

جريمة شرب الخمر في حالة الإضطراب من منظور فقه المذاهب وقانون الجزاء الإسلامي

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**Alcohol drinking under emergency causes
criminalization, from the perspective of the Sects
jurisprudence the Islamic Penal Code**

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المستخلص

الاضطرار من العناوين الثانوية ومن القواعد الفقهية المعروفة التي تستخدم في مختلف أبواب الفقه والقانون. ومن الحالات التي اعتبرت حالة اضطراره شرب الخمر لإرواء العطش والشفاء ، وهناك فرق بين مذهب إليه فقهاء الإمامية وفقهاء أهل السنة في الإذن بشرب الخمر أو عدمه في حالة الاضطرار . ومن بين قوانين العقوبات فقط المادة ١٥٢ من قانون العقوبات الإسلامي تناولت الاضطرار ، وأي رأي فقهي في جواز أو عدم جواز الشرب في حالة الإضطرار له القوة اللازمة وهل يمكن تجريم شرب الخمر في حالات الإضطرار أم لا ؟ في هذه الدراسة التي تستخدم الطريقة الوصفية التحليلية وفق منهج مقارن ، في الخطوة الأولى تمت محاولة قراءة وتحليل آراء فقهاء الإمامية وفقهاء أهل السنة في حكم شرب الخمر في حالة الإضطرار ثم مقارنتها بقانون العقوبات الإسلامي ، وفي النهاية وبالإستناد الى الحجج العامة التي وردت في القرآن الكريم والروايات فضلا عن أن حقيقة الإضطرار هو عنوان ثانوي ، لذلك نستنتج أنه إذا شرب شخص ما الكحول في حالات الإضطرار ، فلا يمكن أن يعاقب قانوناً. وهذا ما تؤكده المادة ١٥٢ من قانون العقوبات الإسلامي.

الكلمات المفتاحية : الاضطرار ، شرب الخمر ، الفقه الإمامي ، الفقه السني ، القانون ، العقوبات الجزائية .

Abstract

Emergence is, inter alia, a secondary title and a reputable jurisprudential norm used in different areas of jurisprudence and laws. A case considered as an implication emergence is alcohol drinking to eliminate thirst and to treat. There are differences among Imamieh and Sunni jurists on permission or lack of permission for emergence alcohol drinking. Among criminal laws, only article 152 of Islamic law has addressed such emergence. Which jurisprudential attitude toward permission or lack of permission on emergence alcohol drinking enjoy needed strength and can emergence alcohol drinking being criminalized? In present study, by using descriptive – analytical method and a comparative approach, it is initially attempted to reread and analyze Imamieh and Sunni jurists' views on emergence alcohol drinking and then to compare them with Islamic Punishment Code. Ultimately, based on Holy Quran and Narratives' general arguments and considering the fact that emergence is a secondary title, it is concluded that if someone drinks alcohol in emergency, one cannot legally consider any penal punishment for him/her. The indication of this statement, is article 152 of Islamic Punishment Code.

Key words : emergence , alcohol drinking , Imamieh jurisprudence , Sunni jurists , laws , penal punishment

Problem description

The permissibility or impermissibility of drinking alcohol in an emergency is one of the issues that has long been discussed among Imami and Sunni jurists and various opinions have been raised about it. Some Imami and Sunni jurists consider drinking alcohol in an emergency to be absolutely permissible, either for quenching thirst or to treat. Some people do not consider it absolutely permissible to drink alcohol in an emergency. Some have chosen the promise in detail and consider it permissible to drink alcohol for treatment if there is a fear of losing one's life.

The issue of drinking alcohol in an emergency is also briefly mentioned in Islamic penal codes. Such briefness has led to various interpretations by jurists. In the present study, a comparative-analytical approach attempts to answer the following questions:

1. Which of the jurisprudential views on the permissibility or impermissibility of drinking alcohol in an emergency is strong?
2. According to the view on drinking alcohol under emergency, can it be legally considered as a crime?

In the present article, it is attempted to answer the above-mentioned questions by comparative-analytical study of the views of Imami and Sunni jurists and also by comparing it with the Islamic Penal Code. According to studies and comparative studies, emergence can be one of the justified causes of crime in drinking alcohol.

1. Concept

1.1. Emergence

Emergence is and infinitive the chapter on affliction and from the subject of damage to conquest or damage to the first attachment. Ibn Manzur in the Arabic language believes that harm to conquest means the opposite of benefit, that is, loss and harm means misery, hardship and poverty (Ibn Manzoor, 1414, vol. 4: 482).

Some other lexicologists believe that the word emergence is from the substance of harm and the chapter of affliction, and ta in this word has become taa and means the need for an object (Farahidi, 1410, vol. 7, p. 7; Zubaidi, 1417, Vol. 7, p. 123; Firoozabadi, Bitā, vol. 2: 107).

Raghib divides emergence into two types:

- 1- Emergence due to a cause out of distressing nature, such as beating or threatening someone to obey and criticize. In some verses of Holy Quran (Baqarah /126 and Lughman /24) are used for the same meaning.
- 2- Emergence due to cause and force from inside the distress; This section is also divided into two types :

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- A) An emergence whose repulsion does not cause the death of distress, such as a person who is distressed by alcohol drinking and gambling due to intensive interest in alcohol or gambling.
- B) An emergence that fighting against it would lead to the destruction of distress, such as a hungry person who is forced to die. He points out verses from Holy Quran in the same sense (Raghib Isfahani, 1412: 505).

The jurists have also provided various and similar definitions on emergence. A group of jurists have considered the distressed person as someone who, if he does not eat, is afraid of losing his life (Tusi, vol.6: 284).

Jurists' words are conceived that emergence is achieved by the fear of losing one's life if one does not use the forbidden things such as fear of disease intensification and fear of late recovery of the patient (Ardabili, 1417, vol.11: 312).

In another definition on emergence, Moghadas Ardabili in Zobdeh Al-Bayan writes: "emergence is when no one can wait such hungriness."

In criticizing the above definitions, especially the definition by Moghadas Ardabili, some writers have stated that such definitions are not thorough and include emergence and other things such as reluctance and coercion, while there is a difference between emergence, reluctance and coercion (Mohaghegh Damad, 2010: 125).

It may be said that, firstly, the above definitions are nominal descriptions and there is no rational and meticulous accuracy in such definitions, and secondly, the jurists have mentioned some restrictions that make the definitions limited to emergence and do not include reluctance and coercion. One of these restrictions is the phrase "إن لم يأكل" in the definition of Allameh Helly, who wants to consider this definition only as an observer of emergence and nothing else. Another adverb of the word "جوع" in the definition by Moghadas Ardabili mentioned in Zobdeh Al-Bayan; By making this restriction, he intends to consider the definition as an observer of emergence so that it does not include reluctance and coercion; Because hunger is an internal matter and does not include coercion and reluctance.

Among different Sunni jurists, definitions on emergence are provided, some of which may be close to definitions by Imamieh jurists. Some of these definitions are provided below:

Hanafi jurists believe that a person in distress is someone who will be perished if he does not eat what is forbidden. Maliki jurists consider emergence as the fear of self-destruction, whether this fear is consciously

or suspiciously. Shafei jurists also consider the distressed person as someone afraid of dying or increasing the disease due to not eating a forbidden food. Hanbali jurists have the same opinion. Zahirieh jurists also say that distress person is someone who is afraid that weakness will befall him and cause his death if he does not eat a forbidden food, (Husseini, 2011: 29, Abu Suleiman, vol. 2: 264, Ibn Hanbal, 1421, vol. 29: 65, Abi Davood, 1430, vol. 7: 14).

Like jurists, lawyers have expressed various definitions on emergence, some of the most important ones are mentioned below.

Garo writes: Emergency is a state that arises in a distressed person due to an event arising from nature or another human being, and in such state, one forces himself/herself to commit an act or leave of an act that is a crime in order to save oneself or another (Ahmadi Vastani, 1972: 27).

Unlike Garo, Garson does not criminalize the distressed person since he/she has conducted it to avoid an impending danger.

Paul Fourier considers emergence as a situation in which a distressed person is forced to commit a crime in order to protect his life, property and rights. (Ibid.) Some other jurists in the definition of emergence have said that the state of emergency is the occurrence of a situation in which the maintenance of rights or finance is associated with damage to property of others and committing a crime (Aliabadi, 2006, vol. 1: 215).

Baheri believes that emergence is a state of someone who should inevitably select two conditions, one of which is crime (Baheri, 2005: 328).

Abdulghader Udeh, while stating the difference between reluctance and emergence, points out that emergence is the occurrence of a person under a threatening situation and condition that exiting it requires committing an action which that saves himself or another from death. For example, if someone gets on a ship with others that the ship is about to sink due to the weight of the cargo, rescuing its occupants requires that the cargo be lightened and some equipment be thrown into the water to lighten it so that the passengers to be saved from sinking (Udeh, 1426, vol.1: 464).

By investigating above definition, it seems that, firstly, such definitions are corresponding to criminal laws in contrary to civil laws in which another definition is provided for emergence. Secondly, as noted by some jurists:

The distressed person has no choice but to commit a crime. This does not mean that this person is completely involuntary and, like the compelled person, has no will to leave the crime, but his authority is such

that society and the legislature do not expect him to use his authority. According to Article 55 of the old Islamic Penal Code and the new Article 152, it may be conceived that emergence is a state that puts a person in a state of involuntary descent; in other words, it is equivalent to spiritual compulsion; Because factors such as floods and earthquakes cause such situations, but this interpretation of the law is not correct. (Sarikhani and Ghiyasi, 2016, vol. 3: 252). There is no definition of emergence in Iranian law, but according to the jurists' definitions, it can be said that emergence is a situation in which a distressed person commits a haram or crime in order to exit it.

1.2. The first verdict

The first verdict is forged for a certain subject, firstly and in essence, without considering the complications and secondary topics such as emergence, and without considering the state of doubt and ignorance of the obliged toward the real verdict such as ablution for prayer (Akhund Khorassani, 1415: 124, Naeini, 1369, vol.1: 449, Abolghasem, Khoei, vol. 2: 248).

1.3. Secondary verdict

A secondary verdict is forged due to a condition such as reluctance, emergency, hardship or titles such as vow, covenant, trustworthiness and taqiya (secondary titles) and in forging it the state of ignorance and doubt is obligatory. It has not been considered situationally. For example, although the ruling on fasting during Ramadan is obligatory, the same ruling changes in some cases for the distressed, the sick, and women. Since the most common use of the secondary sentence is in a state of emergence, it is also called an emergency verdict (Akhund Khorasani, 1415: 124, Naeini, 1369, vol. 1: 449, Khoei, vol. 2: 248).

According to the above definitions, it can be said that secondary verdicts do not have the conditions and elements in the first verdict and due to the pronouns of some special situations such as reluctance, urgency, taqiya and hardship, the first one is changed and the duty of the obliged is shifted. In fact, the secondary verdicts govern the primary ones (Makarem Shirazi, 2006, vol. 1: 215).

2. Alcohol drinking under emergence

Although alcohol drinking is forbidden in Islam and is criminalized in Iranian laws, in cases, preliminary verdict is changes and such act is permissible; these cases are discussed below.

2.1. Using alcohol drink to quench thirst

There are two cites among jurists concerning alcohol drinking under emergence.

2.1.1. Proponents' view

Some jurists believe that a distressed person can drink alcohol to quench his thirst and ward off danger from his life. According to this group, committing forbidden acts is obligatory if self-preservation is stopped, so if a person is thirsty and afraid of dying, it is not only permissible but also obligatory to drink wine to save his life; For example, among the jurists, the following ones can be mentioned:

(Toosi, 1400: 591 and 592) and (Helly, 1410, vol. 3: 126) and (Naraghi, 1415, vol. 15: 21) and (Khomeini, vol. 2: 170).

Among Sunni jurists, Hanafi jurists are generally among those ones who agree with drinking wine in an emergency and consider anyone who drinks to quench his thirst and save his life to be exempt from punishment. Among the Hanafi jurists, one can mention Sarakhsi in his book *Al-Mabsut* (Sarakhsi, vol. 24: 53) and Ibn Najim in his book *Bahr al-Ra'iq* in *Sharh Kanz al-Daghayegh* (Ibn Najim, vol. 8: 249).

The words of Hanafi jurists are used in such a way that if a person is afraid of death due to excessive thirst, he/she can drink as much wine as quenching her thirst.

Shafei jurists, like Hanafis', consider anyone who drinks alcohol to quench his thirst and save his life to be exempt from punishment. Among the Shafei jurists, we can mention Abu Isaac Shirazi in his book *Al-Tanbiyyah Fi Fiqh Al-Shafei* (Shirazi, vol. 1: 84) and Mawardi in his book *Al-Hawi Al-Kabir*. Of course, it is worth mentioning that according to Mawardi in the mentioned book, apparently Shafei himself did not agree with drinking alcohol to quench his thirst, but some of his companions believe in the permissibility of alcohol drinking to quench his thirst (Mawardi, 1419, vol. 15:17). Ibn Rushd al-Maliki says that if a distressed person does not find a solution to feed, it is permissible for him/her to use forbidden in an emergency (Ibn Rushd, vol. 1: 461)

Proponents' arguments

The proponents of alcohol drinking under emergence have referred to reasons, the most important ones are pointed out below.

(a) Verses

Referring to the verses of Holy Quran, one can observe that these verses have made permissible the absolute prohibitions for the distressed person and have not distinguished between the prohibitions. Like the verses of Holy Quran (Baqarah / 173, Maedah / 3 Anaam / 145, Nahl / 115) which were previously stated as reasons for emergence.

(b) Narratives

1. *Sama'eh narrative*

Alcohol drinking under emergency..... (578)

Sama'eh has narrated from Imam Kazem that "all prohibitions are become permissible under emergence for distressed person (Ameli, 1409, vol. 5, 482 – 483).

In this narration, the matter of emergence is expressed in absolute terms and everything that a person is in need, is considered permissible by God. One of them is alcohol drinking which is permissible for the distressed person under emergence.

In this absolute narration, prohibitions are considered permissible in a state of emergency of which an example is alcohol drinking under emergence. The narration of the late Sheikh Toosi quotes from Hussein ibn Saeidi Ahwazi, who is trustworthy quoted from his brother Hassan Bin Saeid Ahwazi, who is authentic, from Zarah ibn Muhammad Hazrami, who is knowledgeable but has been authenticated, and is therefore authentic in terms of the document¹.

2. ofzal Bin Omar's narrative

As a part of a long narration from Imam Sadegh (PBUH), Mofzal Bin Omar cites:

" ثمّ اباحه للمضطر واحله له في الوقت الذي لا يقوم بدنه إلا به فامرّه أن ينال منه..." (ibid, 100)

According to this narration, Divinity, based on the knowledge of the interests of individuals, has forbidden things to people, but in times of emergency, She has made the same things lawful for the needy.

This narration is valid and there is no difference between drinking alcohol and other cases of forbidden things; therefore, this narration is complete in terms of meaning, while in terms of document, it is mentioned in a narrative by Muslim al-Tabari, which is unknown, and therefore, this narration is weak in terms of the documentation and cannot be relied on. However, it can be used for other valid narrations.

3. Rafe'e hadith

The preliminary implication of this hadith is as follow by considering its most complete form:

"Nine things are taken from Muslims:

1. Error, 2. Forgetfulness, 3. What they do not know, 4. What they do not have the ability to do, 5. What they do out of urgency, 6. What they are forced to do (reluctance), 7. Bad divination, 8. To think of creation out of temptation, 9. To envy until it is not spoken by tongue or conducted by hands" (Klini, 1407, vol. 2: 463). This a valid narration in terms of document and is too reputable among Imamieh and Sunni jurists while in terms of signification, it completely indicates the removal of

forbidden cases and implications in a state of emergency, of which one implication is alcohol drinking.

4. Narration by Ammar Sabati

Ammar Sabati cites Imam Sadegh (PBUH): "If a person is thirsty and afraid of death, she can drink wine to quench her thirst." (ibid, vol. 25: 378)

In this narration, when the questioner asks about a man who is thirsty and has nothing than wine to quench his thirst for fear of dying, Imam says: As much as his strength and power returns, he can drink alcohol.

Noteworthy, other narrations refer to the permission of alcohol drinking under emergence, but this narration specifically allows drinking alcohol in case of emergency. There are other narrations in this regard which are avoided due to brevity.

Shaykh al-Tusi narrated from Muhammad Bin Ahmad Bin Yahya Bin Imran al-Ash'ari, who is trustworthy, from Ahmad Bin Hassan Bin Ali Bin Fazzal, who is a Fathi religion, but attested by Amr Fathi Sa'id al-Fatah, who is trustworthy, from Mossadegh ibn Sadiqah, who is again a Fathi and trustworthy from Ammar Bin Musa Sabati has narrated a reliable Fathi and in general the narration is valid from the point of view of a document, so considering the completeness of the meaning and the document of the narration, it can be a reason for the claim.

5. Comparing alcohol drinking and eating haram meat

Another reason that can be mentioned as confirmation is that haram meat, blood and pork, which are higher in terms of forbiddance than drinking alcohol, become permissible under emergency, as same as drinking alcohol under emergency will be permissible. On the other hand, self-preservation is obligatory and makes drinking alcohol permissible in case of emergency (Naraghi, 1415, vol. 15:22).

As a Sunni scholar, Jasas has a similar argument and states that when the purpose of blood and carcass is to keep a person alive by eating and drinking these things under difficult and emergency situations, this cause or this criterion also is also in other harams. Therefore, all prohibitions have the same ruling if necessary. (Jasas, 1415, vol. 3: 251)

2.1.2. The views of proponents

Some jurists believe that a distressed person cannot drink alcohol to quench his thirst and ward off danger from his life, and if he drinks alcohol to quench his thirst, even in an emergency, he is not exempted from punishment and should be punished like a drunkard in possession. . Among the Shiite jurists, Sheikh Toosi is one of those who have such an opinion and says: If someone has nothing but alcohol drinking to use, our

companions believe that there is no way to allow drinking alcohol, whether in an emergency or not. (Toosi, vol. 6: 288.)

In his book titled *Khalaf* he writes: "ان المضطر لا تحل له الخمر ولا يشربها" (Ghortabi, 2000, vol. 5: 308). Alish in his book titled *Manh al-Jalil Brief Explanation of Khalil* (Alish, 1409, vol. 9: 353) and Baghdadi in his book *Al-Ashraf Ala Nokat Masayel Al-Khalaf* (Baghdadi, vol. 2: 923) have the same idea.

Like maleki jurists, Hanbali jurists believe that one cannot drink alcohol under emergence (Moghadas, 1426, vol. 2: 95 and Kolouzani, 1425, vol. 1: 555).

Proponents' arguments

Alcohol drinking proponents have provided different reasons to prove their claim for quench thirst under emergence, the most important ones are provided below:

(a) Verses

Some verses of Holy Quran, such as verse two hundred and nineteen of Surah Baqarah and verses 90 and 91 of Surah Maedah, indicate the forbiddance of alcohol drinking, and according to the text of these verses, anything that contradicts it should be discarded. Therefore, because the narrations that indicate the permissibility of drinking alcohol in an emergency are contrary to the text of Holy Quran, we follow Holy Quran text and set aside the narrations (Toosi, vol. 6: 288).

(b) Narrations

1. Abi Basir Narration

Abi Basir cites Imam Sadegh (PBUH): The distressed person should not drink alcohol because there is evil in drinking alcohol, and if the distressed person drinks alcohol, it will cause his death. (Ameli, 1409, vol. 25: 378 and Sadoogh, vol. 2: 478).

This narration is complete in terms of meaning, but it cannot be relied on due to the existence of some narrators such as Muhammad Bin Umar, Ali Bin Muhammad Bin Ziad and Ahmad Bin al-Fazl, who are unknown.

2. Fazl Bin Shadhan Narration

Fazl Bin Shadhan cites Imam Reza (PBUH): Imam (AS) wrote to Mamun not to use wine in distress because it would cause his death (Ameli, 1409, vol. 25: 347).

The narration is narrated by the late Saduq from Abdul Wahed Bin Muhammad Bin Abdus Neyshabouri, who is trustworthy, from Ali Bin Muhammad Qutaybah Neyshabouri, who is authentic, from Fazl ibn Shadhan, and the narration is correct according to the document.

Sarakhsi in the book Al-Mabsouta has interpreted these narrations in such a way that drinking alcohol is of no use and mostly increases thirst and does not help to quench thirst (Sarakhsi, vol. 24:53).

2.1.3. Assessing the views of proponents and opponents

In examining various viewpoints, it seems what mentioned by Sheikh Toosi and some others as the first reason from the verses of Holy Quran and have used the impermissibility of drinking alcohol in their power and urgency, are absolute verses used by other verses of Holy Quran on a distressed person. In addition, it has been proven in the principles of jurisprudence that the general Quran is allocated with a single news, let alone narrations that have a spiritual frequency.

Also, according to the rule of "الجمع مهما أمكن أولي من الطرح", a customary combination should be made between the narrations that have apparent conflict. Thus, if there is a fear of loss of life, drinking alcohol will be permissible, and if there is no fear of loss of life, then we will believe that drinking alcohol is not permissible. It seems that the correct narration of Ammar Sabati confirms this conclusion.

The conclusion is that based on the Holy Quran generalities and narrations about emergence and the permissibility of prohibitions on the distressed, which also includes drinking alcohol, and also according to the reasons provided by the proponents, it can be concluded that drinking alcohol is urgent and there is no criminal punishment to quench thirst.

The legislator also agrees with the first opinion in criminal law and in some cases accepts drinking alcohol in a state of emergency and does not impose a Hadd (lash) punishment on the distressed person. The legislator stipulates in Article 125 of the Law on Limits and Retribution:

"Whenever a distressed person drinks wine to save herself from death ... she will not be sentenced to the hadd punishment."

The legislator also stipulates in Article 167 of the Islamic Penal Code (1991): "If a distressed person drinks as much wine as necessary to save herself from death, she will not be convicted to HADD (lash)."

However, the legislator did not mention the issue of drinking alcohol in the Penal Code (2013) and has sufficed to mention it in Article 152. This article is general, and wherever the protection of one's life and property or that of another stops committing a crime, such an act is not a crime in the eyes of the legislator and cannot be punished. This substance seems to contain emergency drinking alcohol to quench thirst.

2.2. Alcohol drinking for treatment

Alcohol drinking under emergency..... (582)

Another question on alcohol drinking is whether one can use wine to treat a disease or not. Answering this question, jurists provide three insights:

(a) Proponents' view

The second group consists of those ones who consider alcohol drinking permissible for treatment; hence, a patient who drinks alcohol for curing his/her disease is not punished.

Some Imamieh jurists consider drinking alcohol permissible for treatment; Among them, we can mention Sabzevari in the book "Kefayat al-Ahkam", the Shahid Aval in the book "Al-Durus al-Sharia", Qazi Bin Baraj in the book of Mohazab and Najafi in the book of Jawahar al-Kalam. (Sabzevari, 1423, vol. 2: 628, Shahid Aval 1417, vol. 3:25 and Bin Braj, 1406, vol. 2: 433, Najafi, vol. 36, p. 447)

After surrounding what we have mentioned, it becomes clear that the more correct statement is that it is permissible in case of emergency (drinking alcohol) (Najafi, Jawahar al-Kalam, vo. 36: 447).

Among the Sunni jurists, the Hanafis also believe that if we know that alcohol causes the healing of the sick and we do not know about any medicine other than alcohol, drinking alcohol is permissible. Otherwise, under normal circumstances, treatment with alcohol is not permissible (Bin Abedin, 1412, vol. 1: 210).

Zaheryeh jurists also believe that there is no healing in Muharram objects, but if you are in need of using Muharram objects, those objects are no longer haram and are permissible (Bin Hazm, Andalusi, vol. 1: 177).

Proponents' arguments

(a) Verses

The verse "And do not dwell with your hands until you die" (Al-Baqarah / 195) has taken. Also, the verses that indicate the permission to alcohol and eating forbidden meat in cases of emergency, such as the verses mentioned in the discussion of the reasons for urgency, have been used as Holy Quran reasons for the permission of alcohol drinking for treatment.

According to the first verse, the induction of the soul in death is absolutely forbidden, therefore, it is permissible to use any medicine for treatment, even if it is a forbidden act such alcohol drinking.

(b) Narratives

Various narratives are assigned by proponents to prove the permission of alcohol drinking as below:

1. No lose and no loser hadith

Alcohol drinking under emergency..... (583)

The prophetic narration of "no lose and no loser" is used in such a way that any action that is an example of self-harm is forbidden from the religious point of view; Therefore, if a distressed person is in a state of emergency and does not use alcohol for his treatment, he will suffer loss of life and will be subject to the prohibition of this narration.

This narration is completely authentic in terms of documentation and is accepted by Imamieh and Sunni scholars.

2. Mofzal Bin Omar Narration

This narration reads: "ثم إباحه للمضطر واحله له في الوقت الذي لا يقوم بدنه إلا ... (Mohammad Bin Hassan, Hor Ameli, 1409, vol. 24: 99 – 100).

According to this narration, when the body of a distressed person is not stable without a forbidden act, the Divinity makes that forbidden act lawful for that person.

3. Al-Reza fiqh narration

This narration reads:

Everything that is useful for the body is lawful, and anything that destroys human power and is deadly is haram except in cases of necessity; this narration also includes emergency drinking and refers to the permissibility of drinking alcohol as an emergency.

4. Narration by Amar Sabati

In a narration from Ammar Sabati, Imam (PBUH) was asked about a man who was thirsty and afraid of dying and had nothing but wine to drink. Imam (PBUH) replied: He can drink wine as much as he needs.

The narration is: "عمار بن موسى عن أبي عبد الله (ع) في حديث أنه سأله عن الرجل ... (ibid: 36, 378)

(c) Opponents' view

A group of Shite jurists believe that one cannot drink alcohol to cure a disease:

Bin Edris Helly does not consider the use of wine to be absolutely permissible, whether for treatment or otherwise. (Bin Edris Helly, 1410, vol. 3: 126) Although she has allowed the use of wine to quench her thirst, he believes in the impermissibility of treatment. (Helly, Guidance for the Mind, vol. 2: 114 and Toosi, vol. 6: 288)

Shahid Sani believes that impermissibility of treatment by alcohol drinking is the reputable opinion of jurists (Shahid Sani, 147, vol. 12: 128).

Sheikh Toosi has claimed concurrence on alcohol drinking forbiddance for healing (Toosi, 1407, vol. 6: 97)

Among Sunni jurists, there are two views on the permission or impermissibility of alcohol drinking to treat:

Alcohol drinking under emergency..... (584)

Most well-known Maliki jurists believe that treatment with drinking alcohol is not permissible. (Kalbi, vol. 1: 116 and Abu Abdullah, vol. 4: 132 and Al-Adawi, 1414, vol.1: 582 and Bin Najim, 1423, vol. 2: 403)

Hanbali jurists also believe in the forbiddance of drinking alcohol for healing (Al-Mardawi, 1419, vol. 10: 173 and Ibrahim Bin Muhammad, 1423, vol. 9: 91 and Ahmad Bin Al-Hassan, 1425, vol. 1: 555)

Shafeii jurists, like Maliki and Hanbali jurists, believe that drinking alcohol is forbidden for treatment and will not cause a HADD punishment fall for a person Shafei, 1426, vol. 2: 253).

Opponents' arguments

(a) Narratives

1. Omar Bin Eznieh narration

In a letter written to Imam Sadegh (PBUH), he asked about a man who suffered from hemorrhoids, and Imam (PBUH) replied:

"No, he should not drink even a sip of wine, and then he said that God has not healed what he has forbidden." (Hor Amelei, 1409, vol. 25: 344)

This narration is used to show that alcohol drinking is not permissible for healing and does not stop punishment. Hence, if someone drinks alcohol for treatment, punishment of alcohol drinking will be executed for him.

The narration is narrated by the late Klini from Ali Bin Ibrahim, who is trustworthy, from Ibrahim Hashem, who is trustworthy, from Muhammad BIN Abi Umayr, who is one of the companions of consensus, from Umar ibn Uzina, who is trustworthy. Narration is authentic in terms of documentation. It is also explicit that alcohol is not allowed for treatment.

2. Narration by Abu Basir

Abu Basir says that I was sitting next to Imam Sadegh (PBUH) when Umm Khalid entered and told Imam Sadegh (PBUH) I have a disease that makes my stomach cry. Iraqi doctors have prescribed, a pastry from Nabiz (or a mixture mixed with Nabiz) for healing but I held my hand. Imam (PBUH) said: I do not allow you to eat a drop of it and do not taste a drop of it and pointed to his larynx with his hand and said that when Azrael came to take your soul and your soul reached this, you will regret it and said three times that you understood, The woman said, "Yes, I heard it" (Ibid., Vol. 25, Hadith 2: 344 and Klini, 1407, vol. 6: 413). Imam (PBUH) forbade drinking alcohol with the phrase "plateau" The reason for the existence of Ibrahim bin Khalid, who is unknown, has no authenticity, so it is not possible to rely on the above narration.

3. Narration by Halabi

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شعبان ١٤٤٣ هـ / آذار ٢٠٢٢ م

Halabi narrated from Imam Sadegh (PBUH) that I asked him about a medicine that was mixed with wine. He replied: "No, I swear to God, I do not like to look at wine, let alone treat it. This medicine mixed with wine is like pork or lard." (Hor Ameli, 1409, vol. 25: 345 & Klini 1407, vol. 6: 414). In this narration, the Imam forbade treatment with wine. The narration is narrated by the late Klini from Ahmad Bin Edris Qomi, who is trustworthy, from Muhammad Bin Abdul Jabar Qomi, trustworthy from Safwan Bin Yahya, who is one of the companions of consensus, from Abdullah Bin Maskan, who is also one of the companions of consensus, from Muhammad Bin Ali Bin Shuba, who is trustworthy. Slow and therefore the narration is completely valid in terms of documentation.

(b)Consensus

Sheikh Toosi has mentioned the reasons of consensus on impossibility of drinking alcohol for treatment (Toose, Al-Khalaf, vol. 6: 97).

The Sunnis have also mentioned reasons for the forbiddance of treatment with alcohol, such as the narration of "We made the healing of the Nation in the forbiddance against them" (Al-Baghdadi, vol. 2: 923) and the narration of " ; That is, wine is not a medicine, but it is a disease in itself, and God has not placed healing in prohibitions.(Ibn Maflah, Al-Mobda Sharh Almoghne', 91)

Shafei also believes that drinking alcohol destroys the human intellect and prevents him from performing his duties and leads him to forbidden deeds (Shafei, 1426, vol. 2: 253).

(c)Citing the details

The third group of jurists are those ones who consider drinking alcohol permissible for treatment if there is a fear of loss of life. In such a case, drinking alcohol is permissible for treatment. Otherwise, it will be subject to the general title of prohibition. For example, Shahid Sani in Masalak, after quoting sayings and arguments, says: "in the case that not drinking alcohol can yield to fear of death, it is strongly permitted to use win (Shahid Sani, 1417, vol. 12: 129 and Naraghi, 1415, vol. 15: 39).

Similar to Shahid Sani, Mohaghegh Ardabili asserts:

We consider it permissible to drink alcohol for health, provided that if he does not use wine, he will die (Ardabili, 1417, vol. 11: 332).

Assessing the attitudes by proponents/opponents

It seems that those are right who believe in permissibility, and in criticizing the arguments of the opponents, the following can be mentioned:

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Firstly, the interpretations that have been included in some of the arguments by opponents appear in the prohibition of discipline and hatred, not the prohibition of sanctions. Like the reasons in which the term "la ynbaghi" is used.

Secondly, some narrations that indicate that drinking alcohol is not permissible in the case of illness have been included in the case of diseases that are not very severe.

Thirdly, in some narrations, Khmer is likened to other prohibitions, so all the reasons that use the solution of incest in an emergency can also indicate the solution of drinking alcohol in an emergency, because the terms of the ruling, which is the same as urgency, are the same in all of them. (Hosseini Shirazi, Fiqh, J 77: 35)

Fourthly, in order to resolve the apparent conflict between some narrations, narrations indicating impermissibility can be understood as non-monopoly; That is, not in all cases, when there is a cure other than drinking alcohol, then it is not possible to use alcohol for treatment.

The legislator in law 1304 and 1352 mentioned the issue of drinking alcohol for treatment. However, Article 125 of the Law on Limits and Retribution stipulates:

"If a person is in distress ... he will not be sentenced to HADD to the extent necessary for the treatment of a serious illness." It has also repeated the same thing in Article 167 of law in 1991.

In 2103, the legislator deleted Article 167 and, by quoting Article 152, stated a general ruling on urgency. And it seems that this article is also valid for drinking alcohol for treatment and anyone who drinks alcohol in order to save his life will not be punished. According to the reasons of those who believe in the license and the criticism that was raised against the reasons of the opponents, it is possible to combine the following conditions to consider the use of alcohol for treatment:

1. There should be knowledge of obtaining treatment by drinking alcohol, not on the basis of suspicion, illusion, etc.
2. The disease is severe and not tolerable for the person or is traditionally considered a hardship.
3. The medicine should be uniquely exist limited to drinking alcohol and there should be no intoxication.

Conclusion

It seems that considering the Holy Quran and narrations general reasons as well as the specific reasons given about drinking alcohol and also considering that emergence is a secondary title and is one of the justified causes of crime, assuming that the survival of a person stops

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using wine If he is thirsty and has no choice but to use wine, or if his illness can only be cured by drinking alcohol and there is no other way to cure it, the distressed person can drink wine. And his action will not be a crime and no criminal punishment can be considered for him.

The evidence for such statement is article 152 of the Islamic Punishment Code which reads:

"Anyone who, in the event of a present or imminent danger, such as fire, flood, storm, earthquake or disease, commits an act which is considered a crime under the law in order to save his or her life or property, is not punishable, provided that the danger it should not be intentional and the perpetrator's behavior should be commensurate with the existing danger and necessary to ward it off.

Considering that the mentioned article is general and there is no connected and disconnected verbal analogy in the withdrawal of alcohol drinking under the general rules, it can be included in emergency alcohol drinking as well. The author suggests that if the legislator specifically specifies the alcohol drinking and mentions a separate article for it, he can prevent multiple interpretations and block the way of any difference of opinion.

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¹ Documentary discussions of narrations have been done using Rajali software (Darayeh Al-Noor) in Computer Center of Islamic Sciences, which has been set up according to the opinion of Ayatollah Shobairi Zanjani.