity exists
- For the crime to be the only way to pay the ban
- Pay as much as necessary
- The will of the compelled should not be involved in solutions to danger
- Conditions for abstaining from punishment for necessity in the law
- Comparison between Sharia and law in the conditions 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: conditions, , necessity, jurisprudence, Islamic.

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،

،وقدسميت البحث بـ شروط حالة الضرورة في الفقه الإسلامي؛ لأن معنى الضرورة معنى شامل يتطرق إلى أمور كثيرة ، والإنسان يجب أن يتصف بالإصلاح مع نفسه ومع غيره ، فمن خلال النظر لأحوال الضرورة في الشريعة الإسلامية، ومن المسائل المبعثرة أو المتفرقة في مختلف أبواب الفقه الإسلامي نستنتج أن هناك شروط لا بد أن تتوفر في حالة الضرورة ومن هذه الشروط: فيها

- أن تكون الضرورة ملجئة
- أن تكون الضرورة قائمة
- أن تكون الجريمة هي الوسيلة الوحيدة لدفع الحظر
- دفع الضرورة بالقدر اللازم
- ألا يكون لإرادة المضطر دخل في حلول الخطر
- شروط امتناع العقاب للضرورة في القانون
- المقارنة بين الشريعة والقانون في شروط حالة الضرورة



ثم قمت بتفسير الآيات وشرح الأحاديث والنقد والاستنباط وصرده 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: شروط, حالة, الضرورة, الفقه, الإسلامي.

Conditions of necessity

By looking at the conditions of necessity in Islamic law, and from the scattered issues in the various chapters of Islamic jurisprudence, we conclude that there are conditions that must be met in case of necessity, and these conditions are:

The first condition: that the necessity be compelling

In order for the necessity to be fulfilled in Islamic Sharia, it must be a force, so that the perpetrator finds himself or someone else in a situation in which it is feared that the soul or the organs will be damaged, or in the sense that he will cause him great harm that leads to death or damage to one of the organs, and this is derived from the word “necessity” as it Derived from necessity, which is an extreme need, and for this reason the licenses were issued based on people's excuses and their emergency circumstances. Or as Al-Shatibi says in the definition of the license: “What is legislated for a difficult excuse is an exception from a universal origin



that requires prohibition while limiting it to places of need...”. For this reason, the well-known rule that we talked about above was established, which is: “Necessities make the prohibited permissible.” And the prohibited is the forbidden that is forbidden to do. What we have with us is related to the legal concessions if there is a necessity compelling the soul to kill or severely damage the organs, such as eating dead meat for the compelled as much as preventing death from starvation, and eating pork, and drinking a morsel of wine for choking or severe thirst, or when there is complete compulsion to kill or cut off an organ, because compulsion is also achieved through starvation, it is achieved by complete coercion, not incompleteness. These things are permissible when it is necessary to say the Most High: (ث ت ذ) meaning that the severity of the famine called you to eat it, and the exception to the prohibition is permissible. And as we said, compulsion, as achieved by severe starvation, extreme thirst, and disease, is also achieved by complete compulsion, so eating is permitted and abstaining is prohibited, even if he refrained until he died or was killed, he was a sinner, because by abstaining he was thrown himself into destruction and he forbade that as the Lord, Blessed and Exalted be He, said: (ب ه و ز ح ط). There are levels mentioned by the jurists in another rule that is summed up in their saying: “Need comes down to the status of necessity, whether it is general or specific.” What is meant by necessity here is that it was not without necessity, because the levels of what the Shariah is keen to provide for man are three:

The first: - Necessity, which is that a person reaches a limit if he does not deal with what is prohibited in him, he will perish or be close to perishing. This permits eating the forbidden as we separated before.

The second: - the need, which is that a person reaches a limit if he does not find something to eat, he will not perish, except that he will be in effort and hardship.



This does not permit the forbidden, but it justifies breaking some general rules and permits breaking the fast in Ramadan.

The third: - perfectionism or refinement, which is what is intended by doing a kind of luxury and an increase in the ease of living without deviating from the lawful limit. Other than that, it is an adornment and curiosity. If there is a general need for all people, or a specific need to ship what this need came down the status of necessity in the permissibility of licensing for it. From the general need: the legality of leasing and peace and the like is permissible in contrast to the analogy because of the general need for it, and if the need prevailed, it was like necessity, because renting and Salam is a non-existent sale - and a non-existent sale is void. But it is permissible here because people need it. However, it is noted that in the second and third place, committing the forbidden is not permitted because, as we have previously said, we have known the necessity: “It is the compelling situation to take what is forbidden by law.” This exclusion may be by the action of others, as in coercion and the like, and it may be due to emergency circumstances and force majeure, such as the exclusion in which a person or General famine in which people are. This is forbidden by Sharia, who is forced to take it, compelled, may be vaccinated or drink. It may also be killing a person, committing an indecency, or damaging property. The purpose of committing the prohibited may also be to pay the death of oneself, damage the money, or commit adultery. And the perspective in determining the cases of necessity may be the reasons for necessity, what is motivated by it, or the intended purpose of pushing it to commit the prohibited. What we mainly choose to determine the states of necessity, is what you rush to, that is, what the one who is compelled to eat is prohibited.

The second condition: that the necessity exists



returns, the apathy ceases Cliff the demise of his illness. Likewise, the impediments to guardianship of marriage with regard to guardians raise the guardianship with its demise and return to its height. The standard in this is the standard of the ordinary man. Al-Qurtubi said in his interpretation of the situation of necessity: “So God Almighty permitted, in the case of necessity, all prohibitions due to his inability to do all permissible things.”

Ibn Qudamah al-Hanbali said in al-Mughni after he made it clear that eating from dead meat is permissible when necessary: “Like all other taboos.” So we conclude from all of this: to the condition that states that the state of necessity is present and present and the state and the state of ihram on the person should approach the forbidden.

The third condition: that the crime be the only way to pay the ban

One of the conditions required by jurists with regard to the crime of necessity is that there is no other means to ward off necessity than committing the crime. If it is possible to ward off necessity by a permissible act, it is forbidden to ward off it by a prohibited act. For example, the hungry person who can buy food or take it as a gift or charity does not have the right to invoke the state of necessity, and one of the well-known jurisprudential rules in this regard is their saying: “The harm can still be caused by the same or harm.” The rule is a limitation of the well-known rule: "The damage is removed." Because the removal of harm is not done by causing harm like it or more than it in the first place, then the condition is that the harm be removed without harming others if possible, otherwise it is less than it. Therefore, it is not permissible for a person in need to ward off death on his own behalf by starvation to take the money of a needy person like it, just as it is not permissible for someone who has been forced to kill to kill if the intended killing is a Muslim unjustly. But if there is no way other than committing the crime, then he has the right to choose the lesser, then the lesser, or in the sense that: “the most



severe harm is removed by the lesser harm,” or he chooses the lesser of two evils or the lesser of two harms, and as we explained in the explanation of the well-known rule: “If two evildoers conflict, the greater of them is taken into consideration by committing the lesser of them.” All these rules revolve around one meaning, which is that if the matter revolves between two harms, one of them is more severe than the other, he bears the lesser harm and does not commit the more severe. For example, if a man had an injury, and if he prostrated, his blood would flow, then he would nod and pray sitting, because leaving prostration is easier than praying with juveniles - for those who necessitate breaking ablution when blood flows - even though leaving Prostration also in this case protects the wounded from the harm of the blood coming out and bleeding, and it is also permissible to cut the abdomen of the dead woman to expel the fetus if his life is hopeful.

The fourth condition: Pay the necessity to the extent necessary

The jurists stipulate in the crime of necessity that necessity be paid to the extent necessary to pay it. If it exceeds the necessary amount, it becomes a transgressor, and there is something in Islamic law that confirms this condition, including the saying of the jurists: “The harm is to be paid as much as possible.” This means: the harm is to be paid according to Sharia. It is necessary to pay the damage without increasing. This rule states that the harm must be paid before it occurs by all available means and possibilities in accordance with the principle of the sent interests and the legal policy. Among the well-known rules in Islamic jurisprudence is their saying: “What is permitted for necessity is to be estimated by its measure,” or “necessities are to be estimated by its measure.” This rule entails many issues, including:

A false oath is not permitted out of necessity, but it is permitted to expose the necessity to rush through it.



his saying, “Not seeking evil,” it includes all those who are outside the imam and boycott the path and what is in its meaning. As for his saying: “not exceeding a limit,” it means that it does not go beyond the limit of necessity to the limit of choice. It is possible that the increase will be included under it according to the amount of satiety, as Qatadah and others said, but with the shortness of time, not with the persistence.

From all of the foregoing, it becomes clear to us that the most correct opinion in Islamic jurisprudence is that necessity is estimated to the extent necessary to pay it without increasing it to the limit of satiety, or exceeding the limit in responding to aggression. Because the increase comes out from being a necessity to being transgression, aggression and transgression, and this is due to the origin of the sanctity that was decided for it in the Sharia of Islam and for this the famous jurisprudential rule was established: “Necessity is estimated by its value.”

The fifth condition: The will of the compelled should not have entered into danger

This condition was mentioned by the jurists in the context of invoking the state of necessity, and this condition includes the non-interference of the compelled in the occurrence of this danger, meaning that he has no part in creating this danger, then He takes him as an excuse to commit the forbidden, and the jurists have represented him in a situation of compulsion arising from the travel of sin and the content of that, that whoever goes out to commit a sin such as blocking the road or killing a person who is infallible blood, or committing an indecency and other legal prohibitions, then he is struck by the necessity of hunger or thirst, for example, does he have to take prohibitions Food and drink and is the legal license permissible in Islam or not...?



First: the danger

Presence of a threat to oneself:

This phrase includes in its meaning every danger that threatens life or the body, as well as every danger that threatens a person's freedom, honor or reputation. There is no responsibility on the one who closes the door by force majeure or a sudden accident, so he does not find a way to get rid of arrest except by breaking the door, nor on the one who is forced by a burning fire to go out naked in the public road and extend his hand to the robe of others to cover his nakedness. According to the broad interpretation in which the phrase “a crime against oneself” was interpreted in the Shari’a defence, it includes in its meaning what threatens life or the body, as well as what affects modesty and honor, as if a woman’s clothes were burned in a fire, so the rescue worker broke a box and took a robe and a jacket from it. There has been a dispute in criminal jurisprudence about the danger that threatens honor and reputation, and they cite an example of this that the girl who carries incest, what is the position of the law on her, as she killed her child for fear of shame and scandal. Some went to exclude the danger that threatens reputation and honor from the scope of the state of necessity, “A girl who bears an incest is not exempted from punishment as she aborted herself or killed her newborn for fear of shame.” Some commented on this by saying: “This exclusion has no basis in the law or from a reason Withholding responsibility in case of necessity, and it is justified to justify not recognizing the state of necessity for this girl by saying that the danger that threatens her reputation is due to her will, and that she can ward off this danger by means other than murder or abortion. While some jurists view the opposite, and see that a girl who carries an incest, as she miscarried herself and killed her newborn for fear of shame, and like her who steals letters or destroys papers for others for fear of spreading the scandals that disgrace her. Both of them are



exempted from punishment, adhering to the state of necessity due to the expansion of the concept of the soul and the inclusion in it of everything that affects reputation and honor, and he believes that the first opinion has no one in jurisprudence to support it.

Likewise, it is not required that the danger threaten the same offender, but rather it is valid that it threatens others. And among the explainers of the law, who restricts this to be one of the offender's relatives or loved ones only until the meaning of coercion or necessity is achieved, and because if it is said that a person has to pay by necessity even if the danger threatens any human being with whom he is not related, this leads to the turning of necessity A valid reason for the act so that there is no penalty for it at all, neither for the person in danger nor for his partner. Although it is one of the established matters that necessity is one of the personal reasons preventing liability, which if it is present in the actor, the partner does not benefit from it, and it is an unsound opinion because it specifies the text without a bond. Connected to the actor. Adopting this view leads to unacceptable results, and misses the purpose for which the text was placed, and restricts it to a picture in which the old text was enriched by what was interpreted by jurisprudence and the judiciary.

The second condition: that the danger be grave:

The state of necessity does not arise unless the danger is grave, for the slight danger does not affect the will in a way that erases its freedom and strips it of legal value. The most important thing raised by this condition is the determination of the severity officer. The danger to the soul is not serious except when it raises the fear of the collapse of his entity, whether this entity is material or moral. The danger of violating the entity without threatening it with collapse is not considered a serious danger. Likewise, the danger of depriving a person from satisfying an instinctive need, whether the source of this need is the instinct of acquisition or the source of



the sexual instinct, is not considered serious as long as leaving that need without satisfying the threat of its owner's entity does not threaten to collapse. Based on that, the wife whose husband has been affected by impurity is not entitled to have intercourse with another man by saying that her fornication then required him to be in a state of necessity. Likewise, if a man stole a pair of shoes for fear that he would be harmed by barefooting, his crime is not considered a case of necessity, either because the harm he feared was not serious, i.e. his being threatened with collapse, or because he was able to ward off the danger by another means easier than theft, such as Begging of good people for shoes. A serious condition Danger is a necessary condition to realize the meaning of necessity and direct the will of the offender towards the crime, especially if it is noticed that the crime of necessity falls on an innocent person, unlike the case in legitimate defense, it is directed against a criminal, and for that the law did not require the defense that the crime be of a degree of gravity, and from Then it is the grave danger that would cause harm that cannot be remedied or forced only by great sacrifices. Some have interpreted it as the danger that threatens a person in his life, or the loss of one of his organs, or the loss of his freedom, on the grounds that the gravity of the danger is not an absolute matter estimated by a purely material criterion, but rather it is a relative matter that is included in the assessment of the belief of the perpetrator himself.

But looking at the previous example who steals a loaf to fend for himself from hunger. The example represented an important case in the French court of Chateau Thierry, in which a woman stole a loaf from a bakery in order to ward off the danger to her and her infant whom she was breast-feeding, and in which the court acquitted and was upheld by the Court of Appeal despite the mismatch on the part of the court. It is noted that these two examples have been mentioned in many books of criminal jurists, and between these two examples there was a difference in the ruling, while the incident is the same, which is the theft of a small amount of food and the goal is almost the same, which is to pay the price of starvation and



destruction, whether on oneself or on the soul of others, such as the infant for example. The woman was acquitted, and the man was convicted who, in my view, did nothing except that he took a little to ward off death on his own, and she is overwhelmed hunger, which often leads his owner to doom. In fact, they are considered a crime for reasons, including the futility of punishing these two persons, due to their presence in cases of urgent necessity, the small quantity taken, and the absence of criminal intent to steal. As they did nothing but preserve the life that God gave them and those charged with preserving it in any way and by any means.

The third condition: solutions to danger:

The advent of danger means that the danger is a warning of imminent harm. That is because if the damage present is not imminent danger. There was plenty of time to take what was necessary to ward off it. In that case, there will be no justification for violating the right of an innocent person.

What is in control of the solutions is that the normal course of things is threatened - in a certain or probable way - that the situation facing the accused will turn into an actual infringement of his right, unless he immediately commits the act that would ward off this danger; In determining the normal course of things, the rules derived from the general experience prevailing in the accused's environment are referred to, and the danger is considered immediate in one of two forms: if the threatened assault is about to occur, and if the assault has begun but has not yet ended - and the danger is considered immutable in one of two forms. : If the threatened assault is in the future, and if the assault has already been realized and ended. Likewise, the occurrence of danger does not have to be a reality, rather it is sufficient for it to be so in the imagination of the actor, by believing that this is based on reasonable reasons that the terrible harm that is feared to befall the soul is imminent, even if this harm has not actually occurred, that is, even if it turns out that it is in The truth



and reality was not forthcoming. Here, too, the idea of the common man and reasonable causes come into play.

The reason for this is that the danger is a discretionary judgment that depends in part on the circumstances of reality, and in another aspect on knowledge of the law of causation. That is, they sensed the danger, and the danger in the case of necessity does not depart from this meaning, as it is a situation that seriously warns of harm, and this situation arises when - on the level of reality - one of the factors that human experience has indicated that it is capable in certain circumstances of causing harm, and that is when The factor is associated with these conditions.

The fourth condition: The will of the doer has nothing to do with his solution:

The law stipulates that for the occurrence of a state of necessity, the will of the compelled should not have entered into danger, as stated in Article 61 of the Penal Code. It is a necessary condition for the occurrence of a state of necessity, so there is no necessity for committing the crime if the danger to be prevented was deliberately involved in creating it. The fact that he had to commit the act that prevented him from taking a period of time enables him to think about doing something else that does not affect the rights of others.

But if the will of the accused has tended to achieve the endangered situation, then this means that he expected it to happen and was able to find a way to get rid of it in a way that does not affect the rights of others. this action. On the basis of this reason, it is decided that the object of the absence of this condition is that the accused has deliberately created the endangered situation, such as one who deliberately sinks a ship and then, in order to save himself, is forced to kill a person who crowded him in the means of salvation, or who deliberately burns a place and then, in order to escape from the fire, is forced to Injury to a person who gets in his way. This condition is self-evident. Because it is not permissible to refer



to the overthrow of the ruling of cause by the act of the impediment, meaning that it is not permissible for a person to escape from the punishment of the crime by simulating the state of necessity. This is what the legal scholars express by saying: that licenses are not entrusted with sins. It is based on this that if a traveler in the desert spills what he is carrying of water and throws what he has of his provisions to reduce the burden of his burden, then hunger and thirst chew it, and fears that he will perish, then assaults a colleague by killing or beating in order to obtain from him what saves his life, then he is not in A case of necessity exempting him from punishment.

In view of the generality of the text, the ruling does not differ whether the person intends to save himself or the life of others, as long as danger occurs due to his will. Save the other, it is not in the case of the need to exempt him from punishment. Although the text is limited to mentioning the case of interfering with the occurrence of danger, it must also refer to the case of interfering in directing the danger to the soul or to embodying it, even if the offender had nothing to do with the occurrence of danger from the start. He refuses, even if the defender had a hand in the aggression against him. For this reason, it is permissible for the adulterous wife and her partner to practice legitimate defense against the husband if he caught them in flagrante delicto and then proceeded to kill them, while it was her disgraceful behavior that provoked the husband and pushed him to aggression. . The reason for the distinction in ruling is between necessity and legitimate defense. Until the compelled hits the innocent, while the defender hits the aggressor, and the innocent takes precaution and care, so strictness in the conditions of necessity was necessary.

This is in contrast to the person who, by his negligence and lack of precaution, causes a fire to be set in one of the amusement parks, and in a crowd of people rushing outwards, one of them suffers severe injuries while making himself a way



to escape. To the ignition of the fire, it was not intended to ignite, that is, he did not intend the state of danger, because the lesson in denying the case of necessity is the will of the state of danger itself - as previously - and the will of the behavior leading to it is not sufficient. If two thieves commit a theft from a house, and one of them leaves this house, but the other without agreement with his colleague sets the house on fire and the fire surrounds him from all sides, then they are his colleague who came out to save him, and committed a crime for the sake of this rescue. The latter is to adhere to the state of necessity, because setting the fire, even if it was intentional by the one who lit it, was not due to his own will.

Second: Conditions related to the crime of necessity:

The first condition: the necessity of the crime to ward off the danger:

With this condition, the author of the law requires a relationship between the danger and the action, and this relationship is objective due to the direction of the act in itself, and whether this direction is to the danger and his contact with it would prevent it. The meaning of necessity in this condition comes in that the Egyptian Penal Code, in Article 61 of Penalties, stipulates to exempt the compelled from punishment that he is not in his ability to prevent danger in another way. This means that the act is specific to ward off danger, so if the danger can be warded off by a permissible crime, it is not permissible with a crime, and if it can be warded off with a lesser crime, it is not permissible to ward off it with a greater crime than it, because the necessity is estimated by its degree, i.e. by the extent of the danger escaping, and what exceeds that is not necessary. . There are two limits to the necessity: the first is that the act will ward off the danger, and if it is certain that the danger cannot be warded off, it is not permissible to resort to it because it is not feasible. For example, if some naughty girl kidnapped a girl in a car and drove off with her, then her father rushed after them and found a bike rider who beat him, asking him to give up his bike to use it to catch up with them, or that someone set



fire to a house and his owner caught the offender's son and hit him. However, it is not required for an act of necessity that it would ward off the entire danger, rather it suffices that it should ward off some of it or transform it into a lesser danger. For example, if the danger threatens the death of many people, and the action will save some of them, or the danger will threaten the death of a person, and the action will remove this danger and replace it with the danger of a disability, for the action in these cases is considered necessary to ward off the danger.

The second limit: that the act is the only available means to ward off the danger, and if the means are multiple, the easiest one must be resorted to. This ruling is established in the legitimate defense, and in case of necessity it is necessary, because the act of the compelled falls on the innocent. The reason in this condition is that the freedom of choice is not detracted except for the accused's sense of the threat of danger and his eagerness to ward off it. To diminish freedom of choice when committed. As if a building caught fire and one of the people threatened with fire killed the person who ignited it, he should not plead excluding his responsibility, as this act does not save from the danger of death by burning and the basis of the condition is that the crime was committed to prevent danger, which is the basis for the exemption and with which the text contained In Article 61 penalties, he says: "The necessity of protecting himself," etc. This is achieved in good faith. If the offender took advantage of the opportunity of danger and committed the crime to cure malice, hatred or grudges, he is not exempted from responsibility even if the remaining conditions are apparently met.

The second condition: That the perpetrator is not in the power of the doer to prevent harm by another means

In fact, the law did not stipulate that there be a proportionality between the crime of necessity and the harm paid, and accordingly, a dispute occurred in the Egyptian jurisprudence regarding the extent to which this condition is necessary. conditions.



It is from this group that makes the orbit of judgment on the extent of the actor's freedom of choice on the one hand, and the circumstances surrounding it on the other. Where the freedom of choice is narrowed, the punishment of the perpetrator is prevented, and where it is not affected to a noticeable degree, his punishment is not refrained. Therefore, a distinction must be made in the logic of this opinion between the one who commits the act to ward off a danger that threatens himself or the soul of one of his close relatives, and the one who commits the act to ward off a danger that threatens a person who does not induce kinship or affection for him. To sacrifice the lives of several people, while the second is not exempted from punishment if the proportionality between the harm he pays and the harm he causes is imbalanced. No citizen may ward off danger for his life or the life of a person dear to him by sacrificing the lives of many citizens. But we are inclined with those who stipulate proportionality between danger and action. If the author of the law did not declare this condition, but he learned from the requirement that the act is the only way to get rid of the danger, because if the one who is threatened can ward off it by means of an action of a certain gravity, but preferred to ward off it by means of a more serious action, then the latter is not It is the only way to ward off danger, and therefore responsibility for it does not foreclose, and what is meant by proportionality is that the committed crime is the slightest thing that the perpetrator could have committed according to the means at his disposal, meaning that the perpetrator is not in a state of necessity if he can avoid harm without resorting to crime or by resorting to a lesser crime. The danger that threatens oneself may be repelled by one of the crimes of money. It may also be repelled by one of the crimes of the soul, but it is not permissible to resort to one of the latter when it is possible to escape from danger by one of the first. If a ship is about to sink, the goods in it shall be thrown first. If it is possible to ward off the danger with a less serious crime, the one who resorts to a more severe crime shall not be exempted from responsibility.



The law often imposes in the event of war an obligation to face death if it is not death, in order not to reveal a military secret that would destroy the appeal or part of it. They were taken hostage. And since the crime of necessity harms an innocent person who did not have what necessitated this harm, Article 168 made a civilian for this person to ask for compensation for the damage he has suffered, and the one who pays this compensation is the perpetrator of the crime of necessity. Unless this person pays damages on behalf of others, the person who pays the damages is the one who bears the payment of compensation pursuant to Article (195) civil.

Comparison between Sharia and law in the conditions of necessity

These are the conditions of the state of necessity in Islamic law, which is deduced from the issues scattered in the various chapters and issues of Islamic jurisprudence, and it is summarized in the fact that the necessity is a force so that the doer finds himself or others in a situation where there is fear of damage to the soul or the organs, and that this necessity is present and not expected, and that it is not to ward off Necessity is a means other than committing the crime, and that it pays the necessary amount to pay it without more than that, and that the will of the obliged does not have an income in this danger. And the difference between the two organizations remains in the source and the basis. The source of the conditions in Islamic Sharia is taken from the jurisprudence rules laid down by Muslim jurists - which have already been explained before - and they derived them from the Book of God Almighty and the Sunnah of his Prophet Muhammad bin Abdullah, may the prayers and peace of God be upon him, and the consensus of the Islamic nation in what harmonizes and the spirit The law of heaven that came down from above the seven heavens upon the heart of the messenger as a mercy to the worlds for the happiness of human beings in their religion and their worldly affairs, and there is no room for disagreement and appeal to whims, and this is in contrast to man-made laws. Its source and source in the event of a difference between it and Islamic law



is to the whim and opinion of the creature - which is not infallible - and the action of the creature is always subject to refusal and contradiction from day to day, and from one person to another, according to the characteristics of human beings with which they were characterized.

In the case of agreement between Islamic Sharia and positive law, reason and logic dictate that the later is affected by the previous and taken from it, and this is what actually happened. Islamic Sharia was revealed more than fourteen centuries ago on the heart of the messenger as a mercy to the worlds, and the Lord, the Blessed and Exalted, promised to preserve it until the Day of Judgment. The Almighty said: (مَّا كُنَّا لِنَكْفُرَ بِكَ).

The results of the research:

First: Necessity is compelling, so that the perpetrator finds himself or someone else in a situation in which he fears damage to the soul or the organs.

Second: The necessity exists and is not expected, so the hungry person does not have to eat from the dead carcass before he becomes hungry due to the fear that it will be spoiled.

Third: There is no means to ward off necessity except by committing a crime.

Fourth: It pays the necessity to the extent necessary to pay it, so the hungry person has no right to take from the food of others except what satisfies his hunger.

Fifth: The will of the compelled should not be involved in this danger.

Margins:

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() From verse 119 of Surat Al-An'am.



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- () From verse 195 of Surat Al-Baqarah.
 - () Al-Shbah wa'l-Nazi'ir by Ibn Nujaim p. 86, Al-Shbah wa'l-Nazi'ir al-Suyuti pg. 84, and the explanation of the Judicial Journal of Al-Anassi, article 32, p. 75.
 - () Explanation of the Atassi Judicial Journal Article (32) p. 75.
 - () Explanation of the Journal of Judicial Judgments of the Faqih Professor Ali Haider, Volume 1, p. 34.
 - () Verse No. 173 of Surat Al-Baqarah.
 - () Verse No. 119 of Surat Al-An'am.
 - () The provisions of the Qur'an by Ibn al-Arabi, volume 1, p. 57.
 - () Rules of Judgments in the Interests of People by Ezz bin Abd al-Salam, Volume 2, pg. 4.
 - () Majmoo' Fatwas of Sheikh Al-Islam Ahmed bin Taymiyyah, p. 503.
 - () Al-Ezz bin Abd al-Salam - the previous reference.
 - () Interpretation of Al-Qurtubi. The Collector of the Rulings of the Qur'an by Muhammad bin Ahmed Al-Ansari Al-Qurtubi, Volume 2, p. 232.
 - () Al-Mughni by Ibn Qudamah al-Hanbali Volume 8 pg. 595.
 - () Al-Suyuti's analogies and analogies, p. 86.
 - () Explanation of the Atassi Judicial Journal, Article 25, p. 93.
 - () Ishabah Ibn Najim al-Hanafi, p. 89.
 - () Ishbah Al-Suyuti, p. 87.



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- () Ishabah and Al-Nazaer by Ibn Najim, p. 86, and Ishabah Al-Suyuti, p. 84.
- () Majmoo' Fatwas of Sheikh Al-Islam Ahmed bin Taymiyyah, volume 28, p. 137.
- () Fath al-Bari with the explanation of Sahih al-Bukhari by Ibn Hajar al-Asqalani, volume 10, p. 168.
- () Verse 145 of Surat Al-An'am.
- () Verse 173 Surat Al-Baqarah.
- () The provisions of the Qur'an by Abu Bakr Muhammad bin Abdullah, known as Ibn al-Arabi. Investigation by Ali Muhammad Al-Bajawi - Dar Al-Maarifa for Printing and Publishing - Beirut, Volume 1, p. 57.
- () Al-Razzaqani's explanation on Khalil's Mukhtasar. Al-Bahiya Press in Egypt in the year 1317 A.H., p. 59.
- () Verse No. 9 Surat Al-Hujurat.
327. () Dr. Mahmoud Mahmoud Mustafa, previous reference p
- () Dr. Al-Saeed Mustafa Al-Saeed in General Provisions 421 His Excellency referred to Al-Qalli in criminal responsibility.
- () Dr. Al-Saeed Mustafa Al-Saeed. The previous reference, p. 421, has referred to His Excellency Dr. Al-Qulli. Ali Rashid.
- () Dr. Mahmoud Naguib Hosni. The previous reference, p. 588, footnote (3), which contains a response to the opinion of Dr. Muhammad Mustafa al-Qoli.
- () Ali Zaki Al-Orabi Bey in Explanation of Criminal Law - General Section Edition 1936, p. 96 and beyond.



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- () Dr. Al-Saeed Mustafa Al-Saeed in Al-Ahkam Al-Gamal, p. 423. His Excellency referred to Dr. Al-Qullali and the Consultative Council of Laws' observations on draft article 56 of the Penal Code of 1904.
- () Dr. Ramses Bahnam in the General Theory of Criminal Law, p. 900.
- () Ibid. footnote (1) His Excellency referred to Manzini.
- () Ali Zaki Al-Orabi Bey Explanation of the Criminal Law - General Section Nouri Press, p. 96.
- () Dr. Mahmoud Naguib Hosni. General provisions p. 589, d. Ramses Bahnam in the general theory p.901.
- () Dr. Mahmoud Naguib Hosni in Explanation of the Penal Code - General Section p. 590.
- () Dr. Ramses Behnam, previous reference, p. 903.
- () Dr. Awad Muhammad in the Penal Code p. 503.
- () Dr. Ramses Bahnam in the Theory of Incrimination in Criminal Law, edition of 1971 AD, Mansha'at al-Maarif in Alexandria, p. 107, p. 109.
- () Dr. Mahmoud Naguib Hosni in Explanation of the Penal Code - General Section p. 590.
- () Dr. Awad Muhammad in the Penal Code - General Section p. 509.
- () Dr. Awad Muhammad in the Penal Code - General Section, p. 510.
- () The previous reference.



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- () Dr. Dr. Muhammad Mustafa al-Qali in criminal responsibility, p. 418. Al-Saeed Mustafa Al-Saeed in the General Provisions in the Penal Code, p. 425.
- () Dr. Ramses Bahnam in the general theory of criminal law, p. 905.
- () Dr. Mahmoud Najib Hosni in the General provisions p. 593.
- () Dr. Awad Muhammad in the Penal Code - General Section, p. 513.
- () Previous reference, p. 514.
- () Dr. Mahmoud Najib Hosni, previous reference, p. 594.
- () Dr. Mahmoud Najib Hosni p. 595, d. Mamoun Salama, p. 318, Raouf Obeid, p. 528, d. Ramses Behnam p. 909, d. Ibrahim Zaki Akhnokh in the case of necessity p. 231.
- () Dr. Mahmoud Mahmoud Mustafa p. 330, d. Al-Saeed Mustafa Al-Saeed pg 426.
- () Dr. Awad Muhammad, p. 517, footnote (3), in which Siyadah referred to al-Qullali, p. 419.
- () Dr. Mohamed Mohieldin Awad in criminal law. His principles and theories, 1963 edition, international edition, p. 488.
- () Dr. Mahmoud Najib Hosni in the General provisions pg. 595.
- () Dr. Ramses Bahnam in General Theory p. 907.
- () Dr. Mahmoud Mahmoud Mustafa, Explanation of the Penal Code - p. 331.
- () Verse No. 9 Surat Al-Hijr.

Resources and References



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() Al-Shbah wa'l-Nazi'ir by Ibn Nujaim p. 86, Al-Shbah wa'l-Nazi'ir al-Suyuti pg. 84, and the explanation of the Judicial Journal of Al-Anassi, article 32, p. 75.

() Explanation of the Atassi Judicial Journal Article (32) p. 75.

() Explanation of the Journal of Judicial Judgments of the Faqih Professor Ali Haider, Volume 1, p. 34.

() The provisions of the Qur'an by Ibn al-Arabi, volume 1, p. 57.

() Rules of Judgments in the Interests of People by Ezz bin Abd al-Salam, Volume 2, pg. 4.

() Majmoo' Fatwas of Sheikh Al-Islam Ahmed bin Taymiyyah, p. 503.

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() Interpretation of Al-Qurtubi. The Collector of the Rulings of the Qur'an by Muhammad bin Ahmed Al-Ansari Al-Qurtubi, Volume 2, p. 232.

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() Al-Suyuti's analogies and analogies, p. 86.

() Explanation of the Atassi Judicial Journal, Article 25, p. 93.

() The provisions of the Qur'an by Abu Bakr Muhammad bin Abdullah, known as Ibn al-Arabi. Investigation by Ali Muhammad Al-Bajawi - Dar Al-Maarifa for Printing and Publishing - Beirut, Volume 1, p. 57.

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- () Verse No. 9 Surat Al-Hujurat.
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