

A COMPARATIVE STUDY OF THE EFFECTS OF RELUCTANCE ON DRINKING ALCOHOL IN ISLAMIC JURISPRUDENCE AND PAKISTANI LAW

*Ihsanullah

**DrHafizSalihuddin

***Muhammad shakeel

ABSTRACT

Islam is a complete code of life that provides guiding principles related to every word, deed and disposition of human life, whether the person's consent or consent is absent. Determining these punishments in Islam is to maintain peace in society. However, if they do not consent to the commission of this crime, but someone has forced them to commit this crime, then Islam has allowed their compulsion to be seen. And in some cases they have been exempted from punishment.

Drinking alcohol is also a crime in Islam because it causes physical and social harm, which Islam has prescribed as a punishment. No, and whether there are laws related to this in our country, Pakistan, if there are, the laws should be compared with Islamic jurisprudence, and it should be brought to public attention to what extent the country's law is compatible with Islamic jurisprudence.

Key words: Islam, Consent, human life, Crime,law, Punishment, alcohol, Islamic Jurisprudence

THE DEFINITION OF IKRAH:

Ikrah is the active verb, when someone is forced to do something that he dislikes, as the Arabs say about it:

أَكْرَهْتُهُ: حَمَلْتُهُ عَلَىٰ أَمْرٍ هُوَ لَهُ كَارِهٌ¹

I forced him to do something he dislikes. The ternary singular is used in the sense of displeasing, as in كَرِهْتُ الشَّيْءَ كَرْهًا وَكَرْهًا وَكَرَاهِيَةً²

The original substance of Ikrah is "kaaf,rah and ha" and it is used with both Kaf's addition and Fatah. In summary, the people of the dictionary have taken a sense of "Ikrah" to force someone to do something.

* Ph.D Scholar of Islamic Studies, Department of Islamic Studies (AWKUM).

** Professor, Department of Islamic Studies (AWKUM)

*** Ph.D Scholar of Islamic Studies, Department of Islamic Studies (AWKUM)

THE LITERAL MEANING OF IKRAH:

The literal meaning of Ikrah has been mentioned by jurists with the following different words. The definition of reluctance near Hanaf. Anaf jurists have defined Ikrah with these words.

عِبَارَةٌ عَنِ الدُّعَاءِ إِلَى الفِعْلِ بِالِإِعَادِ وَالتَّهْدِيدِ مَعَ وُجُودِ شَرَائِطِهَا³

"Ikrah is the act that is done with the presence of the conditions of intimidation ."

In these words Sahib Al-Anayah has defined Ikrah:

اسْمٌ لِفِعْلِ يَفْعَلُهُ المَرْءُ بغيرِهِ فَيَنْتَفِي بِهِ رِضَاهُ، أَوْ يَفْسُدُ بِهِ اِخْتِيَارُهُ مَعَ بَقَاءِ أَهْلِيَّتِهِ⁴

"Ikraah is the name of an act which a man does for the sake of another, by reason of which his consent is lost or his authority is corrupted while his capacity remains."

AMONG THE AHNAFS ALLAMA SARKHSI DEFINED IT AS FOLLOWS:

اسْمٌ لِفِعْلِ يَفْعَلُهُ المَرْءُ بغيرِهِ، فَيَنْتَفِي بِهِ رِضَاهُ، أَوْ يَفْسُدُ بِهِ اِخْتِيَارُهُ مِنْ غَيْرِ أَنْ تَنْعَدِمَ بِهِ الاِهْلِيَّةُ فِي حَقِّ المَكْرَهِ أَوْ يَسْتَمُطُّ عَنْهُ الخِطَابُ⁵

"Ikrah is the name of an act that a person does for the sake of another, which ends his consent or corrupts his authority, but despite the reluctance, the ability of Makrah (مكروه) does not end, nor does it invalidate the authority of the Shari'ah."

THE DEFINITION OF IKRAH ACCORDING TO SHWAFI (شوافع):

The definition of Ikrah has been mentioned in KitabuUmm (كتاب الام) as follows.

والاِكْرَاهُ أَنْ يَصِيرَ الرَّجُلُ فِي يَدَيْ مَنْ لَا يَقْدِرُ عَلَى الامْتِنَاعِ مِنْهُ مِنْ سُلْطَانٍ أَوْ لِصِرٍّ أَوْ مُتَعَلِّبٍ عَلَى وَاحِدٍ مِنْ هَؤُلَاءِ وَيَكُونُ المَكْرَهُ يَخَافُ خَوْفًا عَلَيْهِ دَلَالَةٌ أَنَّهُ إِنْ امْتَنَعَ مِنْ قَوْلِ مَا أُمِرَ بِهِ يَبْلُغُ بِهِ الضَّرْبُ المُمُوتُ أَوْ أَكْثَرُ مِنْهُ أَوْ إِتْلَافُ نَفْسِهِ⁶

"Ikrah is that a man should be so helpless and helpless in the hands of a ruler, a thief, a conqueror, that he has no power to forbid it, and aversion is fear so certain that he will be punished painfully or killed for disobeying what he is ordered to do."

IBN HAJR FROM (شوافع) HAS DEFINED IT WITH THESE WORDS:

هُوَ إِزْرَامُ الْعَبْرِ بِمَا لَا يُرِيدُهُ⁷

"Ikrah means to force others to do something they do not intend to do."

ACCORDING TO HANIBALA(حنابلة) IKRAH DEFINITION:

JURISTS HANIBLIA DEFINED IKRAH:

أَمَّا إِذَا نِيلَ بِشَيْءٍ مِنَ الْعَذَابِ، كَالضَّرْبِ، وَالْحَنْقِ، وَالْعَصْرِ، وَالْحَبْسِ، وَالْعَطْ فِي الْمَاءِ مَعَ الْوَعِيدِ، فَإِنَّهُ
يَكُونُ إِكْرَاهًا⁸

"When Makrah(مكروه) is subjected to punishments such as beatings, strangulation, imprisonment and drowning with threats, then it is reluctance."

ACCORDING TO MALKIA IKRAH DEFINITION:

"Threatening to harm another person or murder him is called Ikrah."⁹

Another place is defined as:

حَدُّ الْاِكْرَاهِ مَا فُعِلَ بِالْاِنْسَانِ مِمَّا يَضُرُّهُ أَوْ يُؤْلِمُهُ مِنْ ضَرْبٍ أَوْ غَيْرِهِ.¹⁰

" Ikrah is to beat a person or to do anything else that causes him unnecessary suffering."

AMONG THE CONTEMPORARY SCHOLARS, ABD AL-QADIR AUDA HAS MENTIONED A COMPREHENSIVE DEFINITION OF IKRAH:

Ikrah is to force someone to do something that makes him reluctant to do the thing that he has threatened, and in the case of refusing to do it, he thinks that the thing that he is afraid of will happen.¹¹

This definition includes the terms and conditions of Ikraah.

CONCLUSIONS DRAWN FROM DEFINITIONS:

The words "consent" and "authority" have been used in the mentioned definitions of Fiqh-e-Karam. There is no difference in terms of the literal meaning, because consent is in the meaning of authority according to the literal meaning. However, according to the Ahanaf jurists, there is a subtle difference in this. Option is the ability to choose something from different things, in which one should be preferred over the other. For this reason consent is not necessary to authorize something, so when someone is urged to do something that he does not want to do, his consent to do the work is missing while the option is there, because he preferred the easy side.

In this way, if we look at these definitions, although there is a little difference in the words, but despite this, the purpose and meaning of this work is the same. However, the definition mentioned by the jurist of Hanbalah is different in that it is not enough only to make promises for the realization of Ikrah, but it is also necessary to remove the reluctance in any of these promises.

In this way, in a state of Ikrah, a person who is compelled to do so is bound by Shariat and Allah's speech as an addressee.

These definitions also refer to the members of Ikrah and especially in the last mentioned definition, the members of Ikrah are the following.

ARKAN OF THE IKRAAH:

THERE ARE FOUR ARKAN OF IKRAH:

1. Makrih (مكروه): The noun is the form of the verb, it is called the one who resists.
2. Makra (مكروه): Noun is an active word and refers to a person who is forced or repelled.
3. Makraby (مكروه به): There are reasons, means and resources through which Makra can be forced.
4. Makra (مكروه عليه): The desired speech or action that the Makra is forced to do.

A comparison of the definition of Ikrah with Pakistani law:

In Pakistani law, Ikrah is defined by these words:

“Ikrah” means putting any person in fear of injury to the person, property or honour of that or any other person¹²

If we compare the definition of reluctance in the law with the definitions of (Jurists)Fiqh-e-Karam, no clear difference is noted, which shows that it is compatible with the Shari'ah, because both of them have this thing in common that one has to do something by making someone afraid.

THE DEFINITION OF ALCOHOL:

Khmer is derived from the word "Khamr" in the dictionary, which means to mix. It is given this name because it impairs the intellect, or it is derived from Khmer, which means to leave until maturity, that is, to reach the desired level. It may also be derived from Khmer, which means to cover, because Khamar is the root of the intellect, and it is derived from Khammar, which means intensity and strength.¹³

THE LITERAL MEANING OF KHMER:

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The jurists differ on the terminological meaning of khamr.

According to the jurists of Ahanaf, it is a raw water from a wine near Khamr, while it is intoxicating, as mentioned by Sahib Hidayah:

وهي النبيء من ماء العنب إذا صار مسكراً¹⁴

And it's grape juice until they smile."

According to Hanaf jurists, wine is special only with Asir al-Anab, and that too in the case when it reaches the level of intoxication.

The reason for this is that the lexicographers are in agreement that khamar is applied only to grape wine, and the use of khamr is well-known and famous in that grape wine, and in addition to that, there are other names for other wines, such as sakar and naqi, etc., as Imam Sarkhsi wrote:

وَبَيَّنَ أَهْلُ اللُّغَةِ اتِّفَاقًا أَنَّ الاسْمَ حَقِيقَةٌ لِلَّتِي مِنْ مَاءِ الْعَنْبِ¹⁵

And it is agreed among the dictionaries that it is actually the name of grape juice.

The second argument is that the sanctity of wine is absolute and the sanctity of non-wine is presumed. Now, if wine other than grape wine is called khamar, then its sanctity must also be accepted as absolute, although there is no reason to accept their sanctity as absolute. Every drink is close to the Aima-Talaza, whether it is made from grapes or something else.

Imam al-Talasa has not considered its substance, but applies alcohol to whatever is intoxicating. Their argument in this regard is this blessed hadith:

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «كُلُّ مُسْكِرٍ حَمْزٌ، وَكُلُّ مُسْكِرٍ حَرَامٌ»¹⁶

"The Messenger of Allah, peace and blessings be upon him, said: Every intoxicant is wine and every wine is forbidden."

In this regard, the Ahnaf's opinion is correct, because in the blessed hadith, the application of khumar to every maskar besides Asir al-Anab is either permissible, or its order has been described.¹⁷

From this, it is known that according to the ahnaf, alcohol prepared from anything other than grape juice, if it reaches the level of intoxication, if a person drinks it, it will be prohibited, and even if a person wants to drink a small amount of alcohol, an excessive amount will still be prohibited. Alcohol will be applied to it, and its drinker will be restricted.

Alcohol consumption rule:

From a medical and social point of view, it is clear that alcohol is absolutely useless. Its disadvantages are innumerable. It causes damage to the human intellect, health deteriorates. In addition to this, it is a waste of wealth and honor. The blessed hadiths and the consensus of the Ummah are confirmed.

In the Holy Qur'an, Allah says:

يَا أَيُّهَا الَّذِينَ آمَنُوا إِنَّمَا الْخَمْرُ وَالْمَيْسِرُ وَالْأَنْصَابُ وَالْأَزْلَامُ رَجْسٌ مِنْ عَمَلِ الشَّيْطَانِ فَاجْتَنِبُوهُ¹⁸

"O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than Allah], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful."

In the blessed hadiths, the mention of the sanctity of alcohol has reached the limit of frequency, as it is said:

أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: مَنْ شَرِبَ الْخُمْرَ لَمْ تُقْبَلْ صَلَاتُهُ أَرْبَعِينَ لَيْلَةً¹⁹

"The Holy Prophet (peace be upon him) said, "Whoever drinks wine, his prayer would not be accepted for forty days."

قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: كُلُّ مُسْكِرٍ خَمْرٌ، وَكُلُّ مُسْكِرٍ حَرَامٌ²⁰

"The Messenger of Allah, peace and blessings be upon him, said: Every intoxicant is wine and every wine is forbidden."

The remaining consensus is that the scholars of Islam agree on the prohibition of alcohol.

AMOUNT OF PUNISHMENT FOR DRINKING ALCOHOL:

When a drinker is obliged to drink alcohol, and he drinks alcohol of his own free will, it can be proved by testimony or confession that he has drunk alcohol, there will be a punishment on him, although the jurists of the Ummah differ about the amount of the punishment, about which there are differences.

THE OPINION OF THE SHAFI'I JURISTS:

His opinion about the limit of drunkenness is forty lashes. His argument about this is the hadith of HazratAnas (RA):

أَنَّ النَّبِيَّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أُتِيَ بِرَجُلٍ قَدْ شَرِبَ الْخُمْرَ، فَجَلَدَهُ بِحَرِيدَتَيْنِ نَحْوِ أَرْبَعِينَ²¹

"It was narrated from Anas Ibn Malik, may Allah be pleased with him, that a man was brought to him who had drunk wine, so he gave him forty lashes."

This hadith is a clear text regarding the number of forty.

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His second argument in this regard is the narration of Hazrat Uthman (may Allah be pleased with him) that he ordered Hazrat Ali to flog Waleed bin Uqba for drinking alcohol. He told Abdullah bin Jafar to flog him, when he reached forty lashes, he said stop. I flogged and Hazrat Umar RA flogged eighty lashes and they are all sunnat, and I like it very much.²²

Their argument from this hadith is that the statement of Hazrat Ali RadiAllahuAnhu that the Messenger of Allah ﷺ gave forty lashes in it contains a number. And there is an explicit description of forty lashes.

The opinion of Jamhur Faqhay Karam:

The opinion of Jamhur Fiqh Aye Karam is about these lashes, the proof of which is from the tradition of Hazrat Umar RadiAllahuAnhu, that he asked for advice about the limit of drunkenness, so he was advised to set the same lashes as the limit of Qazf. Which is the lightest limit, then you did as it is written in Muta Imam Malik:

"That Hazrat Umar, may Allah be pleased with him, sought advice from the Companions regarding the limit of drinking alcohol, and Hazrat Ali, may Allah be pleased with him, said that you should flog him with that, because when a person drinks alcohol, he becomes intoxicated, and when he becomes intoxicated, he speaks irrationally, and when he speaks irrationally, he slanders, so the limit of slander is that flogging. Put it, then Hazrat Umar RadiyallahuAnhu did this"²³

Their reasoning from this is that the punishment for drunkardness is clearly confirmed by the actions of the second Caliph (RA), and he did it with the advice of the rest of the Companions. They confirmed and agreed on it and no one objected, so their consensus is the proof that Hadassah is a whip.

Preferred opinion:

The most preferred opinion in this regard is that of Jamhur Fiqhaay Karam, because Hazrat Ali RadiAllahuAnhu ordered that he be flogged. Its amount has been determined by the consensus of the Companions. And it seems to be more likely because people will refrain from it because of the severity of the punishment.

Comparison:

The Limits Ordinance of Pakistan Laws has mentioned regarding the quantum of punishment for drinking alcohol:

"Whoever being an adult Muslim takes intoxicating liquor by mouth is guilty of drinking liable to Hadd and shall be punished with whipping numbering eighty strips²⁴.

It is known that the amount of punishment for drunkenness in the country's law is 80, comparing it with Islamic jurisprudence, it comes out that the law is in conflict with Shafi'i jurisprudence, because the amount of punishment according to them is up to 40, but the country's law is compatible with the opinion of JamhurFiqh.

IN CASE OF RELUCTANCE TO DRINK ALCOHOL:

If a Muslim is forced to drink alcohol, is it permissible for him to drink it or not?

When a Muslim is forced by someone to drink alcohol, the explanation about the permissibility of Makra in this case is that this perks type has been reprimanded, that is, is the reluctance complete or incomplete?

If the anger is complete:

In the case of IkrahTam , all jurists are in agreement that it is permissible to drink alcohol for makrā, as mentioned:

فَإِنْ كَانَ غَالِبَ حَالِ الْمُكْرَهِ أَنَّهُ يُقْتَلُ لَوْ لَمْ يَشْرَبْ فَإِنَّهُ يُبَاحُ لَهُ شَرْبُهُ وَتَنَاوُلُهُ لِأَنَّ هَذَا بِمِثْلِ مَا يُبَاحُ عِنْدَ الضَّرُورَةِ كَمَا فِي حَالِ الْمُخْمَصَةِ²⁵

If the Makra has a strong belief that if he does not drink the wine, he will kill him, it is permissible for him to drink and eat it, because it is permissible in times of need, such as in a situation of dilemma.

According to the Shafi'i jurists, it is also permissible to drink alcohol in the state of reluctance, as Sahib al-Ishbahwal-Nazir wrote:

شُرِبَ الْخَمْرُ وَيُبَاحُ بِهِ قَطْعًا اسْتِنْفَاءً لِلْمُهْجَةِ، كَمَا يُبَاحُ لِمَنْ عَصَّ بِلُفْمَةٍ أَنْ يُسَيِّعَهَا بِهِ²⁶

"Drinking wine is certainly permissible to preserve one's soul, just as it is permissible for a person who has a lump stuck in his throat to swallow it easily with alcohol."

The ruling of Fiqh al-Maliki is also that it is permissible to drink alcohol for the forced, as:

وَيَجُوزُ شَرْبُ الْخَمْرِ عِنْدَ الْإِكْرَاهِ عَلَى شَرْبِهِ²⁷

When drinking alcohol is frowned upon, then drinking alcohol is permissible."

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Allama Ibn Qudama, one of the Hanbali jurists, wrote that "If someone is forced to drink alcohol, and he drinks it, there is no sin on him, even if he is threatened, or forced to cross his mouth, or forced to drink by putting alcohol in his mouth."²⁸

Here are the arguments of the jurists regarding this:

وَقَدْ فَصَّلَ لَكُمْ مَا حَرَّمَ عَلَيْكُمْ إِلَّا مَا اضْطُرِرْتُمْ إِلَيْهِ²⁹

"And He has made it clear what He has forbidden you except when you are forced to eat it."

It is known that in the Sharia there is permission and permission to drink alcohol in the state of unwillingness. And in such a case it would be sinful to indulge in their use and bring oneself to ruin, for here it is better to practice leave than departure.

IF IKRAH GHIR TAAM:

According to the Ahnaf jurists, it is not permissible for a Muslim to drink alcohol in the case of IkrahGhirtaam, because in this case Makra is not obligatory. It is permitted by the Shari'ah in a state of emergency, and in the case of a weak Ikrah, the urgency is not fulfilled. As Imam Kasani mentioned:

وَإِنْ كَانَ الْإِكْرَاهُ نَاقِصًا لَا يَجِلُّ لَهُ الْأَقْدَامُ عَلَيْهِ وَلَا يُرَخَّصُ أَيْضًا³⁰

"If the claim is defective, his action for tawas is not permissible and he is not allowed to do so."

Among the types of reluctance, as mentioned earlier, there is only one type of reluctance for the Hanafi jurisprudents, except for JamhurFiqh al-Karam, and that is total reluctance. Therefore, drinking alcohol near them is permissible in the form of total reluctance, while there is another type of reluctance for the Hanaf, which is drinking alcohol. It is not allowed. However, some forms of reluctance, such as beatings, etc., are considered to be reluctance in the way of Shafi'i, Maliki and some other jurists, which do not apply to the reluctance of the Hanaf.

In Islamic jurisprudence, the ruling on a person who is forced to drink alcohol:

THE OPINION OF AHNAF JURISTS:

If a person is forced to drink alcohol, according to Fuqaha-i-Hanaf, in the case of complete reluctance, his abstinence is proven, and in the case of imperfect reluctance, there is no excuse or abstinence for him.

IMAM SARAKHSI WRITES:

وَإِذَا أُكْرِهَ عَلَى شُرْبِ الْخَمْرِ لَا يُجَدُّ³¹

"And when he is forced to drink wine, he will not be punished".

IMAM KASANI ALSO HAS THE SAME OPINION IN AHNAF JURISTS:

فَلَا حَدَّ عَلَى مَنْ أُكْرِهَ عَلَى شُرْبِ خَمْرٍ³²

"There is no limit to who is forced to drink."

Kasani mentions this absolutely, and this is the argument that in any case Makra is not punishable.

The rest of the imams also share the opinion that there is no limit to Makra.

The opinion of FaqhayMalikiyyah:

The opinion of Fiqh-e-Malikiyyah is also that if a person is forced to drink alcohol, the limit is waived, because the limit is imposed on the person who drank the alcohol by his own will and authority.³³

THE OPINION OF THE SHAFI'I JURISTS:

According to them, even if wine is forced into a person's mouth and he drinks the wine after complaining about it, there is no punishment for him.³⁴

THE OPINION OF FIQH HAYNABLAH:

Allama Ibn Qudama wrote from the Hanbali jurisprudence, that the punishment is given to the person who drank alcohol willingly, but there is no limit to the person who is forced to drink alcohol, as it is written:

أَنَّ الْحَدَّ إِنَّمَا يَلْزَمُ مَنْ شَرِبَهَا مُخْتَارًا لِشُرْبِهَا، فَإِنْ شَرِبَهَا مُكْرَهًا، فَلَا حَدَّ عَلَيْهِ³⁵

"Had(حد) is obligatory on the person who drank alcohol of his own free will. If he drank alcohol under compulsion, there is no limit to repentance."

It is known that according to the specifications of Fiqh-e-Karam, in the case of reluctance, the one who drank alcohol is prohibited.

COMPARISON WITH PAKISTANI LAW:

In Section No. 6 of the Limits Ordinance, while mentioning alcohol consumption, it is written:

"Whoever, intentionally and without 'Ikrah' or 'Iztirar' takes an intoxicant by any means whatever, whether such taking causes intoxication or not, shall be guilty of drinking³⁶"

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From this section of the law, it is known that if a person drinks alcohol when he is unwilling, then in the eyes of the law, that person is not a criminal and there is no limit to it. Comparing this with the Sharia, it is known that there is uniformity in the law and the Sharia.

Conclusion:

From the research, it was found out that the Shariat is not that a person should be punished in every situation, but the act and crime in which the slave has no choice, and if he is forced to commit this crime, then the slave is not guilty, and the punishment for this crime is also suspended.

The research also revealed that there is harmony between the country law and Islamic jurisprudence at this point, because both of them have this thing in common that there is no crime and punishment for this forced person.

References:

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