

## Turning the Collective Obligation into an Individual Obligation in the Arena of the Political System

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Research Article



### Abstract

Collective obligations have been legislated as a part of religious obligations and related to the general interests of the society, for the purpose of achieving the Legislator's goal in the society. While the fulfillment of these obligations in simple societies or in the time of the jurist's limited latitude is referred to the mass of the responsible persons, and the "*man bihi-l kifāya*"<sup>2</sup> of the believers should comply with the obligation and fulfill the obligation in the external environment, in complex societies and at the time of the jurist's authority, these obligations cannot be fulfilled except in the light of the systematic, coherent, up-to-date and efficient management of the society, and leaving them to the masses of the obligated persons (*mukallaḥs*) does not provide the Legislator's final goal. This theory believes that the order, in collective obligations, is addressed to the society (as a legal personality), and the chief manager of the society (as the agentive cause of the society) – to whom is documented the address to the society – is responsible for the citizens' performing their duties; and he ensures the

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2. A person or a group of persons whose presence is sufficient for performing an obligation.

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realization of the Legislator's goals in the society by determining the "*man bihi-l kifāya*" from the citizens and establishing institutions appropriate for the type of legal goals.

**Keywords**

collective obligation, governmental obligation, society, legal personality, "*man bihi-l kifāya*", political system.

## **Introduction**

Contrary to the collective obligation in the individual approach and in the context of previous simple societies where the obligation is addressed to each individual and the people fulfill the legal purpose of the obligation by performing the obligation, in the governmental approach and in today's complex societies, addressing the mass of people based on the traditional approach has led to challenges in the fulfillment of obligations in the society, or because of the troubles and problems of the society, those issues will not be solved easily. Therefore, the fulfillment of the purpose of divine Legislator in those affairs that were, in the past, done through the collective obligation and directly from the *mukallafs*, in the present era and with the requirements of complex societies as well as the realization of the desired Shia political system and the approach of governmental jurisprudence must be reread. It is obvious that rereading the collective obligation and its functions in the present era requires preliminary discussions, among which the following items can be mentioned: possibility of addressing the society as a legal personality; recognizing the foundations, the nature and requirements of the collective obligation; knowing the political system and its requirements; the possibility of converting the collective obligation into a governmental obligation; the distinction between obligations such as individual and governmental obligations; the obstacles to realization of the collective obligation within the framework of the political system; the approach of the collective obligation and the solutions for conversion of the collective obligation into the individual obligation of the government.

### **1. Concepts**

#### **A) Political system**

While in some viewpoints, the political system is defined as an epistemic system with definitions such as “a stable pattern of human

relations based on law and authorized power” or “a set of mutual actions through which values, services and the goods are based on valid authority, the decisions of the legislative, executive and judicial officials of the society”, in another approach, the political system is defined in terms of structural issues with definitions such as “a system whose orders are continuously obeyed and implemented in a specific geographical area, due to the use of power by its agents and executives, or because of the fear of the possibility of using such power” and “a comprehensive and complex structure that maintains the existence of society as a single organism governed by a central political power”., Although, in a narrowed sense, the concept of government is used as a synonym of political system (Aqabakhshi, Afshari Rad, 1999: p. 526), it seems that the meaning of the political system can be understood as a power organization in a general sense, a set of individuals and institutions that establish superior laws in a society and implement them with the support of the superior power they possess. However, it should also be considered that political systems, despite their differences, have common characteristics such as: “having general and inclusive authority”, “the authoritarianism of their laws and the authority of the laws and regulations issued by them for the society”, “the exclusive use of legitimate power for them”, “inclusion of the set of institutions and centers of political power (structure) that create a single whole and are mutually influenced by the characteristics and identity of their society” and “having a complex set of leaders, agents, institutions, laws and governance in a specific land”.

#### **B) Government obligation**

Although it may seem that what is meant by governmental obligation (as opposed to religious obligation) is an obligation that is forged by the government (and not by Legislator) and is communicated to the citizens as a law, and the people due to their citizenship must obey it in the

society, what is meant by governmental obligation is the social affairs that are imposed on the citizens of the Islamic society by the Islamic governor in order to achieve the Legislator's goals.

Therefore, it should be said: What places the collective obligation, according to the approach mentioned in this theory, under the governmental obligation is:

Firstly, what is firstly and essentially addressed to the society, and secondly and by accident to the managers of the society (governors).

Secondly, the management of the compliance of duties by the government (political authority) is done in such a way that it leads to the compliance of the duties in a favorable way on the part of the citizens.

Thirdly, obligatory compliance takes place in the form of creating institutions based on the government (even if it is in the form of fabricating laws and policies).

Fourthly, considering that the establishment of institutions and organizations to achieve the Legislator's goals is the responsibility of the manager and senior agent of the society (governor), therefore, if he does not perform this duty, he will be reprimanded and punished.

Fifthly, the ruler, based on this obligation and in the form of law, imposes an obligation on a part of the society, pays the salaries of some of the agents of the established institutions, or specifies the mechanism for the survival of those institutions from a financial or legal point of view.

## **2. The Nature and Requirements of Collective Obligation**

Collective obligation in the traditional definition refers to a part of religious obligations that is related to the general interests of the society and the Legislator's goal is to achieve the desired action in the outside world; and unlike individual obligations in which performing the action by a particular person is important and the legally competent person is

addressed by the divine order, in the collective obligation, all *mukallaḥs* are equally addressed by the obligation, and when some of them fulfill the obligation, they are subject to divine reward and the obligation is removed from the rest of them; however, if none of the *mukallaḥs* tries to obey the obligation, all them will be recognized as guilty.

Regarding the responsible person of the collective obligation, different assumptions have been made by jurists and *uṣulis*, some of which are considered here:

1. The *mukallaḥ* in the collective obligation is a person appointed by God who undertakes to fulfill the obligation.
2. In the case of collective obligation, the responsible person is the total of the *mukallaḥs* (each individual in the form of individual general), provided that others do not do it, and the obligation is canceled by the actions of others.
3. In collective obligation (*Wājib Kifā'i*), the duty is directed to one person, but this person is hesitant among the *mukallaḥs*.
4. The *mukallaḥ* in the collective obligation is "one of the *mukallaḥs*" as an abstract title.
5. In collective obligation, the addressee is a specific single person, but it is not specific to a specified person. Rather, the *mukallaḥ* is the one who fulfills the obligation.
6. Just as in the bound of duties, sometimes the pure being is desired, in the collective obligation, the pure being is the object; and the pure being means the existence negating the non-existence that confirms to its first person.

Despite these differences, what is important in *Wājib Kifā'i* is doing the action in the context of social affairs. Obviously, considering the fact that the principle of this obligation is the realization of this action in the outside world, and the realization of this action in proportion to

"*mukallaf-un bih Mukalafonbeh*"<sup>1</sup> requires a limited person or number of people, and on the other hand, the Legislator has not considered certain people for this purpose, so the jurists disagreed on the responsible person that should be considered for this obligation. However, it seems that, in many cases, the lack of specified agent for an obligation or ambiguity in it leads to giving it up or has disrupted its efficiency. This is while the Legislator's effort to perform the action in the outside world calls for determining the person responsible for these duties, and entrusting the identification of that to the people themselves in many cases has led to the disruption of the Legislator's purpose; and the multiplicity of tasks in the collective obligation can lead to the interference of duties and the inability to perform the tasks at the same time.

Therefore, the *mukallaf* in the collective obligation is not any of the six cases, but as the addressee of the obligation is the society, the *mukallaf* of this obligation can also be considered to be the society, and the compliance with this obligation is also from "*man bihi-l kifāya*" from the members of the society. And the governor, as the central person of the society and one of its chief elements, can, on behalf of this society and with the knowledge of the requirements and conditions of his society, select a certain part of the people of the society as "*man bihi-l kifāya*" from the same people and make the chosen ones responsible for doing that obligation. Naturally, by performing this action on the part of individuals, not only the obligation is removed from other people, but also by knowing the ruler's plan and determining a solution to achieve "*man bihi-l kifāya*" from people in specialized arenas, the other people do not feel any responsibility towards themselves to realize the obligation.

However, because the society, due to its legal personality, does not

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1. A duty that someone is assigned to do it. The religious obligation

have the ability to make decisions and manage to fulfill religious obligation, this responsibility belongs to the agents of this society who have the ability to manage and have the facilities to realize this matter. Since it is addressed to the society, first of all and in its essence, it belongs to the society, and secondly, it belongs to its agents as the agent cause of the society; therefore, the senior agents of the system must guarantee, by taking on the responsibility of managing to fulfill the obligatory duty of collective obligation and appointing certain people, the purpose of the Legislator in realizing the collective obligation.

### **3. Individual and Governmental Obligation and their Distinction from each other**

Juridical deduction, in the individual approach, only considers those aspects of people's behavior that are related to their own lives and the needs of people are answered in the field of individual and personal issues. In this approach, the duty of *Ijtihad* (i.e. legal reasoning) is only to derive individual and religious rulings and respond to a small part of the believers' needs; This is while the governmental approach to Islamic jurisprudence is based on an attitude according to which, at the time of the possibility of attaining the desired Shia rule in the age of occultation, the jurist considers the requirements of Shia political rule and the desired administration of the religious society in deriving jurisprudence issues, and in his inference.

According to this attitude, in examining rulings, jurisprudential debates and expressing the actions of the *mukallafs*, humans are considered as individual members of the Islamic society and are treated as individuals separated and cut off from the society and the government. Therefore, the governmental approach to jurisprudence means an attitude in jurisprudence in which the jurisprudence inference is for the purpose of the optimal and Sharia-oriented administration of



the political system and considers all the chapters of jurisprudence in a way that oversees the administration of the Islamic country. the but also the optimal and efficient administration of the society requires planning, public participation and integrated and coordinated management in order to achieve the Legislator's goals and objectives, which sometimes requires the determination of people and facilities in order to avoid crises and at other times requires the determination of *man bihi-l kifāya*" to resolve the crises and problems of the society. What emphasizes the necessity of changing the approach of Islamic jurisprudence in responding to the needs of society in the present era is the transformation of political systems in the form of land ruled by Muslims (*Dār ul-Islām*) into political systems under new "nation-states" whose sphere of governance is, in terms of geography, bound to national borders, and in terms of people under domination, bound to citizens.

Therefore, contrary to the time non-realization of the jurists' rule of over the society and the approach of individual jurisprudence (managing the religious life of the *mukallafs*) that the realization of the goals and purposes of the Sharia is done by the "collective duty" of the *mukallafs*, at the time of the realization of the authority of the jurists and the approach of the administration of the political society by the Islamic jurisprudence, and in the matters that leaving it to the masses of the people leads to hardship and does not provide the purposes of the Sharia in a desirable way, it is relegated to "*man bihi-l kifāya*". Nevertheless, the proper and efficient management of the religious community (through Islamic jurisprudence) necessitates to specify "*man bihi-l kifāya*" from those through whom the purpose of the Sharia is provided, before the occurrence of problems and crises. In this way, not only the occurrence of problems and dilemmas is prevented, but also naturally the Legislator's goals in the society are fulfilled to ensure

the efficiency of the administration of the political system.

#### **4. Problems based on performing the collective duty in the context of the political system**

In spite of the fact that the realization of collective obligation in simple and undeveloped societies requires spontaneous participation based on the religious beliefs of the *mukallafs*, and therefore, in the case of addressing the society in the form of the collective obligation, the *mukallafs* expose themselves to doing it and regardless of knowing about the behavior of others regarding the performance of this duty, they would undertake this matter, the requirements for the realization of the desired political system by the jurists and the need for the ultimate achievement of the goals of religion in the society require preliminary planning, eliminating hardship and impediment from the *mukallafs*, decision-making and policy-making for the optimal administration of all citizens (not just the *mukallafs*), creating welfare and ensuring the preservation of the system and considering the approach of the society as the general audience of the rulings and turning the rulings of Sharia into the necessary rules; and it is mandatory for all citizens regardless of their religion.

Accordingly, handing over the collective duty to the *mukallafs*, at the time of realization of the desired political system, faces serious and fundamental obstacles in such a way that the achievement of the collective duty in an optimal way faces a challenge, but also brings problems to the realization of the sharia goals in the society.

Some items that are considered as obstacles to the realization of collective obligation in the political system, and challenge the realization of collective obligation in the political system in mannerist common sense, are listed below.

### A) Collecting wages on collective obligations

Various opinions have been presented by the jurists regarding the charging of wages for obligations, the most important of which are mentioned below.

According to the widely ascribed view of late Shia jurists, there is no prohibition to collect wages from fulfilling obligations (Khoei, 1957, vol. 1, p. 460) and the early jurists did not consider this permissible (Ardabili, 1983, vol. 8, p. 89), but some also distinguished between imperative obligations and non-imperative obligations, prohibiting taking wages from imperative obligations and declared it permissible in non-imperative obligations (Tabataba'i, 1983, vol. 5, p. 37), and some have allowed taking wages in performing duties whose main purpose is worldly benefit, prohibiting getting paid for matters in which the main purpose is the afterlife (Hosseini Ameli, 1998, Vol. 4, p. 92). And some of them, while emphasizing the impermissibility of taking wages in individual obligations, have given a detailed opinion in the collective obligations, and in the imperative collective obligations, they have considered it impermissible and declared it permissible in the non-imperative collective obligations. (Tabataba'i, 1983, vol. 1, p. 505)

Despite the fact that late Shia jurists did not prohibit taking wages for obligations, there are some evidences against the prohibition of taking wages for obligations, among which a few cases can be mentioned.

1. Jurists such as Mohaqeq Ardabili and Sahib Riaz have claimed a consensus regarding the impermissibility of charging wages for obligations. However, despite the great disagreement among the jurists in this regard and its being considered disdainful by some jurists, it is possible to doubt it.
2. The obligation of an action ordered by God causes a right to it, and since God becomes the owner of that action, the action must be done only for Him; And if the hirer wants to become the owner

of the property by paying the wages, then the result will be the sharing of two owners with respect to a single property (obligatory action), which will naturally be impossible. (Ansari, 1999, vol. 2, p. 131). But it seems that first of all, the obligation to act does not mean the ownership of that action for God. Secondly, God's ownership of the action should be considered specific to individual obligations; Because in collective obligations, God's command is not assigned to the obligated person, but rather to a community or a group of obligated persons, and the action of a certain obligated person takes place on the assumption that the divine command is not specifically assigned to him. Therefore, if one of the obligated persons tries to perform an action, because he was not the addressee of the divine decree, God has no entitlement to his action, so that the union of two entitled to a single right occurs - in the case of a lease. (Ansari, 1999, vol. 2, p. 132) Thirdly, God's ownership of action and human's ownership are not from the same source to cause the gathering of similar, opposite or contradictory things in a single thing. (Irvani, 2000, vol. 1, p. 51) Rather, the ownership of the man over his property and the ownership of the tenant over that action is in line with God's ownership (Khoei, 1957, vol. 1, p. 467). Therefore, the analogy of God's ownership with the ownership of humans is an analogy deprived of relevance.

3. Collecting wages on obligation contradicts the intention of sincerity. (Tabatabai, 1983, Vol. 1, p. 505); and since the obligated person must consider the proximity to God in performing the action for the correctness of his action, in the case of receiving a wage, his intention to perform it is not for the proximity of God but to reach the rental property. And naturally, this will cause the invalidation of the bound of the lease that is the obligatory action.

While this reason is not related to the non-imperative obligations, it should be said that receiving the lease does not contradict the

intention of sincerity. That is, every obligatory action includes an intrinsic obligation, and in case of rent, an accidental obligation is added to the intrinsic obligation, so an act that consists of two obligations, in addition to the intention of sincerity, is accompanied by a claimant for the purpose of receiving wages. It was, which naturally does not contradict with the intention of proximity to God.

Assuming that the fulfillment of the obligation in the individual approach is in conflict with the receipt of wages and rewards, non-receipt of wages and the obligation to take a charitable approach in collective obligations regarding the governmental approach to Islamic jurisprudence and developed societies faces serious obstacles and challenges, because:

- a) the purpose of creating collective obligation is the realization of the obligation in the society (apart from appointing specific people) is in desirable, up-to-date and efficient form; And not considering the specific amount of money in exchange for the action performed (which is often a non-imperative obligation and does not require the intention of proximity to God) will cause people not to take the initiative to do it in enough number.
- b) Failure to pay for the collective obligation causes that the desire and motivation to achieve the obligation be not created in the society, and due to the lack of initiative of the members of the society, the collective obligation is not performed at the right time, and the right people and "*man bihi-l kifāya*" to do it are not provided.
- c) Fulfilling this obligation is assigned to those who are obligated to the Sharia, and other citizens of the Islamic society (non-Shiites and non-Muslims) will be exempted from doing it, and this will create a lot of pressure and impediment for the believers, and the benefits of these obligations will be assigned

to non-believers. It is obvious that non-believers' failure to undertake social obligations and achieve benefits for them will cause the masses of people to avoid obligations and tend to disbelieve.

- d) Limiting the collective obligation to the impermissibility of collecting wages causes disruption in the social system. In explaining this point, which is interpreted as "maintaining the system", "disruption of the system", "the system of the believers", "the system of livelihood" and "the system of religious and worldly affairs, one must say that:

Mirza Mohammad Hasan Ashtiani raised this issue in the margin of Makaseb in discussion on charging wages for collective obligations, and he believed that one of the reasons for the permissibility of charging wages for collective obligations is that the social system is founded on the fulfillment of these obligations; and since no one fulfills these obligations for free, there is no other choice but to get paid. Therefore, just as it is obligatory for a doctor to treat patients and provide this social need, and there is no objection to getting paid, a person who goes to a doctor is obliged to pay wages and salaries so that the wheel of this collective obligation and social need turns; Therefore, the doctor's obligation to treat does not conflict with receiving wages from the patient. (Ashtiani, 2004, vol. 1, p. 125)

Rather, the author of *Jawāhir al-Kalām*, adducing the verse 32 of Sura *Zukhruf*, which considers the system of life based on the mutual use of people's services and properties, does not consider any contradiction between the obligation of an action and receiving a reward for it (Najafi, 1988, vol. 22, p. 119); and what this claim indicates is that it is permissible to receive wages for many professions such as medicine and many other collective obligations.

**b) The Impediment Caused by the Multiplicity of Collective Obligations**

There is a wide range of collective obligations in different areas of the society, which the sharia Legislator demands to be realized in the society, and the affairs of the society cannot be managed except through them; and since the imposition of these obligations to all people (not by specifying) causes that the obligated persons, at any time, be assigned to do that obligations; and in order to obey these duties, they should try to fulfill it. Therefore, the large amount of collective obligations and their belonging to all people would cause severe impediment for the *mukallafs*, and until the time of impediment and the impossibility of doing it, the assignment will not fall from them. and in case these obligations are small, in simple societies and villages, it will be possible to do them and this does not lead to impediment. However, the large amount of obligations in big cities and complex societies not only makes it impossible to fulfill them, but also the possibility of realizing those obligations due to the necessity of their specialized nature is practically not available and the purpose of the Legislator is not achieved in a desirable way.

**c) Necessity of Expertise in Collective Obligations**

Two types of general and special collective obligations have been mentioned. While general collective obligation is an obligation that the majority of obligated persons are capable of performing it (such as funeral ablution and promotion of good and prevention of evil), a special collective obligation refers to an obligation that is related to a specific group of obligated persons who have related qualifications and have special knowledge and profession; such as the obligation to treat patients, which is obligatory only for doctors in an adequate manner, or the obligation to give fatwa or judge, which is obligatory only for jurists and judges (Makarem Shirazi, 2006, p. 427) . It is obvious that in such cases, if experts do not undertake this duty, it is a collective obligation for non-

specialists to demand that action from experts. (Ajam, 1998, vol. 2, p. 1690)

Although most of the people can do some things that do not require expertise, most of the things that need to be achieved in the society are those things that cannot be achieved except by studying related specialties. Even those things that fall under non-specialized matters (such as Jihad, promotion of good and prevention of evil, and equipping the dead) are not without the need of education. This is while if a collective obligation is addressed to all members of the society, they cannot perform the action in a desirable way and spend time to learn it (as an antecedent of obligation), or wait for the presence of "*man bihi-l kifāya*", which may not be fulfilled; and this can be one of the examples of delay from the time of need, which will lead to not fulfilling the collective obligation in the society, or doing it in an undesirable way, or at an inappropriate time. Therefore, the proper fulfillment of the collective obligation in the framework of the political system will require the appointment of certain people (*man bihi-l kifāya*) by the political authority, training them and having them ready to perform these collective obligation at the appropriate time and in the shortest time.

In the past, the citizens of the society, when there was a war or an attack by the enemies, were prepared for Jihad and were placed in the ranks of the warriors with the invitation of the ruling system. They would also take defense equipment with them, and victory in war was also possible with the same amount of preparation and equipment. However, victory in battle or defense of borders in the current era is not possible except through the formation of the army, preparation of modern military equipment and appropriate to the conditions of the enemy, as well as the towers and obstacles preventing the attack of the enemies and the existence of ready and expert generals and soldiers to defend the borders of the Islamic country. The formation of the Red Crescent organization to overcome the problems caused by



environmental crises, appointing guards to protect the internal security of the cities and prevent the bandit and thieves, the establishment of organizations to invite and propagate Islam outside the borders of the Islamic country, the establishment of municipal institutions to solve the problems and needs of the urban society, the establishment of firefighting organizations to put out fires in places, and such things can be considered in this regard. This is while handing over these matters in the form of collective obligation to the mass of people will not lead to fulfillment of Legislator's goal and final ends, and the solution of the mentioned troubles and problems will not end in a desirable and appropriate way.

**D) Expiration of a collective obligation in case of not knowing the “*man bihi-l kifāya*”**

In the event of fulfilling collective obligation in the right way and at the appropriate time, it has total utility; otherwise, in most cases, doing what is obligatory will be delayed from the time of need and will cause the loss of the philosophy of what is collective obligation. Since the initiative to fulfill the collective obligation requires the presence of enough people and doing it at the right time, unlike the rulers and agents of the political system who are aware of the conditions and requirements of the society and can manage crises and challenges by understanding them in advance and or solving them later, the masses of people are not able to fulfill the collective obligation in a good way due to their lack of proper understanding of the general issues and problems of the society. As an example, the defense of the Islamic land is considered one of the collective obligations and "*man bihi-l kifāya*" from the people should take the initiative to participate in Jihad by obeying this obligation; however, because the presence of a sufficient number of fighters to win the battle depends on the number and quality of the enemy, and the masses of the people are not aware of this issue,

the number of volunteers to participate in the war may not be proportional to the conditions governing the battle situation, and sometimes it is less and sometimes more than the required limit. Naturally, in both cases, there will be problems in the battleground. On the contrary, in many cases, people refuse to participate in the battle, thinking that there is "*man bihi-l kifāya*". Besides, since the participation in such duties plays a decisive role in terms of time, people's negligence due to supposing the possibility of fulfilling "*man bihi-l kifāya*" can lead to the victory of the enemy and expose the entire Islamic system to threats and failure. This is while, within the existence of the political system, the rulers can have a clear understanding of the number, equipment and plans of the enemy by properly observing the enemy, and by determining "*man bihi-l kifāya*" of the soldiers, they can prepare modern weapons and by understanding the time of invasion, take charge of the management of Jihad and its supplies; and in this way, they can ensure the preservation and defense of the existence of the Islamic regime.

Therefore, the Islamic ruler should eliminate the threat of the enemies by forming an army and appropriate military equipment, and by observing the current needs of the society, he should determine jobs for this purpose; and by training certain people as "*man bihi-l kifāya*" to eliminate these troubles, he must provide the basis for solving the problems to ensure the efficiency of the community administration system.

#### **e) Impossibility of Precise Planning according to the Road Map**

Despite the fact that creation of collective obligation can provide a basis for solving many problems in the society, in many cases, the existence of problems and dilemmas not only calls for quick and immediate solution of the problems, and any delay in it will not solve the problem, but will bring additional problems; and this requires the

planning and presence of "*man bihi-l kifāya*" to solve problems in an up-to-date manner. Besides, the proper administration of the political system requires solving problems and dilemmas quickly and urgently. Besides, after observing the problems of the society, the political system should plan to provide appropriate software and hardware in this regard and not only solve the problems, but also prevent them from happening. This is while entrusting fulfilment of collective obligation to the mass of people in order to solve the basic problems of the system, due to the inability to plan properly and up-to-date and passivity towards the pervasive problems and dilemmas of the society, it only succeeds in eliminating the problem (and not getting rid of it). Moreover, its fundamental solution is not easily accessible because of the insular (not organized) approach of the people towards the affairs of the society and finally, it should be said, there is no guarantee to provide the purpose of the Legislator in the society, by leaving these affairs in the form of collective obligation to the masses of people.

### **5. Turning the Collective Obligation into Individual Obligation in the Political System**

Contrary to the collective obligation which in simple societies or religious societies has been delegated to the mass of people in the opinion of jurists, and people should expose themselves to the fulfillment of the obligation based on their understanding of the situation and conditions of the society and to ensure the existence of sufficient individuals as "*man bihil-kifāya*" in order to achieve the collective obligation must not stop acting to obey the obligation; in today's complex societies and the sovereignty based on the authority of the fully qualified jurist, the Legislator address to the masses of people is not dissolved, but the order is addressed to the society as an independent legal personality. Therefore, the type of obligation will be one of the examples of individual obligation that the society as a certain

legal personality fulfills it. Of course, since the agent causes, as the most effective cause among the four causes, are responsible for obeying the obligation, the legal personality (the society), based on its internal mechanism, specifies "*man bihi-l kifāya*" from the citizens according to the goals of the Legislator and employs them to obey the obligation. And since the final causes, formal and material, cannot obey the obligation and only the agent causes can manage or carry it out, the order addressed to the society goes back to its agent causes. It is obvious that with the non-dissolution of the address to individual members of the society and the inability to refer the address to "*man bihil-kifāya*" from the society, the address goes to the managers and officials of the society who are in charge of managing this matter, just as the family is addressed as a legal personality and the order returns to its manager, and he is responsible for not fulfilling the obligation assigned to the family. Similarly, since the rulers are also considered as the representatives of the people in the framework of the divine authority (*Nahj al-Balaghah*, Letter 51)<sup>1</sup>, the address to the society can be considered as the address to the representatives of the people. Therefore, the ruler and the senior agent of the Islamic regime, as those who manage the affairs of the society (and according to the management of obeying collective obligation), , in the place of the realization of this address, they determine a group of those who are responsible for achieving the obligation and by managing obedience to the collective obligation, they guarantee the achievement of the Legislator's goals in the society.

Accordingly, he creates institutions in the society that are responsible for fulfilling these duties and not only do they take steps in case of crisis and pervasive problems to solve them, but also with proper

1. Indeed, you are the treasurers of the people. And you are the representatives and agents of the nation and the ambassadors of the Leaders

فَأَنْتُمْ حُرَّانُ الرَّعِيَّةِ وَوُكَلَاءُ الْأُمَّةِ وَسُفَرَاءُ الْأُمَّةِ.

planning and before problems arise, they eliminate the foundation of the problem. Obviously, because first and essentially the order is addressed to the society and the Islamic ruler is in charge of managing obedience to the obligation, so this obligation is complied with when the society fulfills it (by "*man bihi-l kifāya*" determined by the ruler). Obviously in that case, the system will be saved from disturbances and issues, the goal of the Legislator in the society will be achieved well and in an up-to-date and efficient manner, and not all people will be involved in multiple obligations at the same time, and the affairs of the country will be carried out in a specialized and desirable manner.

Therefore, since the task of managing the society is under the responsibility of the ruler, and the management of the realization of this address is also the responsibility of the ruler, and if the obligation is not fulfilled, the ruler will be reprimanded, so the ruler, by determining "*man bihi-l kifāya*" from the people, manages the society. Therefore, this obligation should be called a governmental obligation instead of a collective obligation. Among the affairs that the Islamic ruler does in order to obey the collective obligations and manages the society in the process of doing it are the formation of the army to defend the borders of the country, the formation of the Red Crescent organization to solve the crises caused by the upcoming events in a timely manner, holding the selection process (Entrance Exam) to distribute the specialized professions needed by the society, establishing universities for the education of society's needs, establishing municipalities to organize the daily problems and issues in the life of citizens, establishing a welfare institution to deal with the affairs of the disabled and the homeless and the like.

## **6. Solutions to Turn the Collective Obligation into an Imperative Social/Governmental Obligation**

### **A) Possibility of addressing the society**

Rights and duties usually belong to humans, because man has the ability to benefit from his rights and perform his duties.

However, in some times, in the addresses, the human person is not taken into consideration, but his position and legal personality is considered as a matter of duty; among them is the title of "Imam" who is considered as the owner of authority in the consumption of *Anfāl* (the spoils), *Khums* (the One-fifth religious tax) and *Bait-ul-Māl* (public property), not because of his real personality, but because of the authority of Imamate and the guardianship he has over the society. . This is why after the death of the Imam (and the ruler and sultan), this authority is not inherited by his children, but is transferred to the next Imam and ruler. Also, the titles such as "Muslims" as the owners of lands known as *maftūḥ al-ʿanvah*<sup>1</sup> and the `needy` people as owners of alms tax (*Zakat*) have the characteristic that not their persons but their characters will become the owner of those lands and zakat.

Although in the past and in the simple societies, there no need for accepting the legal personality was felt, in the present time in the complicated societies and with proper knowledge of the nature of societies and relationships among humans, there is a need for accepting the 'legal personality'. Indeed, the social life in the present age and with the general arrangements of societies is not possible except with the acceptance of it, in a way that this is one of the pillars of the formation of 'modern state' (Held, 1992, pp. 58-59). Accordingly, we must say that the state as an institution with legal personality independent from its members – especially the statesmen – has a distinct nature and enjoys rights, latitudes and obligations in proportion to its status.

In line with the nature of the legal personality, there are two perceptions of the status and nature of the society. On the one hand, a view denies the society as a personality distinct from its individual

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1. The lands that Muslims have conquered in their campaigns against the infidels.

members (as a collection of individuals) and rejects the view of existence and principality of the society; thus, it maintains that the society as a legal personality lacks qualification for being addressed by the Legislator (Mesbah Yazdi, 2001, p. 82). Accordingly, in the verses of the Quran, all actions are attributed to the plural masculine agents, not singular feminine agents. This shows that actions are done by individual members of the society, not by the nation itself as a true independent being (Mesbah Yazdi, 2001, pp. 92-93).

According to the opposite approach, the society is something other than the collection of its individual members and has a different legal personality that not only is different from the collection of individuals, but also has different effects in comparison to the collection of its members. As an instance, while a liquid such as water consists of oxygen and hydrogen, it is a composite matter (water) with a different nature compared to its constituent parts (oxygen and hydrogen). The proportion of composition of these two elements is also effective in generation of that liquid. Thus, it has different effects compared to those elements. Accordingly, a society consisting of a group of individuals cannot be considered as having an independent and separate nature compared to the individuals. Rather, unlike the natural elements, the society consists of collection of individuals, and the distinction of any society must be considered in proportion to beliefs, myths, symbols, culture, religion and denomination, type of government, convergence or divergence of citizens of that society. Accordingly, the type of addressing the society in the sense of addressing the collection of the individual members of the society will not be as absorptive general or imitative general.

In addition to the very concept of "legal personality", different rulings and effects that are arranged for this legal personality have been discussed, among which we can mention such things as: the status of the political system and its relationship with the ruler and the position

of the law; assigning the impermissibility of usury for real persons or the inclusion of it to juridical persons such as banks and institutions; and inclusion of the assignment of *khums*, *zakat* and taxes to government institutions, public or private legal institutions.

Allama Tabataba'i, while assigning characteristics such as life and death to society under verse 179 of Surah Al-Baqarah (The Cow) and in order to prove the existence of a distinct identity called society, he has adduced many verses of the Quran and maintains that one of the ways to prove the possibility and existence of an entity called society is to prove some apparent characteristics and rules that cannot be attributed to individuals and persons and have been attributed to society as a distinct nature from individuals. Accordingly, he considers, in the verses of the Qur'an, things such as "Moment of death", "Book", "Consciousness", "Understanding", "Deed", "Obedience" and "Disobedience" for the Ummah (i.e. nation), as the existence of an entity called society. (Mesbah Yazdi, 2001, vol. 4, p. 96)

Believing in the existence of an entity called society and accepting special rights and duties for it calls for putting up rules for society, which have also appeared in the view of some jurists. Among them, we can point out Sayyid Kazem Tabataba'i Yazdi as the first jurist who discussed the issue of legal personality. He considered things like the mosque as a legal personality, having intellectual validity, with rights and duties distinct from that of individuals (Tabataba'i, 1988, vol. 1, p. 269).

Imam Khomeini, like many other jurists, has considered the legal personality and, while accepting the legal personality, (Khomeini, 2001, vol. 2, p. 246) has decreed certain rights and duties for it. (Khomeini, 2001, vol. 2, pp. 253-254).

#### **b) Referring the address to the society to the ruler**

As a legal personality, like real persons, the society has an independent identity and therefore certain rights and duties belong to it.



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Thus, the address to the society is, in fact, an address to the same personality and not turning into an address to the members of the society in the form of individual general or fake general; and on the other hand, it is valid to address an obligated person if he has the ability to *Ba'th* and *Zajr*<sup>1</sup> (Do and don't), and can provide causes for the fulfillment of the obligation outside. This is while the legal personality, as a conventional matter, is not able to perform the task assigned to him. Rather this address does not lead to *Ba'th* and *Zajr* (Do and don't) of the obligated person and does not lead to the fulfillment of the duty in the society, unless the agent cause of the society takes the initiative to obeying the obligation. In explaining the agent causes of society, it should be said that the society consists of four causes (final, material, formal, and agent), and since it is not possible to address the final, material, and formal causes, and these causes only provide the contexts, factors, criteria, scope, and ends of the obligations, t only the agent causes are related to the obligation and the obligation is made possible through them. Obviously, the citizens and agents of the society, as the agent causes of the society, should take the responsibility for obeying the obligations that belong to the society. However, since the address to the society does not turn into the address to the citizens (in an individual general or fake general), the address to the society does not also change into the address to the agents of that society; rather, the ruler as one of the individuals is also considered as the agent cause of society. Obeying the obligation given to the society should be done by the society itself (from "*man bihil-kifāya*" of the members of the society). However, since the management of this obeying in today's societies is not possible except through the resourcefulness and management of the senior managers of the society, before the orders addressed to the society are referred to the people of that society, they are referred to its managers

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1. "Ba'th" is the will, the principles of Zajr "suffering" is disgust.

so that under their resourcefulness and their macro-management, the duty is obeyed in a deep rooted, desirable and efficient manner (on the part of "*man bihi-l kifāya*" from the citizens), just as the address to a country by the international community is referred to its senior managers, but the demand from a specific institution or society is referred, by the senior agents of the system, mainly to the managers of that institution or society. Accordingly, with respect to addressing the community managers, before it is addressed to the members of the community, the success in solving a problem or resolving predicaments in the community will be attributed to the managers and those obedient ("*man bihi-l kifāya*"), and the reprimand and punishment in the inability to solve the problem belongs to its managers and agents; and according to the same logic, the victory in the battle, which is done by a limited number of soldiers, belongs to the commander and of course the same soldiers; and the possible defeat of the soldiers in the battle is referred to the field commander or senior soldiers, just as for the victory of a sport team, the chief executive officer 'CEO' of that team and of course its players are congratulated, and due to its failure (caused by the poor performance of the players), the team managers (CEO or coach) are reprimanded or dismissed for the lack of management for the team's victory.

It is obvious that in undeveloped societies - where there is a simple management system to run the society, the members of the society are in charge of managing the affairs themselves, and the society is based on the individuals themselves - addressing the society not only does not belong to its managers for the reason of *`Sālibih bi Intifā Mowzūr*<sup>1</sup>, but encouragement and reprimand are not done for the managers of the society. This is despite the fact that in developed societies, where the

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1. Negative proposition because of its subject being non-existing ab initio

management of obeying the collective obligation is the responsibility of its agents and its realization is up to the *man bihi-l kifāya* determined by the agents, the collective obligation is addressed to the ruler and he determines the "*man bihi-l kifāya*" of the citizens according to the requirements, conditions and needs of the time and employs them in order to achieve the collective obligation. Naturally, in this case, the management of the collective obligation is with the ruler and the agents of the society, and its realization is done by the citizens of the society.

Addressing the obligation to the society, to the rulers and agents of that society, in addition to the customary approach, is documented to some Islamic thinkers and commentators. This is because while accepting the relevance of Quranic addresses to the society, they have considered those obligations to be addressed to the ruler and agents of the Islamic system. (Alousi, 1984, vol. 9, p. 281; Tabatabai, 1996, vol. 15, p. 79)

### **c) Returning the Collective Obligation to the Individual Obligation, under the Special Functions of the Government**

If the fulfillment of the collective obligation is the responsibility of a group of individuals and there is no "*man bihi-l kifāya*" of individuals, and at the same time, limited individuals have the expertise to perform it, this duty will be imperative for them. So, if there are not enough people present for Jihad and protecting the borders, and there are specialized people for Jihad, the task of Jihad will be imperative for those people. (Ismail Pour Qomshai, 2001; vol. 1, p. 241; Ibn Qudama al-Maqdisi, 1998, vol. 1, p. 121).

Accordingly, in the present age that the states have widespread duties and function due to desirable administration of the society, and – thus – enjoy more widespread functions than the past due to proper awareness and ability for performing social obligations and requisites of the societies of the day rather, communities and citizens consider fulfilling these matters and resolving them in an orderly manner as one

of the duties of the government and assume that the government is to blame if these matters are not done. Therefore, the achievement of the collective obligation in a desirable and efficient manner, in many cases, is not possible except through the government, which has influence, power, ability, specialization, financial resources and a pervasive range of agents; and this leads to the determination of the government to determine the agency of the collective obligation. Naturally, with the appointment of the government, in order to fulfill the collective obligation (despite the view that considers the order addressed to the mass of the people and citizens in parallel with the agents), from the beginning, the duty is not placed on the shoulders of the mass of the people; and for this reason, with the presence of the government, people do not feel the need to fulfill the obligation (except in the case of a large volume of problems and the government's inability to solve them in emergency situations). However, the governments are in charge of management of obeying these duties, and in this way, they will use the citizens in the form of hiring or providing a platform and creating grounds for their participation.

#### **d) Management of Obeying Obligation by Rulers**

In addition to the logic of referring the address to the society to its individual people one by one or attaching this address to its senior managers, there is a logic according to which, this address can be referred to social groups and independent and popular institutions. Therefore, social affairs belong to social (not governmental) institutions, and the position of the government is not the implementation of the general affairs, but organizing the public affairs in the society in the form of decision-making, institutionalization and resolution of existing or possible conflicts. According to this point of view, the position of the government and sovereignty is not to take charge of public affairs, but to organize them and ensure the advancement of affairs by independent

and public institutions and groups. Naturally, in this case, the social addresses that demand things from the society, after the impossibility of belonging to the individual members of the society and the senior managers of the political system, belong to the social institutions, and they should, in the process of obeying those addresses, employ people or individuals affiliated with their institution to realize those obligations. Therefore, when these organizations and institutions themselves are in charge of doing it, the obedience is documented to them, and if the obedience management is their responsibility and the masses of people realize those obligations, the obedience is documented to the people and management of the realization of the obligations will belong to those institutions.

However, if the major administration of the society is documented to them, there will be no obstacle for enumerating the social independent institutions as the administration of obeying collective obligation from the positive aspect; rather, in case these social institutions are determined in obeying the collective obligation, these affairs are relegated to them. nevertheless, it must be said that with the existence of the institution of the state, these institutions – alongside the state – will not be able to take over the responsibility for administration of obeying the obligation and organize it. (Although after the formulation of laws and major policies by the government, they can be responsible for this) because this view which can be attributed to an anarchist (who believes in the inherent evil of political power and the incompetence of the government in the management of the public affairs of the society delegates its authority to social institutions), they will not be able to manage the realization of obligations, because:

1. Solving the major problems of the society requires macro coordination between different parts of the society, and a partial and isolated approach to the problems will not be able to solve the

problems and issues. Rather, it will lead to other problems; and if the social institutions also want to solve the problems, this will not be possible except through the coordination of the government and the major decisions of the political authority.

2. Social institutions have limited power and authority and in many cases, they are not able to manage the affairs entrusted to them. Therefore, delegating major duties to them will not lead to its realization in the society.

Therefore, although in many times, the major duties of the society are done by the social institutions, this is not outside the scope of the management of obeying the duties by the governments; rather, in many times, the governments, in order to achieve social goals and ends, start to establish special institutions to solve certain issues or support them by providing a platform for the realization of these institutions.

## Result

Since the social address is addressed to the society and considering the non-dissolution of the address to each member of the society one by one and its attachment to the rulers and managers of the society as the supreme representatives of that society, the management of obeying these obligations is entrusted to the rulers, so that they manage the process of realization of the tasks by "*man bihi-l kifāya*" among the citizens in the form of achieving the Legislator's goals and objectives in the society; Therefore, the rulers should make a plan so that these affairs are realized in an up-to-date, desirable and efficient manner in the society. Thus, in order to properly manage the society and achieve the social goals, by determining the "*man bihi-l kifāya*" from the citizens, the rulers guarantee not only the realization of the Legislator's goals, but also the general needs of the society. Besides, since achievement of the Legislator's goals or customary goals in the society

requires the establishment and continuity of specific institutions, to organize these affairs in an up-to-date and efficient manner, the rulers should establish special institutions, by removing these tasks from the shoulders of the people, and entrust the special duty of doing it to the appropriate institution. It is obvious that the collective obligations, as the obligations that "*man bihi-l kifāya*" of the citizens must obey them, in the Islamic regime, should be performed by the institutions established by the ruler. Naturally, in the last station, the realization of these matters in the aforementioned institutions is done by the citizens of this society, who perform the entrusted affairs in an up-to-date and efficient manner and with appropriate knowledge and ability.

According to this logic, while in the past years, the duty of Jihad and defense of the Islamic regime, as a collective obligation, was the responsibility of the mass of believers and "*man bihi-l kifāya*" of them participated in this matter, the defense of the Islamic regime and the protection of the borders of the Islamic country, nowadays, is carried out by a specific institution (army), which is not only responsible for the protection of the borders of the country, but for creating a deterrence against the possible attack of the enemies with proper preparation in terms of software and hardware. Naturally, in this assumption, during peacetime, the duty of guarding borders is the responsibility of army soldiers, and with the realization of this obligation by this institution, citizens will not have any duty in this regard. Rather, in time of war despite sufficient number of soldiers (in numerous spheres of martial expertise) there is no need for people's widespread presence and with the presence of the institution of army for defense and jihad, the address for defense and jihad (which initially and essentially belongs to the society) has been obeyed by a the part of the society (the army and the IRGC institutions), and practically with the management of the senior manager of the society, the address that belonged to the society has been realized by a part of the same society (which is determined by the ruler);

and therefore, there is no longer an obligation for others (civilians) to try to realize. Although, when the large number of the problems created in the society is not proportional to the ruler's measures for normal conditions and practically the institutions designated by the ruler (army and the IRGC) are not able to realize the duty assigned by the ruler, addressing the society to obey the duty of defense still remains in its place, and in these cases, the ruler gives a public appeal and invites the masses of people to defend; or in the case of the ruler's inability to take care of the society in an emergency situation, this address (like the conditions of a simple society without a ruler) belongs to the mass of people and people spontaneously act in defense of their society. However, this cannot be done without planning by the government and the participation of obedient persons. And the government tries to solve the problem according to the process of the Basij (mobilization) institution.

The establishment of institutions such as the Red Crescent, Welfare Organization, Relief Committee, fire department, national entrance exam, organization of the funeral, etc. should be evaluated in this regard, so that the process of helping citizens in crisis, the disabled, the poor, creating specialized professions, equipping the dead, etc., is done in an up-to-date, efficient, desirable and specialized manner, and by doing these things by the institutions designated by the government, these duties and obligation are taken from the masses of people and are systematically carried out by related institutions.

Obviously, due to the fact that the management of obeying and the realizing the social obligations in the society is entrusted to the managers of the society and the realization of these duties is put to the responsibility of the mass of citizens, in case of the desired achievement of the tasks in the society, the encouragement belongs to the citizens that, firstly, are not obliged to do it or that obey the obligation in the field of "Line"; and in the next stage, it belongs to the managers who



perform their duties in the field of "Staff" and management. Rather, in the case of not achieving the desired duties in the society, reprimands and punishments firstly belong to the managers of the society (who are responsible for managing the realization of the tasks) and in the next stage, the mass of people (citizens) or the members of the organization (in the line area), are reprimanded for their fault or negligence in performing their obligations.

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