



**Investigating the Necessity of Islamic Government Interference in the
Implementation of Religious Jurisprudential**

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**Investigating the Necessity of Islamic Government Interference in the Implementation
of Religious Jurisprudential**

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Abstract

Most of the judgments of Islamic jurisprudence are the livelihood system and resurrection; therefore, it is necessary to say that the implementation of these rules and laws is the existence of state and government and organization, and it can be understood by the purposes of Sharia and all of the jurisprudential issues. This research has focused on the issue of investigating the necessity of Islamic government interference in the implementation of religious jurisprudential judgments and it has discussed the relationship between jurisprudence and government and paid special attention to the relationship between government and implementation of worships. The result of examination is that issues in the field of implementation are not out of several states: the affairs that are the duty of government; affairs that a part of it is the task of government; affairs that need government support; affairs that not have a specific trustee and, of course, they are in responsibility of organizations affiliated with the government or collective decision of righteous people (believers). The Islamic government in the scope of worships in addition to the scope of Islamic constituencies can be in the scope of requirements and cover social matters under this heading. In fact, government jurisprudence in the contemporary era after the two periods of Islamic government during the time of Prophet Muhammad and Imam Ali (as), it was again considered that it should be discussed with a more views.

Keywords: government interference, specific duties, joint duties, jurisprudential and religious judgments



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Introduction

Concerning the interference of government in the worships, there is a verse that said:¹

(Hajj 41); (true believers are those who, whenever we empower them (we give the government), establish prayer, and give Islamic tax, and enjoining good and forbidding evil, and the end of all works is for Allah.

Allameh Tabatabai, in Tafsir Al-Mizan, says: "The purpose of solvency in land is to empower them to do whatever they want from life affairs without preventing them." (Tabataba'i, 1993, p. 12, 32)

And also in this regard, Imam Ali (peace be upon him) says: ²

God! You know that what we are looking for is not due to the interest in the government and the achievement of the wealth of the world, but in order to restore the works of your religion to the community and to reveal and correct the reform in your cities, so that your oppressed servants to be safe and run your unfulfilled limits (Nahj al-Balaghe, sermon 131).

In explaining the above, it is important to note:

Some have said that the goals of Islamic government are: the rule of religion and divine laws on whole community, the establishment of complete security, the education and development of society in the scientific and ethical aspects and justice, ... and ultimately providing the arrangements of servitude of God. (Kanz-al-omal, vol. 10, p. 594). Therefore, the main task of the religious government is to promote religious values. But the argument is that the government can generally monitor or interfere in matters of worship that the intention of closeness is required? To what extent should be the scope of his powers?

However, the purpose of this article is to review the religious jurisprudential judgments which cannot be carried out without the interference of the Islamic government. This research can be new since it attempts to conclude different opinions and, as far as possible, investigate different views on the necessity or non-necessity or permission and the lack of permission of government in worships or determining the type worships and conduct a new thought that in the case of necessity or permission of government interference how to perform this duty and help the courts to determine the verdict of justice.

The domain of jurisprudence in the government

¹ "الَّذِينَ إِذَا مَنَّاهُمْ فِي الْأَرْضِ أَقَامُوا الصَّلَاةَ وَآتَوُا الزَّكَاةَ وَأَمَرُوا بِالْمَعْرُوفِ وَنَهَوْا عَنِ الْمُنْكَرِ وَاللَّهُ عَاقِبَةُ الْأُمُورِ".
² "اللهم أنك تعلم أنه لم يكن الذي كان منا منافسة في سلطان ولا التماس شئ من فضول الحطام ولكن لنرد المعالم من دينك وتظهر الإصلاح في بلادك فيأمن المظلومون من عبادك وتقام المعطلة من حدودك".



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In order to facilitate the understanding of content and determine the domain of jurisprudence, jurists have presented various categories of jurisprudence and also examined various jurisprudential issues. These divisions and jurisprudence provide the investigating of relations and practices of jurisprudence and government, and it helps to be known which sections of jurisprudence and to what extent they are related to the issue of governance and needs it. In other words, the division of jurisprudence into worships, transactions and politics, or similar divisions that have long been common among jurists, leads to the interconnected relations between jurisprudence and government. (Borji, "Taking a look at the classifications of jurisprudence", pp. 241-261)

Legitimacy by the government

1- Holy Quran¹

There is no doubt that the above verse can be argued to prove the validity of rulings of the Prophet and the Imams (peace be upon him). In fact, the obeying of Prophet and Imams is his government's judgments. (Imam Khomeini, *Velayat-e Faqih*, pp. 35 and 75) In other words, it can be said that the subject of obedience in "Atiollah" is the divine rules that have been legislate by God, and obedience in this section of the verse is guidance, but the obedience in ²

Is matters issued by the prophets in social, political and judicial affairs, and here is not guidance. (Imam Khomeini, book of al-Bai, p. 477)

But in order to argue from this verse for the validity of jurisprudential judgments of jurist of Jame al-Sharayet, it should be considered, what is the meaning of "Oli Al-Amr"? In response to this question, several theories are said:

- Scholars and Mujtahidin (Moghadas Ardebili, 1996, p. 21, p. 861)
- Muslim ambassadors and rulers, though defiant (most Sunni commentators); (al-Saayes et al. 1994, p. 1, p. 482)
- people of solving and contract; (ibid)
- Right Sovereigns (Zemokhshari, 1987, p. 1, p. 184)

¹. "يا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَ أَطِيعُوا الرَّسُولَ وَ أُولَى الْأَمْرِ مِنْكُمْ" (Nesa, 59)

². "اطيعوا الرسول و اولى الامر منكم"



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_ Imam; (Imam Khomeini, *Velayat-e Faqih*, p. 75); (Safi Golpayegani, 1298, p. 23); and (Najafi, 1409, p. 15, p. 422);

2- Tradition

Various hadiths and narratives imply the necessity of obedience of jurists in the government affairs and consequently on the validity and influence of their government judgments, including Omar ibn Hanzale. (Horre Ameli, V. 27, p. 136, Hadith 1). In this narration, Imam Sadiq (pbuh) after denying the Shiites from referring to sultans and judges, ordered them to refer to the narrators of Hadith of Imams (peace be upon him) who know their rulings and know the lawful and forbidden matters, and then they explicitly state: ¹

I.e, I placed such a ruler over you.

It seems that the meaning of "government" in this narrative is not merely judgment, but it has a more general meaning, and it also involves the execution of sentences. (Najafi, 1409, V. 21, p. 395) and the execution of sentences requires the government.

Amir al-Momenin says in a statement:²

God, you know what we did in the government was not to gain monarchy and authority, nor to reach the goods of the world, but to restore and establish the disappeared signs of religion, and to reveal reform in your cities, so that your oppressed servants (secured from the oppression of wrongdoers) to be safe and enforced the limits and laws. It can also be understood the government and its purpose that is establishing the order and security of community.

3. Wisdom

There is no doubt that even if there is no reason for the validity of government judgments of the jurist, reason of wisdom can be cited as one of the tetrad arguments; the wisdom which in the language of traditions has been interpreted as "internal proof" (Kelini, 1401, V. 1, p. 16), in turn, understands the judgment of Shi'a well. (Javadi Amoli, 1998, p. 42). Of course, this does not mean that wisdom does not have any criteria. Shahid Motahhari has referred to three criteria for the justification of rational judgments:

A) the necessity of following wisdom;

¹ "فانى قد جعلته عليكم حاكما"

² اللهم انك تعلم انه لم يكن الذي كان منا منافسة في سلطان ولا التماس شيء من فضول الخطام ولكن لئلا نترد المعالم من دينك ونظهر الإصلاح في بلادك فيأمن المظلومون من عبادك و تقام المعطلة من حدودك (Nahj al-Balagheh, sermon 131)



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- B) Failure to follow the way of ancestors;
- C) Ineffectiveness from elders. (Shahid Motahari, 2002, p. 68)

Wisdom with the community of specific criteria understands the necessity of establishing an organization under the title of government to prevent any chaos and disorder of the system, and subsequently the necessity of following the government judgments is also clear. Hence, some jurists also turned to rational reasoning to prove the Velayat-e Faqih. (Naraghi, the former, p. 538)

Government duties

1- specific duties of government

Affairs that are the sole responsibility of government and people of community, groups and parties can never do to it without a government. By recounting this category of affairs, we conclude that these are intertwined issues that have been legislated by the government and its requisite is the existence of a vast organization.

1-1. Financial duties

The establishment of treasury of country where government's costs are always paid by it and without which government administration is not possible, the order of collecting Islamic tax and Khums and keeping it and monitoring public property and spoils of war which is the most important sources of treasury and described in Islamic jurisprudence in the Book of Al-Zaka and the Book of Al-Khums and Al-Anfal and Al-Ghanaem are parts of these issues. The use of narratives and judgments is that the formation of treasury and collection, maintenance and consumption of khums, Islamic tax, public property, war spoils, and all the resources of the treasury and treasury of Muslims are in authority of the Islamic government and is described based on it. (Montazeri, Islamic jurisprudential principles, V. 201, p. 201)

For this reason, in the history of Islam - whether at the time of Prophet or later - is always observed, authorities were appointed to do these affairs by the Islamic ruler. For example, at the time of Prophet (PBUH), Zobirin Avam and Jomhame Bin Salt were the secretary of economic and government incomes and investigated treasury affairs and tax. Hazife was also responsible for registering gardens affairs. As Moghire bin Shabe and Hassan Bin Moghire organized urban affairs and were responsible for the transaction affairs of society. (Makarem Shirazi, Encyclopedia of Jurisprudence, vol. 1, p. 536)



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1-2. Judicial tasks

Judgment: The appearance of (some) traditions implies that judgment is not permissible for other than infallible, but, on the other hand, we observe that the Imams (PBUH) were sent the judge to settle the affairs of people. Therefore, we should interpret these narratives in such a way that judgment is specific for Imams (PBUH), and no one can undertake this responsibility except by allowing them. (Majlesi, *Marat al-Aqul*, vol. 4, p. 231)

Of course, the above is based on the fact that the purpose of executor and imam in the traditions is exclusive to the fallible Imam in which case we have to carry the narrations to the extra constraints, because in any case it is not possible in the time of absence, although it lasts for thousands of years, we were committed to close religious judgments. (Montazeri, *Islamic jurisprudential principles*, p. 252)

About the role of government in judging, the following judgments are noteworthy: It is required that Imam (the ruler) punish with whip those who have testified unjustly, and declare their names among the people and their districts, in order to be known by the people, so that in the future, others not testify unjustly. (Tusi, *Nahaye.*, P. 336)

Someone who deceives people with deception, deception, unjust testimony, falsification, and so on, should be punished ... It is required for the Sultan to punish him publicly and informs the public so that others do not repeat such acts. (Tusi, *Nahaye*, p. 721 - 722)

Execution of limits: Imposing the limits is in responsibility of Islamic ruler. Accordingly, Sheikh Tusi, in *al-Nahiya's* book, states:¹

Executing limits is not permissible for anyone other than the ruler (or someone appointed by him).

In other sermons, the Prophet retells his rule as follows:

(*Nahj-Al-Balaghe*, Sermon 131)

God, you know what we did in the government was not to gain monarchy and authority, nor to reach the goods of the world, but to restore and establish the disappeared signs of religion, and to reveal reform in your cities, so that your oppressed servants (secured from the oppression of wrongdoers) to be safe and enforced the limits and laws. It can also be understood the government and its purpose that is establishing the order and security of community.

¹. "فأما الحدود فليس إقامتها إلا لسultan الزمان". (Tusi, *Nahaye*, p. 300)



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In the jurisprudential books, many examples can be seen, including:

If someone ordered a free man to kill a man and he did so, the murderer should be sentenced to death and the agent should be sentenced to life imprisonment by the order of ruler. (Tusi, Nahaye, p. 747)

Execution of civil judgments: Judgments related to personal circumstances, which include civil judgments, such as divorce, marriage and alimonies and descendants. The Holy Quran says about one of the following cases:¹

"Tasrih to Ehsan", in other words, completing divorce and releasing a woman in a decent manner, accompanied by giving rights. (Baghare, verse 231)

In the present era, there are many cases of misbehaviors in men in relation to women, and it is even more happened that men who marry and abandon their women and go to unknown positions and not pay attention to recommendations of wise men to choose the right way of marriage or the right way of separation. In such cases, there is no other way than the government interferes and forces illogic husbands to do Islamic duty who abuse the right to divorce and cause hardship for wife. First, it should be noticed finally that either divorce or live in a decent and reasonable manner with his wife; otherwise, the ruler divorces her and takes all her rights from the husband (Makarem Shirazi, Encyclopedia of Jurisprudence, vol. 1, p. 541) Also, in other cases, such as marriage and amendment of couples, and so on, the government has the right to interfere or at least have the right to interfere.

If a man does not pay his wife's alimony and clothes by having financial ability, the ruler forces him to pay alimony or divorce. (Tusi, Nahaye, p. 475)

In marriage contract, the father and grandparents, and the ruler are the authority. (Mohaghegh Helli, Sharia, p. 2, p. 276).

It is evident that a quick look at such rulings makes the need for jurisprudence to government in various social fields clear. Some of the worships which have social aspect is possible under the authorities of the government.

3.1. Political duties

Defensive Jihad: From the perspective of precise jurisprudential discussions, jihad is considered as one of the most important duties and worships, and jurisprudential affairs are loaded on it and in some books, it is divided into four categories:

¹ إِذَا طَلَّقْتُمُ النِّسَاءَ فَبَلَغْنَ أَجَلَهُنَّ فَأَمْسِكُوهُنَّ بِمَعْرُوفٍ أَوْ سَرَخُوهُنَّ بِمَعْرُوفٍ وَ لَا تُمْسِكُوهُنَّ ضِرَارًا لِّتَعْتَدُوا.



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First, fighting with the infidels, firstly, to invite them to Islam, and this type of jihad has conditions that include the permission of Amir al-Momenin (as) or his particular vice and because in our era, Amir al-Momenin (as) does not have a particular deputy, the primary jihad is null and void. Sheikh Tusi in the first chapter of Book of Jihad Nahaye claims to have no primary permission without the permission of Imam and his representative, and some jurisprudents like Mr. Khoiyi in the second volume of Monhaj al-Salehin on page 412 do not consider the permission of Imam.

Second, fighting of the infidels invaded to Muslims to eliminate Islam and its effects. Third, fighting with a group of infidels who attack the masses of Muslims to kill and loot of properties, although they do not want to change religion and eliminate Islam, in this part, the permission of imam is not condition.

Fourth; Jihad is the defense of life and honor and property. (Dastgheib, 1990, 114) Shahid Sani writes in "Rowze al-Bahiye": jihad is several parts?

- "Primary jihad with the polytheists to invite to Islam.
- Jihad with infidels that intend to attack Muslims. So that their domination on Islamic lands or the plundering of Muslim property to be removed, and such like, if the infidels are few.
- Jihad with one whom he wants to kill an honorable person, either loot properties, or to disgrace an honor; absolutely; and a Muslim jihad that is the captive of polytheists to preserve his life. This is called defense not jihad, and this interpretation is better. "
- Jihad with those who were outraged to Imam. (Shahidsani, 2010, vol. 3, 102)

In terms of affiliation to the government and ruler, the necessity of the initial jihad is conditional upon the existence of infallible Imam and the just ruler. (Khamenei, Ajube al-Esteftaat, p. 244)

Defensive jihad is not subject to existence of government, but requires the establishment of a government in order to exist and to realize. In other words, the primary Jihad for necessity requires a just imam and the government, and the defensive jihad is based on government and organization. (Montazeri, Islamic jurisprudential principles, p. 238)

War and struggle against one who has rebelled against the Imam is obligatory and if the Imam or his deputy invites people publicly or at a limited level to fight him. (Mohaghegh Helli, Sharaie al-Islam, V. 1, p. 336)



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There is no difference between the general Muslims about the necessity of jihad against the rebels against the imams, but the consensus in both implies on its necessity. (Najafi, *Jawaher al-Kalam*, vol. 21, p. 324)

Therefore, the war with rebels against the just imam is one of the issues that have always been considered by jurists.

Foreign relations: Some of the jurisprudential rulings relate to the relationship between Muslims and non-Muslims, such as obligation judgments- the judgments of religious minorities living in the Muslim community in a peaceful manner - as well as judgments concerning the coexistence of Muslims with others, and trade relations and treaties, such as this. It is clear that this part of judgments does not have meaning without the formation of government and their proper implementation by rulers. In other words, these are not individual and private issues that everyone is doing himself, but issues that must be done through social and political authorities. (Makarem Shirazi, *Encyclopedia of Jurisprudence*, p. 545)

1-4 Supervisory duties

Another part of jurisprudential judgments, although apparently their execution is not an inherent duty of government, but without the supervision and supporting of government cannot be implemented, such as:

Education: Education issues are duties for people. In Islamic jurisprudence, including the rights of children on fathers and mothers is "education".

Amir Momenan Ali (pbuh) said about his children's rights on parents:¹

The child has the right to the father and father to the child, the right of father is that child to be obeying him- except for God; but the right of child to the father is to choose a good name for him, to train him well and to teach him Quran. Certainly, organizing this issue and providing the necessary and coordinated programs is not possible without government supervision. (Makarem Shirazi, *encyclopedia of jurisprudence*, p. 541)

Transactions: In the legal and economic issues of people with each other, which includes a series of transactions and financial transactions, there are many judgments in Islam that are in the Book of Al-Bei and the Book of Al-Ejare, the Book of Al-Wasiye and the Book of Al-vaghf, and many other books.

¹ إنَّ للولد على الوالد حقا، و إنَّ للوالد على الولد حقا. فحقَّ الوالد على الولد أن يطيعه في كلِّ شيء، إلا في معصية الله سبحانه؛ و حقَّ الولد على الوالد أن يحسِّن اسمه، و يحسِّن أدبه، و يعلمه القرآن؛ (Nahj al-Balaghe, Hekmat 399)



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Certainly, the regulation and organization of these matters, as well as the resolution of disputes in this relation is not something that is done without the power of government.

Therefore, the implementation of these judgments of Islam correctly and free of chaos and conflict is not possible without government interference. Therefore, it can be accepted that this section of jurisprudential judgments is the formation of government along with itself. The view to some of the judgments of great jurists in this regard makes this judgment more relevant: The ruler must force the debtor to pay the debt and, if he does not accept it, arrest him and force to pay ... sell his movable and immovable properties and pay his debt; and if the debtor was absent, the ruler needed to listen to the intuition to prove debt, and sell part of the debtor's property and give to creditors. (Tusi, Nahaye, p. 374)

2. Common duties of government and people

Part of the Islamic judgments is that part of it is available to the Muslims, and the other part is only available to the government; in other words, it is impossible to do it without a government, such as:

2-1- Enjoining good and forbidding evil

This subsection of religion which is the duty of public at the heart and linguistic stage, in other words, everyone within himself must seek goodness and opposed to evil, and wherever he sees leaving goodness or performing an evil, he must prevent the committed from it with a proper and admirable statement;

As the Quran says:

"You were the best people who were created for the benefit of humans (I.e), you are enjoining good and forbidding evil)." (Al-Emran, verse 110)

But sometimes for leaving evils and performing the necessary duties, verbal recommendations are not feasible and need practical actions;

Such as closing corruption centers, arresting criminals, and giving them to judicial centers; that the public involvement in it has a lot of corrupts and should only be done by the government. Here executing this duty is in responsibility of government, as the Qur'an refers to it in another verse of this Sure.¹

¹ وَ لَتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَ يَأْمُرُونَ بِالْمَعْرُوفِ وَ يَنْهَوْنَ عَنِ الْمُنْكَرِ؛



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"It is necessary for you to call for a collective invitation to good and forgiveness and forbidding evil." (Al-Imran, verse 104)

The difference between this verse and the previous verse is also explained in this way, in other words, the difference in responsibilities.

Sheikh Tusi, in the book on the subject, says:

"Sometimes the practice of good and forbidding is practicable, such as the fact that a person wants to make people famous by using, scolding, or injuring and killing. This is only allowed by the government's permission. " (Tusi, Najah, p. 300)

Researcher Helli also says

"You must be called for enjoining good and forbidding evil." (Al-Emran, verse 104)

The difference between this verse and the previous verse is also explained in this way, in other words, the difference in responsibilities.

Sheikh Tusi, in the book of Nahaye says:

"Sometimes enjoining good and forbidding evil is practicable, such as the fact that a person wants to prevent people from a thing by colding, or injuring and killing. This is only allowed by the government's permission." (Tusi, Nahaye, p. 300)

Mohaghegh Helli also says:

Whether it is obligatory or not, if enjoining good and forbidding evil needs to injury and killing? Some have said that it is not permissible unless with the permission of the ruler. In our opinion, this comment is more correct. (Mohaghegh Helli, Sharahiye al-Islam, p. 1, p. 343)

In the explanation of these two judgments, it should be said that if doing good and forbidding evil is based on assault and battery whether enjoining good and forbidding evil is obligatory or it is conditional on the permission of Imam, then there are two opinions in this regard. A comment is based on the use of evidence that absolutely obliges enjoining good and forbidding evil, and the other comment is that if anyone is able to act arbitrarily, it causes a chaotic and, in some cases, causes disruption in system.

Also the evidence of enjoining good and forbidding evil with all affiliation, multiplicity and assurances is the strongest evidence of the necessity of establishment of Islamic trick, because every enjoining good and forbidding evil that following it in the case of violation, there is no power, it is impossible. (Montazeri, Islamic jurisprudential principles, p. 268)



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2-2. Probate matters

A series of jurisprudential rulings does not have a specific responsibility in society and it is naturally in responsibility of organizations that are affiliated with the state; for example, the provision of internal security and the preservation of property of people, and doing the "probate matters" and supervision on affairs of orphans and peasants and palaces and order of streets and markets and overseeing rates are all matters that have been mentioned in Islamic jurisprudence.

Hoarding is social sins that has not been specified a limit for it in the Shari'a, and hence the correction of its agent requires the existence of government.

With this explanation, it is clear that the implementation of these matters is not possible without the formation of government and in an organized manner; otherwise, it will cause chaos in society. (Makarem Shirazi, Encyclopedia of jurisprudence, p. 544)

Conclusion

It can be concluded that in non-religious societies, the legitimacy of law is carried out by the people of society and varies with societies based on religion, and all the laws of society must be compatible with religious standards.

In the changing rules of the religious system, the Islamic ruler has the authority, but in fix laws, including those of worship, to what extent has the power or limitations must be examined.

Jihad, or in other words, the defense of the integrity of Islamic countries against the invasion of foreigners, is another important point of jurisprudence, which is undoubtedly is the duties of governments, whether jihad and defending and achieving a desirable outcome, except by preparing preparations and equipping to modern weapon and practice, and to gain experience to use it cannot be obtained, and this is obligatory. It depends on the existence of organization and state, as it is in the whole world. In our time and era, wars have become much more complex and require a very large organization, including the education and training and preparing complex weapons and relying on extensive information from enemy's situation and plans and preparing heavy costs, the necessity of forming a government is clearer, and for this reason, we see the governments everywhere to undertake it.

Regarding jihad, although the difference between the opinions of jurists at the time of absence about the necessity of jihad or its non-necessity is vast, but ultimately it can be promised that in defense jihad not only, there is no problem, but Islamic government undertakes it for protecting the Islamic honor. Islamic government can be in the field of requirements in



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the field of worship in addition to the scope of Islamic laws, and cover social interests under this title. In fact, government jurisprudence in the contemporary era after the two periods of Islamic government during the era of Prophet of Islam and Imam Ali (AS) was re-considered, which should be discussed with more attention. We should have a correct perception of the fact that not to be mixed with the political jurisprudence that is around authority and government because in the government jurisprudence that deals with jurisprudence, there is no discussion about power, but it covers all religious matters and issues, although observing individual and social worship and punishing criminals on the basis of Islamic punishment. Therefore, it can be said that the Islamic government has penetrated the domain of personal interests with all its dimensions, including the law and policy, which also covers social matters. And so, the government's supervision on worship as it was investigated is by pursuing appropriate policies and promoting and executing worship.

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