

Contraction and Expansion the powers of the agents of the Islamic system based on the theory of Velayat-e-Faqih'

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Abstract

The Contraction and Expansion of the powers of the agents of the Islamic system is one of the most challengeable discussions in four decades after the constitution of the Islamic Republic. It is essential to be observed in the various arena, and particularly it would be variant in perceptions of the Velayat-e Faqih theory. The purpose of this writing is to study of limits of agents' s contraction and expansion based on the perception of the Velayat-e Faqih, so the basic question is going to proceed to the contraction and expansion of Islamic Republic agents based on government theories in the perception of on the Velayat-e Faqih in various field, and to respond, remarkably according to the opinion of on the Velayat-e Faqih theories, knowing as elected or appointed, oversight role or attorneyship jurisprudent, bring about a change in agents contraction and expansion, so in the Velayat-e Faqih, agents have an outspread choice according to divine limits, justice, and expediency of Islamic republic and the public, however through the Velayat-e Faqih theories, the contraction and expansion, depending on the volume of powers which people grant them to jurisprudent and agents that is limited.

Keywords

Agents Authorization, Islamic System, Expediency, Limited Guardianship, Absolute Guardianship.

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Introduction

Outspread choice of Islamic republic agents along the length of history of Shia religious jurisprudence especially after the constitution of Islamic Republic and its applicable attendance arena in ratification and the abuse of power have been challengeable, which encounter with lots of contradictions and reviews, and all theories of government have a different opinion about agents contraction and expansion. The importance of this, outspread choices of leaders and agents have various consequences in the public acumen and management of political power.

As arena state correlates with the occupation in life, possession, chastity, and citizenry safety, the observation of agents' contraction and expansion is as much again. In that matter, after the constitution of the Islamic Republic, that has been the subject under discussion, and processing can illustrate some of the covert and evident aspects. This writing is proceeding about the contraction and expansion of the agents of Islamic Republic based on the theories of government perception, and in this hypothesis, the type of perception which the Velayat-e Faqih tendered has direct effect, for instance, believing in Velayat-e Faqih, knowing the agents and jurisprudent as elected or appointed in arena state or oversight role or jurisprudent attorneyship, it can swing the contraction and expansion of agents, in any matter that limited guardianship, Islamic republic agent will have the wide powers according to expediency and Islamic the public, but in most partial region guardianship theories, the contraction and expansion depend on the amount of contraction and expansion which people grant to jurisprudent and agent. This will be done in the script with termination and attention without importing any customary detail.

“Agent” defines as a person who is doing work, factor, and functionary (Moein, 1998. Vol. 3, p. 2814) is in the political system and includes all the people who are in charge of, in most cases, agent in the factor that is a co-worker of an Islamic leader.

Although lots of books and articles were written about the guardianship theory, there are no absolute books that proceed about agents' powers. In guardianship books, it was written about Islamic leader powers, and sometimes it was discussed about agents, the most discussion is about features and responsibilities except powers. In the study of agent's power, matters transferred from guardianship to agents have been reviewed besides that. Most of the books that will analyze have this kind of feature.

For instance, in *Derasat fi velayat-e-faqih va fiqh al-dolat al-Islamia* (Montazeri, 1409 AH), in the second copy, the writer proceeds just about some of the powers and responsibilities of guardianship. Or in *(Islamic government and guardianship in Imam Khomeini thoughts)* (Ayatollah Khomeini, 2013), in chapter 10 it was said about the features of Islamic republic agents. Or in *(limits, powers, and responsibilities of guardianship)* (Sheikholeslami, 2012) it has written about interior and exterior powers of guardianship. In some cases, it can be observed that the powers of agents. What this article wants to say is to analyze the agents' powers according to guardianship perception theory that power can change. We are forced to consider what is the Islamic governor's power, and in the next step find his agents' powers, which is paid attention to it a little bit.

1. Theoretical background

In Velayat-e Faqih's theory, there are two tremendous readings, absolute guardianship limited guardianship Both are related to the agents' outspread powers that have broadness and tightness. In constitutional history, this word was used for despotism, in contrast with constitutional, for instance, deceased Naini divided the government into two parts in general, the first one is: "the ownership government". This type of government obligates the rules and there is no limitation because the governor runs the country in the way that he

wants which is called dictatorial, slavery, and bullying. This kind of governor is called a despot. He illustrated about this government that the governor like the other owners' deals toward his properties with the states, knows the country as it's for himself, and the citizen like booty and cattle for the realization of his lust, whether he can make amends or violates the rights of people, and sometimes called freehold and subjectivity and mean to do what he wants, and he doesn't want. Then the second one is "the provincial government" that, on the contrary, the governor just does what he must do in his field. As a matter of the fact, this type is limited to the governor's responsibilities related to keeping country order and honesty. It is called fairly, and constitutional. in his point of view, it has two firm basic generally, first freedom and second the equality of people and governor partnership in all country affairs. so he believes that the second type won't lead to despotism, because this part of the government, concerning government and honesty, is limited without oppression and wasting, so it couldn't be like freehold (Naini, 1424 AH, pp. 8-13). He uses regional against freehold, and the situations should be considered as in Velayat-e Faqih. So, guardianship has the powers, not more than in dominion of expediency, naturally, the Islamic agents' powers are also limited.

Some of the contemporaneous jurists express three dominions for absolute guardianship, first, a just guardianship is in charge of all aspects of religion in the absence of the leader of the Time (Imam-e asr), and Islamic religious law and all its rules are related to him, and everything depends on his approval. Second, implementation of all social commandments which influence social order is the responsibility of fully qualified guardianship, or he accomplishes through people's assistance or gives over to a competent person. Third, during accomplishing divine commandments, in the case of overlap the commandments, call off accomplishing some commandments for more important ones, due to the people expediency, because he is freehold, and

it includes all commandments. Guardianship is responsible for distinguishing which one is most important than the others. (Javadi Amoli, 1999, p. 251) in this construing, Islamic agents have wide powers.

In a regional state, limited guardianship limits the agent's powers including ruler in total, and interpretation of appointed Imam Khomeini and the expansion of the power can not go beyond necessity. According to various theories of limited guardianship including oversight theory, elected guardianship theory, guardianship representation theory, and political attorney theory, we will discuss this in this article.

2. history and process of Islamic agent's power discussion in Velayat-e Faqih theory

In the history of religious jurisprudence, except in contemporaneous period, jurists considered that they have equal power with Imam-e-Masum, for instance, Ghazi-Ebne-Boraj (418) in Mahzab book, specified that presentation of limit is just for Imams and people who are hired for this reason:

و ليس يُقيم الحدودَ إلا الأئمةُ عليهم السلام، أو من ينصبونه لذلك، أو يأمرونه به

.Boraj Terablosi, 1406 AH, p. 518)

After that Shaykh Tusi (560) explained about the Velayat-e Faqih and its limits that implement of limits is just permitted to a person who is raised or elected by Imam. (Shaykh Tusi, 1400 AH, p. 300)

In the eighth century, Alame Helli (726-648), one of the jurists who claimed about hiring a conventional jurist bluntly to have the power of implement of limit. (al-'Allama al-Hilli, 1413 AH, pp. 250-253)

In other jurists' point of view, it is specified guardianship is elected by Imam-e-Masum and he is on behalf of Imam, one of them, shaykh Nor al-din Ali Karki (875-940), has come to Iran at the beginning of the Savafi government institution from Tahmaseb king and became Shaykh al-Islam, said that:

ان الفقيه الموصوف بالواوصاف المعينه منصوب من قبل ائمتنا (ع) نائب عنهم في جميع ما للنيابه مدخل (Mohaqiq Karaki, 1998 Vol. 1, p. 142).

Also Molla Ahmad Naraqi (1185-1245) in "Awa'id al-ayyam min muhimmat al-ahkam" Expressed the guardianship powers in proving Velayat-e Faqih after almost twenty anecdotes:

كلّ ما كان للنبي و الإمام - الذين هم سلاطين الأنام و حصون الإسلام - فيه الولاية و كان لهم، فللفقيه أيضا ذلك، إلّا ما أخرجه الدليل من إجماع أو نصّ أو غيرهما. (Naraqi, 1417 AH, p. 536)

After Naraghi's talk, Seyed Mostafa Khomeini has mentioned the forty powers of the ruler in the various arena (Khomeini, 1999, p. 49).

Deceased Abdollah Mamqani (1290-1351) define as absolute representation, put a lot of emphasis on the implementation of commandments. (Mamqani, n.d., pp. 141-142).

When Imam Khomeini proceeds to probate which is assured religious jurisprudence, some confirmation of guardianship powers are keeping government, guarding the frontier, and keeping the young people from depravity that legislator is dissatisfied to leave them. (Ayatollah Khomeini, 2000, Vol. 2, p. 498). in explanation of ruler and agents' powers as his followers in implement of divine commandments, he persisted the absolute guardianship in action an opinion arena, in appointed guardianship point of view, confirmed that not only are non-litigious matters include orphans and missing person, but also include all aspects in this matter. (Ayatollah Khomeini, 2000, Vol. 2, p. 563), he has written in his book "Al-bay" which is the outcome of his lessons in Najaf (1348):

فللفقيه العادل جميع ما للرسول و الأئمة (ع) ممّا يرجع الى الحكومة و السياسة (Ayatollah Khomeini, 2000, Vol. 2, p. 467)

For a just jurisprudent does as the same as the prophet (PBUH) and Imams in politics and government problems.

Imam was the first person who talked about ruler powers and Islamic agents and designed absolute guardianship against limited guardianship, then he recognized the field of ruler and agents powers

beyond initial and secondary commandments and limit them to necessity sphere is problematic and indicated to some results as drawing lines in the street that requiring occupation in a place is not in the frame of incidental commandments, military service and mandatory dispatch to the front, prevention of entrance and exit for government exchange, any goods and hoarding, extortion, addiction, dealing drugs, carrying a weapon, are the government powers (Ayatollah Khomeini, 2010, Vol. 20, p. 456).

Seyed Mostafa Khomeini believed that Imams and jurisprudent have the same rights. «هو أنه تعالى قد جعل للفقهاء كل ما جعله للإمام (عليه السلام)». He indicated to some of them such as incumbency of people as director, his dominion on people and religious laws, leadership for leading people, penetrating in the divine commandment, expediency of people's lives, which God deposits guardianship. And jurisprudents have known that as government. So, decreeing, judgment, and honesty are related to people's expediency. About the ruler powers believed that Islam has some commandments that people need (Ayatollah Khomeini, 2010) crystal clear that ruler is not able to implement these affairs and agents are responsible to do them, and it has swung in limits implementation of powers discussion.

3. range of Islamic agent's powers based on absolute guardianship theory

Agents' powers are alongside the serious condition. The topic is not talking about a specific person, it is about Islamic dominion, and among these agents, one of them is guardianship. The fundamental point is guardianship's choice has a direct effect on an agent's powers.

3-1. attribution of denouement in absolute guardianship theory

Attribution in Velayat-e Faqih theory is for the ruler and agents in an Islamic system to solve the political difficulties, it is important to care about that absolute guardianship is responsible for denouement in

Islamic government difficulties, leader of Islamic revolution believed that “one of the capacities of Velayat-e Faqih government has predicted is flexibility against complex issues that will appear in absolute guardianship. Of course, the enemies define it as despotism, which means that guardianship is just, so he couldn’t be a dictator. And if he is a dictator, he is not a just person. He mentioned that flexibility means that the government should transform itself. thus, there is a great flexibility that the guardianship is capable of the right way and rebuild it. He confirmed that guardianship is obedient to the law, to ignore the incorrect analysis.” someone thought that absolute guardianship is the thing that everyone can be in charge and does what he wants, it doesn’t have such meaning, leadership is forced to do the laws meticulously. When the attendants are in a hardship situation in law enforcement, leadership is the authority (Ayatollah Khamenei, 17/12/2003).

3-2. agents’ powers in Islamic government and attribution of relativity in absolute guardianship

As it pointed out, ruler and agent powers in social affairs and solving the problems is not defined as inconsiderate, because they ought to observe the justice, people’s expediency, public law, citizens' private laws. Guardianship must adjust its affairs based on divine law that «ولاية» (Makarem Shirazi, 1422 AH, p. 513) «الفتية مطلقة في حريم أحكام الشرع».

Imam Khomeini mentioned that Islamic government is neither dictatorial nor absolute guardianship, but it is constitutional, due to the obligatory of a certain condition, which is determined in the Quran (Ayatollah Khomeini, 2001, p. 33).

He believed that the Islamic government is the law government. (Ayatollah Khomeini, 2001, p. 62) This law is a warrantor of the prevention of the governments' depravity to tyranny. Based on social Islamic philosophy, faith in God is the only fact that a ruler becomes accountable (Motahhari, 2000, Vol. 1, p. 554).

In this perception of absolute guardianship and doesn't bound it into certain conditions, it is not indiscretion. but we meant absolute relativity. Jurisprudents have determined the limitation of every government. Hence the intention of attribution is the expansion of the range of Velayat-e Faqih till religion is firm, and it won't be like the other one-dimensional governments. (Ma'refat, 2000).

3-3. agents' powers in absolute guardianship theory

In absolute guardianship theory, one of the pivoted elements is the expediency of people and government. The base and effectiveness of keeping the expediency restriction cause the state command to become prior between individual and state command. When people gather together can make the right decision. «هو الاعتبار الشرعي المتعلق بافعال العباد» (Hakim, 2005, p. 55).

But in some situations, the command can be changeable due to the conformation change (Motahhari, 2010, Vol. 1, p. 76).

People's expediency is the most essential yardstick in governmental command, it has some features such as:

First: recognition, exportation, and activity for applying it is the Islamic ruler's responsibility. Consultation is also important.

Second: it is exported based on religious rules, so in this field, the ruler doesn't have any permission that can issue the command yardstick, because it was predicted before (Ayatollah Khomeini, 2000, Vol. 20, p. 461).

Third: the obedience of that is obligatory for all people:

إذا امر الحاكم الشرعي بشئٍ تفديراً منه للمصلحة العامة، وجب اتباعه علي جميع المسلمين (Sadr, 1402 AH, p. 116).

When a religious ruler orders a certain thing, all Muslims have to obey.

Forth: it is temporary and changeable, government command would be firm till a better situation is coming up, (Seyedbaqeri, 1388, p. 276) for example,

in these commands we can indicate that Islamic government decision for births (Ayatollah Khomeini, 2010, Vol. 4, p. 59) control or ownership limitation to be endangered. (Motahhari, 1996, Vol. 2, p. 86)

Although, according to domination rules and regularity, all agents can not behave based on their desires under any pretexts.

Imam Khomeini has written about it:

ليس لاحد من الولاه الاستبداد برايه بل جميع مايجري في الحكومه و شؤونها و لوازمها لابد و ان يكون علي طبق القانون الالهي نعم للوالي ان يعمل في الموضوعات علي طبق الصلاح للمسلمين او لاهل حوزته و ليس ذلك استبداداً بالرأي (Ayatollah

.Khomeini, 2010, p. 461)

All agents must work based on divine commands. However, the governor can accomplish various topics based on people's expediency in his domination, it doesn't mean that's despotism.

The leader of the Islamic revolution declared that guardianship's responsibility is considering the people's expediency. For instance, if social interests are contrary to some individual profits or personal desires, it needs a guardian who can remind him to coordinate both.

(Hosseini Haeri, 2020. p. 188)

So, in Imam Khomeini's analysis about absolute guardianship, guardianship or agents couldn't interfere in social affairs without justice. As Imam Khomeini said in the eighth manifesto that a person who is not considered the law and religion does not have the right of interference in people's private lives. Nothing (wisdom, religion) permits rulers to interfere with the other's lives without their consent. Deceased Imam believes that even prophet (PBUH) and Imam-e-Masum are not allowed that interfere in people's lives and properties without certain reasons. Because that's against divine commands.

(Ayatollah Khomeini, 2001, Vol. 2, p. 482)

Prophet is superior to all Muslims, but he hadn't behaved against divine commands «النَّبِيُّ أَوْلَىٰ بِالْمُؤْمِنِينَ مِنْ أَنفُسِهِمْ» (Holy Quran, al-Ahzab, 6)

So, the ruler and his agents are allowed to interfere in the general affairs of people which is based on justice and expediency, Why the ruler and the political government is responsible for adjusting the social-political affairs and can not enter other fields naturally. Of course, in the case of interruption between individual and social rights, social rights gas priority and discrimination is the responsibility of legal political government attendant.

In absolute guardianship reading, agents' powers are not limited to necessity and guardianship ought to act selflessly against expediency.

(Ayatollah Khomeini, 2000, p. 59)

So, in Shia political government emphasizes that agents and rulers are forced to do the commands. He considered all behaviors, discourses, plans, and rules. And we have already known that considering expediency is one of the inevitable matters that rulers must notice about it. Kashef-ul-Qeta has written that the ruler's command is followed only when is not against the region. Unless Muslims' expediency. «إنما يتبع حُكْمَ الحاكم إذا لم يخالف الشرع و لم يتعمد الباطل و لا يمضي إلا فيما فيه صلاح المسلمين» (Kashif Alghita, 1422. p. 347).

So absolute guardianship, in Imam Khomeini's perception, analyzes in a way that social expediency considered to Islamic government politicians it can rescue from hardship. So that agents' powers are disciplined and based on social and people's expediency and justice, they cannot perform desirable or make use of his powers or treat people.

4. the powers contraction and expansion of agents based on the limited theory

It was mentioned that agents' powers have certain rules, it is considered that those conditions are more important in this theory, and naturally, their powers contraction and expansion are limited. Thus, there are various readings that we will discuss.

4-1. the guardianship occupation permission and limits of agents' powers

Deceased Akhond Khorasani in guardianship's powers discussion, in the first step, it has indicated to Imam powers confirmation in his dominion, have trouble for guardianship, he claimed about Imam's powers that no doubt in general affairs has a region, then he talked about Imam's interfering to detailed affairs such as selling other's house, or stuff like that knows as an issue. The reason is you can occupation in people's property just with their permission. Prophet had the same behavior with people. The limits of following their orders are determined in anecdotes. (Akhond Khorasani, 1406, p. 35). anyway, this perspective, basically observed the ruler and agents' powers limitation and granted most affairs in the general arena regarding the government rules.

On the other hand, deceased Ayatollah Khomeini didn't recognize the Velayat-e Faqih as the common definition. But he discussed occupation permission, and he believed that the government ruler is not correct. (Mousavi Khomeini, 2010, Vol. 1, p. 258). he has written in the conclusion that in absence of Imam Mahdi, there is no reason for Velayat-e Faqih, but government belongs to the prophet and Imams. From the anecdotes, guardianship can use a couple of factors: judgment and religious decree. There is no permission for guardianship to interfere with the people's properties except in non-litigious matters.

«أن الولاية لم تثبت للفقهاء في عصر الغيبة بدليل وإنما هي مختصة بالنبي والائمة عليهم السلام، بل الثابت حسبما تستفاد من الروايات أمران: نفوذ قضائه و حجية فتواه وليس له التصرف في مال القصر أو غيره مما هو من شؤون الولاية إلا في الأمر الحسبي فان الفقيه له الولاية في ذلك لا بالمعنى المدعى» (Mousavi khomeini, 2010, Vol. 1, p. 424)

Then as same as deceased Akhond Khorasani, he expressed that this is occupation because it doesn't allow the occupation of the people's property, except in some situations that is non-litigious matters and

there is no other chance and we ask the main owner to use. Then he was written so much is certain that completely qualified guardianship is the person who God is satisfied with his seizure, so the point is regard to occupation, not government:

«و القدر المتيقن ممن رضى بتصرفاته المالك الحقيقي هو الفقيه الجامع للشرائط

فالثابت للفقيه جواز التصرف دون الولاية» (Mousavi Khoei, 2010, Vol. 1, p. 424)

Therefore, interfering in affairs would be fine but not from the government's view. So, as it was mentioned, there is no chance for agents remarkably.

In political attorneyship theory (Haeri Yazdi, 1995, p. 119) a person who is elected by people as ruler or guardianship as a proxy for people, is capable to determine the range of agents' powers. The attorneyship must be a temporary, permitted, unsteady contract, and only in the field that client has granted, the lawyer has the right of interfering. It is considered that in this theory, the limitation of agents' powers is just from what people grant to.

4-2. agents 'powers in probate theory

On the other hand, some contemporaneous jurists, besides considering non-litigious matters define as general, also accept the political government of jurists. Deceased Sheikh Javad Tabrizi believed that Velayat-e Faqih, the custody of non-litigious matters, is essential to control the government and defenses of the country (Tabrizi, 2006, Vol. 3, p. 358). Jurist must keep the government and not quit anymore. Based on current observation, agents' powers depend on ruler recognition and divine commands, and if he will consider that for instance whether government factor can interfere or not, it will be enacted. there are no differences between this matter and absolute guardianship.

4-3. agents' powers in oversight jurisprudent theory

Some of the p threshold partial government can persist in the partial government theory format which limits the ruler power due to the Islamic rules of the country oversight, according to it, the limits of agents' power would be specified in law. Ayatollah Montazeri in his last theories about Velayat-e Faqih, to reply to his scholars' questions, has expressed to dispel doubt concerning Velayat-e Faqih. In the last years of his life, to reject appointment theory, he believed that legislator just declared about conditions and competent outstanding, government legality depends on people's allegiance. The government dominion format depends on people's requirements. (Montazeri, 2009, p. 13)

He limited the jurisprudent powers. He has written that:

The aim of electing the guardianship by people is that he can observe the dominion whether it is Islamic or not in case of people requirement. Otherwise, non-elected guardianship just guides and talks about his theories and can not impose his opinions on people.

(Montazeri, 2009, p. 23)

4-4. agents' power based on an elected theory

Most people who talked about elected guardianship, specified the agents' powers depend on the limits which people determine. In elected theory, guardianship dominion depends on people's vote and support. A person is formally guardianship when people accept him. If a person is completely qualified but people don't accept him, he no longer is the guardianship. Generally, all the powers that are given to jurisprudent are from people. And they are not able to act on the contrary of people's requirements. whereas in appointment theory, jurisprudent can perform like the prophet (PBUH) and issue the command. In elected theory, affairs are related to citizen belief. In Motahari's point of view, a person who is not elected by people cannot be a jurisprudent because it is a kind of cruelty (Motahhari, 2008, Vol. 5, p. 147).

Conclusion

The context was about the contraction and expansion of agents' powers based on Velayat-e Faqih theory as one of the most serious theories in Shia political-religious jurisprudent. Believing it or not, the range or broadness and tightness of agents' powers depend on the way of reading and analysis. Naturally, in appointment theory, and absolute guardianship the rights of enforcement powers from prophet and Imam-e-Masum to jurisprudent. He can determine the limits of agents' powers sphere based on Islamic rules and expediency. And if agents interfere in the various arena that is legal. However, in limited guardianship which is considered as elected and attorneyship theory, if they perform beyond certain rules that are illegal. This is close to partial theory. So, in possession permission, there is no room to discuss it in the political field.

As a matter of the fact, nowadays social-political affairs are not as easy as personal affairs. It has different levels that would destroy the peace of society and security. So, notice that in certain circumstances, something occurs in a way that agents' powers must use, and that's not specified just for government. For instance, in such cases, authorship theory can not wait for the client that is there any permission to interfere with a terrorist person who wanted to create chaos for an agent or ruler as a lawyer to keep the security. Common sense permits to do it whether as expediency or necessity.

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