

The Application of the Principle of Absolute (Isalat al-Itlaq) in Contemporary Transactions Jurisprudence with Emphasis on Imam Khomeini's Book of Sale (Kitab al-Bay)

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Abstract

The principle of *iṭlāq* (absoluteness) is a fundamental verbal principle in Islamic legal theory that uncovers the speaker's true intent when there is doubt about potential restrictions in speech, and its authority rests upon rational custom (*binā' al-ʿuqalā'*) and its endorsement by the Lawgiver. Employing a descriptive-analytical method, this article first elucidates the theoretical foundations of this principle from the perspectives of Imam Khomeini and seven prominent scholars (Anṣārī, Khurāsānī, Nāʾinī, Muẓaffar, Khūʾī, Ṣadr, and Āshtiyānī). It then analyzes its concrete applications in six cases from his five-volume work *al-Bayʿ*, including the binding nature of *muʾāṭāt*, *khiyār al-majlis*, the loss of counter-values, liability for hunting in *iḥrām*, and the distinction between prescriptive and constitutive prohibitions. Subsequently, drawing upon rational custom and customary practice, the study explores the scope of this principle in contemporary emerging transactions such as cryptocurrencies, the sale of human organs, and contracts involving data, patents, and franchises. The findings indicate that Imam Khomeini, through his precise distinction between the principle of generality (*ʿumūm*) and absoluteness (*iṭlāq*), and his reliance on the preliminaries of wisdom (*muqaddimāt al-ḥikma*), offers an innovative approach fully aligned with customary practice—further reflected in his theory of gradual linguistic convention (*al-waḍʿ al-takwīnī*). The conclusion is that the principle of *iṭlāq*, as a rational and *sharʿī* instrument—while respecting its limitations (e.g., doubts in application and the presence of specific evidence)—can effectively fill the normative gaps of modern financial systems and ensure the dynamism of contemporary jurisprudence.

Keywords: Isalat al-Itlaq, Kitab al-Bay', Imam Khomeini, Practice of the Wise, Preliminaries of Wisdom, Emergent Transactions.

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1. Introduction

1-1. Statement of the Problem and Importance of the Research

In the science of *usul al-fiqh*, one of the first and most important steps of inference is understanding the speaker's intent from the words used in the Book (Qur'an) and the Sunnah. Many religious texts have been issued in absolute form; that is, a word that indicates the nature and essence without any restriction, such as "Allah has permitted trade" (Qur'an 2:275) and "O you who have believed, fulfill [all] contracts" (Qur'an 5:1). In these cases, there is always the possibility that the speaker (God, the Prophet, or the Imam) had a specific restriction in mind but refrained from mentioning it due to the existence of a contextual or situational indicator (*qarina haliyya* or *maqamiyya*). In such circumstances, the jurist is compelled to employ a rule known in *usul al-fiqh* as "*Isalat al-Itlaq*."

Given the ever-increasing development of human societies, the transformation of economic relations, and the emergence of new phenomena that have no precedent in jurisprudential texts (such as digital currencies, buying and selling of body organs, smart contracts, data selling, patent rights, and franchising), the necessity of re-reading jurisprudential sources and utilizing *usuli* rules such as *Isalat al-Itlaq* for inferring the rulings on these issues is felt more than ever. Imam Khomeini (may God have mercy on him), in the five-volume book "*Al-Bay'*," has extensively used lexical principles (especially *Isalat al-Itlaq*) for inferring the rulings on transactions (Khomeini, 1392 SH, Introduction). The examination of this valuable work can provide a practical model for using *Isalat al-Itlaq* in solving emerging issues.

Imam Khomeini (may God have mercy on him) in his *usuli* works such as "*Manahij al-Wusul*" (Khomeini, 1410 AH, vol. 1: 55) refers to the genetic theory of positing and believes that words are established gradually and according to human needs. In "*Al-Rasa'il*" (Khomeini, 1410 AH, vol. 1: 238) he establishes the authority of lexical principles on the practice of the wise and says: "The wise have a principle for *Isalat al-Haqiqa* or *Isalat 'Adam al-Qarina* or *Isalat al-Zuhur*, and when there is doubt about the existence of a contextual indicator, *Isalat 'Adam al-Qarina* applies. The truth is that the proof and evidence in all lexical principles is the same, and that is the very agreement and consensus of the wise in their speeches and discussions among themselves." He also emphasizes this same foundation in "*Mi'tamad al-Usul*" (Khomeini, 1410 AH, vol. 1: 348) and "*Anwar al-Hidaya*" (Khomeini, 1427 AH, vol. 1: 112), and in "*Al-Istishab*" (Khomeini, 1381 SH, vol. 1: 45) he discusses the relationship between *Isalat al-Itlaq* and *istishab*.

Allamah Muzaffar in "*Usul al-Fiqh*" (Muzaffar, 1370 SH, vol. 1: 68-70) considers this rule one of the most important lexical principles and in its definition writes: "Lexical principles are principles that are used to establish the speaker's intent and purpose from the word, when the listener is in doubt about understanding the speaker's intent." He considers the recourse of *Isalat al-Itlaq* to be in cases where the absolute word has various states and restrictions and there is doubt in the will of some of them (Muzaffar, 1370 SH, vol. 1: 70). Akhund

Khorasani in "Kifayat al-Usul" (Khorasani, 1431 AH, vol. 1: 376) considers absolute to be a word that indicates the nature without any condition. Na'ini in "Fawa'id al-Usul" (Na'ini, 1376 SH, vol. 1: 215) differentiates between absoluteness and generality, considering absoluteness to be from rational indications and generality from lexical indications. Sayyid Abu al-Qasim Khoei in "Muhadarat fi Usul al-Fiqh" (Khoei, 1419 AH, vol. 5: 252) considers the authority of lexical principles to be from the aspect of discovering and being a path to the actual intent. Shahid Sadr in "Mabahith al-Usul" (Sadr, 1365 SH, vol. 4: 129-130) distinguishes between lexical and practical principles in terms of lengthiness and perpendicularity. Mirza Muhammad Ashtiyani in "Bahr al-Fawa'id" (Ashtiyani, 1429 AH, vol. 7: 358) says: When there is doubt in the speaker's intent and no contextual indicator to the contrary is established, lexical principles take precedence over practical principles, even if the basis of practical principles is from the chapter of devotional obedience.

1-2. Research Method

This research has been conducted using a library-based method and a descriptive-analytical approach. To this end, by referring to the main jurisprudential and usuli books (including Kitab al-Bay', Manahij al-Wusul, Al-Rasa'il, Fara'id al-Usul, Kifayat al-Usul, Usul al-Fiqh, and also comprehensive jurisprudential and usuli software), the necessary information has been collected and then analyzed and examined.

1-3. Research Questions

Main Question:

What is the status and function of Isalat al-Itlaq as a lexical principle in inferring the rulings of transactions jurisprudence (especially in Imam Khomeini's Kitab al-Bay'), and how can it cover the legal gaps of contemporary emergent transactions?

Sub-questions:

1. What is the concept, foundations, and authority of Isalat al-Itlaq from the perspective of Imam Khomeini (may God have mercy on him) and other prominent usulis (Ansari, Akhund Khorasani, Na'ini, Muzaffar, Khoei, Shahid Sadr, and Ashtiyani), and what differences exist in their approaches?
2. In which issues has Imam Khomeini (may God have mercy on him) used Isalat al-Itlaq in the five-volume book "Al-Bay'", and how has he inferred rulings by relying on this principle?
3. What is the fundamental difference between "Isalat al-'Umum" and "Isalat al-Itlaq" in Imam Khomeini's usuli thought, and what effect does this distinction have on the process of ijtihad?
4. What is the relationship between the genetic theory of positing from Imam Khomeini's perspective and the flow of Isalat al-Itlaq, and how does it affect the dynamism of jurisprudence in facing new phenomena?

1-4. Research Hypotheses

1. It seems that Isalat al-Itlaq, as a rational and legal principle, is an efficient tool for resolving legal doubts in new transactions and, by relying on the practice of the wise, can fill jurisprudential gaps.

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2. It seems that Imam Khomeini (may God have mercy on him), by distinguishing between the situational indication of generality and the rational indication of absoluteness, has presented an innovative approach in the application of Isalat al-Itlaq that is in complete harmony with customary practice.
3. It seems that the genetic theory of positing creates a high capacity for applying lexical principles to new phenomena and guarantees the dynamism of jurisprudence in responding to emerging needs.
4. It seems that by observing the limitations of circumstantial doubts and specific evidences, Isalat al-Itlaq can be extended to the realm of cryptocurrency transactions, buying and selling of body organs, and new contracts.

1-5. Research Background

In the field of the application of lexical principles in transactions jurisprudence, numerous studies have been conducted. Among them is the thesis "Examination of the Application of Lexical Principles in Imami Transactional Jurisprudence and Interpretation of Legal Contracts" (Rahimvand, 1393), which generally examines these principles in legal contracts. Also, the thesis "Application of Lexical Principles in the Interpretation of Iranian Laws with Emphasis on the Civil Code" (Moqaddasniak, 1395) has examined the interpretive aspect of these principles in statutory laws. The thesis "Application of Lexical Principles and Legal Schools in Contract Interpretation" (Malania Malekshah, 1395) has also addressed the effect of these principles in contract interpretation. Additionally, two scientific-research articles have been written in this area: First, "Analysis of the Role of the Certain Minimum (Qadr al-Mutiqin) in Absolutization and the Methods of Its Discovery with an Approach to the Views of Imam Khomeini and Shahid Sadr" (Alishahi and colleagues, 1401), which examines the role of the certain minimum in the process of absolutization. Second, "The Difference between Absolute and General from the Perspective of Akhund Khorasani and Imam Khomeini" (Khomeini and Daneshpour, 1388), which is devoted to a comparative comparison of the views of two great usulis on the issue of distinguishing between absolute and general. However, none of these studies has specifically and focused on the application of Isalat al-Itlaq in Imam Khomeini's Kitab al-Bay' and then its extension to emergent transactions. This article seeks to fill this same research gap.

2. The Concept, Foundations, and Authority of Isalat al-Itlaq

2-1. The Concept and Definition of Isalat al-Itlaq

To enter the discussion of Isalat al-Itlaq, we must first clarify the meaning of the two key terms "asl" (principle) and "itlaq" (absoluteness) from the perspective of language and terminology, because any analysis without precise knowledge of these concepts will be incomplete and unreliable.

In the terminology of usul al-fiqh scholars, multiple meanings have been mentioned for "asl," each of which is used in its own place: Sometimes it means a rule that is used in cases of doubt to determine the apparent obligation (such as *istishab* and *bara'ah*); sometimes it means a proof and discoverer of something (such as that the principle in establishing a ruling is the Book and the Sunnah); sometimes it means principle as opposed to branch (such as "wine is the

principle for nabidh" in the chapter of analogy); and sometimes it means that which indicates preference (such as that carrying speech on the literal meaning is the principle compared to the figurative meaning). In a comprehensive and accepted definition, "asl" in *usul al-fiqh* refers to a rule to which the jurist resorts in times of doubt and uncertainty to reach the apparent ruling and determine his practical duty (Adalat, 1385 SH: 67; Valayi, 1387 SH: 34). This definition includes both lexical and practical principles and shows that the main function of principles is to remove bewilderment and doubt in the position of practice and inference.

The word "itlaq" in language is the infinitive of the causative form (bab if'al) from the root "t-l-q" meaning to release, to set free, and to leave without restriction and condition (Sajjadi, 1380 SH: 15). In the terminology of *usul al-fiqh*, "mutlaq" (absolute) is a word that indicates the nature and essence of a thing without any restriction or condition, without referring to an individual or a particular characteristic of it. A more precise analysis of this concept shows that absoluteness is not a lexical feature, but a semantic and abstract feature that is discovered from the absence of a restriction in speech. For example, when it is said "free a slave" (a'tiq raqaba), the word "raqaba" (slave) is used in absolute form and includes every slave (believer, unbeliever, healthy, sick, etc.), unless a restriction like "believing" (mu'mina) is added to it. In contrast, "muqayyad" (restricted) is a word that is mentioned together with a restriction, such as "believing slave" (raqaba mu'mina) which indicates a slave with faith. The subtle point is that in some cases, a word that is apparently absolute is actually restricted to an unspoken restriction due to the existence of contextual or situational indicators; but *Isalat al-Itlaq* negates this possibility.

Imam Khomeini (may God have mercy on him) in "*Mi'tamad al-Usul*" (Khomeini, 1410 AH, vol. 1: 348) has defined *mutlaq* in this way and then points to an important point: absoluteness is a rational indication based on the preliminaries of wisdom, not a lexical and posited indication. This means that unlike generality for which a specific word has been posited (such as "kull" and "jami'"), for absoluteness no specific word has been posited and its understanding is the responsibility of reason and custom. Shaykh Ansari in "*Fara'id al-Usul*" (Ansari, 1428 AH, vol. 4: 86) has also defined *mutlaq* and *muqayyad* and explained their difference in terms of indication and jurisprudential effects, but unlike Imam Khomeini, he considers absoluteness also a type of lexical indication that is obtained from the implied or rational meaning. Muhaqqiq Hilli in "*Shara'i' al-Islam*" (Muhaqqiq Hilli, 1408 AH, vol. 2: 3) in the position of stating the conditions for the validity of transactions has paid attention to the concept of absoluteness and restriction and has shown that many rulings of transactions are stated in absolute form and their restriction requires separate evidence. Allamah Hilli in "*Qawa'id al-Ahkam*" (Allamah Hilli, 1419 AH, vol. 3: 438) in the discussion of distinguishing plaintiff and defendant has referred to custom, which is in complete harmony with the concept of absoluteness (i.e., carrying speech on the customary meaning without restriction). This alignment between

Allamah Hilli's view and the foundations of Isalat al-Itlaq shows that this principle is rooted in customary and rational practice.

2-2. The Preliminaries of Wisdom and Their Role in the Flow of Isalat al-Itlaq

For Isalat al-Itlaq to flow in a speech, the existence of four preliminaries (known in *usul al-fiqh* as "preliminaries of wisdom") is necessary and unavoidable. These preliminaries are not merely formal conditions, but a rational analysis of the position of the issuance of speech and the speaker's intention. The first preliminary is that the speaker be in the position of expression; that is, he intends to fully convey his intent to the audience and is not in the position of ambiguity or brevity. If the speaker is not in the position of expression, but rather in the position of sending messages or brief instruction, one cannot conclude absoluteness from his silence. This preliminary is easily established where the speaker speaks for guidance and legislation (such as the Sacred Lawgiver). The second preliminary is that the speaker have the power to restrict; that is, if he had a restriction in mind, he could easily add it to his speech and there was no obstacle. The third preliminary is that the speaker, despite having the power to restrict, has not mentioned any restriction in the position of expression. This silence in the face of restriction is the most important indicator for discovering absoluteness. The fourth preliminary is that no indicator to the contrary (i.e., an indicator of restriction) has been established in the speech or outside it. If there is an indicator of restriction, then it is no longer the turn of Isalat al-Itlaq.

Shaykh Ansari in "*Fara'id al-Usul*" (Ansari, 1428 AH, vol. 4: 86) emphasizing these preliminaries, says: "The requirement of the lexical principle is multiplicity in obligation, because the absolute with restriction is certainly different from the restricted." In other words, as long as we do not have evidence for restriction, the same absolute ruling is authoritative and one cannot consider it restricted merely on the basis of probability. He in "*Al-Makasib*" (Ansari, 1419 AH, vol. 1: 12) has pointed to an important distinction between obligatory prohibition (related to the act of the obligated person) and situational prohibition (related to the invalidity of the transaction), and in "*Matarih al-Anzar*" (Ansari, 1404 AH, vol. 2: 34) has discussed the theories of "governance" and "entry" which are used in the conflict of evidences. Akhund Khorasani in "*Kifayat al-Usul*" (Khorasani, 1431 AH, vol. 1: 512) also emphasizes the necessity of establishing these preliminaries and says: "The source of recourse to practical principles in some matters is from the aspect of the execution of obligation, while in lexical principles, comprehensive knowledge of the existence of a specifier prevents recourse to the general." This difference between lexical and practical principles from Akhund Khorasani's perspective shows that lexical principles are at a rank prior to practical principles, and as long as one can discover the speaker's intent through them, it is not the turn of practical principles.

Muhaqqiq Iraqi in "*Badayi' al-Afkar*" (Iraqi, 1370 AH, vol. 1: 97) has examined the concept of "*tabadur*" in these preliminaries and considers it to mean the occurrence of the meaning of the word in the mind without the need for an indicator. *Tabadur* is a sign of the literalness of the meaning and in the flow of

the preliminaries of wisdom has an effective role in discovering absoluteness. Sakkaki in "Miftah al-Ulum" (Sakkaki, 1407 AH, vol. 2: 89) has pointed to the fundamental difference between lexical indication (which is seen in generality) and rational indication (which plays a role in absoluteness) and considers this difference to be one of the foundations of the distinction between general and absolute. Imam Khomeini (may God have mercy on him) in "Mi'tamad al-Usul" (Khomeini, 1410 AH, vol. 1: 348) and "Manahij al-Wusul" (Khomeini, 1410 AH, vol. 1: 215) has also discussed these preliminaries in detail and emphasized their pivotal role in the flow of Isalat al-Itlaq. He in "Anwar al-Hidaya" (Khomeini, 1427 AH, vol. 1: 112) explicitly states: "In case of doubt about the existence of a restriction, Isalat al-Itlaq removes the doubt." Also in "Kitab al-Bay'" (Khomeini, 1392 SH, vol. 1: 280-282) he has practically referred to these preliminaries and shown how they can be used to discover absoluteness in the evidences of transactions.

2-3. The Authority of Isalat al-Itlaq and the Practice of the Wise

The authority of Isalat al-Itlaq, like other lexical principles, is based on the "practice of the wise." This rational practice has a deep anthropological principle: every rational human being, in the position of making oneself understood and understanding others, expects his audience to carry his speech on the apparent and customary meaning and not pay attention to far-fetched probabilities. The wise in their daily conversations, whenever they hear an absolute speech and the speaker is in the position of expression and has not established an indicator to the contrary, carry it on absoluteness and pay no attention to illusory probabilities such as the speaker's negligence, joking, intention of ambiguity, error, or jesting (Ansari, 1419 AH, vol. 4: 86). This rational practice is so widespread and continuous that it can be considered an unwritten law among all rational human beings, regardless of cultural and religious differences.

Allamah Muzaffar in "Usul al-Fiqh" (Muzaffar, 1392 SH, vol. 1: 75) in explaining this foundation says: "The source and evidence of authority in all lexical principles is one, and that is the agreement of the wise in their current speeches among themselves on taking the apparent meaning of speech and not paying attention to the will contrary to the apparent, just as they pay no attention to the probability of negligence or error or jesting or the will of brevity and ambiguity." He elsewhere (Muzaffar, 1370 SH, vol. 1: 74) more decisively states: "The validity of all these principles returns to the validity of Isalat al-Zuhur, and in reality we have only one principle, and that is Isalat al-Zuhur. Because in the case of the probability of figurative meaning, the word has an apparent meaning in the literal; in the case of the probability of specification, it has an apparent meaning in the general; in the case of the probability of restriction, it has an apparent meaning in the absolute; and in the case of the probability of ellipsis, it has an apparent meaning in the absence of ellipsis." This theory that all lexical principles return to one principle is one of the most important achievements of the science of usul al-fiqh, and from Allamah Muzaffar's perspective, this single principle is nothing but "Isalat al-Zuhur."

Imam Khomeini (may God have mercy on him) in "Al-Rasa'il" (Khomeini, 1410 AH, vol. 1: 238) has fully accepted this view and eloquently states: "The proof and evidence in all lexical principles is the same, and that is the very agreement and consensus of the wise in their speeches and discussions among themselves. The wise pay no attention to the probability of negligence or error or joking or the intention of brevity and ambiguity." Since the Sacred Lawgiver has not prohibited or rejected this rational practice and has not provided a specific way to determine His intent (different from the customary method), He has naturally endorsed this practice and made lexical principles a legal authority. As a result, the jurist also in the position of inference can comfortably resort to these principles. The important point is that the Lawgiver's endorsement can be in two forms: sometimes verbally and with explicit expression (such as "Actions are but by intentions") and sometimes in the form of practical silence in the face of rational practice. Here, the Lawgiver's silence in the face of the practice of the wise is itself a sign of endorsement.

Akhund Khorasani in "Kifayat al-Usul" (Khorasani, 1431 AH, vol. 1: 512) although he considers the authority of lexical principles to be from the chapter of "generic conjecture" and believes that the predominance of the uses of a word in a meaning creates a strong conjecture to its will, in practice he is close to the practice of the wise and considers this same generic conjecture authoritative. Na'ini in "Fawa'id al-Usul" (Na'ini, 1376 SH, vol. 1: 30-31) with another view says: "In lexical principles, investigation and examination in it is investigation from the obstacle, not from the requirement, because the general is always exposed to specification and restriction. For the necessity of investigation in practical principles and lexical principles, there are two evidences, in one of which they are common (comprehensive knowledge) and in the other they differ." This means that in lexical principles, the principle is the authority of the apparent meaning, and the jurist before resorting to the general or absolute must ensure the absence of a specifier or restrictor (obstacle). Sayyid Abu al-Qasim Khoei in "Ajwad al-Taqrirat" (Khoei, 1368 SH, vol. 2: 275) emphasizes non-recourse to the general in circumstantial doubts; that is, if we doubt whether an external individual is truly an instance of the general or not, we cannot include it merely with Isalat al-'Umum. This point is in complete harmony with the foundations of Isalat al-Itlaq. Shahid Sadr in "Mabahith al-Usul" (Sadr, 1365 SH, vol. 4: 129-130) distinguishes between lexical and practical principles in terms of "lengthiness" and "perpendicularity" and shows that in the conflict of principles, sometimes their fall is longitudinal (one after another) and sometimes perpendicular (simultaneous). Mirza Muhammad Ashtiyani in "Bahr al-Fawa'id" (Ashtiyani, 1429 AH, vol. 7: 358) writes: "Lexical principles take precedence over practical principles, even if the basis of practical principles is from the chapter of devotional obedience."

2-4. The Distinction between General and Absolute in Imam Khomeini's Thought

One of the most important and innovative discussions of Imam Khomeini (may God have mercy on him) in the field of lexical principles is the precise distinc-

tion between general and absolute. He in "Kitab al-Bay'" (Khomeini, 1392 SH, vol. 1: 280-282) explicitly states: "Generality is established through lexical evidence and situational indication (such as the word 'kull' and the plural with alif and lam), but absoluteness is discovered through the preliminaries of wisdom and rational indication. The inclusion of the general is of the type of lexical indication, and the inclusion of the absolute is of the type of rational indication." An analysis of this distinction shows that Imam Khomeini (may God have mercy on him) seeks to show that absoluteness, contrary to what some have thought, is not a type of generality, but has a different nature. In generality, the word indicates that the ruling is attached to all individuals of the nature; in absoluteness, the word only indicates that the ruling is attached to the nature (without restriction), and since the nature pervades all individuals, consequently, the ruling extends to all individuals.

This distinction has important practical fruits. In cases where we doubt the exclusion of an individual from the general, the reference is *Isalat al-'Umun*; but in cases where we doubt the restriction of the absolute (for example, whether there is a restriction or not), the reference is *Isalat al-Itlaq*. Also, in cases where we doubt the continuity of the ruling in time, this doubt is removed by *Isalat al-Itlaq* (not by *Isalat al-'Umun*), because continuity relates to the ruling on the nature, not on individuals. Imam Khomeini in "*Manahij al-Wusul*" (Khomeini, 1410 AH, vol. 2: 132-134) emphasizes that the general does not need the preliminaries of wisdom, because its indication is situational and independent, while absoluteness does not form without the preliminaries of wisdom. This means that to understand generality, one only needs to hear the general word, but to understand absoluteness, one must establish the preliminaries of wisdom.

Akhund Khorasani in "*Kifayat al-Usul*" (Khorasani, 1431 AH, vol. 1: 376) has also pointed to the difference between absolute and general, but has not done so with the clarity and depth of Imam Khomeini's distinction. Na'ini in "*Fawa'id al-Usul*" (Na'ini, 1376 SH, vol. 1: 215) has differentiated between absoluteness and generality, considering absoluteness related to "the nature itself" and generality related to "the individuals of the nature," but he does not pay attention to the role of the preliminaries of wisdom in absoluteness in the manner of Imam Khomeini and has merely stated a conceptual difference. Allamah Muzaffar in "*Usul al-Fiqh*" (Muzaffar, 1392 SH, vol. 1: 74) has also referred to the return of all principles to *Isalat al-Zuhur*, but has not expanded the precise distinction between lexical and rational indication to this extent. This distinction is one of the main pillars of Imam Khomeini's usuli theory, which is used throughout *Kitab al-Bay'* and provides a model for contemporary jurists in facing religious texts. In other words, Imam Khomeini with this analysis has paved the way for a broader application of absoluteness in emergent issues, because by accepting that absoluteness is a rational indication, it will no longer be limited to a specific time and place, and contemporary custom can, by establishing the preliminaries of wisdom, apply absoluteness to new phenomena.

3. The Application of *Isalat al-Itlaq* in Imam Khomeini's *Kitab al-Bay'*

Imam Khomeini in this book has used lexical principles, especially *Isalat al-Itlaq*, in numerous cases. In the following, six concrete examples of the application of this principle are presented in detail.

3-1. Proving the Necessity of Bay' al-Mu'atat

Bay' al-Mu'atat (exchange without verbal formula) is one of the challenging discussions in transactions jurisprudence. The famous jurists considered it to be merely permissible (*mufid ibaha*), but Imam Khomeini (may God have mercy on him) in the first volume of *Kitab al-Bay'* (Khomeini, 1392 SH, vol. 1: 271-272) by resorting to the absoluteness of the verse "O you who have believed, fulfill [all] contracts" proves its necessity. He says: This verse, in addition to the generality of individuals (due to the plural with *alif* and *lam*), also has an absoluteness that is derived from the preliminaries of wisdom. The absoluteness of the verse requires that the obligation to fulfill the contract continues in all states and periods of time. Therefore, bay' al-mu'atat is also included in this absoluteness and will be a binding contract. In this argument, he distinguishes between "doubt about the exclusion of an individual from the general" (which is removed by *Isalat al-'Umum*) and "doubt about exclusion in a period of time" (which is removed by *Isalat al-Itlaq*). Muhaqqiq Karaki in "*Jami' al-Maqasid*" (Muhaqqiq Karaki, 1414 AH, vol. 4: 112) and Na'ini in "*Muniyat al-Talib*" (Na'ini, 1373 AH, vol. 2: 234) have also referred to this absoluteness.

3-2. The Flow of Khiyar al-Majlis in Bay' al-Mu'atat

In the prophetic tradition "The two parties to a sale have the option [to cancel] as long as they have not separated," which Hurr Amili has narrated in "*Wasa'il al-Shi'a*" (Hurr Amili, 1409 AH, vol. 18: 9), the question is whether *khiyar al-majlis* (option of the session) also includes bay' al-mu'atat. Imam Khomeini (may God have mercy on him) in the second volume of *Kitab al-Bay'* (Khomeini, 1392 SH, vol. 2: 234-235) by resorting to the absoluteness of the evidence proves that bay' al-mu'atat is also included in this ruling. He says: "The establishment of *khiyar al-majlis*, which is specific to a binding sale, by using the requirement of absoluteness, has established and necessitated the existence of this option in bay' al-mu'atat." Then, by referring to the concept of the limit (until they separate) and the tradition "When they separate, the sale becomes obligatory" (Hurr Amili, 1409 AH, vol. 18: 10), he strengthens this ruling. Here he distinguishes between circumstantial and legal doubt and shows that absoluteness includes mu'atat. Muhaqqiq Isfahani in "*Hashiyat al-Makasib*" (Muhaqqiq Isfahani, 1419 AH, vol. 1: 56) and Shaykh Tusi in "*Tahdhib al-Ahkam*" (Shaykh Tusi, 1365 SH, vol. 7: 20) have also resorted to this tradition.

3-3. Non-Necessity of the Continuation of the Conditions of the Unauthorized Contracting Party until Permission

In an unauthorized contract (a contract that a non-owner concludes without the owner's permission), must the conditions of the contracting party (puberty, reason, intention) continue until the owner's permission? Imam Khomeini (may God have mercy on him) in the third volume of *Kitab al-Bay'* (Khomeini, 1392 SH, vol. 3: 140-141) using *Isalat al-Itlaq* in the evidences of the validity of the contract says: "It appears that the conditions of the unauthorized contracting

party outside the time of the contract are not valid. So it is not necessary that the contracting party be sane and even alive after the contract." The evidence for this ruling is the absoluteness of evidences such as "O you who have believed, fulfill [all] contracts" and "The believers are [bound] by their conditions," which have not mentioned a restriction for the continuation of the conditions. Since the Lawgiver was in the position of expression and did not mention a restriction, the requirement of absoluteness is that only the existence of the conditions at the time of the contract suffices. Shaykh Ansari in "Al-Makasib" (Ansari, 1419 AH, vol. 3: 140) believed in the validity of the continuation of the conditions, but Imam Khomeini has criticized this view. Muhaqqiq Hilli in "Shara'i' al-Islam" (Muhaqqiq Hilli, 1408 AH, vol. 2: 3) emphasizes the necessity of establishing the conditions of the contract at the time of its conclusion, which is in harmony with Imam Khomeini's view.

3-4. The Ruling on the Destruction of the Exchanged Items under the View of Ownership

In bay' al-mu'atat, according to the view of ownership, if one of the exchanged items is destroyed, is liability established? Imam Khomeini (may God have mercy on him) in the first volume of Kitab al-Bay' (Khomeini, 1392 SH, vol. 1: 272) says: "The consensus on the non-necessity of bay' al-mu'atat is as long as the exchanged items remain. So the consensus is not a specifier of the general, but a restrictor, and with doubt about the amount beyond the certain minimum, Isalat al-Itlaq removes the doubt." In other words, the absoluteness of evidences such as "O you who have believed, fulfill [all] contracts" requires that the mu'atat contract be binding as long as the exchanged items remain; but after destruction, the principle of necessity still remains and the other party must assume liability. He then refers to evidences such as "People are dominant over their properties" (Majlisi, 1403 AH, vol. 2: 272) and the traditions "The property of a Muslim is not lawful except with his consent" and shows that after destruction, recourse to these evidences is not correct, because the subject (existing property) has ceased to exist. Muhaqqiq Karaki in "Jami' al-Maqasid" (Muhaqqiq Karaki, 1414 AH, vol. 4: 112) has also referred to this matter.

3-5. Non-Implication of Isalat al-Itlaq for the Validity of the Contract

The subtle and important point that Imam Khomeini (may God have mercy on him) states in the second volume of Kitab al-Bay' (Khomeini, 1392 SH, vol. 2: 315) is that Isalat al-Itlaq alone cannot prove the validity of the contract. Some jurists thought that if an evidence is issued in absolute form (such as "Allah has permitted trade") and we doubt the validity of a specific type of sale, Isalat al-Itlaq requires that sale to be valid. Imam Khomeini criticizes this view and says: "Validity in the view of custom is not a restriction. Isalat al-Itlaq is in the position of removing doubt from the speaker's intent, not proving the intrinsic validity of the contract." Validity requires the establishment of general conditions (such as intention, eligibility, non-opposition to the Book and Sunnah) and Isalat al-Itlaq cannot prove these conditions. Allamah Muzaffar in "Usul al-Fiqh" (Muzaffar, 1370 SH, vol. 2: 85) has separately raised "Isalat al-Sihha" (the principle of validity). Muhaqqiq Hilli in "Shara'i' al-Islam" (Muhaqqiq Hilli, 1408 AH, vol.

2: 3) and Shaykh Ansari in "Al-Makasib" (Ansari, 1419 AH, vol. 1: 12) also emphasize the necessity of establishing the conditions of validity.

3-6. Liability for Hunting by a Muhrim and the Distinction between Obligatory and Situational Prohibition

In the issue of liability for hunting by a muhrim (one in a state of ritual consecration), the primary rule in a valid loan is that the borrower is not liable except with transgression or negligence. But is a muhrim who takes a hunted animal as a loan liable? Imam Khomeini (may God have mercy on him) in the third volume of *Kitab al-Bay'* (Khomeini, 1392 SH, vol. 3: 185-186) using *Isalat al-Itlaq* in the verse "And hunting on land is forbidden to you as long as you are in a state of ritual consecration" (Qur'an 5:96), distinguishes obligatory prohibition from situational prohibition and proves that the muhrim is liable. He says: "When the hunted animal, merely by the muhrim's taking it, leaves the ownership of the previous owner, it is as if it has been destroyed, and there is liability. The rule 'Whatever is not guaranteed by its valid [form] is not guaranteed by its invalid [form]' is not acceptable." In this argument, the absoluteness of the word "hunting" in the verse includes every type of contact and possession (including taking as a loan). Obligatory prohibition means the prohibition of the act, but situational prohibition (liability) is derived from the evidences of liability of the hand (such as "The hand is liable for what it takes until it pays"). Shaykh Tusi in "Al-Mabsut" (Shaykh Tusi, 1387 AH, vol. 3: 57) and "Tahdhib al-Ahkam" (Shaykh Tusi, 1365 SH, vol. 7: 20) have referred to this issue. Hurr Amili in "Wasa'il al-Shi'a" (Hurr Amili, 1409 AH, vol. 12: 430) has collected the traditions related to the prohibition of hunting for a muhrim. Shaykh Ansari in "Al-Makasib" (Ansari, 1419 AH, vol. 1: 12) has also referred to the distinction between obligatory and situational prohibition.

4. Comparative Analysis of the Views of Usulis and Imam Khomeini on the Issue of Isalat al-Itlaq

What is of central importance here are three issues: the source of the authority of lexical principles, the relationship between *Isalat al-Itlaq* and *Isalat al-Zuhur*, and the distinction between general and absolute.

Shaykh A'zam Murtada Ansari in "Fara'id al-Usul" (Ansari, 1428 AH, vol. 4: 86) explains his theory as follows: "The requirement of the lexical principle is multiplicity in obligation, because the absolute with restriction is certainly different from the restricted." From his perspective, whenever in a speech there is the probability of figurative meaning, specification, restriction, or ellipsis, it is in reality doubt about the existence of a "diverting indicator." Therefore, all lexical principles (*Isalat al-Haqiqah*, *Isalat al-'Umum*, *Isalat al-Itlaq*, *Isalat 'Adam al-Taqrir*) ultimately return to one principle: "*Isalat 'Adam al-Qarina*." Shaykh Ansari in "Al-Makasib" (Ansari, 1419 AH, vol. 1: 12) also points to an important distinction: "The prohibition of a transaction may be essential or accidental; sometimes something is prohibited for a corruption in it while the transaction remains valid." This distinction between obligatory and situational prohibition is later used in Imam Khomeini's works (especially in the discussion of liability for hunting by a muhrim). The main point of difference between Shaykh Ansari

and Imam Khomeini is that Imam in "Al-Rasa'il" (Khomeini, 1410 AH, vol. 1: 238) explicitly says that the practice of the wise is based on "Isalat al-Zuhur," not on "Isalat 'Adam al-Qarina." From his perspective, the indicator is something outside the speech, and Isalat 'Adam al-Qarina cannot be the source of the authority of the apparent meaning; rather, the apparent meaning itself is the criterion of authority.

Akhund Khorasani in "Kifayat al-Usul" (Khorasani, 1431 AH, vol. 1: 512) has taken a different position. He writes: "The authority of lexical principles is from the chapter of generic conjecture and is not suitable for using preferences, unlike practical principles whose authority is from the chapter of devotional obedience." According to Akhund, what gives validity to the apparent meaning of a word is the predominance and prevalence of the apparent meaning in the type of uses. In the discussion of absolute and restricted, Akhund Khorasani in the same book (Khorasani, 1431 AH, vol. 1: 376) says: "The issue of the preliminaries of wisdom in absolutes is according to different positions and places." But Imam Khomeini does not consider generic conjecture sufficient; from his perspective, if the authority of lexical principles is based merely on generic conjecture, in rare cases (where conjecture is not obtained) one cannot resort to them, while the practice of the wise is the same in all cases.

Mirza Muhammad Husayn Na'ini in "Fawa'id al-Usul" (Na'ini, 1376 SH, vol. 1: 30-31) pays special attention to the difference between lexical and practical principles. He writes: "In lexical principles, investigation and examination in it is investigation from the obstacle, not from the requirement, because the general is always exposed to specification and restriction." This view is in harmony with Imam Khomeini; both believe that in lexical principles, the principle is the authority of the apparent meaning and investigation is done to remove the obstacle. Na'ini in "Munyat al-Talib" (Na'ini, 1373 AH, vol. 2: 234) has also discussed khiyar al-majlis, but has not addressed the precise distinction between general and absolute in the manner of Imam Khomeini.

Allamah Muzaffar in "Usul al-Fiqh" has presented the most organized exposition of lexical principles. He in (Muzaffar, 1370 SH, vol. 1: 74) writes: "The validity of all these principles returns to the validity of Isalat al-Zuhur, and in reality we have only one principle, and that is Isalat al-Zuhur." Also (Muzaffar, 1392 SH, vol. 1: 75) says: "The source and evidence and authority in all lexical principles is one, and that is the agreement of the wise in their current speeches among themselves on taking the apparent meaning of speech." This view is in complete harmony with Imam Khomeini's thought, but what is less seen in Allamah Muzaffar's works is the precise distinction between general and absolute in terms of the type of indication and also the genetic theory of positing.

Sayyid Abu al-Qasim Khoei in "Muhadarat fi Usul al-Fiqh" (Khoei, 1419 AH, vol. 5: 252) expresses his view as follows: "We have mentioned in the discussion of general and specific that the authority of the lexical principle is from the aspect of discovering and being a path to the actual intent." He also in "Ajwad al-Taqrirat" (Khoei, 1368 SH, vol. 2: 275) emphasizes non-recourse to the general in circumstantial doubts. Shahid Muhammad Baqir Sadr in "Mabahith al-Usul"

(Sadr, 1365 SH, vol. 4: 129-130) distinguishes between lexical and practical principles in terms of lengthiness and perpendicularity and shows that in both areas, principles can flow longitudinally. Mirza Muhammad Hasan Ashtiyani in "Bahr al-Fawa'id" (Ashtiyani, 1429 AH, vol. 7: 358) has discussed the flow of governance and entry in lexical principles and says: "When there is doubt in the speaker's intent and no indicator to the contrary is established, lexical principles take precedence over practical principles." In sum, the comparison of the views of these seven *usulis* with Imam Khomeini shows that Imam has a fundamental innovation in three axes: the source of authority (*Isalat al-Zuhur* based on the practice of the wise), the distinction between general and absolute, and the genetic theory of positing, which makes his approach more efficient for emergent transactions.

5. The Application of *Isalat al-Itlaq* in Contemporary Emerging Transactions

Given the aforementioned foundations (the practice of the wise, the role of the preliminaries of wisdom, the distinction between situational and rational indication, and reference to custom), one can extend the scope of *Isalat al-Itlaq* to emerging transactions that did not exist at the time of the issuance of religious addresses. This extension is not by analogy, but based on the same mechanism that the wise use in facing new instances of absolute words. The essential condition is that custom and the wise recognize the new phenomena as instances of titles such as "sale," "contract," and "property." In explaining the lexical and customary meaning of "sale" and "property," one can refer to the famous definition in lexical sources. Ibn Manzur in "Lisan al-Arab" (Ibn Manzur, 1414 AH, vol. 8: 50) defines sale as "exchange of property for property" and introduces property as "everything that is owned, whether tangible or intangible" (*ibid.*, vol. 11: 25). Today's custom has also expanded this meaning and considers new phenomena, if they have economic value, the ability to be owned, and the ability to be transferred, as falling within the concept of property and sale.

5-1. Buying and Selling Blood and Human Body Organs

Assuming the customary acceptance of the financial value of body organs, the absoluteness of the verse "Allah has permitted trade" (Qur'an 2:275), which is known in exegetical and jurisprudential texts as one of the general evidences for the permissibility of sale, also includes this type of transaction. Allamah Muzaffar in "Usul al-Fiqh" (Muzaffar, 1392 SH, vol. 1: 70) in explaining the indication of this verse has stated that the word "sale" is used in absolute form and includes every type of sale, unless specific evidence is established for its exclusion. Of course, it is possible that traditions indicating the prohibition of selling human organs may be found. Shaykh Ansari in "Al-Makasib" (Ansari, 1419 AH, vol. 1: 150) has disputed traditions such as "The price of a dog is impure" (Hurr Amili, 1409 AH, vol. 17: 89) in terms of chain of transmission and indication and has not considered them sufficient to prove situational prohibition. Additionally, the distinction that Imam Khomeini in "Kitab al-Bay'" (Khomeini, 1392 SH, vol. 3: 185-186) presents between obligatory and situational prohibition is also helpful here. He shows that mere obligatory prohibition of an act does not ne-

cessitate the invalidity of the contract related to it. In cases of medical emergency where saving the patient's life depends on donating or selling an organ, the rule "Necessities permit the prohibited" also provides obligatory permissibility.

Concrete example: Selling a kidney by a living person to save another patient's life. Contemporary custom considers this transaction a type of sale. The absoluteness of the evidences of sale includes it, and the possible obligatory prohibition does not cause the invalidity of the contract, except in non-emergency conditions where there is a specific situational ruling on its invalidity.

5-2. Digital Currencies (Cryptocurrencies)

Today's economic custom considers cryptocurrencies to have intrinsic value (derived from supply and demand, mining cost, and practical applications), exchangeability, storability, and transferability. In contemporary usuli analyses, Shahid Sadr in "Mabahith al-Usul" (Sadr, 1365 SH, vol. 2: 35) has stated that the meaning of "property" is subject to custom, and whatever custom calls property is included in the evidences of dominion and trade. Therefore, the absoluteness of the evidences of sale includes cryptocurrencies. On the other hand, sometimes the concern is raised that exchanging cryptocurrency with conventional money is a type of bay' al-sarf (exchange of gold and silver) which has its own specific rulings. But Imam Khomeini in "Kitab al-Bay'" (Khomeini, 1392 SH, vol. 2: 330) has clearly emphasized that the rulings of bay' al-sarf are specific to gold and silver and its generalization to any new financial phenomenon requires specific evidence. The rule "The principle in transactions is permissibility" (Ansari, 1419 AH, vol. 3: 12) also indicates permissibility until prohibition is proven. Also, in cryptocurrency transactions that are conducted in reputable exchanges and with transparent instant prices, gharar (uncertainty) is not realized (Muzaffar, 1392 SH, vol. 2: 90).

Concrete example: Buying Bitcoin from a reputable exchange with a transparent instant price. The absoluteness of the evidences of sale includes it, and the rulings of bay' al-sarf do not extend to it.

5-3. Emerging Contracts (Data, Patent, Franchise)

Today, contracts such as selling data, selling patent rights, and selling concession (franchise) have become common in commercial and legal custom. Today's custom considers these contracts to fall under the title of "contract" and "sale," even though the subject of the transaction in them may be intangible matters such as information, intellectual rights, or business concession. Resorting to the absoluteness of "O you who have believed, fulfill [all] contracts" and "The believers are [bound] by their conditions" requires that every contract that is recognized by the wise as a "contract" be included in the obligation of fulfillment, unless it is excluded by specific evidence. Imam Khomeini in "Al-Rasa'il" (Khomeini, 1410 AH, vol. 1: 238) has clearly stated that the conversations of the wise are the basis for the authority of apparent meanings and custom is the criterion in recognizing contracts. Allamah Muzaffar also in "Usul al-Fiqh" (Muzaffar, 1370 SH, vol. 2: 80) writes: "Contracts follow the intention of custom and the wise." In this midst, the essential condition for validity is avoiding gharar and

opposition to the necessary rulings of the Lawgiver. Shaykh Ansari in "Al-Makasib" (Ansari, 1419 AH, vol. 4: 105) has stated the general rule as follows: "Every contract in which there is gharar and ignorance causing dispute is invalid." For example, in selling data, the type of data, amount, quality, and method of delivery must be clearly specified. In selling patent rights, technical specifications, duration, and geographical scope must be determined. With these conditions observed, the requirement of the absoluteness of the general evidences is the validity and effectiveness of these contracts.

Concrete example: A contract for selling medical data to a research company with precise determination of type, amount, quality, and method of delivery. With these conditions observed and no opposition to religious rulings, the requirement of the absoluteness of the general evidences is the validity and effectiveness of the contract.

5-4. The Scope and Limits of Isalat al-Itlaq and Obstacles to Its Application

In addition to the aforementioned cases, attention must also be paid to the limitations of Isalat al-Itlaq. First, circumstantial doubts: whenever we doubt whether a new phenomenon is truly an instance of "sale" or "property" or not, we cannot merely by resorting to the absoluteness of the word consider it included in the general. Imam Khomeini in "Kitab al-Bay'" (Khomeini, 1392 SH, vol. 2: 240) states: "A circumstantial doubt for a rational specifier prevents recourse to the general." Shaykh Ansari in "Fara'id al-Usul" (Ansari, 1419 AH, vol. 2: 150) also says: "The general is not resorted to in circumstantial doubts." In such cases, first the truth of the title must be established by referring to custom. Second, the existence of specific evidence: if there is specific and valid evidence for the prohibition or invalidity of a specific type of transaction, that evidence takes precedence over the general absoluteness. Among these specific evidences, one can mention the traditions prohibiting gharar sale, prohibiting the sale of what you do not possess (Hurr Amili, 1409 AH, vol. 18: 10), and definitive consensuses. Third, opposition to jurisprudential necessity or definitive consensus: if there is a definitive consensus of jurists on the subject's exclusion from the general, then one can no longer resort to absoluteness (Ansari, 1419 AH, vol. 3: 220). With these limitations observed, Isalat al-Itlaq is a strategic tool for managing customary and technological developments in the field of transactions.

6. Conclusion

The findings of the research show that Isalat al-Itlaq, beyond being a simple lexical rule, is rooted in the rational practice and practical conduct of the wise, and its authority is confirmed by the endorsement of the Sacred Lawgiver. Imam Khomeini (may God have mercy on him) with a theoretical innovation distinguished between "the situational indication of the general" and "the rational indication of absoluteness," considering the general independent of the preliminaries of wisdom, while introducing absoluteness as completely based on the preliminaries of wisdom and rational discovery from the speaker's position of expression. This distinction, contrary to Shaykh Ansari's view which returns lexical principles to Isalat 'Adam al-Qarina, and in contrast to Akhund Khorasani's

view which considered authority from the chapter of generic conjecture, provides a fundamental and efficient approach.

The examination of six examples from Kitab al-Bay' showed that Imam Khomeini (may God have mercy on him), with complete mastery of the discussions of lexical principles, in issues such as the necessity of bay' al-mu'atat, the flow of khiyar al-majlis, the ruling on the destruction of the exchanged items, the liability for hunting by a muhrim (with the distinction between obligatory and situational prohibition), and the non-implication of absoluteness for the validity of the contract, has always used Isalat al-Itlaq as a tool for removing legal doubts. The comparative analysis of the views of usulis showed that although all agree on the authority of the practice of the wise, Imam Khomeini has innovation in three fundamental axes: the distinction between the indication of the general (situational) and the indication of the absolute (rational); emphasis on the return of all lexical principles to Isalat al-Zuhur; and the genetic and gradual theory of positing, which creates a high capacity for application to new phenomena.

In the arena of contemporary emerging transactions (buying and selling body organs, cryptocurrencies, data contracts, patent rights, and franchising), by relying on custom and observing the limitations of circumstantial doubts and specific evidences, Isalat al-Itlaq can be used and legal gaps can be filled. In sum, Isalat al-Itlaq is not a frozen rule, but a dynamic and rational tool that, by relying on the practice of the wise and the endorsement of the Lawgiver, guarantees the dynamism of contemporary jurisprudence. It is suggested that future research examine the application of this principle in other jurisprudential rules such as Isalat al-Sihha and Isalat al-Ibaha, and also in comparative legal systems.

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