

The assessment of Morality and Human Right in Religious Political Jurisprudence

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Abstract

Morality and taking attention into morality system in any society were from the issues which attracted philosophers and researchers from many years ago. Religious Political Jurisprudence and human's right are from the points which involve effectiveness and necessity in Iran and worldwide, by which it could be said that these matters could not be devoid of morality. According to the permanency of the precepts of God on one hand, and the pragmatism through the religious Political Jurisprudence with giving meaning to the precepts of God on the other hand, it has been attempted to make the Islamic government as a stable system. Along this, presenting implication for morality and the speech definitions related to human right such as freedom, equality, justice, and etc are different from the instructions which are in the west morality systems. For this, in present paper with regard to the viewpoints of Imam Khomeini who is the Guardianship of the Islamic Jurists and Establisher of an Islamic Government in Iran and Ayatollah Mesbah-Yazdi's viewpoints who is the most important theorist in Iran, it has been attempted to discuss the Religious Political Jurisprudence regarding the routine pragmatisms in contrast to the west morality system and the definitions of human right. Also in present paper, based on the morality system, definitions of human right and within the Islamic jurisprudence, we are attempted to know "whether the Religious Political Jurisprudence is relevant with the morality system of Kant or not?", and to know "whether it is relevant with utilitarianism theory or not?" Here this point is also important to know "whether is the Religious Political Jurisprudence against the other morality systems or not? "Also, based on the speech definitions of human right in the morality system, what would be concluded finally?

Keywords: Religious Political Jurisprudence, virtue ethics, Utilitarianism, morality and human's right.

Introduction

Religious Political Jurisprudence as a contemporary statement in Iran is so common by which justice among people in the society and worldwide would be realized and become a true fact that subsequently within the justice among people, dignity would be realized. As a matter of fact, justice moreover bringing about dignity, also would be lead to virtue ethics¹. Here, we have to take into attention that within a cohesive pattern interrelating the elements of religion, morality and justice in any society, so that the religious Jurisprudence would be accounted as the most important matter. In this relation, Religious Political Jurisprudence as well as any dominion needs a cohesive theory that in present paper, within a concise theory of intrinsic value and Utilitarianism, we are attempted to discuss about the morality theory of religious political Jurisprudence in which the human right is also an important matter².

In the basic moral intuition, it can simply state that we ought to do our best whereas the utilitarianism theory says, there is an intuition underlying the utilitarian doctrine. Notably, this plays a major role in formulating the doctrine precisely³. The merits from utilitarianism have been resulted so assaying there is a duty to see theoretical targets clearly before pulling over

argumentative triggers⁴. Assumed the difficulty of the utilitarian doctrine makes considerable progress to providing a formulation mentioned, providing a plausible case to think about utilitarianism, when carefully formulated, many of the objections that have been raised against it can be formulated. It is believed that the less someone deserves something good, the less value results from that person's having it, and the more someone deserves something good, the more value results from that person's having it. Jurisprudence is the study and theory of law. Scholars of jurisprudence, or legal theorists hope to obtain a deeper understanding of the nature of law, of legal reasoning, legal systems and of legal institutions. General jurisprudence can be broken into categories both by the type of question scholars seek to answer and by the theories of jurisprudence, or schools of thought, regarding how those questions are best answered. Contemporary philosophy of law which deals with general jurisprudence, addresses problems⁵.

Moral theories such as contemporary virtue ethics emphasize the role of character in morality. Virtue jurisprudence is the view that the laws should promote the development of virtuous characters by citizens. Historically, this approach is associated mainly with Aristotle later. Contemporary virtue jurisprudence is inspired by philosophical work on virtue ethics. Utilitarianism

is the view that the laws should be crafted so as to produce the best consequences for the greatest number of people possible. Historically, utilitarian thinking about law is associated with the great philosopher, Jeremy Bentham. John Stuart Mill was a pupil of Bentham's and was the torch bearer for philosophy⁶.

Problem statement

Religious Political Jurisprudence and morality system: Religious Jurisprudence with the purpose of considering the Shia -Islamic matters, and with emphasizing on religion and tradition against the west-oriented speeches in orientation of mentioning Islamic government put the endeavor to involve the guardianship⁷. Imam Khomeini, Ayatollah Mesbah-Yazdi, Ayatollah Javadi Amoli with the companionship of many other philosophers in Islamic republic are the ones who put the most efforts in Religious Political Jurisprudence. As a matter of fact, in response to Religious Political Jurisprudence and presentation of statements in this base, the ones who were mentioned are different from the philosophers such as Akhon Khorasani, Mirzay-e Na'eeni, Ayatollah Khoi, Ayatollah Shariatmadari and Ayatollah Montazeri. On the basis of morality system, the philosophers guide the humans toward justice and constitutional laws at which eventually the virtue ethics and dignity would be realized among humans. Generally, the morality matters in religion political jurisprudence could be categorized into two groups: 1- morality ethics 2-morality virtues⁸.

It has to be said that morality ethics are permanent, whereas due to various conditions and with regard to time and place circumstances, the morality ethics are relative and diverse, and according to the involvement of pragmatism within realization of epistemological-foundationalism and reduction of losses from Islamic society, the religious matters such as praying and approach to God are considered in this case. Protecting the Islamic government which is based on the fact "Islam" and doing the religious duties are from the most important virtue ethics. As a matter of fact, the virtue ethics are permanent at which no change is observed. Dignity resulted of morality ethics could be only realized in Islamic dominion. In this relation, the ethics which due to political and social circumstances change are relative at which a new interpretation of morality duties would be presented⁹.

The role of guardianship and the effect of pragmatism in the ethic system of religious political jurisprudence: In viewpoint of Imam Khomeini, in relation with the role of guardianship in the society and the ethic system through genetic province, in the government the guardianship would be followed by the government on which prophets have taken domination¹⁰.

Conducting people to Approach the perfectionism and define the religious instruction by the title of "pragmatism" is undertaken by guardianship. This is due to the point that two elements are involved in the guardianship, at which in the absence of Imam Mahdi, only guardianship involves these

elements: 1- jurisprudence 2-justice, which these are the necessity of moral perfectionism. Furthermore, guardianship involves the sufficiency to take the dominion on the government by which all the moral relativism and virtue ethics have to be considered. Religious Political Jurisprudence which is subordinate to meta-speech in Islam is arranged to implement the realism; This is not possible only while the religious instructions and guardianship's orders be realized in the Religious Political Jurisprudence. For this Ayatollah Mesbah-Yazdi believes that superior dominators in world's system are not involved of the moral sufficiency to be the guardian, whereas in Iran there are people who could take the domination¹¹.

Human right in Religious Political Jurisprudence: Here we have to mention the point that with the lack of recognition from human and the facilities for him, the purpose of life for human would not be possible. Also, according to the morality system in religious political jurisprudence and specification of ultimate purpose of life for human, we need to discuss about the anthropology in Religious Political Jurisprudence and humanright¹².

Anthropology in Religious Political Jurisprudence and human's right: In Religious Political Jurisprudence, the purpose of life for human is not only related to the material world, but also relates to the afterlife at which the divine dimension has been considered most. It is endeavored to discover mankind accurately, so practically value for human beings and presenting the highest of moral values and constructive patterns in his behavior have been shown. Man has always had thoughts and ideas alongside his natural life¹³. One of these viewpoints considers nothing but thoughts. Supported by religion and sound common sense, this point of view believes that one hour of thinking is equal to years of worship, emphasizing that nothings is equal to thoughts. It is a virtual certainty that the human rights corpus, if fully implemented, would alter the fundamental character of any state, its cultures, and society. The definition of "social life of human rights" involve focusing on the performative dimensions of human rights, the dynamics of social mobilization, and the attitudinal changes of elite and non-elite social actors towards formulations of "rights" and "justice," both inside and outside the legal process¹⁴.

Freedom in Religious Political Jurisprudence: The government's power in relation to the freedom of religion has a volatile history. Governments around the world have legitimized cruelty and persecution of religious groups in the past through their legal systems. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. Alongside this international protection, freedom of religion has been recognized as a value worthy of protection in

jurisprudence history through provincial human rights codes that prevented discrimination based on religion and judicial decisions that promoted equal treatment of all religions¹⁵. Mesbah-Yazdihas categorized freedom into two groups: constitutional or unconstitutional. In this relation, we have to mention that the constitutional freedom has been accepted in the religion and no contrast against it observes, whereas while the freedom be unconstitutional, thereafter it would not be acceptable in the religion. This kind of freedom “unconstitutional” is forbidden and it could be limited and forbidden as well. Due to this, it could be said that religion and constitutional instructions in the religious political jurisprudence are along with the guardians' deductions by which the freedom could be resulted. As mentioned previously, realization of freedom in the constitutional jurisprudence would bring about the most virtue ethics in this world and afterlife. In case of observing no loss in the society, freedom of speech would be realized¹⁶. We have to pay attention that only guardian who could state the freedom of speech has to be in the society which in this case, guardian is the only one who could remove this rule. As the guardian is the only one who take the dominancy on society in the absence of Imam Mahdi, so that he would be also the only one who could discern the justice from the nullity. Hence, everyone who opposes to the guardian and criticizes him, actually is the one who is going the wrong way and following the wrong instructions in both this world and afterlife. This is totally in consistent with the instructions of religious political jurisprudence by which the immorality would be ended Rationality and individuality in religious political jurisprudence¹⁷.

There are three principles that deal the relations between the individual and the whole, which include the principle determined by power according to naturalism, the principle determined by rationality according to individualism, and the principle of sharing before self-owning according to holism. The principle determined by rationality is represented that people who have rights make the judgment. But the increasing of right content and right subject can only make the conflicts between human and nature grow¹⁸. Right has only positive effect on extremely small scale of environmental protection. The principle of sharing before self-owning is the best choice to cope with the environmental crisis, and should be observed as the social principle in ecological civilization time. The jurisprudence according to the principle has three core contents including nature adaptation, whole priority, and obligation standard. Rationality helps humans to find their ways, which beside the precepts of God, this would be possible in which all the humans' needs would be responded. Humans have to act under dominion of guardians and they have to do their duties with taking permission from guardian. People who act against the permission of guardian are the ones who are obeying a wrong way and no action of them would be accepted¹⁹.

Eventually, it could be said that the speech of religious political jurisprudence which is based on rationality has been considered

in divine reasoning in which people obey the book and tradition in order to go through the religion and follow it. It is contend that arguments derived from religious beliefs are incompatible with Constitutional jurisprudence because such views are generally irrational, and consequently, judicially incontestable. Yet, due to the significance of religion in the lives of many citizens, such arguments have continually intruded into matters of law and public policy. It is further argued that once such arguments are excluded, there are persuasive moral reasons which are implicit in the Constitutional right of self-definitional autonomy²⁰.

Results and Discussion

Ayatollah Mesbah-Yazdi through defining the “evolution theory” believes that all the morality values are permanent and are not under people's domination, where we have to consider the point that morality ethics rely on particular circumstances.

He believed that some of the morality values are absolute whereas others are relative. He states that some ethic values in humans are intrinsic by which these ethics are relevant with humans'ultimate purpose “dignity”. In this relation, due to the point that human's intrinsic is permanent, so that the values interrelating to humans's intrinsic are also permanent which all are the very ethic principles in Islam.

He also defined the ultimate evolution in human as the approach to God, for this the religious ethic values and religious instructions are all necessary. In this case, morality and religious jurisprudence are not only inseparable from each other, but also are interrelated with each other. Mesbah-Yazdi states that the religious instructions are needed in both determining the ultimate purpose “morality”, and in determining the “ethic values”. Imam Khomeini used both politic and morality in giving the statements of religious political jurisprudence strategies, and he believed that religious instructions have a political facet by which it could be said that Islamic religion is a political religion at which every instruction relates to politic, so that the Islam ethics are the very political ethics. While humans are in captive of material world and lusts, in this case any political and evolution system would be disabled from guiding humans. We have to mention that idealism is necessary in all aspects, actually within the idealism all the problems would be resolved. In viewpoint of Imam Khomeini, today morality has become as a difficulty in the society which if it does not get resolved, so the world would be declined. Hence, in religious political jurisprudence, the utilitarianism is not considered. This is due to the point that in Islamic government at which guardianship takes on the dominion, taking the doom day into attention and trying for the other world would be more important than the transient matters. So that, utilitarianism in Islamic government as well as other governments in involvement of religious political jurisprudence is not important ever. We could mention the transient matters as the increase of tourism earning with neglecting Islamic instruction provided for

coverage, humans' relation with each other, establishment of clubs for enjoyment. Imam Khomeini at the time while war was between Iran and Iraq, stated that success and getting over the war is not important for us ever, which he knows the success against war as a duty. In viewpoint of Imam Khomeini, jurisprudence theory against utilitarianism theory is not a material theory which it is a divine –material theory. Taking the idealism into attention is unavoidable, because everything is interrelated with idealism. As a matter of fact, politic without morality would not be possible to guide people. Guardians are attempted to guide individuals and society by which with the realization of idealism, individuals would be guided²¹.

As the mortality theory "intrinsic value" could not determine the duties for individuals, so that determination of humans' duties would not be possible in consistent with the morality system. Within The viewpoint of Kant about mortality, morality would be realized within presenting alogical responses by which we have not to expect any award or punishment. Idealism has been considered in morality in which all the good and bad points are assessed with virtue ethics. Therefore, as the religious political jurisprudence is not mentioned in Kant's decision making and morality viewpoint²², So as due to the point that religious political jurisprudence is not in consistent with utilitarianism ethics; for this a morality system has to be represented at which morality based on Islam involves the complex networks of absolute ethics, relative ethics, utilitarian and Foundationalism, which all these are realized with having perception of time, place conditions and political, social circumstances. For this, the morality system in Islam has made the realism as a complex order among people. Approach to God has been mentioned in the assessment of "religious ethics "system"²³. As Approach to God is not possible without faith, so that it could be said that origin and the virtue in Islamic ethics is the very faith, meaning that only the tasks which are originated from the faith toward God are valuable²⁴. Imam Khomeini believed that the ethics in Islam is political ethics referring to the instruction by which it is said that Muslims are brother with each other, actually this instruction as well as a social and political instruction is a moral instruction²⁵. In this relation, the main aims in the religious political jurisprudence are as establishment of Islamic government and protection from it, implementation of Islamic instructions, doing the constitutional orders, Approach to perfectionism, slavery and put the endeavor for Approach to God, and etc, by which the obligations and unnecessary points have to be specified to achieve the aim of religious political jurisprudence²⁶. Religious beliefs can be particular and distinct for each individual. It is not necessary that a religious view of an individual be endorsed by any other authority of a particular religion. It has been shown that how religious freedom jurisprudence has developed quite differently, invoking powerful purposive descriptions of the right; a clear focus on the individual²⁷; a clear recognition and respect for difference; and an expectation of compelling state justification. Some thoughts on whether equality law could actually be reinvigorated by religious freedom jurisprudence²⁸. Worships are in the way of

human evolution and his/her approach to God. Approach means closeness to God which needs human transformation and development²⁹. It is possible to develop human capacity by worship. Thus, respecting to worship and its management is, indeed, human growth and evolution management. It is particularly more necessary for those worships whose rational aspects are stronger. In religious political jurisprudence, it has been attempted to represent the pragmatism in morality system at which moreover realization of utilitarian the deontologism has been also mentioned in the religious political jurisprudence. As a matter fact, within the pragmatism and virtue ethics a morality system in the religious political jurisprudence would be realized involving high adaptability. In religious political jurisprudence, the morality affairs have been divided into constant and varied principles at which the compatibility, ability and all good facets could be observed. The morality system in religious political jurisprudence could respond to all the human's needs, which finally the evolution would be realized³⁰.

Conclusion

On the basis of religious political jurisprudence, it has been attempted to present the outlooks with the purpose of "security and welfare in the Islamic society" by which beside implementation of the precepts of God, the dignity and virtue ethics would be realized for humans. In this relation, also a pattern of morality system has been presented in which the instructions for advancement of humans in all dimensions toward dignity and perfectionism have been represented. Religious political jurisprudence is not relevant with human's willing at which protection from the divine instructions has been mentioned as the most important aim. The Guardian who is a self-righteous and superior person in the society involves two characteristics which within considering the circumstances in the society, he puts endeavor to consider the morality system in the Islamic government. Along this, all the efforts are only for approach to God which beside the morality this would be possible, in this case the perfectionism would be realized.

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