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ISLAM ON THE EFFECTS AND SOLUTIONS OF JUSTICE ADMINISTRATION IN THE DOMAIN OF HUMAN RIGHTS

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ABSTRACT

Demand of equality, fairness and justice is among the most important issues in religious thoughts as well as the modern system of human rights. Here we need to evaluate human rights system based on the justice touchstone. The modern system of human rights though insists on the principle of justice, due to its being influenced by the philosophical foundations of individualism and humanism, it gives priority to the individual in the domain of legislation and codification of rights. This approach has led to the prioritization of the demand of a group of human individuals before the rights of majority and in it justice and human dignity have been ignored. However, in Islamic human rights, man as the Deputy of Allah has been chosen as the axis of legislation and his rights have been regulated by the Creator of Universe based on his primordial nature. In current essay, we have sought using discursive analysis to explain the challenges of the Universal Declaration of Human Rights and codify the solutions of administration of justice as deemed by Islam in the statutes. These solutions include concentration on human existential identity and aspects, taking human dignity as the axis and considering human primordial nature as touchstone. Being beyond space and time, compatibility and harmony, proportion, continuation and enjoying performance bond are among the effects of justice based human rights.

Keywords: Justice, Human Rights, Universal Declaration of Human Rights, Human Dignity, Human Primordial Nature.

INTRODUCTION

It is generally believed that relations of individuals and groups, social laws and regulations and also social institutions should be just. Social regulations and requirements are legitimate when they are compatible with justice or have been designed based on it and are administered according to it. Justice is a measure not only for the individuals and individual action rather for the community and collective behavior. Therefore, problem of fairness and justice has been one of the most important human problems and ideals on the planet earth and among the subjects discussed by every thinker. The discussion and study of justice and fairness, its nature and mechanism and its method of realization and performance in human societies and in human souls have always been considered to be part of the primary necessities of human life. Moreover, tendency towards justice, struggle for justice and justice administration not only as a human demand and need rather is one of human primordial and rational aspects without which his humanity loses its meaning.

Concept of Human Rights

Human Rights from a Western Perspective

The UN has defined human rights as follows: “Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.” (Ghumami, 2008). From a western perspective, denial of human basic rights and freedoms is not only an individual and personal tragedy rather it leads to the social and political unrest and sows the seed of violence and animosity inside the communities and nations. As the first sentence of the Universal Declaration of Human Rights announces: recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.

Human Rights from an Islamic Point of View:

The concept of right and rights and also man from Islamic point of view, have been defined as follows: “Human rights are those fixed, stable and common affairs that in all humans that every human is entitled to enjoy just in view of his being a human being and these rights have been endowed upon man by the Creator in the very first day of creation” (Javadi Amoli, 2006).

It is needless to say that determination of rights from an Islamic point of view is the responsibility of the owner of Sharia and these rights have been explained in detailed way in Holy Quran and prophetic traditions (Sharani, 1977). Then, the only supporter and provider of human rights is Holy Quran which is the logic of revelation and all books of prophetic traditions including Nahjulbalaghah, Sahifeye Sajjadyeh, Bihar, Kafi and other Islamic sources are all branches of Holy Quran in one sense they are lower versions of Holy Quran (Hassanzadeh Amoli, 1990).

Justice and Human Rights in Islam**Role of Justice in Human Rights according to Immaculate Imams**

According to Immaculate Imams, justice is a necessity which the survival of the society is contingent upon and without its realization the society will not remain and in the political aspect it will have no stability. This necessity can be seen in every society. Imam Sadeq refers to justice as one of the things which people really need: “There are three things that people truly need them: 1) security, 2) justice, 3) abundance (Harrani, 1976). Moreover, nothing is more urgent than justice and fairness and its realization in the society. Therefore, one cannot neglect justice at the cost of economic and political development. For all social expedencies can be realized under the shadow of justice. Imam Ali states: Nothing like justice can make lands prosperous (Mohammadi Reyshahri, 1983).

The importance of justice is so that our Immaculate Imams have described justice as the foundation of existence, basis of life, religion and Sharia and ground of divine law and rights, foundation of society and ethics, God’s balance on earth, factor of development and growth of societies and stability of regimes, execution of divine traditions and terms, balance of peace of hearts and tradition of divine prophets. In the political and social aspect, justice is also a right that must be observed by the rulers. Imam Ali states: “One of your rights that must be observed by the ruler is treating you in the spirit of fairness and justice” (Majlesi II, 1990).

Effects of Administration of Justice on Human Rights according to Islam

Temporally and Spatially Transcendent Human Rights

The Lord God held man in high regard and after his creation He congratulated Himself (Chapter, Momenun, 14). Among all creature, He chose man for Himself (Chapter Taha, 40-41). In Islamic worldview, man is the caliph of God (Chapter Anaam, 165) and Wise God has endowed him with certain talents that assist him to reach the goal of creation, i.e. Perfection. For realization of these potential talents, God has determined certain obligations and rights among which one can refer to “Human Rights”. “Fundamental rights and public freedoms in Islam are part of the Islamic religion as a whole”.

In Twentieth Century, the world after leaving very bitter experiences behind, particularly WWI and WWII that imposed countless destructions unto humanity, and following the establishment of “United Nations” on 26 June 1945, decided to take an effective step towards laying the foundations of international peace and security. Among the measures adopted by the UN, one can refer to the issuance of the “Universal Declaration of Human Rights” in 1948. According to the clause (3) of the Article (1) of the Charter of United Nations, all member states are required to strengthen the respect of human rights and basic rights of all people without any discrimination in terms of sex, language and religion. According to the Articles (55) and (56) of the Charter, one of the missions of the United Nations is the “encouragement of global and effective respect of human rights and basic freedoms for all, without discrimination in view of race, sex, language or religion” (UN Charter, Article 55) and “all member states are required to cooperate with the UN in this regard” (Charter, Article 56).

One of the features that are enumerated for human rights and underlined in the Universal Declaration of Human Rights is its “universality”. This is the major feature that distinguishes human rights from other rights (Mesbah Yazdi, 2006). According to Islam, this advantage (value dignity) is necessary for reaching the proper conditions in social life (Mesbah Yazdi, 2006). Therefore, the root of many differences in nature and extensions of human rights according to Islamic and Western perspectives lies in the difference in anthropology; although it is not intended by any means that “man” does not have any right regardless of his religion, race and sex; in the logic of Islam, if someone has killed thousands and he has been condemned to death penalty hundred times, he still has certain rights that must be observed (Motahari, 2009). Thus, human rights as a set of rights beyond positive statutes that govern them should be observed by the legislators and officials and in fact, human rights have been designed for defense of people and citizens against the despotism and oppression.

Secret of Universality of Islamic Human Rights:

Human rights in Islamic thought due to including primordial and human principles and rules are universal and if the Universal Declaration of Human Rights observes these principles it can be universal. The most important of these principles and rules include the following three principles:

Principle One: Primordial and super-dogmatic nature of Islamic human rights,

Principle Two: Simplicity, generosity and dignity of Islamic rights,

Principle Three: Justice as the foundation of Islamic human rights (Motahari, 1979).

Justice in Islamic legal system, contrary to the theory of justice in the view of authors, is an absolute value that is temporally and spatially transcendent. Justice in Islamic culture and thought is an absolute value the concept and measure of which are stable though in proportion



to the requirements of time and space its extensions vary. Justice in this context has to be understood in terms of the paradigm provided by Imam Ali in his Nahjulbalaghah as well as the Prophet's household for the Shia thinkers and it refers to putting everything in its proper place. Whenever someone speaks of divine justice, he would refer to evolutionary justice or the Sharia based justice or both of them.

Consistency and Harmony in the Structure of Human Rights:

In contemporary sciences, a rigid and inflexible industrial picture of the world has given its place to the notions that build the world that is composed of permanent creative data that no mechanical law can stop it by force. Man has turned to an aspect of this creative motivation and is so intertwined with the universe as a whole that cannot be expressed within the previous industrial framework. As a result, human "self" changes into a motivated free element from a will-less cogwheel which is condemned to be under the control of a giant machine. This free self establishes relationship with the world as a unique whole.

Accordingly, human values in this new scientific perspective, are extended into values that are consistent with the values accepted in the previous cultures. Within the framework of common beliefs of human beings that have taken form under the shadow of recent scientific and cultural developments, we can deem a future in which man will live under the auspice of justice a majestic life in harmony with surrounding world (Qurbani, 1996).

Humankind takes the utmost advantage of the external world and uses the potentiality of life in the evolving cultural and social environment to the highest degree. The growing vision of man in the field of sciences suggests that man can acquire his lost faith and spiritual experiences. Present crisis which is the result of conquest of earth by man has paved the path for tomorrow and other tomorrows as well as new views that have their origin in human primordial nature and different cultures.

Understanding of infinite world in a continuous way will allow man to be united with nature and he understands his own relationship with life and material world as a whole within the context of space and time (Jafari, 2011).

Proportion and Continuation:

System of Islamic human rights is a religious rights system based on justice, primordial nature and human dignity. No doubt, acceptance of this problem that in this era, i.e. so called era of flourishing of human desires in the field of intellection, sciences, industries and different freedoms, leads us to a religious legal system for mankind in all contemporary societies, particularly legal experts and other thinkers of humanities (Amid Zanjani, 1991). Religion in this sense cannot be of no influence in law, politics, economy, art and ethics, and to put it in a nutshell, in all human affairs. All scholars of Islam concede that all aspects of human natural life and ideals can be united and realized in an intelligible way and this does not require any demonstration.

Performance Bond:

Islamic legal system within the paradigm of justice is based on primordial nature and relies on Divine Will; in other words, it is the Lord God who has endowed these rights and obligations upon the servants. It is needless to say that by acceptance of this attribution (attribution of rights



and obligations to Glorious God), every conscious man, not only will undertake his relevant obligations and execution of rights with utmost sincerity and honesty without profit-seeking and hedonism rather he will consider the fulfilment of obligations and observation of rights to be a means for perfection and nearness to God – as the Ultimate Telos of Life. This is a great advantage that no legal or political school would ever have it. The man whose primordial nature has not been deviated and his consciousness is not spoiled by narcotizing factors – as noted by some greatest philosophers of east and west – by acceptance of the attribution of obligations and rights to human keeps himself loyal to the precepts of Common Sense and Sound Conscience and Human nature. It is needless to say that there is no such an advantage in none of the laws made by human brain whose views are limited to the relative benefits and harms of human nature (Javadi Amoli, 2006).

Solutions for Administration of Justice from an Islamic Point of View in Human Rights

Concentration on Human Identity and Existential Aspects:

Man is superior to all creatures and angels and is the caliph of God on earth. He is the final cause of the creation of universe. Although he is formally the final stage of creation, he is the first creature in the chain of creation. In the discussion of human identity, the best definition has become reflected in God's word where he states: "I choose you as my deputy on Earth" (Chapter Al Baqara, 30). In other words, God has endowed a different identity upon man as compared to other creatures.

Man has always been the subject of various sciences and he has a complicated notion in scientific discourses. Like many other controversial terms, there are various definitions. In Holy Quran the issue of identity of man and its relevant issues are among significant discussion. The importance of anthropology can be discussed from different perspectives because the knowledge of man is a premise of theology, self-purification and reaching perfection and deliverance from self-forgetfulness.

Concentration on Human Dignity:

Human essential dignity from the perspective of Islam is a bounty from God like "reason" and "conscience" which are two great divine bounties for man. This dignity has a potential value that if becomes realized by means of sincere effort in the course of "Intelligible Life" will have a value documented to "free will"; by the same token, if human reason and conscience due to its evolutionary activity by the management of "ego" or active personality in the course of intelligible life becomes realized will enjoy a value based on a free will. All human individuals should recognize this dignity and honor for each other as a right and see themselves obliged before this right. The origin of this essential dignity consists of the most significant and valuable relationship with God (Tabatabaei, Tafsir Al Mizan) and this is noted by the following holy verse: "I breathed of my Soul into man" (Chapter Al Hajar, 29). This is why the angels are ordered to glorify the man.

Moreover, the origin of this dignity is significant features, forces and potencies the mobilization of which in a sincere way on the path of intelligible life leads to the supreme value based dignity (Parsania, 2014).

Up to this point, all revealed religions and a considerable number of legal systems and moral schools are unanimous; in other words, religions and legal and moral systems accept the essential



dignity for all humans and obligate them all to observe this right but unfortunately, some legal systems of the world including western system of human rights in contemporary era have limited human dignity to the essential dignity and do not speak of a higher dignity, i.e. value based dignity. Thus, they have halted human movement in the path of intelligible life. This mode of thought in which legal issues are deemed to be separate from the moral issues that lie in the domain of values is what has led to human confusion in contemporary era particularly in the beginning of the twentieth first century. According to the conscious scientists who have not been deceived by money, name and fame: “Planet earth has been changed into a burning motor from a very beautiful planet that has always supported life that now seeks to uproot human life in an unbelievable speed” (Jafari, 1998). The right of dignity, like other basic rights, is in the sense of “judgement” not “right” in the ordinary legal sense; in other words, dignity is not a right in terminological sense. It cannot be denied or transferred; this is also the case with the rights of education, freedom and equality (Arasta, 2017).

According to Islam, no one should transfer or deny the privilege has been provided by God as dignity, honor and value status. Also Islam insists on the defense of human dignity and honor. Then, everyone is required to guide the person who seeks to deny his dignity (Qorbani, 1996).

“No one would ever insult someone’s dignity and honor unless he has already lost his dignity” (Javadi Amoli, 1987). Shortly speaking, we conclude that if someone recognizes the importance of human dignity and honor and he himself already enjoys this magnificent capital, he would never insult any other one and spoil his dignity. Therefore, if in every family, society and group, some persons are found who do not observe the judgement of human dignity, they surely do not enjoy dignity.

Human Primordial Nature as a Measure:

In Universal Declaration of Human Rights, some human natural rights have been noticed but its systematic emergence at the heart of positive statutes is the product of social necessities specifically the post-WWI and WWII events in a way that it was provided in the form of binding legal rules and has been resulted from the negligence and excess. These so called universal rights do not have their root in philosophical and intellectual principles informed by human primordial nature as the caliph of God (Baqara, 30). Rather they are more rooted in social necessities and sociological foundations. Thus, the Universal Declaration of Human Rights cannot serve the ideal values and human essential dignity in an effective way; then, one of the solutions for making the human rights just and leading it towards the path of human dignity is taking human primordial nature as the measure.

Some definitions have been proposed as regards human rights: “These rights refer to the rights that particularly belong to every individual in view of his substance and essence” (Human Rights, 2011). “Human rights represent general privileges that every individual has it by nature” (Falsafi, 1996). “Human rights are based on human individual nature” (Javid, 2009). Along with the aforementioned definitions, one may state that “human rights are the fundamental and basic rights that every human individual enjoys regardless of his color, race, language, nationality, geography and ever-changing social conditions or even the distinguished capability and any other secondary condition whatsoever” (Baqerzadeh, 2005). Some of these definitions are not comprehensive. In other words, human rights should be attributable to every human individual regardless of every condition without being limited to a particular condition. Our



definition of human rights is as follows: “human rights are in fact shared by every human individual in view of their human nature” to which in religion is referred to as “Fitrah”. Therefore, the fundamental substance of human rights is human nature in the existing theories. This constitutes the common foundations of two schools of natural rights and innate rights of man.

First Theme: Double Essence of Human Nature

Therefore, man has a nature with a happiness or misery and in practice works through a fixed tradition. This is why after “[Adhere to] the fitrah of Allah upon which He has created [all] people” it is noted “No change should there be in the creation of Allah” (Tabatabaei, Al Mizan fi Tafsir Al Quran). Thus, the eternal traditions of God have been mentioned in the following verses: Ahzab, 62; Anbia, 105; Araaf, 128; Raad, 11. Mankind has a natural and supernatural essence and is in fact a combination of these two types. “Fitrah” [primordial nature] is a constitutive element of human exclusive nature and it includes “nature” in its general sense. The natural rights theory insist that these rights cannot be conventional. Then, human rights cannot be relative rather due to the primordial essence of human nature, human rights are eternal and accordingly one can consider them to be universal because in this type of perspective like the natural rights theory the basis of rights is human nature with its specific features.

Second Theme: “Nature” as Fundamental Substance of Human Rights:

According to the theory of Fitrah, religion is a need that has its origin in human nature. Human sound primordial nature accepts the divine invitation. Of course, due to the primordial essence of religion, the battle with it is war against nature and is half of human existence that is finally doomed to fail (Motahari, 1999). Therefore, religion is the only way of man to divine and essential evolution, values and essential realities of man and an answer to human essential interests. It is also an answer to human natural demands (i.e. demands rooted in nature, instinct and Fitrah). In other words, human rights have their origin in his “nature” and the equality and freedom of human in natural rights have their origin in the creation itself. Although reason guides man towards his natural rights and according to the fundamental law of nature, man is the creature of God, Shria refers to the positive statutes the discovery of which is only possible via not violating the natural laws. This ensures its consistency with the natural laws. Its universality is also due to its harmony with human nature. Finally, human fundamental rights should be respected in every place and every time. Therefore, the rules concerned with human fundamental rights (natural rights) are universal and there is no condition that would limit it and as a result, the majority of Muslim philosophers claim that these rights are not in contradiction with divine laws and natural laws (Baqerzadeh, 2005). For these rights are not limited by any condition and belong to human nature as such.

Third Theme: Limiting the Scope of Influence of Human Carnal Desires:

Today we need to approach human rights in the spirit of justice in order to ensure human existence. We have to leave the following sentence aside: “whatever I want is part of my interests and I can acquire whatever is in my interest” and instead defend the following maxim: “what is my right belongs to me and the government and society must defend this right”. If the former sentence is not changed to the second proposition, though the explosion of the planet earth can be delayed, the earth will not be an inhabitable place for us.



CONCLUSION:

Human Rights as the international basic rights in view of their nature should be universal and as a result, political, racial and tribal differences and identities should not impede them. This truth can be endorsed when we accept its requirements; including the fact that human rights belong to all human individuals as the concept suggests. This requires the codifiers of human rights to pay attention to all cultures and their specifications or at least to their common grounds. Justice is not merely an individual virtue; rather it is of social nature. Justice is the feature of political and social laws as well as the feature of human society. Generally speaking, justice is a fundamental principle that grounds other human laws. The Universal Declaration of Human Rights due to its reliance on a special culture – liberalism, secularism and atheism that all in contradiction with human primordial nature – is regional and cannot be absolutely universal.

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