

"أوفوا بالعقود"¹ New Research on Indication of the Verse on the Principle of Necessity

*Mohammad Mehdi Meghdadi**

*Mehdi Hematian***

*Seyyedeh Ma'sumeh Fatemi****

DOI: 10.22096/rc.2021.244798

[Received Date: 24/01/2021 Acceptance Date: 16/08/2021]

Abstract

Since all Islamic religions have accepted the Holy Quran as the most important source of the religion of Islam, the Proving or not proving the Qur'anic origin of some legal rules may have a great impact on the justification or non-justification of those rules among Muslim jurists and brought Islamic societies closer to the unity. This study has reviewed indication of the verse "أوفوا بالعقود" on the legal rule of "principle of necessity" and after reviewing the Statements of commentators and jurists, the arguments of the views on the indication and non- indication of the verse on the principle of necessity are presented and examined. The result is that the verse does not any the indication on the principle of necessity.

Keywords: Contract; Principle of necessity Covenant; Faithfulness.

1. Surah Al-Ma'idah: 1.

* Associate Professor, Law Department, Mofid University, Qom, Iran.

Email: meghdadi@mofidu.ac.ir

** PhD in Quran and Law, Al-Mustafa International University, Qom, Iran. (Corresponding Author)

Email: hemmat110@yahoo.com

*** PhD Scholar in Comparative Interpretation, Al-Mustafa International University, Qom, Iran.

Email: Fatemi.m110@yahoo.com



Bibliography

A) Books & Articles

The Holy Quran.

Tabarsi, Fazl Ibn Hassan (1994). *Majma' al-Bayan fi Tafsir al-Qur'an*, Third Edition, Tehran: Nasser Khusraw publications. [In Arabic]

Alidoost, Abolghasem (2015). *Feqh and Hoghugh Gharardadha (Adaleye 'Am Qurani)*, First Edition, Qom: Research Institute for Islamic Culture and Thought. [In Persian]

Ameli (Shahid Thani). Zayn al-Din Ibn Ali (1990). *Al-Rawzah al-Bahiyah fi Sharh al-Lom'ah al-Dameshghiyah (Al-Mahshsha Al-Kalantar)*, First Edition, Qom: Davari Bookstore. [In Arabic]

Ameli (The First Martyr). Muhammad Ibn Makki (N.D.). *Al-Ghava'id val Fava'id*, 2 Volumes, First Edition, Qom: Mofid Bookstore. [In Arabic]

Ameli (The Second Martyr), Zayn al-Din Ibn Ali (1992). *Masaalek al-Afham Ela Tanghih Sharia al-Islam*, First Edition, Qom: Al-Ma'aaref al-Islamiyah Institute. [In Arabic]

Ameli (The Second Martyr), Zayn al-Din Ibn Ali (1995). *Tamhid al-Ghava'ed al-Osuliyah val al-Arabiyah*, One Volume, First Edition, Qom: Publications of Islamic Propaganda Office of Qom Seminary. [In Arabic]

Ameli, Muhammad ibn Ali (1991). *Nahayat al-Maram fi Sharh-e Mokhtasar Shara' al-Islam*, First Edition, Qom: Publications of Jame' Modarresin Houzeh Elmiyeh. [In Arabic]

Ameli, Sayyid Jawad Ibn Muhammad (1998). *Meftah al-Keramah fi Sharh-e Ghava'ed al-Allameh*, 23 Volumes, First Edition, Qom: Publications of Jame' Modarresin Houzeh Elmiyeh. [In Arabic]

Ansari, Mortada bin Muhammad Amin (2005). *Matarih Al-Anzar* (Jadeed Chap). Chap Awal, Qom: Assembly of Islamic Thought. [In Arabic]

Ansari, Murtaza bin Muhammad Amin (1994). *Kitab al-Makasib*, 6 Vol., First Edition, Qom: Kangarh Jahani Bozorgdasht, Sheikh Azam Ansari. [In Arabic]

Araki, Muhammad Ali (1994). *Al-Bay'*, first Edition, Qom: Dar Rah-e Haq Foundation. [In Arabic]

Ardabili, Ahmed bin Muhammad (N.D.). *Zubt al-Bayan fi Ahkam al-Qur'an*, Tehran: The Jaafari Library for the Revival of Jaafari Antiquities. [In Arabic]

Bahrani, Muhammad Sanad (2007). *Fiqh Al-Masaref va al-Noghud*, First Edition, Qom: Fadak Library. [In Arabic]

Bahrani, Yusuf bin Ahmed (1985). *Al-Hadaegh al-Nazerah fi Ahkam al-Etrah al-Taheerah*, 25 Volumes, First Edition, Qom: Jame'ey-e Modarresin Houzeh Elmiyeh. [In Arabic]

- Baizawi, Abdullah bin Omar (1997). *Anvar al-Tanzil, Asrar al-Ta'vil*, First Edition, Beirut: Dar Ehya al-Torath al-Arabi.[In Arabic]
- Behbehani, Muhammad Baqir (2003). *Masaabih al-Zalaam*, 11 Volumes, First Edition, Qom: Foundation of the Allama Al-Mujaddid Waheed Behbehani.[In Arabic]
- Fadhil Abi, Hassan Ibn Abi Talib (1996). *Kashfal-Romuz fi Sharh-e al-Mokhtasar*, Qom: Publications of Jame' Modarresin Houzeh Elmiyeh. [In Arabic]
- Fayumi, Ahmad Ibn Muhammad (N.D.). *Al-Misbah al-Munir fi Gharib al-Sharh al-Kabir Lerafi'i*, Qom: Publications of Dar al-Radhi. [In Arabic]
- Fazlullah, Sayyid Muhammad Hussein (1998). *Min Vahy-e al-Qur'an*, 25 Volumes, First Edition, Beirut: Dar al-Malaak. [In Arabic]
- Haeri Tababai, Seyyed Ali Bin Muhammad (1997). *Riyad Al-Massal fi Tahghigh al-Ahkam Beddalael(Haditheh)*. Qom: Alolbeit Institution.[In Arabic]
- Haeri Tabataba'i, Seyyed Muhammad Mujahid (1879 BC). *Riyaz al-Masael fi tahghigh al-Ahkam Beddalael (Haditheh)*, 1 Volume, Qom: Alolbeit Institution.[In Arabic]
- Haeri, Seyyed Kazem (2002). *Fiqh al-Oghud*, Second Edition, Qom: Andisha Islamic Majma'. [In Arabic]
- Hamedani, Agha Reza Ibn Mohammad Hadi (1999). *Hashiyeh Ketab al-Makasib*, 1 Volume, First Edition, Qom: Moalef. [In Arabic]
- Haqi Barsawi, Ismail bin Mustafa (N.D.). *Ruh Al-Bayan*, First Edition, Beirut: Dar Al-Fikr.[In Arabic]
- Helli, Hassan bin Yusuf bin Mutaher (1992). *Mokhtalef al-Shia'h fi Ahkam al-Sharia'h*, 9 Voluems, Second Edition, Qom: Publications of Jame' Modarresin Houzeh Elmiyeh Publications.[In Arabic]
- Helli, Hassan bin Yusuf bin Mutaher (1993). *Tadhkirat al-Fuqaha*, 14th Edition, Qom: Alolbeit Institution. [In Arabic]
- Helli, Ibn Idris (1990). *Al-Sarrer Al-Hawi letahrir Al-Fatwa*, 3 Volumes, Second Edition, Qom: Publications of Jame' Modarresin Houzeh Elmiyeh.[In Arabic]
- Helli, Jaafar bin Hassan (1988). *Share'a al-Islam fi Masael al-Halaal va al-Haraam*, Second Edition, Qom: Ismaelian Publications.[In Arabic]
- Helli, Jamal-al-Din (1987). *Al-Mohazzab al-Bare' fi Sharh-e al-Mokhtasar al-Nafe'*, First Edition, Qom: Jame' Modarresin Houzeh Elmiyeh Publications.[In Arabic]
- Helli, Miqdad bin Abdullah Sayuri (1984). *Al-Tanghah al-Ra'e Lemokhtasar al-Sharaye'*, 4 Volumes, First Edition, Qom: Publications of Ayatollah Marashi Najafi Library.[In Arabic]

- Helli, Miqdad bin Abdullah Sayuri (N.D.). *Kanz al- 'Erfan fi Feghh al- Quran*, first Edition, Qom: N.Pa.[In Arabic]
- Helli, Muhammad bin Hassan bin Yusuf (2009). *Izahol al-Favaed fi Sharh-e Moshkelat al-Ghavaed*, 4 Voluems, First Edition, Qom: Ismailian publications.[In Arabic]
- Helli, Najm al-Din Jaafar ibn Zuhdari (2007). *Izah Taraddodat al-Shara'*, 2 volumes, Second Edition, Qom: Ayatollah Marashi Najafi Library. [In Arabic]
- Himyri, Nashwan bin Saeed (1999). *Shams al-Ulum va Dava' Kalam al- Arab men al-Kolum*, 12 Volumes, first Edition, Beirut: Dar Al-Fikr al-Mo'aser. [In Arabic]
- Hosseini Qomi (Rouhani), Seyyed Sadiq (1992). *Figih Al-Sadiq (peace be upon him)*. 26 volumes, First Edition, Qom: Dar Al-Kitab, Imam Sadiq School (peace be upon him).[In Arabic]
- Ibn Faris, Ahmad (1984 B.C.). *Dictionary of Language Measures*, First Edition, Qom Seminary Islamic Propaganda Office. [In Arabic]
- Ibn Manzur, Muhammad Ibn Makram (1993). *Lisan Al-Arab*, 15 Vol., Third Edition, Beirut: Dar Al-Fikr for Printing and Publishing. [In Arabic]
- Isfahani, Muhammad Husayn (1997). *Hashiy-e Kitab al-Makasib*, 5 Vol., First Edition, Qom: Anwar al-Huda. [In Arabic]
- Jazaeri, Seyyed Muhammad Ja'afar (1995). *Huda Al-Talib in Sharh Al-Makasib*, seven Volumes, Chap Awal, Qom: Dar Al-Kitab Foundation.[In Arabic]
- Johari, Ismail bin Hammad (1990). *Al-Sehah; Taj al-Loghah va Sehah al-Arabiyyah*, First Edition, Beirut: Dar al-Elm lel Malain.[In Arabic]
- Karaki (Mohaqeq Thani). Ali ibn Husayn (1993). *Jame' al-Maqassid fi Sharh al-Qawa'd*, Qom, Al-Albayt Foundation (AS). [In Arabic]
- Karaki (Mohaqeq Thani). Ali Ibn Hussein, *Rasa'il al-Muhaqiq al-Karaki*, 3 Volumes, First Edition, Qom: Library of Ayatollah Mar'ashi Najafi and Islamic Publishing Office. [In Arabic]
- Kazemi Asadi, Fadhil Javad Ibn Saad (1987). *Masalek- al-Afham Ila Aayat al-Ahkam*, 4 Volumes, Second Edition, Tehran: Mortazavi. [In Arabic]
- Khalkhali, Seyyed Muhammad Mahdi Mousavi (2006). *Feghh al-Shia'- Ketab al-Ijareh*, 1 Vol., First Edition, Tehran: Markaz-e Farhangi Entesharat Monir. [In Arabic]
- Khoei, Syed Abul-Qasim (N.D.). *Misbah al-Feqaha (Al-Makasib)*. 7 Volumes. [In Arabic]
- Khomeini, Seyyed Mustafa (1997). *Ketab al-Bay'*, First Edition, Tehran: The Institute for compilation and publication of Imam Khomeini's. [In Arabic]
- Khomeini, Seyyed Ruhollah (2000). *Ketab al-Bay' (by Imam Khomeini)*. 5 Volumes, First Edition, Tehran: The institute for compilation and publication of Imam Khomeini's. [In Arabic]

- Khorasani, Muhammad Kazem ibn Husayn (1986). *Hashiyah al-Makasib*, First Vol., First Edition, Tehran: The Ministry of Culture and Islamic Guidance. [In Arabic]
- Makarem Shirazi, Nasser (2006). *Da'erat al-Ma'aref Feqh al-Mogharen*, 1 Volume, First Edition, Qom: Imam Ali Ibn Abi Talib (AS) School Publications. [In Arabic]
- Mamaqani, Muhammad Hassan bin Mullah Abdullah (1938). *Ghayat al-Amal fi Sharh-e Ketab al-Makasib*, 3 Volumes, First Edition, Qom: Majma' al-Zakhaer –al-Islamiyeh. [In Arabic]
- Maraghi, Sayyid Mir Abd al-Fattah ibn Ali (1996). *Al-Anawin al-Fiqhiya*, 2 Volumes, First Edition, Qom: Publications of Jame' Modarresin Houzeh Elmiyeh. [In Arabic]
- Mirza Qomi, Abu al-Qasim Ibn Muhammad Hassan (1992). *Jame' al-Shetat fi Ojvabat al-Soalat*, 4 Volumes, First Edition, Tehran: Kayhan Institute. [In Arabic]
- Mirza Qomi, Abu al-Qasim Ibn Muhammad Hassan (2006). 2 Volumes, First Edition, Qom: Islamic Propagation Office. [In Arabic]
- Mousavi Bojnourdi, Seyyed Mohammad (1981). *Ghavaed al-Feqhiah*, 2 Volumes, Third Edition, Tehran: Orouj Institute. [In Arabic]
- Mustafawi, Sayyid Hassan (1982). *Al-Tahghigh fi Kalamat al-Quran al-Karim*, 14 Volumes, First Edition, Tehran: Markaz al-Ketab Letarjomah val Nashr. [In Arabic]
- Na'ini, Mirza Mohammad Hussein (1992). *Al-Makasib wa al-Bay'a*, First Edition, Qom: Jame'eyeh Modarresin Houzeh Elmiyeh Publications. [In Arabic]
- Na'ini, Mirza Mohammad Hussein (1995 AH). *Minya al-Talib fi Hashiyat al-Makasib*, 2 Volumes, First Edition, Tehran: Al-Muktabah Al-Muhammadiyah. [In Arabic]
- Najafi (Kashif al-Ghatta '). Hassan Ibn Ja'far Ibn Khedhr (2001). *Anwar al-Fiqahah – Ketab al-Makasib*, 1 Volume, First Edition, Najaf: Kashif al-Ghatta Foundation. [In Arabic]
- Najafi, Mohammad Hassan (1993). *Jawahar al-Kalam fi Sharh Sharia al-Islam*, First Edition, Beirut: Dar al-Ahya Al-Torath al-Arabi. [In Arabic]
- Naraqi, Mawla Ahmad Ibn Muhammad Mahdi (1996). *'Avaid al-Ayam fi Bayan-e Ghava'ed al-Ahkam va Mohemmat Masa'el al-Halal va al-Haram*, First Edition, Qom: Publications of Islamic Propaganda Office of Qom Seminary. [In Arabic]
- Qushairi, Abd al-Karim bin Hawazen (2000). *Lataaf al-Ishaaraat*, Cairo: Al-Hei'at al-Mesriyah al-'Ameh Lelketab. [In Arabic]

- Ragheb Isfahani, Hussein Ibn Muhammad (1992). *Mofradat Alfaze Quran*, 1 Vol., First Edition, Beirut: Dar Al-Elm. [In Arabic]
- Rashti Najafi, Mirza Habibullah (1933). *Ketab al-Ejareh*, 1 Vol., First Edition, N.D. [In Arabic]
- Rashti Najafi, Mirza Habibullah (1987). *Fiqh al-Imamiyyah*, Gesm al-Khiyar, 1 Vol., First Edition, Qom: Davari. [In Arabic]
- Rawandi, Qutb al-Din Saeed bin Abdullah (1985). *Fiqh of the Qur'an*, 2 Volumes, Second Edition, Qom: Ayatollah Marashi Najafi library press. [In Arabic]
- Razi, Fakhruddin Muhammad bin Omar (1999). *Mafatih al-Ghayb*, third Edition, Beirut: Dar Ehya'al-Torath al-Arabi. [In Arabic]
- Sadr, Sayed Muhammad Baqir (1999). *Mavara'e al-Fiqh*, 10 volumes, First Edition, Beirut: Dar Al-Azwa' letabaa'h va al-Nashr va al-Touzih. [In Arabic]
- Shahidi Tabrizi, Mirza Fattah (1997). *Hedayat al-Talib Ela Asrar al-Makaseb*, 3 Volumes, First Edition, Tabriz: Etelaat Publications. [In Arabic]
- Sharif Mortada, Ali bin Hussein (1994). *Al-Entesar fi Enferadat al-Imamiyah*, 1 Vol., First Edition, Qom: Publications of Jame' Modarresin Houzeh Elmiyeh. [In Arabic]
- Tabari Kiahrasi, Abul-Hassan Ali Ibn Muhammad (1985). *Ahkam-e Qur'an*, First Edition, Beirut: Dar Al-Kutub Al-Elmiyyah. [In Arabic]
- Tabataba'i, Seyyed Muhammad Hussein (1996). *Almizan fi Tafsir al-Quran*, Second Edition, Qom: Publications of Jame' Modarresin Houzeh Elmiyeh. [In Arabic]
- Tabatabai Qomi, Seyyed Taqi (1992). *Umdat al-Matalib fi al-Ta'ligh ala al-Makasib*, 4 Volumes, First Edition, Qom: Mahalati Bookstore. [In Arabic]
- Taraihi, Fakhruddin Ibn Muhammad (1997). *Majma' al-Bahrain*, Tehran: Mortazavi. [In Arabic]
- Tusi, Muhammad Ibn Hassan (1987). *Al-Khalaaf*, 6 Volumes, First Edition, Qom: Publications of Jame' Modarresin Houzeh Elmiyeh. [In Arabic]
- Tusi, Muhammad Ibn Hassan (2009). *Al Mabsout fi Feqh al-Emamiyah*, First Edition, Tehran: Al-Maktabah al-Mortazaviyeh le Ehya al-Asaar al-Ja'fariyeh. [In Arabic]
- Tusi, Muhammad Ibn Hassan (Bita). *Al-Tibyan fi Tafsir Al-Quran*, First Edition, Beirut: Dar al-Ehya al-Torath al-Arabi. [In Arabic]
- Wasiti Zubaydi, Sayyid Muhammad Murtada (1993). *Taj al-'Arus min Javaaher al-Ghamus*, 20 Volumes, First Edition, Beirut: Dar al-Fikr Letaba'at val Nashr. [In Arabic]
- Zamakhshari, Mahmoud bin Omar (1987). *Al-Kashf an Haghaegh Ghavamez al-Tanzil va 'Oyun al-Aghavil fi Vojuh al-Ta'vil*, 4 Volumes, Third Edition, Beirut: Dar al-Kitab al-Arabi. [In Arabic]