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Challenges and Damages Arising from the Omission of Duties by Government Officials with Emphasis on the Governance of Imam Ali (Peace Be Upon Him)

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ABSTRACT

The occurrence of omissions contrary to legal duties within any society is an undeniable and self-evident fact. What appears significant, however, is the nature of the governmental response to such omissions. Each legal system, in accordance with its philosophical foundations and ideological principles, determines the scope of crimes and punishments. Western legal systems, influenced by liberal thought, have adopted a minimalist approach toward integrating religious ideas into legal discussions. In contrast, the criminal law system of the Islamic Republic of Iran demonstrates a greater degree of support for legal principles rooted in religious thought. An examination of the governance practices of Imam Ali (peace be upon him), along with the analysis of narrative sources and the authoritative opinions of prominent Imami jurists, confirms—especially through the well-known jurisprudential maxim “al-ta’zīr li-kull fi’l muḥarram” (“discretionary punishment applies to every prohibited act”)—as well as through the detailed deliberations of the legislative assemblies, that this principle remains valid and operational. One of the most debated criminal concepts among legal systems is the “crime of omission.” Article 295 of the Islamic Penal Code (2013) recognizes omission as a criminal act under specific conditions defined by law. Although criminal behavior generally manifests through affirmative acts, omission constitutes one of the critical and controversial subjects in contemporary legal opinions concerning criminal liability.

Keywords: Omission, governance of Imam Ali (PBUH), government officials, damages, consequences, effects.

Introduction

Supervision and enforcement of laws, as well as the establishment of guarantees for their implementation, may be viewed as different manifestations of the same fair and criminally just response by the state toward the deviant behavior of offenders. These various manifestations, due to their direct relationship with the real and fundamental rights of human beings, have become among the clearest components of criminal policy measures adopted by governments in the modern era.

Criminal behavior, just as it can be realized through commission, can also occur through omission. The rules of criminal procedure law play an essential role in the formulation and development of legislative criminal policy and are of particular significance to governments that rely on codified law. These rules can simultaneously act as the



guardian and protector of individuals' rights and freedoms within society, or conversely, they may themselves become formal instruments serving the repressive objectives of criminal law. When these legal rules are properly implemented, they genuinely safeguard civil rights.

However, if these provisions are not correctly applied and an omission occurs, neither justice is administered nor the rights of individuals are upheld. For this reason, the diligence of government officials in overseeing the enforcement of obligations and laws is both essential and fundamental. Should government officials fail to perform their own duties, on one hand, the rights of citizens will sustain greater harm, and on the other hand, those officials will not pursue restitution for such rights. Consequently, whenever government officials commit crimes, the law imposes aggravated punishment on them in accordance with the principle of intensified liability for public servants.

In reality, the efforts of criminal policymakers in various countries to broaden and universalize judicial guarantees are based on the view that, while reducing the rate of crime within society and ensuring citizens' legitimate rights and demands, all government agents must also fulfill their assigned duties and responsibilities. They must avoid any form of omission, negligence, or dereliction of duty, since the preservation and enforcement of justice rest upon state authority. Hence, the significance of reducing omissions by public officials becomes evident. Although numerous examples of omission can be imagined, this article focuses specifically on those omissions that (a) cause material or moral harm, and (b) are committed by government officials.

Lexical and Legal Concepts of Key Terms

Omission (Tark-e Fe'l)

a. Lexical meaning:

In lexicography, *omission* means “to desist” or “to stop doing something,” “to leave or abandon a person or thing,” and “to refrain from an act” (1-3). The term *act (fe'l)* itself signifies human movement or behavior (4).

b. Legal definition:

In the terminology of criminal law, omission refers to a negative criminal behavior that takes the form of abstaining from performing a duty prescribed by law for individuals (5).

c. Criminalization of omission in law:

Under Article 2 of the Islamic Penal Code (2013), any conduct—whether by act or omission—for which a penalty has been determined by law is considered a crime (6).

Among jurists, various definitions of omission have been proposed, some of which are cited below:

(1) Omission means that, under law, contract, or established custom, an explicit or implicit duty is imposed upon a person who then refrains from performing it, and the legislator declares such negative conduct punishable (7).

(2) Omission in criminal law terminology is the deliberate abstention from performing a duty mandated by the legislator (8).

Accordingly, offenses such as the failure of certain government heads to report crimes committed by their subordinates (Article 606 of the Islamic Penal Code – Discretionary Punishments), and the refusal of judicial authorities to perform their legal duties (Article 597 of the same code), fall within this definition (9).

(3) The most complete and comprehensive definition of omission seems to be that a *crime of omission* is the voluntary failure of a person to perform a specific positive act that, under certain conditions, the legislator has obliged the individual—if capable—to carry out (10).

Damage (*Khesārat*)

Another key concept in this article is the notion of “damage.” Lexicographers define *damage* as the opposite of profit, meaning loss, detriment, or harm. Several examples of such definitions are as follows:

a. Lexical meaning:

1. In *Abjadi Dictionary*, Bistani defines *damage* (*khasāra*) as “loss” or “harm,” noting that it is the opposite of profit (*ribh*). The term also conveys deprivation or loss; for example, “*yā khasāra*” means “what a loss” or “how grievous a loss,” and “*khasā’er fādiḥa*” denotes “severe losses.”
2. Rāghib Isfahani, in *Mufradāt*, defines *khasara* as “to diminish the scale,” “to lose property,” or “to suffer loss.” The term stands in contrast to *ribh* and denotes misguidance or ruin (3, 4).

b. Legal meaning:

According to several jurists, *damage* refers to any significant defect or loss affecting property, reputation, or life (11). In legal and judicial usage, the notion of “harm” derives from the same linguistic root as *damage*. Jurists, when discussing liability—whether criminal or civil—consider the terms *loss*, *harm*, and *damage* as synonymous, encompassing both material and moral detriment (12).

In French law, the court determines the amount of damages only when the debtor’s bad faith in non-performance is proven. As illustrated in a ruling of November 10, 1973 (Recueil Sirey, p. 263), damages resulting from fault absent bad faith or deceit are not recoverable. Article 1147 of the French Civil Code provides that a debtor is liable for damages arising from non-performance or delay unless he proves that non-performance resulted from an external cause not attributable to him and that he acted without bad faith. Furthermore, the damage must have been foreseen or foreseeable at the time of contract formation (Article 1150, French Civil Code) (13).

Of course, the discussion of *bad faith* is not exclusive to French law. In many legal systems, bad faith is considered an element of criminal omission. In Islamic jurisprudence, a comparable concept exists under the term *tajarrī* (presumptive transgression). Classical jurists have elaborated on this issue extensively. For instance, consider a scenario in which a slave witnesses someone drowning and could rescue him, but refrains out of resentment toward his master—believing the drowning person to be his master’s son—only to later discover that the victim was in fact the master’s enemy. Scholars differ as to whether such a slave, whose ill intent was established but whose act caused no harm, deserves punishment or not. However, if the omission motivated by bad faith actually results in the master’s son’s death, then without doubt the slave would be deemed blameworthy in his master’s eyes (14, 15).

In English law as well, damages must be foreseen or foreseeable. Moreover, the court considers the actions taken by the obligee to mitigate damages when assessing compensation. Judge Cockburn, in *Knight v. Frost*, stated: “In assessing damages for breach of contract, the jury must consider the conduct and measures that a reasonable and prudent person would have adopted under similar circumstances to reduce the extent of the loss” (11).

Damage in Common (Customary) Usage

a. Definition

In customary usage, *damage* is defined as the loss inflicted upon a person. The notion of damage or loss, both in common language and in the law of obligations, is well known and refers to any diminution in the quantity or

quality of the property of the injured party that arises from non-performance or delay in the performance of an obligation (2, 3).

b. Types of Damage

From the standpoint of its source, damage resulting from breach of an obligation is divided into two categories. One relates to the *material source*, which includes (1) loss of property and (2) loss of the benefits that execution of the contract would have produced.

It may occur that, due to the obligor's refusal to perform, certain property of the obligee is destroyed or removed from his estate. Alternatively, the damage may arise from the obligee's deprivation of the profits or advantages that would have accrued had the obligation been duly performed.

Such damage is termed *loss of profit (khesārat-e adam al-naf')*. Under Article 728 of the former Code of Civil Procedure (1939 CE), the obligor was required to compensate the loss resulting from deprivation of the expected benefit. However, Note 2 of Article 515 of the 2000 Code of Civil Procedure provides that "damage arising from loss of profit is not recoverable."

Beyond this material classification, damage may also be categorized according to its *legal source*—namely, damage arising from breach of a contractual obligation and damage arising from breach of a non-contractual (tortious) obligation. The broad language of Article 515 encompasses both types of damage (16).

Consequences Arising from the Omission of Government Employees

Failure of Governmental and State Programs Due to Omission

Omission leads to situations in which national programs are either not implemented or proceed with extreme slowness, thereby damaging the fundamental infrastructure of the country. The consequences of such omissions are now clearly visible within the nation's economic arteries. Although the judiciary has long recognized the harmful outcomes of managerial omission, it appears that no serious plan has yet been implemented to mitigate this problem, and the response has been limited to merely declaring such conduct as wrongful (17).

The question remains as to the nature of this phenomenon and its consequences. For years, in the fight against administrative corruption and the misconduct of managers and officials, numerous agencies have engaged in supervision, review, and audit processes which, rather than reducing corruption among that group of managers, have—paradoxically and for various reasons—led to its increase. Each of these reasons deserves separate scrutiny and analysis.

The outcome of this excessive auditing has been *omission*: officials increasingly attempt to evade genuine responsibility, either by transferring accountability to others or by avoiding decision-making altogether. This has produced an endless and unproductive chain of inaction.

Outwardly, these managers present themselves as efficient, yet the process has yielded disastrous results. Even more astonishing is that these irresponsible managers are transferred from one post to another, sometimes even promoted to higher ranks, without their performance records being properly reviewed—relying instead on fabricated résumés. All the while, responsible managers are well aware that if they take initiative and assume accountability, they will receive no encouragement and will instead spend long periods defending their decisions. Hence, no real distinction exists between those who act and those who omit to act.

The environment that such a pattern produces—and which, indeed, already prevails—is profoundly perilous to administrative integrity and national progress (17).

Failure to Disclose Offenses and Crimes

One manifestation of omission is the failure to disclose offenses and crimes against public property. Among the most pressing problems confronting governments today—and a major cause of public dissatisfaction—is the neglect of *bayt al-māl* (public treasury), accompanied by money-laundering, embezzlement, and plundering of public assets.

Government employees have a fiduciary duty to safeguard the property entrusted to them. If anyone commits a crime in this regard, those aware of it are obligated to promptly inform the relevant authorities to protect the public treasury. Failure to do so, when accompanied by an organizational duty, constitutes an offense punishable by law. Given the employees' fiduciary status, such omission warrants aggravated punishment (8, 9).

In Islam, strict injunctions exist regarding the preservation of *bayt al-māl*. Nevertheless, throughout Islamic history, from its earliest periods to the present, the public treasury has only occasionally been managed by just rulers; more often, it has been controlled by unjust elites. For example, during the rule of Mu'āwiya I, public funds were exploited for personal and sectarian purposes (18).

Historical accounts record that Mu'āwiya issued a decree throughout his realm stating:

"Wherever testimony is established that a person is a friend of 'Alī ibn Abī Ṭālib or his family, erase his name from the register of the public treasury and do not accept his testimony."

He further instructed judges and governors not to accept the testimony of any supporters of 'Alī, his family, or those narrating his virtues. Conversely, he ordered that supporters of 'Uthmān and those who reported his merits be honored, enriched, and drawn close, commanding his officials to record their names and genealogies and to send the lists to him.

These officials obeyed, and Mu'āwiya lavished them with wealth, lands, and gifts. Over time, such individuals multiplied in every city, competing in luxurious living and accumulating estates. Later, Mu'āwiya instructed his officials to encourage the people to narrate virtues of Abū Bakr and 'Umar as well, to weaken the legitimacy of the Prophet's household. Thus, collections of fabricated traditions were compiled and publicly recited in mosques and schools, taught even to children and women so that they memorized them as they did the Qur'ān (18, 19).

Hence, Mu'āwiya was not a trustworthy guardian of *bayt al-māl*; rather, he diverted it to serve his material ambitions and misguided beliefs.

Imam Ja'far al-Ṣādiq (a.s.) narrates that 'Aqīl, the brother of Imam 'Alī (a.s.), once came to him in the courtyard of the Kufa Mosque and greeted him, saying, "Peace be upon you, Commander of the Faithful." Imam 'Alī replied, "Peace be upon you, Abū Yazīd." He then instructed his son, Imam Ḥasan (a.s.), to take his uncle home, clothe him in new garments, and care for him.

The next day, 'Aqīl returned, dressed in new clothes, and remarked: "O Commander of the Faithful, I see that you possess nothing of this world except these pebbles." Imam 'Alī responded: "O Abū Yazīd, when I receive my rightful stipend, I shall give you from it." Dissatisfied, 'Aqīl departed and went to Mu'āwiya.

When Mu'āwiya heard of his arrival, he ordered a grand reception and granted him one hundred thousand dirhams. He then asked: "Tell me, what difference did you see between my army and that of 'Alī?" 'Aqīl replied: "In the camp of the Commander of the Faithful 'Alī ibn Abī Ṭālib, I witnessed nights and days like those of the Prophet

(peace be upon him), save that the Prophet himself was not among them. But in your camp, I saw the same hypocrites who once plotted treachery against the Messenger of Allah on the night of al-‘Aqaba” (15).

Failure to Enforce Anti-Money-Laundering Laws

One of the major international challenges in governance is the non-enforcement of laws, particularly negligence in implementing anti-money-laundering legislation. Article 9 of the Anti-Money-Laundering Law provides that:

“Defendants and offenders convicted of money-laundering, in addition to returning the proceeds and benefits obtained from the committed crime, shall be sentenced to a monetary fine equal to one-fourth of the illicit proceeds, to be deposited in the public revenue account of the Central Bank of the Islamic Republic of Iran.” (20).

Furthermore, Article 20 of the same law stipulates that the competent supervisory authorities—including the Central Bank of the Islamic Republic of Iran, the Central Insurance Organization, the Securities and Exchange Organization, the General Inspection Organization, the Organization for Registration of Deeds and Properties, professional unions, and the Organization of Endowments and Charitable Affairs—are required, within the scope of their routine inspections, to ensure compliance with the provisions of anti-money-laundering and counter-terrorism-financing regulations, and to report on the observance or non-observance of such provisions (21).

Negligence in Enforcing the Constitution

The Constitution provides no detailed explanation of the responsibilities and powers associated with the enforcement of the Constitution itself, which—according to Article 113—is the first duty of the President. However, the *Law on Determining the Scope of Duties, Powers, and Responsibilities of the Presidency* (enacted by the Islamic Consultative Assembly on November 25, 1986) clarifies this matter in Articles 13 through 16 as follows:

“In order to safeguard the Constitution of the Islamic Republic of Iran and in implementation of Article 113, the President, through supervision, information-gathering, inspection, follow-up, examination, and necessary action, is responsible for the enforcement of the Constitution.” (22).

To ensure the proper and timely execution of constitutional principles, the President may issue reminders to the heads of the three branches of government and, once a year, report to the Islamic Consultative Assembly on observed violations and the measures taken in response.

However, the meaning of *violation*, *breach*, or *omission* in constitutional provisions refers to failures arising from negligence or carelessness. In cases where the implementation of a constitutional principle proves impossible or where obstacles prevent enforcement, the Constitution itself provides no explicit remedy or clarification.

Major Consequences of Omission

Negligence in Implementing Regulations Protecting Citizens’ Rights

One of the fundamental consequences of omission and administrative non-compliance is observed in the failure to implement development measures for underdeveloped and rural regions. Governmental negligence has resulted in inadequate progress toward fulfilling assigned duties, and even where measures have been undertaken, their effectiveness has been minimal.

Additionally, some executive bodies have issued regulations contrary to the intended goals of rural and regional development, thereby slowing the implementation of strategies designed to reduce administrative omissions and promote equitable development (23).

Lack of Transparency in Budget Allocations

a. Omission in budget transparency:

The omission of governmental organizations to disclose budgetary allocations related to the development of deprived rural and nomadic areas—and their failure to provide adequate and timely funding—has led to inequality between urban and rural populations. As a result, motivation for rural residence continues to decline, causing rural-to-urban migration, expansion of urban populations, reduction in agricultural and horticultural production, and, consequently, rising unemployment and poverty rates.

In this context, Clause 2 of Paragraph (a) of Article 27 of the *Sixth Five-Year Development Plan Law* obliges the Organization for Planning and Budget to prepare and present transparent and targeted annual budgets for rural and nomadic development under a separate appendix titled “Rural and Nomadic Development.” Despite the fact that the implementation of this provision imposes little financial burden, more than four years after the law’s enactment, no practical action has been taken to fulfill this obligation (23).

b. Omission of the government in reducing licensing delays:

Another form of omission concerns the government’s failure to reduce the processing time for licenses to establish rural economic enterprises. Under Clause 3 of Paragraph (a) of Article 27 of the same law, the government is required to shorten the time needed for responses to inquiries and the issuance of construction permits to a maximum of fifteen days.

Nevertheless, the delegation of policymaking for rural development to the *High Council for Rural and Deprived Areas Development*, an entity irregularly designated under the supervision of the Vice-Presidency for Rural Development, contradicts Clause 3 of Paragraph (b) of Article 27 of the *Sixth Five-Year Development Plan Law*. This provision explicitly emphasizes the integration of policymaking and management for rural, nomadic, and agricultural affairs. Establishing a separate council that ignores agricultural dimensions represents a misinterpretation of the law and contravenes the stated intent of unified oversight and accountability to legislative bodies—especially to the Islamic Consultative Assembly (23).

If, however, the duties of each organization regarding rural development were transparently defined and each fulfilled its responsibilities promptly, rural-to-urban migration would decline, agricultural and livestock production would expand, and the supply of domestically produced goods would increase—thereby preserving national capital and supporting economic sustainability.

Refusal of Government Agencies to Fulfill Assigned Duties

Agency directors are obligated to implement national laws. Any refusal by public officials to perform their assigned duties constitutes misconduct and, in certain cases, a criminal offense. The omitting official bears liability for any resulting damage (8, 9).

For instance, one of the institutions that has exhibited indifference toward rural development is the Ministry of Agriculture Jihad. All responsibilities and powers previously held by the former Ministry of Jihad Sazandegi—

responsible for rural development policy and planning—were transferred to the Minister and Ministry of Agriculture Jihad, which became the main body responsible for rural and nomadic development.

Nevertheless, contrary to the explicit provisions of law, this ministry has confined its activities to agricultural production—particularly raw agricultural goods—while largely neglecting the follow-up of rural construction and development affairs. Indeed, within its organizational structure, no dedicated unit has been established for the management of rural development (23).

According to the legislative debates held during the formation of the Ministry of Agriculture Jihad in 2000, the integration of the two ministries was intended to coordinate agricultural and rural development. However, this goal was unlawfully disregarded after the merger. Rural and agricultural development are interdependent, and the experience of most countries demonstrates the necessity of a unified management structure overseeing both domains.

The Ministry's refusal to address rural affairs over the years has led to the fragmentation of responsibilities among multiple executive agencies acting without coordination or shared vision. These institutions—often working in isolation and without measurable indicators—make independent decisions on rural economic, social, cultural, political, spatial, and environmental matters, resulting in inefficiency and wasted resources (23).

Notably, when governmental omission of this nature occurs and mismanagement takes root—a complex form of omission—the resulting harm persists into subsequent administrations. No one seeks a genuine remedy, and such mismanagement is often attributed broadly to “the state,” even though it actually arises from the decisions of a limited number of individuals within government rather than from the overarching governance framework, which is fundamentally oriented toward justice and national progress.

Governmental Omission in Providing Children's Basic Needs

Studies indicate that, in Iran, abuse is not specifically perpetrated against street children as such; however, officials' omissions give rise to victimization of children. The state is obligated to provide the basic needs of all individuals—especially children. In many countries, these rights and distributive justice are implemented to a relative extent, yet in many others, although a façade of justice is displayed, negligence in practice leads to the infringement of citizens' rights, with children bearing a disproportionate share of the harm.

Neglect of Citizens' Bodily Harms

Under domestic and international norms, the state bears a duty to secure the essential needs of its citizens. Although governmental action alone cannot, by itself, fundamentally eliminate the phenomenon of street children, the critical point is that failure to discharge legal duties—such as job creation and assistance with housing—generates secondary problems like poverty, which is the principal root of the social pathology of street children. Thus, the nexus between governmental omission in carrying out statutory duties and crimes committed against street children becomes established. Even though “governmental crime” is not expressly and directly named in the Islamic Penal Code, a careful analysis of criminal statutes and regulations allows for criminal responses to those responsible for such omissions (8).

For example, pursuant to Article 2 of the **Instruction on Supervision and Follow-Up of Public Rights** (adopted on January 26, 2019, by the Head of the Judiciary), the prosecutor of each judicial district is obliged, where non-enforcement, violation, or imminent violation of public rights occurs, to take measures such as “criminal prosecution

of suspects, issuing warnings or notices to executive agencies in cases of delay in bringing suit, warning officials of executive agencies and other natural or legal persons regarding actions that lead to the violation of public rights, adopting preventive measures, and so forth” (24). Failure to implement this instruction constitutes another actionable form of criminal omission.

Given the foregoing, county prosecutors—both in their supervisory capacity to safeguard public rights and through their judicial obligation to prosecute offenses implicating the public interest—are required to perform their legal duties in this domain. With respect to the non-prosecution of offenses committed against street children (such as exploitation and abuse) by prosecutors and the potential criminal liability of such officials, it should be noted that even if no provision can be found explicitly criminalizing their failure to perform statutory duties, a broader construction is available. Under Article 597 of the Islamic Penal Code (Book of Discretionary Punishments, 1996), if judges, upon the filing of a complaint or petition meeting legal conditions, refuse to accept or hear the case—despite being competent to do so—or unlawfully delay judgment, or act contrary to the explicit law, they shall, on the first occasion, be sentenced to six months to one year of dismissal from judicial office; upon repetition, they shall be permanently dismissed, and in all cases shall be liable for damages caused (9).

Failure to Adapt Buildings, Streets, and Public Places

One of the duties of the state is to make the urban environment suitable and accessible for all members of society. If negligence occurs in this regard, the omitting official commits an offense, and disability or harm arising from the failure to properly manage urban accessibility is among the key grounds upon which a person with disabilities may claim damages. Such damages include those resulting from inadequate management of adaptations to buildings, streets, and public or private venues.

Non-Compliance with Technical and Architectural Standards

Another consequence of omission is non-compliance with technical and architectural standards. Article 100 of the Municipal Law requires owners of lands and properties located within the city limits or its protective zone to obtain a permit from the municipality prior to any development activity, subdivision, or construction; the sanction for non-compliance is the municipality’s cessation of construction and referral of the matter to the **Article 100 Commission**. Under Note 1 to Article 100, the Commission may, considering the criteria therein, order demolition; or, under Note 4 to Article 100 and the relevant specifications, impose a fine per square meter of unlicensed construction equal to one-tenth of the building’s transactional value, or one-fifth of its goodwill value (if applicable).

This violation occurs when, according to the specifications in the permit, approved plans, and municipal regulations, construction of parking is mandatory, yet the owner refuses to build it at the outset or constructs it in a manner that still permits correction. In such cases, the Commission orders rectification accompanied by a fine, and if correction is impossible, the Commission—taking into account the local context and the use of the parking space—may issue a decision imposing a fine of not less than one and not more than two times the building’s transactional value per square meter of destroyed parking space.

When the owner fails to observe technical and architectural standards and the structure lacks necessary stability, and where the violation falls within the instances enumerated in Article 100, demolition is mandatory by order of the Commission (25).

To prevent such omissions and to ensure compliance with technical and architectural standards—thereby reducing violations of Article 100 of the Municipal Law by owners of lands and properties—the following measures are essential:

1. Establish a specialized team to inspect and supervise the enforcement of statutory provisions.
2. Revise certain non-functional laws and adopt new, practically effective legal provisions.
3. Conduct a governance-focused needs assessment in urban management and eliminate managerial weaknesses.
4. Select capable and incorruptible individuals to conduct administrative inspections. In the letter of the Commander of the Faithful, Imam 'Alī (peace be upon him), to Mālik al-Ashtar upon appointing him governor of Egypt, after detailing the method of selecting officials and agents, he states: “Then keep their work under constant scrutiny, and appoint, in secret, loyal and upright inspectors to examine their actions; for continuous, covert oversight encourages them to be trustworthy and gentle with their subordinates. Guard yourself against the crookedness of your aides. If one of them commits treachery and your confidential agents unanimously testify against him, suffice with that testimony, subject him to corporal punishment, penalize him commensurate with his betrayal, abase him from his office, and mark him with the stigma of treachery so that its disgrace clings to him” (14, 26).

Imam 'Alī (peace be upon him) further advises: “Reflect deeply when choosing your officials, and appoint them based on evaluation, not personal ties or affection; for these are the roots of injustice and treachery. Choose those who are experienced and modest, from noble families who preceded others in Islam; their ethics are better, their reputations sounder, their greed for material things less, and their foresight in crises greater. Then ensure they are well provided for, for that strengthens them in cultivating integrity, makes them independent of what is in their hands of the public treasury, and leaves them no pretext to disobey your orders or betray your trust. Thereafter, examine their affairs and send truthful, loyal monitors to them; for secret inspection fosters their trustworthiness, their kindness toward people, and restrains the treachery of their assistants. If any of them commits treachery and your monitors report it, then punish him physically without need of further witnesses, call him to account in proportion to his fault, abase him, and brand him with betrayal and the stigma of accusation” (15, 27).

Non-Enforcement of Anti-Money-Laundering Laws

One of the international challenges is the failure to enforce statutes, notably negligence in implementing the Anti-Money-Laundering Law. Article 9 of this law provides: “Defendants and offenders convicted of money-laundering, in addition to returning the proceeds and benefits obtained from the offense, shall be sentenced to a cash fine equal to one-fourth of the proceeds of the crime, which must be deposited into the public revenue account at the Central Bank of the Islamic Republic of Iran” (20).

Article 20 of the same law obliges supervisory organizations (such as the Central Bank of the Islamic Republic of Iran, the Central Insurance Organization, the Securities and Exchange Organization, the General Inspection Organization, the Organization for Registration of Deeds and Properties, professional unions, and the Organization of Endowments and Charitable Affairs) to consider compliance with anti-money-laundering and counter-terrorist-financing regulations in their routine inspections and to report observance or non-observance accordingly (21).

Some Challenges of Omission from the Perspective of Imam ‘Alī (peace be upon him)

Non-Payment of Maintenance (Nafaqa)

Sukūnī narrates from Imam al-Ṣādiq (peace be upon him), from his father (peace be upon him), that a woman complained to the Commander of the Faithful (peace be upon him) that her husband did not pay her maintenance, while the husband was insolvent. Imam ‘Alī (peace be upon him) therefore refrained from ordering his detention and recited the verse: “Surely with hardship comes ease.” (15).

This ruling of Imam ‘Alī (peace be upon him) occurred while he was serving as head of state and could lawfully have ordered the husband’s detention. However, given the exigencies of the time, the Imam knew that the man’s insolvency did not necessarily arise from sloth but was influenced by the economic conditions of the era; the insolvent person was incapable of discharging a mandatory right, and the omission was not willful disobedience. Governments, by their legal duty, must assist the destitute in such circumstances.

It is also narrated from ‘Alī (peace be upon him) that the Noble Prophet (peace be upon him and his family) said: “Indeed, Allah forgives every sin except one who denies a woman’s dower, or usurps a laborer’s wage, or sells a free man.” (19). In *al-Muḥāsīn*, Imam al-Ṣādiq (peace be upon him) is reported to have said: “The most loathsome sins are three: killing an animal [unjustly], withholding a woman’s dowry, and depriving a hired worker of his wage.” (27).

Omitting Obligatory Duties

In censuring the omission of obligatory duties, the Commander of the Faithful (peace be upon him) delivered a sermon, saying: “God, blessed and exalted, has set limits—do not transgress them; He has imposed obligations—do not neglect them; and He has remained silent regarding certain matters—not out of forgetfulness, but as a mercy—so do not impose them upon yourselves.” He further related that the Messenger of Allah (peace be upon him and his family) said: “God the Exalted has set limits for you, so do not transgress them; He has obligated duties upon you, so do not waste them; He has established practices (sunan) for you, so follow them; and He has forbidden certain things to you, so do not tear away their veils; and He has remained silent on some matters out of mercy for you—not due to forgetfulness—so do not oblige yourselves concerning them.” (28).

Imam ‘Alī (peace be upon him) also said, to forestall omission in enforcing *qiṣāṣ*: “Allah made faith obligatory to purify from defilement... and [He made] retribution (*qiṣāṣ*) [obligatory] to preserve lives.” (15). He considered the legislation of *qiṣāṣ* a means of safeguarding human life and the enforcement of *ḥudūd* a cause for magnifying the sanctities of Allah—so that prohibitions are not trivialized, and people do not commit them and thereby fall into their inherent corruptions (14).

It is narrated that the Commander of the Faithful (peace be upon him) apprehended a man from Banū Asad for a *ḥadd* punishment due upon him, intending to carry it out. The tribe sought intercession through Imam al-Ḥusayn (peace be upon him), who refused. They then appealed to Imam ‘Alī (peace be upon him), who said: “Whatever is in my power that you ask of me, I shall do.” They departed rejoicing, and on the way encountered Imam al-Ḥusayn (peace be upon him), who, hearing of their appeal, told them: “If you desire your companion, turn back—perhaps his matter has already been concluded.” Returning, they found that Imam ‘Alī (peace be upon him) had already executed the *ḥadd*. They said: “O Commander of the Faithful, did you not promise us?” He replied: “I promised regarding what lay within my power; this is not within my power. The Messenger of Allah (peace be upon him and

his family) forbade intercession concerning the *ḥudūd* of Allah, saying: ‘Whoever intercedes regarding a *ḥadd* so as to nullify it, striving to invalidate the limits of Allah, Allah will punish him on the Day of Resurrection.’” (28). The Imam deemed omission so harmful that, in certain cases such as the foregoing, he deemed the ommitter deserving of punishment, adducing Qur’anic and Prophetic proofs (14).

Regarding omission of *jihād*, he said: “Each of you must bring down his counterpart (on the battlefield); thereafter, if able, let him aid his fellow at the same time; do not cast your duty upon the shoulders of others or abandon your opponent so that the enemy may overpower another Muslim with his aid.” (29).

The state is obliged—where necessary—to encourage, and elsewhere to censure and discipline, in order to vindicate the rights of all members of society; whoever omits an obligation or commits a prohibition should be timely admonished and chastised: “Thus the Imam (peace be upon him) and his deputy have the right to impose *ta’zīr* [discretionary punishment], provided the sin is among the major ones; *ta’zīr* is less than the *ḥadd* and its measure is determined by the judge; the more cautious view for the judge, where no specific measure is established by proof, is not to exceed the least of the *ḥudūd*.” (30).

Indifference Toward Jihād

In brief statements, Imam ‘Alī (peace be upon him) explains the negative consequences of omitting *jihād*, saying: “Whoever abandons it out of indifference, Allah will clothe him with the garment of humiliation,” and “calamity will encompass him from every side,” for such a person—or such a community—becomes like an undefended city upon which beasts of prey descend from every direction. He continues: “Such a one is stricken with ignominy and baseness, and his intellect and understanding are corrupted,” and further: “For abandoning *jihād*, the right is taken from him, and he is driven to perdition.” In Sermon 27 of *Nahj al-Balāgha*, Imam ‘Alī (peace be upon him) mentions seven terse and profound points, each indicating one of the negative consequences of abandoning *jihād* (15).

“After praising the Lord: *Jihād* in the way of Allah is a gate among the gates of Paradise, which Allah has opened to His special friends; it is the garment of piety, the impregnable armor of Allah, and His reliable shield. Whoever abandons it out of aversion, Allah clothes him in the garment of humiliation; calamity encompasses him; he is branded with meanness and abasement; a seal is set upon his heart with deviation; by neglecting *jihād*, the right is taken from him; he is doomed to degradation and denied equity.” (15).

The phrase “out of aversion to it” indicates that those excused by reason of incapacity, illness, or disability are excluded—just as the Qur’anic verses make clear. For an accessible exposition of these teachings, see the contemporary commentary *Payām-e Imām Amīr al-Mu’minīn (peace be upon him)* (14).

Breach of Covenant

Adherence by rulers to the promises they make to the people—sometimes even sworn to fulfill—cultivates public confidence, wins hearts, and stabilizes the political order. In this regard, the Commander of the Faithful ‘Alī (peace be upon him) instructed Mālik to avoid promising the people and committing to an action and then violating it, because breaking promises and covenants provokes the wrath of God and of the people (31).

Breach of promise is not only a reprehensible moral act; in law, the defaulter may incur liability. The Civil Code provides that where, within a contract, it is stipulated that in the event of breach the breaching party shall pay a specified sum as damages, the court may not order more or less than the amount stipulated.

Concerning fulfillment of covenants—the antithesis of breaking promises—the Qur’ān states: “And fulfill the covenant; surely, the covenant will be questioned [on the Day of Resurrection].” The Messenger of Allah (peace be upon him and his family) said: “A promise is a debt. Woe to the one who promises and then breaks it; woe to the one who promises and then breaks it; woe to the one who promises and then breaks it.” (32).

Imam ‘Alī (peace be upon him) narrated that Allah the Exalted said: “Three kinds of people I shall be their adversary on the Day of Resurrection: a man who swears by Me and then betrays; a man who sells a free person and consumes his price; and a man who hires a laborer, takes full work from him, and then fails to pay him his wage in full.” (33).

Imam ‘Alī (peace be upon him) also said: “Treachery is the ugliest of the two betrayals,” that is, covenant-breaking is among the worst forms of treachery (34). He further declared: “One who is asked (for something) remains free until he gives a promise,” i.e., once a promise is given, moral responsibility attaches (15).

He also said: “The promise a believer makes to his brother is a kind of vow, even if it has no expiation; whoever breaks it has, in truth, begun by breaking with God and exposed himself to His wrath,” and he cited the verse, “O you who believe, why do you say what you do not do? It is greatly hateful in the sight of Allah that you say what you do not do.” (14, 35).

Laxity in Adjudication

The epistle of Imam ‘Alī (peace be upon him) to Mālik al-Ashtar discloses another foundational principle of judging: the qualities that must converge in a judge for the guardian-ruler to appoint him to the bench.

First, in adjudication, the best of people must be chosen—where “best” denotes superiority in moral integrity as well as in intellectual and scholarly capacity.

Second, from Imam ‘Alī’s perspective, the one who judges among the people must aim at the reform of society, avoid making matters unduly difficult, not be provoked to obstinacy by adversarial conduct, and refrain from persisting in error.

Third, he must be an inquirer who does not content himself with superficial understanding.

Fourth, he must not allow caprice to intrude upon judgment.

Fifth, he must not persist in his mistakes and should be given to consultation.

Sixth, once the truth becomes clear, he must issue his ruling with proof and argument, without inclining toward any side.

“In appointing a judge among the people, choose the one whom you deem the most excellent—who lingers longest in cases of doubt, adduces the most compelling proofs, is least wearied by the frequent visits of litigants, is most patient in uncovering the realities of matters, and is most decisive when the ruling becomes clear...” (15, 36).

Imam ‘Alī (peace be upon him) thus required his governors to appoint judges in whom no laxity could take root, so that they might discharge their duty in the best possible manner (15).

Insufficient Attention to the Rights of the Accused

In the Islamic system of criminal procedure, the rights of the accused are grounded in preserving human dignity and in securing judicial justice and safety. Reflecting upon the governance of the Commander of the Faithful (peace be upon him), one can infer severe restrictions on detention—except in cases such as intentional homicide.

Detention is prohibited except in the instances specified by the laws of the Islamic Republic. As Ayatollah Hāshemi-Shahrudi (may Allah have mercy on him) explained—expounding the import of Imam ‘Alī’s guidance—detention, save in cases like intentional killing, is impermissible; his statement elucidated the Imam’s view, not a personal judicial ruling. He further emphasized that Islam is a religion of justice, which grounds the realization of justice in the preservation of human dignity; and that criminal justice—long the aspiration of seekers of justice—cannot be attained without a fair trial that respects the rights and freedoms of the accused (36).

It is certain that the aim of every criminal proceeding is criminal justice, and this cannot emerge without a fair hearing in which the accused’s rights and liberties are honored. Respect for the rights of others is a prerequisite for social and political order and security; all citizens, to secure their own freedoms, must respect one another’s rights. The accused, as a member of society, must be treated like other citizens and, until a final conviction is issued, stands in no different position from them in terms of dignity and respect. Appropriate conduct by criminal-justice officials toward the accused promotes secondary prevention and the reform of offenders, thus realizing one of the judiciary’s essential missions (36).

With regard to detention, several points are noteworthy:

(a) Where sufficient evidence exists, the investigating judge, after serving notice of the accusation in accordance with law, may issue an order for temporary detention.

(b) Temporary detention may facilitate completion of the investigation; generally, it is issued only in offenses for which sufficient evidence of guilt exists.

(c) Under the law, such detention orders are reserved for limited categories of serious offenses (e.g., those punishable by death, life imprisonment, amputation, grave bodily offenses, higher-degree discretionary crimes, certain national-security crimes, violent public-order offenses involving weapons, and major theft and corruption offenses).

These constraints underscore that safeguarding the rights of the accused is a structural duty of the justice system and that any omission in this regard undermines both due process and the public’s trust in the rule of law (36).

Conclusion

Based on the findings of this study, within the adjudication of offenses and violations committed by governmental employees at the stage of preliminary investigations, there are insufficient enforcement mechanisms to ensure observance of fair trial principles. These deficiencies include the absence of safeguards to prevent experts affiliated with governmental organizations from compromising neutrality due to structural or institutional dependency; lack of disciplinary oversight concerning professional misconduct of such experts; failure to ensure impartiality within investigative teams; and inadequate procedural provisions governing the summoning and detention of managers and officials, particularly in protecting the rights of private complainants.

First, as indicated throughout the discussions, the existing laws concerning damages resulting from omission in Iranian law remain incomplete and require reform and supplementation. For instance, under current law, a person who passively tolerates another’s omission that causes damage is not held liable or subject to sanction. In contrast, under English law, steps taken by the aggrieved party to mitigate losses are considered by courts when assessing damages. In *Frost v. Knight*, Justice Cockburn observed that, in estimating damages for non-performance of a contractual obligation, a jury must consider the conduct and precautions that a reasonable person in similar circumstances would have taken to reduce the extent of loss.

In Imami jurisprudence—the foundation of Iran’s civil law—there exists the principle of *iqdām* (voluntary assumption of risk). This principle holds that when a person knowingly consents to an act that leads to his own loss, such consent precludes the recovery of damages. In other words, one who deliberately waives protection over his property or knowingly acts to his own detriment cannot later claim compensation for the harm incurred. For example, if someone knowingly buys an item at an inflated price or with awareness that the property does not belong to the seller, his voluntary acceptance of possible loss extinguishes any right to indemnity.

In most modern legal systems, the performance of obligations and assigned duties forms the cornerstone of all judicial processes—criminal, civil, and administrative alike—such that omission or noncompliance with these principles can undermine the very legitimacy of proceedings. Stable theoretical foundations consistent with natural human rights and internationally recognized instruments serve as essential supports for protecting citizens’ material and moral rights. Accordingly, the standards and norms governing the performance of duties and obligations must be observed in all institutions; otherwise, governance will lose both legitimacy and credibility. Effective supervision of all governmental bodies is an inherent duty of the state, and any negligence in this regard constitutes a separate omission in itself. Proper oversight of governmental employees’ conduct and the reduction of omissions thus represent fundamental pillars of just and equitable adjudication.

Accordingly, given the importance of criminal responsibility among governmental employees, this article titled “*The Major Challenges of Governmental Omission with Emphasis on the Conduct of Imam ‘Alī (peace be upon him)*” was undertaken. Based on empirical evidence and documentary analysis, the study examined the manifestations, consequences, and effects of governmental omission as both offense and violation. However, significant theoretical and jurisprudential divergences persist among legal scholars and jurists.

The study shows that the most critical challenges arising from governmental omission—which may undermine fundamental principles of legal duty—include:

- (a) Bodily harms such as failure to assist the injured, abandonment of post or duty, negligence, carelessness, forgetfulness, inattention, or omission in treatment; and
- (b) Financial damages stemming from omission, such as hoarding, owner’s fault, leniency, administrative negligence, dereliction by officials, disregard for law, employer’s fault, and managerial neglect.

According to the findings, governmental omission produces major consequences, including the paralysis of state programs, failure to report violations and crimes, non-enforcement of anti-money-laundering laws, negligence in implementing constitutional and statutory provisions, inattention to regulations protecting citizens’ rights, lack of transparency in budget allocations, and refusal of agencies to fulfill their assigned responsibilities.

Imam ‘Alī (peace be upon him), in his instruction to Mālik al-Ashtar, condemned governmental omission by advising: “Refrain from making promises to the people and pledging to do what you will then fail to perform, for breaking promises and covenants provokes the wrath of God and the people.” Similarly, he considered breach of covenant and abandonment of *jihād* as manifestations and outcomes of governmental omission, warning: “Whoever deems *jihād* undesirable and abandons it, Allah will clothe him in the garment of humiliation and disgrace; calamities will befall him, he will become weak and despised, his heart will be veiled in error, the truth will turn away from him, and through neglecting *jihād*, he will be condemned to ignominy and deprived of justice.”

Recommendations

A. Research Recommendations

1. It is recommended that future studies be conducted with larger sample sizes and broader geographic coverage to develop a more comprehensive and coherent body of literature regarding the operationalization of the discussed variables.
2. As the present study focuses solely on Iranian governmental employees, future research should examine governmental omission in other countries, thereby enhancing generalizability and allowing comparative analysis.
3. Subsequent research should explore intervening variables such as economic status, marital condition, gender, and educational level of the accused individuals.
4. Since the determinants of omission among governmental employees—like those of many other offenses—remain insufficiently understood and underexplored, further empirical investigation is needed to elucidate these factors.

B. Practical Recommendations

1. Based on the findings, it is recommended to organize training workshops aimed at strengthening legal awareness and ethical responsibility among governmental employees.
2. Both in-person and distance-learning programs should be developed to improve managerial skills and understanding of relevant laws, thereby enabling employees to implement effective strategies. These initiatives can complement existing intervention frameworks for reducing omission and enhance their efficacy.
3. Oversight authorities should incorporate preventive measures against omission into their supervisory and compliance programs to ensure early detection and intervention. Given the relationship between omission and physical as well as financial harm, aligning preventive and monitoring initiatives with these concepts will significantly improve the efficiency of administrative systems and reduce damage.
4. A **comprehensive law** addressing all aspects of omission should be drafted and enacted. The absence of such legislation represents a significant gap that Parliament should urgently address, notwithstanding that the Judiciary has issued internal directives for countering and preventing dereliction of official duties.

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Authors' Contributions

All authors equally contributed to this study.

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The authors of this article declared no conflict of interest.

Ethical Considerations

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Transparency of Data

In accordance with the principles of transparency and open research, we declare that all data and materials used in this study are available upon request.

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