

**Justice in the Form of a Jurisprudential Theory in the Islamic Canonical Law (Shari'a)**Ehsan Aliakbari Babookani<sup>1</sup>, Mohammadhadi Mahdavi<sup>2\*</sup>, Javad Edaalatjo<sup>3</sup><sup>1</sup>Assistant professor, university of Isfahan, Isfahan, Iran<sup>2</sup>Department of law, Najafabad branch, Islamic Azad university, Najafabad, Iran<sup>3</sup>Department of law, Najafabad branch, Islamic Azad university, Najafabad, Iran**Abstract:**

Justice has always been propounded as a theological theory in the Islamic tradition and culture, thus having a long history in the Islamic thought. And it has been so important in understanding the theological thought that the Imamite and Mu'tazilite schools have become known as Adliyyah (the justice-centered schools) in the history of theology. However, despite the importance that Islam has attached to the issue of social justice, this concept has not been viewed as a jurisprudential theory, and has not been taken into consideration by jurisprudence and jurists, except in the present era. In this paper, we examined the possibility of the jurisprudential propounding of justice, and proved that justice can also be used as a rule in jurisprudence just as it can be used in theology, and the three proofs; namely, the Qur'an, the Traditions, and reason support it. As some examples for the functions of justice in jurisprudence, we can refer to its uses as a criterion for assessing the narrative proofs, as a basis for constraining and expanding the narrative proofs, as a basis for the issuance of verdicts in non-prescribed cases, and finally, as a basis for adopting verdicts in the discretionary sphere of Shari'a.

**Keywords:** justice, negation of injustice, non-prescribed verdicts, the discretionary sphere of Shari'a

**Introduction**

Justice is the most important ideal of humans in social life, and is considered as a long-standing dream of all righteous people. Justice is so important that the Holy Qur'an considers its realization as the goal of sending messengers. Islamic literature is full of texts that reflect the virtue and importance of justice. The topic of justice has a long history in the Islamic culture and religious sciences too. Albeit, justice has mainly been considered as a theological theory to the extent that the Imamite and Mu'tazilite schools have set justice as one of their religious principles, which has made them known as Adliyyah (the justice-centered schools). But justice has never been propounded as a jurisprudential theory in the traditional jurisprudence. The importance of the issue

arises from the fact that justice, as one of the most important verdicts of practical reason, is most closely related to jurisprudence, which is essentially the science of acts to be done by the obligated. Nonetheless, justice has never been regarded as a jurisprudential theory among jurists, and it was merely considered as a theological theory. According to Martyr Motahhari: "The principle of social justice, with all its importance, has been neglected in our jurisprudence. And while some generalities have been obtained in jurisprudence using Qu'anic verses such as "Do good to your parents" and "Fulfill the promises and covenants once made", but despite all emphasis that the Holy Qur'an has laid on the issue of social justice, no general rule or principle has been extracted from it. And this has led to the stagnation of our social thought." (Motahhari, 1988: 27) In this paper, we are seeking to investigate the question that whether we can propound justice in the form of a jurisprudential theory, and use it in the process of inference, or that we should take the traditional path in this regard, and ignore this fundamental concept in jurisprudence, and that if the answer to the first part is yes, what its place is going to be and how the framework of using it will be.

### **Concepts and Vocabulary**

#### **Adl (Justice)**

The Arabic word "Adl" is used in two opposing meanings. The first meaning is equality and moderation, and the second meaning deviation. (Ibn Faris, 1983: 264/4; Al-Hemyari, 1999: 4419/7) It is also said that Adl is what the human soul considers straight, and is the opposite of the Arabic word "Jawr: transgression". (Ibn Mandhur, 1993: 430/11) This term is sometimes used in the sense of an adjective too. In this sense, they may say "Someone is Adl (justice)", which means the person's words and acts are commendable. (Farahidi, 1989: 38/2) This term is also used to mean peer and match (Al-Turayhi, 1995: 133/3), moderation in things to be done, and the mean between the two extremes; excess and deficiency. (Farahidi, *ibid.*: 38/2) Ragheb's lexicon also refers to equal division and equality in reward and punishment as meanings of Adl. (Ragheb, 1991: 551)

It is difficult to exactly explain the meaning set for Adl due to various interpretations by etymologists, which are more than what we have mentioned here. But what matters is that Adl is used in all the aforesaid senses, and that in each case, by paying attention to proofs existing in the text, you can find the context in which Adl is used. Therefore, seeking to find the etymological meaning of Adl is not so helpful, as it may not seem so possible either.

Nonetheless, it seems that the most comprehensive expression in this regard is what Imam Ali says: “Justice (Adl) puts things in their places” (Sayyed Radhi, 1993: 495), which has been expressed in other places as “Putting things in their places” or “Giving every right owner their right.” Because equality and balance in things and avoiding extremes and the like are all instances of “Giving every right owner their right” and “Putting things in their places”.

### **Zulm (Injustice):**

The Arabic word “Zulm” is considered as putting things in places other than their original places. (Al-Jawhari, 1989: 1977/5; Ibn Mandhur, *ibid.*: 373/12) Ibn Faris has mentioned two meanings for it; the first meaning is darkness and is the opposite of light, and the second meaning is the one we mentioned, with the exception that he added the adverb “infringingly; in an infringing manner” as well. (Ibn Faris, *ibid.*: 468/3) It seems that the addition of this adverb is due to the same reason mentioned in the words of Imam Ali on the difference between bounty and justice, saying that bounty makes matters deviate from their original directions, but this is not done in an infringing way. (Sayyed Radhi, 1993: 496), Deviation from moderation has also been mentioned among the meanings of Zulm (injustice). (Ibn Mandhur, *ibid.*)

In any case, as can be inferred from the words of etymologists, though not mentioned explicitly, most of the meanings mentioned for Zulm are in some way the opposites of the meanings mentioned for Adl. Hence, it can be used as the opposite of Adl, even though etymologists have mostly used the word “Jawr: transgression” as the opposite of Adl. (Al-Zubaidi, 1993: 471/15)

### **Qist (Equity)**

Like “Adl”, the other Arabic term “Qist” has two opposing meanings; because if it is from the mere triliteral Arabic infinitive “Qosut”, it means deviation from what is right (Sahib ibn Abbad, 1993: 281/5), and if it is from the derived form of the triliteral Arabic root “Eqsaat”, then it means “Adl: justice” (Farahidi, *ibid.*: 71/5) as mentioned in the noble Qur’anic verse “And be equitable. Surely, God loves the equitable” (Al-Ḥujurāt/9). The following is from the book “Lisān al-‘Arab; The Tongue of the Arabs”: It is said: Aqsata (he did equitably), Yuqseto (he does equitably); and he is Muqsit (equitable) if he acts justly. And Qasata (he deviated from what is right), Yaqseto (he deviates from what is right); and he is Qāsit (deviates from right) if he transgresses. (Ibn Mandhur, *ibid.*: 377/7)

The term "Qast" with fathāh (a short vowel representing a short /a/) means Jawr (transgression) (Ibn Faris, *ibid.*: 86/5), and the term "Qist" with Kasrah (a short vowel representing a short /i/) means share and portion (Sahib ibn Abbad, *ibid.*: 281/5), and also justice (Ibn Faris, *ibid.*: 85/5) as mentioned in the noble Qur'anic verse "Say my Lord has enjoined justice" (Al-A'rāf/29).

Therefore, it seems that the word "Qist" should be considered synonymous with "Adl: justice" as it was mainly used in the same sense in the Holy Qur'an.

### **Terminological Meanings of Adl in Different Branches of Science**

#### **Adl in Theological and Philosophical Terminology:**

The Arabic word "Adl: justice" in philosophy is most often used as an attribute of God. This means that every creature has a capability, based on which they are entitled to grace from God, and that God, Who is the absolute bountiful, gives every creature the amount of grace they deserve. And that is why He is called Just (equitable). Therefore, Adl (justice) means raining down the blessings of being and perfection to creatures with capabilities and Zūlm (injustice) the denial of this grace to them. (Molla Sadra, 1981: 192/5) Albeit, Adl is used in a more general sense in classical texts of theology, such that it is said that Adel (just) is a person who does not commit a reprehensible act, and who does not disrupt his or her obligatory acts. (Al-Shaykh Al-Mufid, 1992: 32) And to define reprehensible and obligatory acts, they say that a reprehensible act is an act or inaction, whose perpetrator deserves blame in the world and punishment in the hereafter, and that an obligatory act is what, whose doer deserves praise in the world and reward in the hereafter. (*Ibid.*: 32) Mulla Abdul-Razzaq Laheji believes that the purpose of using the word Adl (justice) is to show the necessity of describing the essential self-existent (God) as one who does good and beautiful acts, and considering Him free from injustice and reprehensible acts. According to him, justice is one of the practical attributes of God (Laheji, 1993: 57)

#### **Adl in the Terminology of Ethics:**

In ethics, two terminological meanings can be found for Adl (justice):

a) Adl (justice) in the sense of a kind of perfection which is the mean between the two extremes; excess and deficiency:

In ethics, virtues are enumerated for the human soul, which lie in the mean between the two extremes; excess and deficiency, in that area of moral acts. In other words, every moral virtue lies at the mean between two vices, one of which is towards excess, and the other towards deficiency, and whoever save themselves from these extremes; excess and deficiency, and put their soul at the equilibrium point, this equilibrium point will be a virtue for their soul. For instance, we can refer

to courage, which is the mean between two ethical vices; namely, cowardice on the deficiency side and rashness on the excess side, both of which are caused by deficiencies in the soul. And the one, who saves his or her soul from these two extremes and puts it at the mean between them, is courageous and has a moral virtue. Based on this explanation, the perfection of the human soul is Adl (justice) and balance in all of his or her apparent and inner attributes and acts. (Naraq, Bit: 95/1)

b) Adl (Justice) as a moral virtue:

In this sense, Adl (justice) is a moral virtue besides other virtues such as sincerity, humility, and so on. This virtue means observing the rights of others (ibid., 171/2) and/or to like for others what you like for yourself, and to dislike for others what you do not like for yourself. (Ibid.)

### **Adl in Jurisprudential Terminology:**

In jurisprudential terminology, Adl (or Adalat: justice) is more closely tied to topics such as the status of witnesses, judges, muftis<sup>1</sup>, and leaders of congregational prayer. Here, Adalat or Adl (justice) means a sensual quality or an aptitude in a human being, which commends them to do their obligatory acts, which prohibits them from committing sins, and which, in brief, motivates them to accompany piety and fairness. (Naraq, 2001: 158; Fakhr al-Mohaqqeqin, 1967: 419/4)

Besides this terminological meaning, jurists have sometimes referred to a rule called the “rule of justice and fairness,” which is, according to the words of their famous ones, a rule for resolving financial disputes. In explaining this rule, it has been said that whenever the status of a property among two or more people is not clear in terms of ownership, and there is general knowledge of the ownership of one of them, but there is no proof that which one is the owner, based on the rule of justice and fairness, the property shall be divided among the claimants, and shall be given to all of them. In this case, if we do not give the property to any of them, we will be acting contrarily to our general knowledge. And if we give it to one of them, this will be preference without a justification, and furthermore, the property may be given to a non-owner, in which case we will be guilty of injustice. Therefore, justice requires us to act in a way that at least half the property is received by its real owner. (See Aqa Zia Iraqi, Bit: 176)

### **The Theological Background of Discussion about Justice**

One of the pivotal and important issues in the theology of divine religions is the principle of justice and philosophy, which is a basis for many theological issues, and to which is referred in various

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<sup>1</sup> Mufti: A Muslim legal expert who is empowered to give rulings on religious matters

topics. Although discussion about justice in the form of a theory goes back to the theological discussions in the second and third centuries A.H. (the eighth and ninth centuries A.D.), there are some evidence in religious texts suggesting that the basis of this issue has a history as long as the history of Islam. Al-Shaykh al-Saduq narrates from Imam Ali (peace be upon him) that he said: "One day, the Prophet Muhammad (peace be upon him and his descendants) was sitting in the mosque when a Jewish man came in and asked some questions about monotheism and God's attributes, including the following: 'Does your Lord oppress anyone?' The prophet answered: 'No.' The Jewish man asked: 'Why?' The prophet answered: 'Because of His awareness of its reprehensibility and because He does not need to do that.' The Jewish man asked: 'Has God revealed something to you in this regard?' The prophet answered: 'Yes.' Then, he recited some Qur'anic verses for him." (Al-Shaykh al-Saduq, 2009: 397-398)

What is obtained from historical studies is that the issue of justice is particularly tied to the topic of rational goodness and reprehensibility. The first historical signs of discussions about goodness and reprehensibility should be pursued in theological discussions in the first two centuries A.H. (the seventh and eighth centuries A.D.). And the purpose of raising such points was mainly to justify the fact that divine acts are done based on wisdom. In this regard, we should refer to the first theological question being discussed, which was discussion about "compulsion or choice?" And one of the arguments of those who negated compulsionism was God's wisdom and justice. They argued that if man was compelled to do his acts, then, duties, rewards, punishments, promises, and warnings would be void, and this would be generally in vain. Whereas God is free from doing pointless acts and acts which are away from wisdom, and this is reprehensible. As a historical example, we can refer to discussion between Ghaylan of Damascus and Omar ibn Abd al-Aziz, the Umayyad caliph, in which exactly the same type of argument can be seen. (Wolfson, 1989: 663) Nevertheless, this kind of argument has an older root, and it has also been employed in the answer to the question that the Iraqi man asked Imam Ali, in the Battle of Siffin, about predestination. (Al-Shaykh al-Saduq, 2009: 380) Subsequently, with the advent of the Mu'tazilite's theological thought, the theory of rational goodness and reprehensibility turned into one of their fundamental principles, and perhaps their most important basis in theological topics, and became the fundamental basis of the Mu'tazilite's theological system. This principle, which was opposed by the Ash'arites, was propounded as the Imamites and Mu'tazilites' slogan, to the extent that these two groups were referred to as "Adliyyah: the justice-centered schools" in the history of theology.

### **Adalat or Adl (Justice) as a Jurisprudential Theory**

Aside from theological discussions about justice, we must examine the question that whether the principle of justice can be propounded in jurisprudence, and be considered as a basis for jurisprudential topics. Although there have been jurisprudential discussions about it sporadically in recent times, justice has never been dealt with as a theory.

The point that needs to be mentioned before examining the proofs of the topic is that the jurisprudential theory of justice has an affirmative and a negative aspect. The affirmative aspect of justice affirms a verdict, and the negative aspect negates a verdict. For instance, the affirmative aspect states that justice is obligatory, and the negative aspect states that injustice is forbidden. Therefore, the affirmative aspect affirms a verdict in Islam, but the function of the negative aspect is only the negation of unjust verdicts from Islam. For instance, if a narrative indicates the affirmation of an unjust verdict, the negative aspect of the rule of justice will negate it. The negative aspect of it can also be called the “rule of the negation of injustice.” (Hasanali Aliakbarian, 2008: 39)

Therefore, firstly, we are going to examine the proofs for propounding justice as a comprehensive jurisprudential theory and rule. And then, we will look for its applications in jurisprudence.

### **Proofs Affirming the Jurisprudential Rule of Justice**

#### **Proof 1: The Rational Proof**

Perhaps the most important proof that justice should be a rule is the rational proof. An independent rational proof, as proved in the jurisprudential principles, is considered among jurisprudential sources, and it can affirm a religious verdict. (Mohammad Baqir al-Sadr, 1997: 202/2) Now, based on this presumption, it should be said that the most important instance of a rational verdict is undoubtedly the rational goodness of justice and the rational reprehensibility of injustice. Such that whenever an example of rational verdict is mentioned in the jurisprudential principles, they talk about justice and injustice. And they have even referred all rational verdicts to the goodness of justice and the reprehensibility of injustice, which means whatever is good is an instance of justice, and whatever is reprehensible is an instance of injustice. Although, from the viewpoint of some scholars, the rational verdict for the goodness of justice is due to the public interests resulting from it, which maintains the regime in power, and which causes the survival of human beings (Mozaffar, 2008: 244), this has no contradictions with the inherent goodness of justice, and this

rational verdict, whatever its origin, is a definitive rational verdict, and can affirm a religious verdict. Therefore, if human reason determines something as a definitive instance of justice, it will issue a verdict of its goodness. And if it determines something as an instance of injustice, it will issue a verdict of its reprehensibility. And then, by issuing a verdict that the religious verdict accompanies the rational verdict, it will conclude that Shari'a has such a verdict in this regard as well. Because based on proofs given in what follows, reason is one of God's proofs to humans, and its perception is valid in the world of legislation, as it is the case in the world of creation.

Of course, this rational verdict must be considered in conjunction with another rational verdict. Because reason considers itself as having the right of perception in cases where the holy legislator has not expressed his explicit opinion. Therefore, if it is proved in some cases that Shari'a has definitely given its verdict, though opposing the perception of reason, then, reason will follow Shari'a's verdict. Therefore, the perception of reason about instances of justice and injustice is valid when there are no definitive narrative proofs available. But if there is no narrative proof in a case, or there is, but not valid and definitive, or if it is based on guessing, and reason has a definitive perception that whether the case is an instance of justice or injustice, this will be the rational verdict which shall be followed.

### **Proof 2: Qur'anic Verses**

There are many verses in the Holy Qur'an that prove the desirability of justice before God, and that indicate the fact that as justice is the structure, basis, and foundation in the divine creation system, all divine commands and prohibitions are based on justice and negation of injustice in the divine legislation system as well, which is, in turn, indicative of the fact that justice, as a comprehensive rule, covers the whole sphere of Shari'a, And that whatever is just, is God's decree too, and whatever is unjust, it is far away from the divine realm to make a verdict of it.

#### **a) Verses in which the term "Adl: justice" has been employed:**

- Surah al-Nahl: Verse 90) "Surely, God commands justice, good-doing, and giving to kinsmen"

Three things have been commanded in this noble verse, the first of which is justice. This indicates two things:

First, justice has a special place before God and it is always commanded by Him.

Second, instances of justice are identifiable to humans; otherwise, God would not have commanded it. Therefore, wherever the human identifies a thing as an instance of justice and he

is sure about it - because if he is not sure about it, he will not consider it as an instance of justice - then, it would be one of the instances that God has commanded.

It may be argued that this sentence is declarative; that is to say, God is informing us of the real world, and He declares that whatever verdicts He gave were instances of justice. But this does not seem correct. Because firstly, “good-doing” and “giving to kinsmen” have also been commanded besides commanding justice, and regarding these two cases, the sentence is definitely originative. And it does not make sense that the sentence is declarative, but it rather commands us to do things and care for our relatives. And based on the uniformity of context, it must be said that this is also the case with regard to justice. Secondly, at the final part of the verse, God has employed the expression “He advises you,” which means that these are pieces of advice, which match practical commands, and which shall be put into practice.

The other point is about instances of justice, which is likely to be the same things that God has commanded. But this possibility is also ruled out by the fact that in such a case, the divine word will be in vain. Because it will mean that God commands what he has commanded. Hence, the meaning of justice is its customary concept; i.e. intellectual and rational justice, which is commanded by God. Based on this explanation, a comprehensive rule in the field of jurisprudence will be extracted from this verse.

- Surah al-Mā'idah: Verse 8) “O you who believe! Be you always securer of equity for God in bearing witness; and do not let detestation for a people make you depart from justice. Be just; that is nearest to piety; and fear God. Surely, God is Well Aware of what you do”

Both terms “equity” and “justice” have been mentioned in this noble verse. Nonetheless, we mean the second part of the noble verse, where justice has been commanded. Although some say that it is possible that the term justice is used in this verse to mean behavior and interactions in society, whose meaning will be close to that of fairness, and the context of the verse, which blames moving away from justice due to detestation, strengthens this possibility as well, it should be noted that as this is the case in many divine verses, this verse also has a general statement at its final part as a conclusion, and proves the general goodness of justice. Because after commanding justice towards enemies, the reason mentioned is the closeness of justice to piety. Thus, if you have to deal justly even towards enemies, then, justice is totally good before God. Hence, this verse, too, expresses a general criterion and a comprehensive rule, and sees justice as the basis and foundation of piety.

Then, the more we judge and act based on justice, the closer we will become to piety. And the more we judge based on injustice, the farther we will be away from piety.

**b) Verses in which the term “Qist: equity” has been employed:**

- Surah al-A‘rāf: Verse 29) « Say: 'My Lord has commanded equity' »

The reasoning for this verse is almost the same as that for Verse 90 of Surah al-Nahl. In this verse, the term “Qist: equity”, which is another term for expressing Adl (justice), has been commanded by God. These verses indicate that the divine legislation system is based on justice, and that every jurisprudent, who steps into the domain of inferring divine decrees, must take the issue of justice very seriously.

- Surah al-Ḥadīd: Verse 25) "Indeed, We sent Our Messengers with the clear signs, and sent down with them the Book and the Balance so that people establish equity”

In this verse, God considers the final purpose of sending the messengers to establish justice and equity. Therefore, the purpose of divine legislation is nothing but the establishment of justice, and the basis of God's legislation and decrees consists of justice and negation of injustice. This important issue cannot be achieved except through consideration of justice in the process of inferring religious verdicts. If the jurisprudent does not give verdicts based on what he sees as instances of justice, and if he does not base his religious decrees (fatwas) on justice, how will this divine goal be achieved? Therefore, it is not possible to imagine constructing a society, in which justice is ruling and secures divine goals while its jurisprudence and religious decrees are not based on justice. Hence, this verse, too, refers to justice and equity as a comprehensive rule, and reminds us of its importance in the process of inference.

**c) Verses that have commanded justice in particular cases:**

- Surah An-Nisā’: Verse 58) “God commands you to deliver the trusts back to their owners; and when you judge among people, to judge based on justice; How excellent is the admonition that God gives you! Surely, God is the All-hearing All-seeing”

- Surah al-Mā’idah: Verse 42) “And if thou judgest among them, judge equitably; Surely God loves the equitable”

- Surah al-Baqarah: Verse 282) “O you who believe! When you contract a debt one upon another for a stated term, then write it down and let a writer write it down justly between you”

- Surah An-Nisā': Verse 3) "If you fear that you may not be able to act equitably towards orphans, then marry such women as seem good to you, two or three or four; But if you fear that you may not be able to act justly, then only one"

These verses besides many other verses in the Holy Qur'an, which have commanded equity and justice in various cases, are indicative of the importance of justice in the view of the Holy Qur'an. And as can be seen, all these cases entail religious verdicts, and the reason is that they are based on justice. Hence, a general criterion for justice can be extracted from these verses altogether, which must definitely be taken into consideration during the process of inference.

### **Proof 3: The Traditions**

There are many traditions about justice in religious sources, which can be categorized as follows:

#### **a) Traditions that consider justice as a benchmark:**

- "Justice is God's scale on the earth; so whoever perceives it will go to heaven, and whoever gives it up will go to hell." (Mirza Nuri, 1987: 317/11)

- "Justice is the strongest foundation" (Ibid.: 318)

- "Justice is the cause of the survival of decrees" (Ibid.: 318)

- "God has set justice as a cause of the stability of people and to keep them away from injustice and sins" (Ibid.: 320)

#### **b) Traditions that commands rulers to be just:**

For instance, Imam Ali writes to Malik Al-Ashtar:

"Do justice for God and do justice towards people on behalf of yourself, your near ones, and those of your subjects for whom you have a liking ..... The thing most coveted by you must be the one which is the most equitable for right, the most universal by way of justice, and the most comprehensive with regard to the agreement of those who are under your rule" (Sayyed Radhi, 1993: 368)

#### **c) Traditions that consider justice as the principle of divine decrees and commands:**

- God has not sent any messenger unless he taught goodness, justice, moral virtues, and good deeds. (Mirza Nuri, 1996: 121/4)

- God does not command his servants except to be just and do good things. (Qomi, 1988: 389/1)

- Telling the truth, judging based on justice, and fulfilling the promise are all religious decrees. (Al-Shaykh al-Saduq, 1982: 113/1)

**d) Traditions that consider the presence of justice and negation of injustice a reason for issuing a verdict:**

For instance, in addition to Qur'anic verses, some traditions have also mentioned the injustice existing in usury as a reason why it is forbidden:

- "... Because usury causes corruption and injustice" (Al-Shaykh al-Saduq, 2007: 483/2)

- It is mentioned in Abu Wilad's *Ṣaḥīḥah* (a collection of authentic traditions (Hadith) gathered by Abu Wilad) that Imam Sadeq considers Abu Hanifa's verdict of the non-obligation of paying the excess rent for the duration beyond the rental period as being unjust, and gives a verdict of the obligation of paying the rent for the excess time. (Al-Kulayni, 1986: 291/5)

- Another tradition states that any effort that a usurper makes over usurped property is of no value to him or her, and he or she deserves no compensation; because he or she is unjust, and the trouble that an unjust person takes is of no value. (Al-Tusi, 1986: 295/6)

- In another tradition, the imprisonment after enforcing the religious hadd (a punishment mandated and fixed by Islamic law (Shari'a)) is considered injustice, and thus nullified. (Ibid: 314/6)

**Evaluation of the Proofs**

It is fair to say that by putting these proofs together, we can conclude that justice is a criterion and rule in jurisprudence. Although some of these traditions are weak in terms of evidence, if we take a comprehensive look at all the proofs, their content can be attributed to the Imams; because it is in accordance with the Qur'an and reason. Hence, the weakness of evidence in these traditions can be offset by other proofs, which can at least be considered as confirmatory evidence. Taking into account what have been mentioned above, it is a bit unfair to deny the fact that justice is a rule and theory in the sphere of verdicts.

**Functions of "justice and negation of injustice" in the process of inference**

**A criterion for evaluating narrative proofs**

One of the most important functions of the theory of "justice and negation of injustice" is the evaluation of narrative proofs. To explain this point, it should be said that sometimes some of these narrative proofs explicitly contradict the basis of justice and negation of injustice, and contain verdicts which are rationally considered unjust. If the narrative proof definitively has such a conflict with justice and negation of injustice, the said rule will be applicable, and can be a criterion for judging the narrative proof, and giving a verdict that the proof is not issued by the holy legislator. From among instances of this function, we can refer to Imam Khomeini's fatwa

(religious decree) on legitimate tricks for usury. Since the nature of usury is unjust, and by changing its name, its unjust nature will not change, Imam Khomeini considers traditions found about the legitimate tricks for usury to be fabricated to defame the Holy Imams.

In this regard, Imam Khomeini writes:

Considering God's words where He says: "And if you repent, you shall have your capital; neither you have dealt unjustly [with others] nor will you be dealt with unjustly", it seems that according to the Holy Legislator, it is unjust to receive something more than your capital. And its philosophy is that if there is no cause, a verdict shall be set. And it is clear that injustice will not be removed by changing the name while excess money is taken. And it was previously said that in the authentic traditions and the like, the reason why usury was forbidden had been considered to be that people would turn away from trade, and that it would cause corruption and injustice. (Imam Khomeini, 2000: 553/2)

And elsewhere he says:

If it is assumed that authentic traditions, indicating the legitimacy of tricks, are quoted, they must be interpreted or referred to experts in this field [and they cannot be accepted with this apparent form of theirs]. Because these tricks cannot, in this way, be cleared of the fact that they are a subject of injustice and corruption. (Ibid.: 544)

### **Constraining and expanding the narrative proofs**

Another function of justice and negation of injustice is expanding or constraining the narrative proofs; that is to say, in cases where the generality of a narrative proof, and not itself, is a subject of injustice, and conflicts with justice, based on the rule of justice and negation of injustice, it is possible to constrain the narrative proof and/or if it is constrained, it can be considered as being general. For example, we can refer to a problem in the topic of Qisas (equal retaliation).

Based on the generality of the verse "An eye for an eye" (Al-Mā'idah/45) in the topic of Qisas for eyes, some jurists have believed that if the victim of a crime performs Qisas using a tool that causes the perpetrator to suffer more than the victim does, and that brings about a greater pain to him or her, there will be no problem, and the victim will not even be subject to a discretionary punishment. Because the verse is general and does not necessitate any particular conditions. But, in criticizing this view, the author of the book "Al-Jawahir" writes the following:

If greater suffering is caused to the perpetrator, such a view will not be free from problems. But rather this is a pain that the perpetrator does not deserve, thus, he or she is subjected to injustice.

So, it would be preferable to choose an easier way to perform Qisas, even though the perpetrator has committed the crime using a harder tool. (Najafi, 1983: 361/42)

### **The basis for the issuance of verdicts in non-prescribed cases**

Another function of justice and negation of injustice is that in non-prescribed cases, wherever the case is one of the definitive cases of justice or negation of injustice, you must judge based on justice in that case, and you cannot refer to practical principles immediately after noticing the absence of narrative proofs. This is due to the fact that based on the proofs available for the rule of justice, this rule is considered a certain piece of evidence and a definitive reason. And, as a constant rule, evidence always takes precedence over a principle. There are many examples of this function in jurisprudence, some of which will be referred to in what follows.

For instance, some jurists have considered respecting justice in matrimonial duties as a condition, to the extent that it is forbidden to divorce one's wife if a person does not properly fulfill his wife's right and divorces her, because this divorce involves injustice towards her.

Another example is the pricing of benefits and of a building constructed on a piece of land, as well as determining the amount of compensatory payment. In the topic of compensatory payment in cases where there is disagreement among experts about prices, the author of the book "Al-Jawahir" says: "According to some jurists, the prices shall be added together and divided by the number of prices to obtain the average price." Then, he criticizes the opinions of others, and accepts the above-mentioned opinion, arguing: "The reason is that this method is a requirement for the justice, which brings together the buyer's right and the seller's right." (Najafi, 1983: 290/23) The author of the book "Al-Anaween" too sees this view as being true, and states that the reason is that it is based on justice, and that this way, no injustice will be imposed on anybody. (Maraghi, 1996: 545/2)

And about demanding a debt, Sheikh Ansari says: "If a price or any debt is due, the owner shall accept it if being paid; because refusal to accept it will cause injustice and loss." (Sheikh Ansari, 1994: 216/6)

Another case is where a person knows the value of property he or she owes somebody else, but he or she does not know the person, and only knows that the person is among certain persons. In this case, some ways have been mentioned in order to stand cleared of the debt, and the author of the book "Orwah" has considered the best way to be the distribution of property among all of them equally. (Tabatabaei Yazdi, 1988: 382/2) Sayyed Mohsen al-Hakim considers the reason for this view as being the rule of justice. (al-Hakim, 1995: 497/9)

### **Justice as a basis for adopting verdicts in the discretionary sphere of Shari'a**

One of the other fundamental functions of the rule of justice is that in cases where the subject of a verdict undergoes changes, and the survival of the verdict in its previous form will contradict justice, we can nullify the previous verdict based on justice, and issue a new verdict in a way that is based on justice.

For example, we can refer to the issue of the restoration of wastelands. As we know, according to the traditions, whoever restores a piece of wasteland will be its owner. (Al-Kulayni, 1986: 280/5) In the early days of Islam and during the era of the Imams' presence, this decree was quite just, and anybody who worked more and made more efforts to restore wastelands, was the owner of those pieces of land based on his or her own efforts. Because the facilities, which were at their disposal, were not much different, and did not give some of them more opportunities than the others had. But nowadays, due to advances in technology and the advent of new tools and machines, those who have more financial resources at their disposal can restore large amounts of land by utilizing modern tools, thus taking away the opportunity of land restoration from others. Now, if we consider constant the verdict, based on which anybody has the right to restore whatever amount of wastelands he or she wishes, this will contradict the justice in the distribution of job opportunities, and the right of many who do not have such facilities will be lost.

Martyr Sadr has posed this problem in the form of the discretionary sphere of Shari'a and says:

This legislative principle in Islam, which states that anybody who works on a piece of land, and who makes an effort to restore it, has priority over others, is regarded as being just in the view of Islam. Because it would be unjust not to differentiate between someone who has worked on the land and the one who has not worked on it at all. But due to the advancements and the increased power of humans in dominating nature, this principle may be regarded as being unjust. Because once, land restoration was done in old and simple ways, which allowed an individual to only restore small areas of land. But after human power increased and tools were provided to dominate nature more than ever before, it has become possible for a few people who have financial opportunities to restore much larger areas of land and dominate it by utilizing modern tools and machines, which would eliminate social justice. Therefore, it is necessary to take into account the discretionary sphere of Shari'a in legislation, so that it can be filled with appropriate verdicts according to social situations and conditions; that is to say, in situations like in the past, absolute restoration of land shall be allowed, and in situations like in the present era, individuals shall be prohibited from

restoration of land except in pieces of land proportionate to the goals of the Islamic economics and its view towards justice. (Mohammad Baqir al-Sadr, 1996: 688)

These were just some of the functions of justice in jurisprudence and the process of inference, and further research can prove more functions of it, not all of which could be investigated in this short opportunity.

## Conclusion

As we have seen, Justice has always been propounded as a theological theory in the religious tradition and thought. And the issue of divine justice has been the origin of the emergence of many theological topics and thoughts. But what was of concern to us was to propound justice in the form of an effective jurisprudential theory in the process of inference. Based on Qur'anic verses, numerous traditions, and the independent verdict of reason, justice can be used as a comprehensive jurisprudential rule. Although jurists have considered and utilized justice and negation of injustice in some cases, the importance of justice has not been taken into account by Islamic jurisprudence to the extent that it should be. Some functions of justice in jurisprudence were enumerated in this paper as follows: its uses as a criterion for assessing the narrative proofs, as a basis for constraining and expanding the narrative proofs, as a basis for the issuance of verdicts in non-prescribed cases, and as a basis for adopting verdicts in the discretionary sphere of Shari'a. According to the author, the functions of justice are more than what were mentioned in this paper, and it requires serious studies. But this brief can also pave the way for justice-centered jurisprudential thinking. Our aim was to prove the efficacy of justice in the process of jurisprudential inference, and this fact has been proven.

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