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CRITIQUE OF LEGAL POSITIVISTS' THEORY ON DETERMINING THE SCOPE OF TREATY OBLIGATIONS BASED ON REVEALED TEACHINGS

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ABSTRACT

The implementation and interpretation of obligations arising from international treaties, as outlined in international instruments, are accompanied by legal values such as the principle of good faith in treaties (one of the general principles of law). The most authoritative interpretation of this moral-legal principle is the prohibition of fraudulent conduct by states. The school of legal positivism, with some of its proponents drawing inspiration from H.L.A. Hart's legal theory, has been unable to establish a proper legal foundation for explaining and determining the legal impact of the principle of good faith, as it denies values in the validation of legal rules and prioritizes state consent. Although in a few rare rulings of the International Court of Justice (ICJ), contrary to the prevailing theory in international legal practice and perspectives, the principle of good faith has been granted legal status in the implementation and interpretation of treaty provisions, the manner of its influence has not been fully developed, nor has a solid foundation been formulated. The dominant view holds that the role of good faith in determining the scope of international obligations arising from treaties is defined within the framework of state consent and recognition in their execution and interpretation. However, from the perspective of the Holy Quran, not only has the rule of fulfilling international obligations been legislated with an intrinsic connection to values, but it has also extended the scope of such obligations beyond the explicit agreements of contracting states as part of their legal function. This research, conducted through an analytical method, aims to compare the effectiveness of these two perspectives. By examining their respective arguments, it attributes legal influence to values such as the principle of good faith, considering Quranic teachings as developed by Muslim jurists.

KEYWORDS: Quran, Scope of International Obligations, Principle of Good Faith, Explicit Indication, Implicit Indication.

1. STATEMENT OF THE PROBLEM

The principle of good faith in treaty law applies to both the implementation and interpretation of obligations. In the realm of treaty implementation, Article 26 of the 1969 Vienna Convention states:

"Every treaty in force is binding upon the parties to it and must be performed by them in good faith."

This means that states have two obligations: the obligation to implement the treaty and the obligation to observe the principle of good faith in its execution.

¹ In this regard, Article 18 of the same convention ²prohibits actions that could undermine the "object and purpose" of a treaty. In other words, an act or omission by a state party that does not directly violate the treaty provisions but has the same *effect* as a treaty violation would constitute a failure to observe good faith. ³

According to the Vienna Convention, despite the close connection between the *interpretation and implementation of treaty obligations* (Articles 31-33), ⁴the interpretation of international treaties must be conducted in accordance with the principle of good faith.

In the domain of treaty interpretation, paragraph 1 of Article 31 of this international document states: *"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."*

Legal positivism in international treaty law, as in other legal fields, maintains that legal values do not play a decisive role in defining the scope of legal obligations. In recent years, the renowned legal philosopher Herbert Hart developed the theory known as the *"system of primary and secondary rules"*, ⁵which some legal scholars have attempted to apply to international law in general and treaty law in particular. However, this theory has faced significant opposition from many international legal experts. ⁶

Within this systemic theory, like other positivist theories, one of the key legal values in international treaty law – the *principle of good faith*⁷ – does not hold

a significant position in determining rights and obligations arising from international treaties.

Thus, the question arises: Given this prevailing legal perspective, which does not recognize legal values such as the principle of good faith as having substantive legal content in defining the scope of international obligations in both implementation and interpretation, what perspective do revealed teachings offer?

2. CONCEPTUAL CLARIFICATION

2.1. *International Treaties*

An international treaty, as the most important source of international law, shapes the activities of states and other subjects of international law on the international stage. According to the 1969 Vienna Convention: *"A treaty is an international agreement concluded in writing between States and governed by international law, whether embodied in a single instrument or in two or more related instruments, regardless of its particular designation."* (Article 2, paragraph 1(a))

2.2. *The Principle of Good Faith in Treaty Law*

Some legal scholars have even stated that this principle is *"the foundation of all law or the fundamental principle of law."*⁸

Good faith, arising from ignorance or another forgivable misunderstanding, is honesty in legal conduct. In legal literature, these two types are referred to as *protective good faith* and *obligatory good faith*, respectively. The latter is the focus in international law. It is the expectation of one party from the other to execute legal obligations with sincerity, avoiding actions contrary to that expectation. This negative meaning of good faith refers to the absence of malice in transactions. In other words, the negative meaning indicates the lack of bad intentions in dealings. This definition of good faith represents an obligatory principle synonymous with honesty.

The Court, in an international ruling, states: *"The execution of obligations, along with the principle of good*

¹ - The Gabčíkovo-Nagymaros Project (Hungary/Slovakia), Judgment of 25 September 1997, ICJ, para. 142

² - A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when: a) it has signed the treaty subject to ratification, acceptance or approval, or has exchanged instruments constituting a treaty, until it shall have made its intention clear not to become a party to the treaty; or b) it has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.

³ - McNair, Arnold, *The Law of Treaties*, Clarendon Press, 1961, p. 540

⁴ - Malagosa Fitzmaurice and Olufemi Elias, *Contemporary Issues in the Law of Treaties*, (Netherlands: Eleven International Publishing, (2005), 221

⁵ - Law as the Union of Primary and Secondary Rules

⁶ - see Anastasios Gourgourinis, *General Particular International Law and Primary_Secundary Rules_ Unitary Terminology of a Fragmented System* _European Journal of International Law 1016-1017

⁷ - Good Faith Principal

⁸ - Schwarzenberger, Georg and Brown, Edward D, *A Manual of International Law* (6th ed), 1976, p. 7.

faith, includes a series of actions that prevent fraud or deceit and also encourage subjects of international law to fulfill their obligations correctly and loyally to the treaty in practice."⁹

Based on the intended meaning of this principle in international law, treaty parties act fairly with each other and should not present dishonest interpretations to gain interpretive advantages, considering the context of the treaty's terms.¹⁰ This principle also forms the basis for the rule of *pacta sunt servanda* (the necessity of fulfilling obligations) and other legal rules directly related to honesty¹¹ fairness¹², and reasonableness¹³.¹⁴

2.3. Primary And Secondary Rules¹⁵

From the perspective of Herbert Hart, the famous positivist legal scholar, primary rules directly determine obligations, while secondary rules pertain to the stage of execution and the conflict between primary rules. Hart presents a view of law that includes "the integration of primary and secondary rules." (Hart, *op. cit.*, p. 79-99)

Secondary rules are those that operate in determining the consequences resulting from the failure to fully execute obligations established by primary rules.¹⁶ Based on this, supporters of this view argue that the structure of international law, and not only treaty law, is a combination of these secondary rules.¹⁷ This concept of law embraces a positivist approach to international law that avoids the shortcomings and limitations of traditional positivism, known as "voluntarism."¹⁸¹⁹

According to Hart's interpretation in the system of international law, the criterion for validating primary rules, such as the principle of *pacta sunt servanda* (the necessity of fulfilling obligations), is (in their view) a clear example of "secondary rules." As explicitly stated in the International Law Commission's report, this role is attributed to secondary rules.

Therefore, supporters of this view maintain that

the structure of international law, and not only the "law of treaties," is composed of these secondary rules²⁰

2.4. The Scope of International Obligations in the View of Legal Positivism

It is now appropriate to review the arguments of this view. Based on the views of international law positivists inspired by Hart's theory, the following points can be inferred.

According to the Vienna Convention on the Law of Treaties, despite the close connection between the "interpretation and performance of treaty obligations" (Articles 26 and 31-33) and the need to employ "objective" criteria such as the subject matter and purpose (Article 18), the "principle of good faith" can be one of the criteria. That is, if the principle of good faith mandates behavior that is objectively consistent with the "subject and purpose" of the treaty.²¹ The same criterion applies in its interpretation.

Thus, the Convention considers not only the "subject and purpose" but also the "criterion of good faith" for legal interpretation. This is because "... the fundamental principle of good faith differs from the rule of necessity and other legal rules due to its direct and prominent connection with (moral concepts) such as honesty, fairness, and reasonableness, making the implementation of these rules at any time contingent upon adhering to these mandatory standards governing the international community at that time."²² However, international law positivists argue that obligations extending beyond the text are an unfounded claim and are inconsistent with the regulations of the international law system of treaties.

A question has arisen among international law scholars as to whether the scope of obligations arising from treaties is limited to discovering the intention and will of the parties to the treaty or the drafted text, or whether the goals of the concluded treaty must

⁹ - Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. USA), Merits, Judgment of 27 June 1986, 1986 ICJ Rep. 14, p. 135, para. 270.

¹⁰ - D'Amato, Anthony, "Good Faith", in: Rudolf, Bernhardt, Max-Planck Institute, Encyclopedia of Public International Law, vol. 7, Amsterdam: North-Holland, 1984, p. 107

¹¹ - Honesty

¹² - Fairness

¹³ - Reasonableness

¹⁴ - O'Connor, John F, Good Faith in International Law, Dartmouth Pub. Co., 1991, p. 124.13

¹⁵ - primary and secondary rules

¹⁶ - ILC, 'Second report on State responsibility, by Roberto Ago, Special Rapporteur - the origin international responsibility' [1970] II YbILC, p. 179

¹⁷ - P.-M. Dupuy, (1999) 'The Danger of Fragmentation or Unification of the International Legal System and the International Court of Justice', *op cit*, pp. 793-794

¹⁸ - voluntarism

¹⁹ - Payandeh, (2010), "The Concept of International Law in the Jurisprudence of HLA Hart", 21 EJIL, p. 971

²⁰ - P.-M. Dupuy, (1999) 'The Danger of Fragmentation or Unification of the International Legal System and the International Court of Justice', *op cit*, pp. 793-794,

²¹ - Goodwin- Gill, State Responsibility and the "Good Faith" Obligation :92

²² - J.f O'Connor, Good faith in International Law 111 (1991).

also be discovered. ²³These goals are intertwined with values. ²⁴

From the perspective of legal positivists, the obligation of states to commitments beyond the text is that inferring obligations beyond the text is incompatible with the interpretive rules set out in the Vienna Convention and does not follow them. ²⁵

In other words, regardless of the text agreed upon by the parties to the treaty, no shared will can be found. Obligations beyond the text are considered unfounded and contrary to the regulations of the international treaty law system. According to this theory, inferring obligations beyond the text is inconsistent with the interpretive rules set forth in the Vienna Convention and does not follow them. ²⁶

This interpretation is contrary to the literal interpretation approach²⁷, which they view as the accepted method in the Vienna Convention. As is well known, in the literal interpretation approach, the etymology of words (jurisprudence of language), syntactic analysis, and the interpretation of terms (words) are employed. According to critics, it is natural that in this approach, "preparatory works" ²⁸ are the authorized source for discovering the intent of the parties, which is clearly reflected in the words used in the text of the treaty. ²⁹As stated in "the use of the specific meaning of each term, the intention of the parties to the treaty is decisive." (Paragraph 4 of Article 31), each treaty is considered to originate from the agreement of the wills, and the "text of the treaty" is an objective element that reflects the intent of the parties to the treaty.

However, the interpretive rule established in the Vienna Convention deems it invalid to disregard the natural and ordinary meanings of words in light of the spirit, subject, and context of the provisions. Therefore, the claims of the critics cannot be accepted.

In this case, breach of an obligation means breaking the pact explicitly stated in the treaty, and not beyond that, with the scope of the principle of necessity being limited to the provisions explicitly stated in the text. The expressions reflect the intent of the parties, and there is no other way to determine a breach. In this analysis, an independent meaning for

the "principle of good faith" is not considered, and they believe the interpretation is correctly linked to the content of the treaty. ³⁰

However, the International Court of Justice, in the "Nicaragua v. United States" case, held the latter responsible for violating obligations arising from the bilateral treaty "Friendship, Commerce, and Navigation 1956" (even obligations not explicitly stated in the treaty) with the reasoning that the actions of the United States were inconsistent with the "subject and purpose" of this international document. The court acknowledged and confirmed that the "implicit meaning" of the treaty text regarding the existence of the said obligation stems from the principle of "pacta sunt servanda" (the necessity of fulfilling obligations). ³¹

Opponents of obligations extending beyond the text argue that the common will of the parties to the treaty is the basis for the necessity of fulfilling obligations arising from treaties, and discovering it is only accessible through the "text." In their view, the common will and intent of the parties to the treaty are reflected only in the text of the treaty's provisions, and nothing more. In this analysis, the primary assumption is that they consider the approach of the "subject and purpose of the treaty" as a single matter and do not accept an interpretation beyond the literal meaning.

They argue that:

"A treaty is a valid and agreed text that is usually carefully drafted through the selection of terms, and the resulting text is prepared for acceptance by the states. The condition of 'good faith' is the essential component of the principle of pacta sunt servanda and implicitly strengthens the effective principle of treaties... the terms of a treaty... in their context, in fact, represent the initial stage that must be viewed in light of the 'subject and purpose' of the treaty... This rule provides that the initial text, along with the principles of 'subject and purpose' and 'the intent of the parties to the treaty,' is a coherent, agreed-upon text that embodies their acceptance. Therefore, the 'subject and purpose' and 'the intent of the parties to the treaty' are combined." ³²

Later, the unity principle of "subject and purpose"

²³ - J Panwelyn, M. Elg, *The Politics of Treaty Interpretation: Variations and Explanations Across International Tribunals*, In *Interdisciplinary perspectives on international law and international relations: the state of the art* / edited by Jeffrey L. Dunoff, Mark, A. Pollack :45

²⁴ - G Letsas, (2010) *Strasbourg's Interpretive Ethic*, 21 EJIL, p. 512

²⁵ - Christina Binder 'The Pacta Sunt Servanda Rule in the Vienna Convention on the Law of Treaties: A Pillar and Its Safeguards', Isabelle Buffard et al (eds), *International Law between Universalism and Fragmentation* Brill, 2008.:322

²⁶ - McTaggart.Sinclair, *The Vienna Convention on the Law of Treaties*: 131

²⁷ - Textual approach or school

²⁸ - Travaux preparatoires

²⁹ - Oliver Morse, *School of Approach to Interpretation of Treaties*, 1960, p. 41.

³⁰ - Christina Binder, *op cit*, p. 324

³¹ -1986 ICJ Rep. 14, p. 135, 138, paras, 270, 255

³² - Sir Robert Y Jenings, *Theories*, p. 145

and the "literal interpretation" approach were acknowledged as the general rule of interpretation in Article 31 of the Vienna Convention by this group of scholars³³. In other words, the common will cannot be discovered without considering the text agreed upon by the parties to the treaty. The concept of "subject and purpose" must be found in the words of the treaty text. (However), the treaty text cannot be understood in a way that leads to a result inconsistent with its subject and purpose.³⁴

Furthermore, with this analysis of the interpretation of the necessity of treaty obligations, breach of an obligation means breaking the pact explicitly stated in the treaty, and not beyond that. The scope of the principle of necessity is limited to the same provisions explicitly stated in the text, and the expressions reflect the intent of the parties, with no other way to determine a breach.³⁵In this case, what meaning does the implementation of the treaty provisions according to the principle of good faith have?

In this analysis, no independent meaning is attributed to the "principle of good faith," and they believe the interpretation is correctly linked to the content of the treaty.³⁶

This is because, in general, general principles of law (including the principle of good faith) do not hold status as sources of international law and must (only) be dealt with as "methods of interpretation."³⁷

2.5. Nader's International Judicial Theory on the Role of the Principle of Good Faith

In a separate legal opinion³⁸related to the "Case of U.S. Military and Paramilitary Activities in Nicaragua and Against This Country," it was emphasized that the violation of an obligation that is incompatible with the subject and purpose of the treaty does not constitute a specific breach of treaty obligations.³⁹

In the "Nicaragua v. United States" case, the International Court of Justice held the United States responsible for violating obligations arising from the bilateral treaty "Friendship, Commerce, and Navigation 1956," even for obligations not explicitly mentioned in the text of the treaty, with the reasoning that the actions of the U.S. government were

inconsistent with the "subject and purpose" of this international document.⁴⁰The Court believed that the United States had engaged in activities incompatible with the "general spirit" of the bilateral treaty due to failure to observe the essential principle of "good faith."

In other words, the Court accepted Nicaragua's argument that there is an obligation for states to refrain from actions that are incompatible with the execution of the treaty and considered the "implicit meaning" of the treaty text as arising from the principle of *pacta sunt servanda*.

To illustrate the Court's reasoning using the legal language of the Vienna Convention, the United States was in violation of the "subject and purpose" of the treaty, as outlined in Article 18 of the Convention, where states are obligated to comply with it. While it is true that the treaty's provisions on "friendship, commerce, and navigation" between the two countries do not explicitly require the implementation of this obligation, activities such as arming opponents were deemed to be in contradiction with the "subject and purpose," which is to carry out actions that strengthen friendship. According to the Court, the "Friendship, Commerce, and Navigation" treaty implicitly includes such obligations. However, critics have considered the Court's use of the "principle of good faith" in this reasoning as an unjustified broad interpretation.⁴¹

In support of this ruling, in another case (the "Gabcikovo-Nagymaros" case), the Court explicitly acknowledged that the principle of good faith requires states to perform their obligations in a reasonable manner to achieve the objectives of the treaty.⁴²

It is clear that in this ruling, customary arbitration is implicitly accepted for "the reasonable execution of obligations," which is necessary for maintaining the balance of rights and reciprocal obligations of treaty parties (the principle of justice). As can be seen, in this reasoning, the Court interpreted the "principle of good faith" as "fulfilling reasonable and legitimate expectations"⁴³— one of the accepted legal interpretations — considering this legal principle as an essential element for achieving the objective of the treaty. This example clearly demonstrates the

³³ - Jennings, R. y. and watts, A, Oppenheim's International Law, p. 1273

³⁴ - McTaggart. Sinclair, op cit, p. 130-131

³⁵ - Nicaragua case, ibid p. 250, para 81 (Judgoda, Dissenting opinion).

³⁶ - Christina Binder, Ibid, 324

³⁷ - d'Aspremont, What Was Not Meant to Be: General Principles of Law as a Source of International Law, R. Pisillo Mazzeschi and P. De Sena (eds), Global Justice, Human Rights,

and the Modernization of International Law (Brill, 2018 :1699.)

³⁸ - Dissenting Opinion

³⁹ - See Nicaragua case, *supra* note 26, p. 250, para. 81 (Judge Oda, Dissenting Opinion).

⁴⁰ -1986 ICJ Rep. 14, p. 135, 138, paras, 270, 255

⁴¹ - Christina Binder, Ibid, 322

⁴² - Gabcikovo-Nagymaros Project (Hungary v. Slovakia), Judgment of 25 September 1997, 1997 ICJ Rep. 7, p. 79, para. 142

⁴³ - Legitimate and reasonable Expectations

contrast between two approaches in positioning the role of the "principle of good faith."

Thus, from the Court's perspective, on the one hand, the concept of the principle of good faith in treaty implementation is used in a negative sense, meaning the prohibition of behaviors incompatible with the spirit of the 1956 treaty between the U.S. and Nicaragua, and on the other hand, this concept is linked to the legal provisions of Article 18 of the 1969 Vienna Convention. However, the most significant flaw in the Court's interpretative approach is that it did not process its reasoning within the realm of the art of legal deduction.

Now, it is appropriate to examine what criticisms this perspective might face according to divine teachings.⁴⁴

2.6. Divine Perspective on the Principle of Fulfilling Promises

In the verses about fulfilling promises, the ethical and value-based concepts serve a legal function that provides a framework for the scope of obligations. In other words, the verses on fulfilling promises, according to the opinions of commentators, consider the interests and harms associated with legal rulings. For example, the ethical phrase ("Indeed, Allah decrees what He wills") at the end of the first verse of Surah Al-Ma'idah⁴⁴ establishes the legal ruling on fulfilling promises based on the interests and the avoidance of harm to the servants of Allah.⁴⁵ This ethical phrase qualifies the entire verse and serves as the rationale for this legal principle.⁴⁶

For instance, in Surah At-Tawbah/4⁴⁷ the phrase "They did not diminish anything from you nor did they support anyone against you" implies two kinds of non-violation that indicate the duty to fulfill promises (فَأْتُوا إِلَيْهِمْ). Thus, the phrase "فَأْتُوا إِلَيْهِمْ" can be understood as a conditional response,

meaning that if they act in such a way (by not violating the terms in these two ways), you should also fully fulfill the covenant in return.⁴⁸ In legal terms, the balance between rights and obligations in the contract is established based on these conditions. The ethical phrase "Indeed, Allah loves those who are pious" serves as the justification for the complete fulfillment of the promise, as it appears at the end of the verse.⁴⁹

Accordingly, in the two verses mentioned, the word "pious" (الْمُتَّقِينَ) in the phrase "Indeed, Allah loves the pious" has been interpreted by many commentators as "those who fulfill their promises," a meaning consistent with the legal principle and the ruling of the verse.

In verse 35 of Surah Al-Isra⁵⁰, the balance between rights and obligations can be inferred from both parts of the verse.⁵¹ It is presumed that complete fulfillment is based on a covenant between people, and the other party in this covenant is committed to fulfilling a right for the addressed party.⁵² Justice in this part of the verse means either the complete fulfillment of the promise or not falling short, as implied by the verse.⁵³ Additionally, "the straight balance" (قِسْطَاسٍ مُسْتَقِيمٍ) signifies equality, where there is no shortfall or harm.⁵⁴ In the divine verses, determining the scope of obligations, considering interests and harms, can broadly indicate the "prohibition of fraudulent behavior" in contractual relations.

Now, we must analyze the ethical phrases justifying the ruling (in terms of the requirements of religious piety and the fulfillment of promises)⁵⁵. What significance does this justification hold in legal interpretation? And what is meant by the "justification of the ruling"?

To analyze the issue, we must first note that according to the provisions of the verse (the domain

⁴⁴ - O you who have believed, fulfill [all] contracts. Lawful for you are the animals of grazing livestock, except what is recited to you, other than game prohibited while you are in the state of ihram. Indeed, Allah decrees what He intends.

⁴⁵ - "Al-Zamakhshari, *Al-Kashshaaf* (previously cited), Vol. 1, p. 601; Al-Qasimi (previously cited), Vol. 4, p. 6; Al-Sa'di, *Taysir al-Karim al-Rahman*, p. 235; Al-Maraghi (previously cited), Vol. 6, p. 44."

⁴⁶ - Shawkani, op. cit., vol. 2, p. 387; Tabataba'i, op. cit., vol. 9, pp. 150-157; Shubbar, *al-Jawhar al-Thamin fi Tafsir al-Kitab al-Mubin*, vol. 3, p. 51; al-Baydawi, op. cit., vol. 3, p. 71; Zuhayli, op. cit., vol. 10, p. 119; Tanta'awi, op. cit., vol. 6, p. 204; Haqqi Bursawi, op. cit., vol. 3, p. 385; Alusi, op. cit., vol. 5, p. 244.

⁴⁷ - Except for those polytheists with whom you made a treaty, and who have not failed you in anything, nor supported anyone against you – so fulfill their treaty with them until the end of its term. Indeed, Allah loves those who are mindful of Him."

⁴⁸ - Mahmud ibn Ibrahim Safi, *al-Jadwal fi l-rab al-Qur'an*, vol. 10, p. 282.

⁴⁹ - Shubbar, *al-Jawhar al-Thamin fi Tafsir al-Kitab al-Mubin*, vol. 3, p. 51; Mahmud ibn Ibrahim Safi, op. cit.

⁵⁰ - "And give full measure when you measure, and weigh with an even balance. That is better and fairer in outcome."

⁵¹ - Mullā Fath Allāh Kāshānī, op. cit., vol. 4, p. 234; 'Abd Allāh ibn 'Umar al-Baydāwī, op. cit., vol. 3, p. 72

⁵² - Mullā Fath Allāh Kāshānī, *Khulāṣat al-Minhāj*, vol. 3, p. 112; Ṭabarsī, op. cit., vol. 6, p. 638; Samarqandī, *Baḥr al-'Ulūm*, vol. 2, p. 311.

⁵³ - The negative form of justice appears in works such as: al-Baydāwī, op. cit., vol. 3, p. 255; Ibn 'Ajibah, *al-Baḥr al-Madīd fi Tafsir al-Qur'an al-Majīd*, vol. 3, p. 198; Ibn Kathīr, op. cit., vol. 5, p. 68; Mazharī, *al-Tafsir al-Mazharī*, op. cit., vol. 5, p. 439

⁵⁴ - Mullā Fath Allāh Kāshānī, op. cit., vol. 4, p. 32; *Nahj al-Bayān 'an Kashf Ma'āni al-Qur'an*, vol. 3, p. 231.

⁵⁵ - Ṭabatabā'ī, op. cit., vol. 9, pp. 150 and 157.

of keeping promises), we can clearly understand that the relevance of the subject (the promise with polytheists) and the ruling (balance of rights and obligations) is very strong. This is because the compatibility of these two is so clearly manifested in the reason for the appearance of the verse that it has gone beyond mere statements.⁵⁶

Now, a question may arise: How can we understand that this relevance is both present and strong? The answer is that, firstly, the subject of the promise is customary and considered a form of authorized transaction. Secondly, the relationship between the promise and fulfilling it is a kind of implicit indicator connected to the verbal evidence.⁵⁷

Thus, it forms an appearance of the verbal evidence, which is based on the rational principle of the legitimacy of apparent meanings. Now, if the question arises as to how custom understands the relevance between the subject of the promise and fulfilling it, the answer can be given as follows: In the domain of balanced fulfillment of promises, since this concept is one of the goals of Sharia, customary understanding is based on an acceptable interpretative theory derived from numerous verses of the Quran – justice being a legislative goal of religion – and it reveals the harmony and relevance between the subject and the ruling.

In verse 7 of Surah At-Tawbah: "... So, if they remain firm to you, then remain firm to them. Indeed, Allah loves the righteous," the apparent reason for the command to keep promises in a balanced way (reciprocal justice) is the emergence of a spiritual effect – the love of Allah for the righteous (muttaqin).

Now, if we accept that these expressions reflect the wisdom of the ruling, not its cause, the interpretative theory that has explained the righteous as those who fulfill the promise weakens this view.⁵⁸ As this interpretative theory has appeared in the following works.

In clearer terms, based on this theory, the reasoning for the verse would be that the cause for fulfilling a balanced promise is indeed becoming beloved to Allah for those who fulfill their promises. The mentioned moral expression serves as the cause of the ruling (the legal rule of balanced fulfillment of

promises). That is, piety seems to encompass the effect and result of fulfilling the reciprocal promise. It appears that the command to fulfill the promise and the complete implementation of its contents in the two above-mentioned verses is conditional on the clause of not violating the promise in two presumed and mentioned ways. With this analysis, it seems that this ruling would be nullified if this condition in the subject is not met. In simpler terms, the scope of fulfilling promises is valid only when the balance of rights and duties is maintained, and this is possible when the condition is realized in the subject. Now, if the promise is broken in one of the two ways, it will no longer be contrary to loyalty to the promise as commanded.

The question now is how the concept of **good faith** in contractual obligations, as stated in the verse "... So if they remain firm to you, then remain firm to them..." (Surah At-Tawbah, 9:7), aligns with the literal meaning of **fulfilling promises** in these verses, particularly in the context of "prohibiting breach of promises and maintaining contractual relations"?

In other words, how can the implied meaning of the verse, such as "**if they remain firm to you, then remain firm to them**", be understood as representing the principle of **good faith duty** (prohibiting breach of promises and the disruption of contractual relationships)?

Is the **conceptual implication**, like the **literal implication** (such as the agreed-upon concept), certain and valid?

The issue arises in determining how we might prefer this interpretation (the implied meaning) over the opposite view, which holds that **implicative meanings** are, in general, conceptual rather than literal.^{59, 60}

If we accept the view that the three types of meanings – **corresponding**, **implicit**, and **implied** – are verbal, and we consider the implied meaning as being verbal in nature⁶¹, the **constraints in the speech** (such as the value-laden expressions at the end of the verses related to contractual relationships) are seen as the exclusive cause of the ruling. Therefore, once these constraints are removed, the ruling is nullified. This is because these constraints determine the necessary implications of the speech.

⁵⁶ - For the discussion on the authority of relations and its connection to the affirmation and negation of the authority of being poetic, see: Khūyī, *Muḥāḍarāt fī Uṣūl al-Fiqh*, vol. 5, pp. 130-131.

⁵⁷ - Bāqir Ṣadr, *Buḥūth fī Sharḥ 'Urwat al-Wuthqā*, 1st ed., vol. 1, p. 153.

⁵⁸ - Shubbar, *al-Jawhar al-Thamīn fī Tafsīr al-Kitāb al-Mubīn*, op. cit., vol. 3, p. 51; Abū al-Fayḍ ibn Mubārak Fayḍī, op. cit., vol. 2, p. 428; Muḥammad Thanā' Allāh Maẓharī, op. cit., vol. 4, p.

141; Wahbah ibn Muṣṭafā Zuhaylī, op. cit., vol. 10, p. 119; Ṭabātabā'ī, op. cit., vol. 9, p. 150; 'Abd Allāh ibn 'Umar al-Bayḍāwī, op. cit., vol. 3, p. 71.

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⁶⁰ - Ḍiyā' al-Dīn 'Irāqī, *Minhāj al-Uṣūl*, vol. 2, p. 214.

⁶¹ -al-Mūsawī Khomeīnī (Imām), *Mu'tamad al-Uṣūl*, vol. 1, p. 233; Subḥānī, *al-Maḥṣūl fī 'Ilm al-Uṣūl*, vol. 2, p. 346.

The restrictions in the words and the sentence, whether due to general context, general indicators, or comprehensiveness, form the exclusive cause of the ruling, and with their removal, the ruling ceases. In other words, the **implied meaning** is considered a type of verbal implication. Further, the **implied meaning** refers to **explicit meaning** in its strictest sense, meaning it is a meaning the speaker conveys, not directly or literally, but through **implied meaning** in its strictest sense. In this case, the term "necessary" implies a meaning based on the logical association without directly stating it.⁶²

In this analysis, some **implicative meanings** are considered indirect, non-explicit meanings.⁶³

It is clear that the relationship between the **implied meaning** (good faith duty) and "fulfilling promises" in these verses refers to the strictest form of explicit meaning, where merely imagining the **necessary implication** (the command to fulfill the promise) makes understanding the **prohibition of actions contrary to the agreement** (or the violation of the promise) sufficient. According to this theory, the **implied meaning** of the principle of good faith is inferred as part of the verbal implication.

Thus, the **good faith duty**, which is the **implied meaning** of the rule to fulfill promises in the above verses, can be deduced. That is, the moral expression **defines the necessary meaning** (the concept of good faith) within the context. As mentioned earlier, this meaning (prohibiting actions that disrupt contractual relations) is an implication derived from the **strictest sense of explicit meaning**.

3. RESEARCH FINDINGS

Based on Hartian Legal Theory and other

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international legal positivists, the concept of "**good faith**" in the interpretation and execution of obligations arising from treaties is inferred from the will of the contracting parties. In other words, according to the perspective of positivists, states are only obligated to fulfill the explicit commitments specified in treaties, and adherence to the "subject and purpose" of the treaty is achieved solely by implementing the "literal text of the treaty." The principle of **good faith** does not impose obligations on states beyond the literal text of the treaty.

If, according to the definition in international law, **good faith** involves the execution and interpretation of international obligations without fraud or deceit, and the faithful and sincere performance of commitments, then the legal function and content of this principle in the positivist legal theory have been overlooked in all its forms. Consequently, the predominant legal approach in interpreting international treaty obligations has focused on determining the intention of states. Rare opposing views in international law have not been able to provide a solid foundation for critiquing or undermining the prevailing positivist interpretation of treaty law.

However, religious teachings consistently associate the principle of **fulfilling promises** with moral values. Muslim legal scholars and Quranic commentators, considering the content of the relevant verses, have outlined the impact of moral values—similar to the definition of the principle of **good faith** (prohibiting deceit in the execution and interpretation of obligations)—in determining the scope of obligations arising from the fulfillment of treaties.

⁶² - Gharawī Isfahānī (Nā'īnī), *Fawā'id al-Uṣūl*, vol. 2, pp. 476-478; Khūyī, *Muḥāḍarāt fi al-Uṣūl al-Fiqh*, vol. 4, p. 196. And that some in this category consider the concept of the necessity of an implicative

denotation either in the narrower or the broader sense. Ṣāliḥī Māzandarānī, *Miftāḥ al-Uṣūl*, vol. 2, pp. 159-160

⁶³ - **Mīrzā Abū al-Qāsim Qumī**, *op. cit.*

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