Shariʿa and the Social Justice[1]

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Abstract

In the contemporary era, the social justice has been focus of special attention, and explained and interpreted variously in the form of the theories of justice. In the climate of the Islamic thought, the belief in the perfection of *Shariʿa* and the capacity of the Islamic teachings for optimal management of the human societies has brought about a belief in self-sufficiency of *Shariʿa* and no need to any attempt for some movements such as identity neo-Salafism. In the present article, while explaining the view of identity neo-Salafism regarding the status of *Shariʿa* in establishing justice with a focus on Sayyid Quṭb's thought, we attempt to explore various aspects of the discussion on the relationship between *Shariʿa* and social justice. In this way, we try to present a vivid picture of the function of jurisprudence and *Shariʿa* in the sphere of establishing social justice as defined by Islam.

Keywords

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1. Statement of Problem

For some thinkers, the belief in the perfection of Islam and the capacity of Islamic *Shari'a* and laws for guiding human beings as well as fulfilling the individual and social needs prepare the ground for formation of the belief that with the existence of *Shari'a* and commitment to enforcing Islamic laws and adjusting *Shari'a* with social and individual states, the Islamic society needs no external thing outside the sphere of Islamic *Shari'a* and jurisprudence. Thus, we need no attempt to theorize on justice and design models of distributive justice or even human interference in establishment of justice through enacting human laws and regulations. Indeed, in their view, the Islamic *Shari'a* and the theoretical and practical commitment to the theme of the Islamic laws negate the reason and necessity of thinking on justice. This is because Islam in its core contains both individual and social justice. Therefore, inviting to social justice is nothing but inviting to adjusting *Shari'a* and commitment to Islamic laws and, practically, the social justice is not an issue for which one must analyze and theorize.

In fact, the Islamist movements in the last two centuries, especially neo-Salafism, have played an important role in promoting and spreading the belief in sufficiency of *Shari'a* and no need of any epistemic affair beyond Islamic laws and *Shari'a*. What is related to the present discussion is the exploration of the following question: "Do preserving justice and establishment of just relations in the Islamic society need practical and epistemic efforts of the type of theorizing justice, enacting laws and regulations, modifying structures and processes, and managerial designing along with practical commitment to the teachings of Islamic *Shari'a*?" It seems that there are various versions of self-sufficiency of *Shari'a* in providing social justice, all of

which are common in the belief that Islamic doctrines are sufficient for establishing justice, and the only problem of injustice in Islamic societies is interpreted as inaction in enforcing Islamic laws and rules. In the present article, while investigating this claim, we attempt to offer a vivid interpretation and explanation of the role and function of *Shariʿa* in regard with discussions pertaining to social justice and its establishment.

2. Neo-Salfism and sufficiency of *Shariʿa*

In the later half of the twentieth century, the neo-Salafist movements and the Islamic fundamentalism grew considerably in the Islamic societies. Unlike the historical Salafism with its special doctrines formed by a focus on views presented by Ahmad bin Hanbal and formalist views offered by Ibn Taymiyya Harrani (8th century), the contemporary neo-Salafism has an identity aspect and its political-social aspect is dominant. Indeed, it is a serious negative reaction to the dominance of modernity and the negative consequences and the resultant cultural-social changes in the traditional and Islamic societies. The identity Salafism, especially in the face of the *jihadi* and *takfiri* Salafism, is an identity-seeking reaction to the rush of modernity and Secularist efforts for modernization of the Islamic societies. The neo-Salafist movements, despite their variety and plurality, agree in three important rules as follows:

(a) The existing social reality in the Islamic societies and various forms of the relationships and arrangements dominant in these societies are non-Islamic and do not conform to the Quranic criteria, and thus, are somehow of deviation from the true Islam.

(b) The era of *salaf ṣāliḥ* (i.e. the righteous predecessors)[1] is the crystallization of true Islam and includes the Islamic utopia – the pure Islam not polluted by wrong imitations and false traditions as well as various intellectual deviation, which must be sought in *salaf* era (Bukhari, 1333, vol.18, p. 178).

(c) The present religious duty of the Muslims is jihad and struggle for changing the existing social reality according to the Quran and Sunnah. This change and neutralization of deviated social relations and arrangements must be done on the basis of the *salaf ṣāliḥ*'s thought and behavior and their understanding of the Quran and Sunnah. Do all subdivisions of identity neo-Salafism consider religious formalism and mere practical commitment to jurisprudential decrees as sufficient provision for realization of justice and other desirable ideals of the Islamic society? This is what the author will seek in the following pages to show that one cannot easily issue a definite decree in this regard and some of the Salafist thoughts must be studied more accurately.

One of the strongest and most influential neo-Salafi thinkers was Sayyid Qutb who emphasizes on the three abovementioned rules by adducing the Quran's verses in his book entitled *Maʿālim fil-Ṭarīq.* In Sayyid Qutb's view, any society other than the Islamic society, is an ignorant one. What is the criterion is the acceptance or rejection of the divine servitude and governance. Any society that does not restrict its

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1. This term refers normally to three groups: first, the Prophet's companions, i.e. those who saw the Prophet and converted to Islam in his lifetime. The second group includes *Tābiʿīn* (i.e. Successors) who did not see the Prophet but saw the Prophet's companions and died as Muslims. And the third group included *Tābiʿ Tābiʿīn* who did not see the companions, but converted to Islam by the Successors. The traditional evidence for the claim that the method of the Righteous Predecessors is the best method of Muslimhood is a hadith in Bukhari's *Ṣaḥīḥ* transmitted by Abu Saʿid Khidri from the Prophet. In that hadith, the Prophet says: "The best people in my nation are those who live in my age, and after them, those who come after them, and then those who come after them".

servitude – in doctrinal insight, in ritual worship, and in legislation – to God is an ignorant society. According to this definition, all existing societies in the contemporary world are ignorant. Today's ignorance entrusts governance to human beings (Sayyid Qutb, 1378 SH, pp. 7, 115, 116, 139).

In his view, Islam has a vivid goal, that is, proclaiming God's divinity and negating servitude to other human beings. He writes: "proclaiming God's divinity and His lordship over creatures means an all-out riot against mankind's governance in all its forms and systems and a complete disobedience towards all existing systems on earth wherein the mankind governs anyway, or – in other words – may have divinity" (Sayyid Qutb, 1378 SH, p. 74).

According to his criterion, not only liberal or socialist societies but also all Islamic societies are ignorant, although they believe in God. This is because life system and principles as well as their laws, values and rules are not all-out Islamic, but they are taken from sources other than God (Sayyid Qutb, 1378 SH, p. 120).

Sayyid Qutb maintains that there is no third state of mixing Islam and non-divine governance, and such a society is definitely ignorant. For him, ignorance is the men's servitude to other men. That is, some men enact law for other men and make principles and values govern on them. Such a society has surrendered itself to worshiping something other than God and has become ignorant (Sayyid Qutb, 1378 SH, p. 203).

Sayyid Qutb does not interpret the desired Islamic society in returning to the past and the social arrangements of the golden era of the early Islam. In this way, he goes away from dogmatic Islamism. Some critics of the neo-Salafism wish to attribute dogmatism and mere prejudice as a general label to all defenders of Islamism and Salafi movements. For instance, Tayyib Tizini believes that Salafi invitation is an invitation for returning to the golden era of Salaf and the virgin Islam. It is adjusting the existing social reality of the present era with the past and making the present era subordinate to that golden era. Thus,

in the ideal society wished by the Salafiya, the era of the *salaf ṣāliḥ* is the axis, which not only dictates and directs the questions and concerns of today's Muslims, but also it organizes the method and the quality of answering them. In this way, by making the golden past era of Islam the axis and making the social reality of that era the criterion, the movement of the intellect and its power in perceiving the changing social reality and the present demands of the time become useless and the door of reasoning is closed (Tizini, 1997, p. 14). The above image is somewhat applicable to the Talebanist Islam and that of ISIS as well as the *jihadi* and *takfiri* Salafism. However, it does not apply to intellectuals such as Sayyid Qutb, because there are elements in his general thought that are inconsistent with this simplification and cliché attitude towards Islamism and centrality of *Shariʿa.*

It is true that Sayyid Qutb maintains that the civil society is the very Islamic society, and believes that the Islamic society and the human civilization are realized when the divine *Shariʿa* (in its expanded sense) is dominant. However, the important point is that Sayyid Qutb does not consider the form and the framework of this human Islamic civilization as fixed. In his view, this civilization can come to existence in any place and in all milieus according to its *Shariʿa,* principles and values. The material forms of this civilization are not limited, because in any milieu, it employs its existing actualized capacities, expanding and developing them. The Islamic society is not a fixed historical being in form, volume, and type of life governing it. However, its entity and civilization are based on fixed historical values (Sayyid Qutb, 1378 SH, pp.142, 157-158).

Considering the points distinguishing Sayyid Qutb and other fanatic neo-Salafis, we must now see what the share of the *Shariʿa* is for him in regard with social justice and establishment of Islamic justice in various states of human life. We must also see whether the social justice is among the things whose content must be taken wholly from *Shariʿa,*

with human's intellectual and epistemic efforts and theorization of justice playing no role in it.

In his book entitled *Social Justice in Islam,* Sayyid Qutb has a broad perception of the Islamic social justice and maintains that social justice is in the first place a general human justice, not a limited economic justice. In this case, it includes all manifestations of life and all aspects of activity in it, just as it includes perceptions, intuitive cognitions and as well as internal senses. The values liable to the Islamic social justice are not merely material and/ or economic values; rather, they are composed of both spiritual and material values (Sayyid Qutb, 1392 SH, p. 55). The fact, however, is that despite an emphasis on the broad scope of social justice, he has – in practice – just referred to those aspects and elements of Islam that pertain to the economic justice.

Since Islam seeks to establish a complete social justice, it starts its work from the inside of the human's soul, not merely the external affairs, and focuses on the universal human justice. It does not restrict itself to enacting laws and straining for enforcing them; rather, it sets two things as the pillars of social justice: human's heart and conscience from the inside, and right legislation in the community [from the outside]. Islam makes great effort for purification of human's soul in all aspects, and by modifying the humans' inside, it makes them the guardians of the laws and enforcers of many laws guaranteeing justice (Sayyid Qutb, 1392 SH, pp.119-120). For instance, Islam has determined *zakat* for the properties of the wealthy people as a right of the needy ones. However, it has incited human's conscience for fulfilling that duty so that giving *zakat* may be done with the wealthy men's internal willingness (Sayyid Qutb, 1392 SH, p. 124).

For him, Islam has both provided the legislative content for establishing justice and has shown the way to establishing it. Islam and *Shariʿa* have also considered the fact that enforcing the social justice requires, apart from proper laws and external executive guarantees in

an Islamic political system, the internal incitement of individuals and their readiness of souls as well as wakefulness of their consciences in divine obedience and enforcing laws and rules.

Thus, in this comprehensive perception of *Shariʿa* and Islam, there is no place for interference of any scientific content and theorization of justice or designing models of fair distribution or enacting human laws and regulations for realization of justice. In other words, in his view, there is no need to have human design and purification of model of justice in various spheres for a comprehensive establishment of Islamic social justice. *Shariʿa* has provided all epistemic content, and it just requires the executive guarantee (the Islamic political system) as well as the cultural and internal readiness of the Muslims and their practical participation resulted from that readiness. Therefore, Sayyid Qutb is, at best, among the proponents of sufficiency of *Shariʿa* and opponents of a need for theorization of justice, human legislation and other scientific and epistemic interferences in the sphere of social justice.

3. *Shariʿa*'s inclusion of justice

The fact is that justice, injustice and oppression lack unique epistemic authority both from the viewpoint of decree and from viewpoints of instance and theme. The reason, religious law and the rational convention are in the general level suggestive of evil of oppression and injustice and goodness of justice. They are also discerning and judging in cases and instances of justice and injustice. The convention and common sense of a society may consider something as just and consider an action as an instance of oppression, while the convention and common sense of the same society or other societies would not consider it, in the past eras, as oppression and injustice. Besides, the reason – in addition to the general judgment of the justice and oppression – judges some of the instances as just or unjust.

The question is that how the "religious law" (*sharʿ*) enters the sphere

of the instances of justice and injustice. Is the epistemic authority of *shar* ʿin the sphere of instances of justice so maximal that it puts aside reason and rational convention altogether? Or, is it so minimal that, while confirming the general judgment of reason and convention as to the goodness of justice and evil of oppression, it entrusts the discernment of instances completely to the reason and convention, being quite obedient to them?

In answering these important questions, various views can be stated, which – depending on each of them – the judgment on the relationship between *Shariʿa* and social justice and the extent to which one can expect *shar* ʿand Islamic laws to provide justice in social arrangements would be different.

The minimalist approach to *Shariʿa*'s inclusion of justice maintains that verses such as "do justice; it is nearer to piety" (the Quran, Māʾida, 8), "…so that people may maintain justice" (the Quran, Ḥadīd, 25), and all those cases that the Prophet has enumerated among the instances of justice must be restricted to and understood with a historical approach in the framework of that time's perception of justice. The Prophet (PBUH) was seeking to make the social arrangements just in the framework of the perception of justice in that time and for creating social change and in interaction with the social realities of his age.

Therefore, the principle of advising justice was always the Prophet's advice. But the question of what the instances of justice – or even the meaning of justice – is in various societies with a variety of changes of time and states is something related to the Muslims. In an age, even in those cases where there are textual evidences from the verses and traditions, the Muslims must take the perception of their time as the basis, because what is stated in those texts are instances of justice and injustice of the time they were issued. If in the present age the meaning of justice is what is specified by the common sense, we must commit to that very sense of justice; and the meaning of justice in the Prophet's

age does not make choosing it necessary for us. This is because the Prophet did not seek to state a unique meaning for justice for all ages, and justice is something that reformers have invited people to it with various meanings appropriate for their own time (Ali Akbariyan, 1386 SH, pp. 244-247). According to this minimal approach to the share of *Shariʿa* in justice, the Islamic jurisprudence and *Shariʿa* create no obstacle in the way of social justice and new epistemic effort for offering new emerging explanations of justice.

The maximal approach to *Shariʿa*'s inclusion of justice can be found among the formalists and people of hadith; that is, those who do not believe in authority of conventional understandings and do not consider the rational perception of anything – including justice – as legal necessity and obligation. For them, justice in enacting religious laws has been considered by the Holy Legislator. Thus, the religious laws contain the justice wished by God. Therefore, no decrees among the religious decrees would be out of the sphere of religious laws, and there is nothing lost from justice to be sought through some means other than *sharʿ* and by referring to reason, convention or rational contracts.

Reason is not a religious proof so that we may consider its perception of justice and injustice as a means for perceiving the *sharʿ*'s opinion, let alone putting aside the religious laws by relying on rational perception of instances of justice and injustice, or hindering the resort to generality or specificity of a transmitted religious evidence.

According to this approach, if reason is not able to fulfill the demands and denotations of the transmitted religious evidences, the rational contracts and conventions cannot make the instance perceptions of justice and injustice prior to the denotations of religious laws.

The *Akhbārī* scholars in the Shiite world as well as people of *Ẓāhir* and hadith among the Sunnites have disputed and denied the validity of reason in perceiving religious laws and its authority in paying heed to

necessities and obligations, whether in relation to justice and oppression or anything else. Besides, their arguments in the science of principles of jurisprudence have been reviewed and discussed under the discussion of rational arguments (Ansari, 1419 AH, part 1, pp. 51-64; al-Sadr, 1405 AH, part 4, pp. 124-147). Thus, if we accept the foundations of the *Akhbārī* scholars and the people of *Ẓāhir* for non-authority of reason and the exclusive way of referring to transmission for understanding the religious teachings and laws and, along with it, we accept that the Holy Legislator enact laws according to justice and that His orders and prohibitions are based on expediencies and criteria one of which is the justice, then the Legislator Himself has taken the responsibility for all the affairs related to justice, and there is nothing left for the human beings to be dealt with by using the reason or rational foundations. Therefore, according to this maximal attitude, *Shariʿa* specifies the obligations both in the domain of general laws related to justice and in regard with instances of justice and injustice. This approach clearly denies the reason and necessity of studying justice and theorizing about it.

Some of the theological foundations of the discussion on divine justice are obtained with the help from this maximal perception of *Shariʿa* and justice. The theological view of Ḥanbalīs and Ashʿarīs prepares a foundation for this maximal perception, while Muʿtazila's view is not so. Muʿtazila regards justice as God's essence and considers any oppression far from God because it opposes His essence, and on the other hand, the reason has the power to distinguish between just and oppressive actions; and even before receiving revelation by the Prophet, human beings understand justice and are able to distinguish the just actions from the oppressive ones. They can understand the concept of justice by reason even without the justice in the revelation and the Quran. For Muʿtazila, the legal justice in the revelation and the Quran is related to the rational justice and the rational justice wants to clarify the way of justice for the human being according to the revelational

justice. Thus, according to this theological foundation, there is no place for the aforementioned maximal perception.

For the opponents of Mu'tazila, emphasis on the reason causes the revelation to be subordinate to reason and empowers the man to decide with his reason about the issues pertaining to his destiny. According to the Ash'arite's theological doctrine, justice is not subordinate to the man's free will, because God is the creator of anything and there is no place for the humane or rational justice. For Ahmad bin Hanbal, all questions pertaining to justice must be answered according to the *shar'* and justice is defined on the basis of *shar'* (Khaduri, 1394 SH, pp. 85 and 96).

In addition to these maximal and minimal perceptions, there is a middle-way approach that prepares the ground for the two other sources (the reason and/ or the rational conventions) to play their roles, while focusing on the *Shari'a* in the realm of justice and its instances.

4. Martyr Mutahhari's approach

Martyr Mutahhari's statements on the relationship between jurisprudence and justice are based on his commitment to the 'Adliyya's view (Mu'tazila and the Imami Shi'a) regarding the real and essential goodness and evil of the things and the fact that the laws of *shar'* follow the real criteria and standards. This causes him to consider an important status for justice in jurisprudence and basic rights as well as in regulating the social relations of the Muslims, to avoid formalism and regarding right and justice as legal, and to regard as authoritative the man's perception of justice and natural rights. The main propositions emphasized by Martyr Mutahhari are as follows:

A) The Islamic laws and regulations, whether in issues related to people's rights, limits, and social relations or in other issues are based on a series of realities (Mutahhari, 1362 SH, p. 71).

B) According to 'Adliyya school, the system of divine legislation is subordinate to the extent of justice. Islam has adjusted its

commands in accordance with truth and justice. The legislator's commands and laws are subordinate to the real goodness and evil of things. The truth and justice as the foundations of the legislator's decrees are realities prior to the religious law, and exist in reality, even if the legislator would not issue a decree about them (Mutahhari, 1371 SH, vol.4, pp. 812-813).

C) From the Islam's viewpoint, justice is in itself a scale and, in Uṣulyūn's term, is among the causes of laws, not the effects of them. The importance of the issue is in the fact that for Islam, justice is the scale of religion, not the vice versa. Religion says what justice is, and says it because it is justice. Indeed, it is not the case that what religion says is justice (Mutahhari, 1378 SH, vol.1, p. 52).

D) From the viewpoint of the Islamic jurisprudence, and at least the Shiite jurisprudence, if it is proved that justice requires that some law must be in this form and not in that form, and it is oppressive and contrary to justice, we must necessarily say that the *shar'*s law is the same. This is because the Islam's *shar'* does not go out of the path of justice and the innate and natural rights (Mutahhari, 1371 SH, vol. 19, p. 138).

E) The Muslim scholars explain the principle of justice to found the basis of the philosophy of law. Muslims were the first people who paid attention to the human rights and the principle of justice as innate and genetic affairs out of the scope of conventional laws (Mutahhari, 1371 SH, vol. 19, p. 138).

1. However, due to the movement of the people of hadith and formalism, and legitimizing the truth and justice as well as the serious opposition of that movement to ʿAdliyya, the Muslims could not go the way they had found and continue it to identify the sources of rights in the human's nature, identify the primary sources of the Islamic rights and social philosophy of Islam, and use those general foundations in

inferring the laws. If people went the way found by ʿAdliyya in previous times, it would be the origin for many social sciences among the Muslims (Mutahhari, 1362 SH, p. 138; Mutahhari, 1359 SH, vol. 19, pp. 126-127, 138).

F) Today's jurisprudence faces obstacles and oppositions originated from inattention to the principle of justice. Denying the principle of justice and the effect of this denial on the thoughts of the Islamic scholars hindered the growth of Islam's social philosophy on a rational and scientific basis. If there was freedom of thought, there was no dominance of the people of Sunnah on the people of justice, and the Shiʿa did not face the disaster of traditionalism, we would now have a compiled social philosophy, our jurisprudence had been founded on this principle, and we had not faced with the existing conflicts and dead ends (Mutahhari, 1378 SH, vol. 3, p. 250).

In the image offered by the above propositions from the relationship between jurisprudence and justice, it is clearly emphasized that the religious laws, while including justice and being issued on the basis of justice, are not sufficient to make us ignore the rational perceptions of justice. Neither commitment to *Shariʿa* and the inferred jurisprudential decrees state the whole story of justice, nor must the principle of justice and the scholars' understandings of justice be the basis for perceiving and inferring the laws and principles needed for organizing the Muslims' collective life. Besides, the principle of justice and rational understanding of justice must be among the bases for Islam's social philosophy. Neglecting and ignoring the principle of justice, for Martyr Mutahhari, is the origin of harms afflicted upon jurisprudence and legal reasoning (or *ijtihād*) as well as some dead ends and conflicts in Islamic jurisprudence and its inability in accompanying the human's path to perfection.[1]

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[1]. Mutahhari, collection of articles, p.57

Martyr Mutahhari's explanation, while it is quite clear on the authority and validity of rational understanding of justice and the legal requirements of that understanding, has not answered some questions and ambiguities. For example, it is not clear whether the reference of discerning the instances of justice and injustice are convention and the wise people or the jurist's individual discernment is also a religious proof. Is the principle of justice proposed by Master Mutahhari a rational principle confirmed by rational reasoning or a conventional principle founded on the preference of the wise people and the society's convention? Another important ambiguity is as follows: "if the rational perception of a just thing was inconsistent with an inferred legal decree or the appearance of the transmitted religious evidence, would the principle of justice and this extra-religious understanding of justice be prior to the inferred legal decree or the appearance of transmitted religious evidence?" "Can the rational or conventional perception of justice and injustice prevent resorting to the generality of a literal religious evidence or applying an evidence to that case?" "Is today's conventional perception and understanding of justice or oppressiveness of something absolutely valid or one must prove that such an understanding existed in the legislator's time and it is not specified to our time's convention?"

Another angle of the questions and ambiguities is focused on the capacity of justice and the rule of negating oppression in the form of a jurisprudential rule for doubts on decrees. Can discerning the instances of oppression (conventional or rational) and principle of justice be the way of proving the legal decree for illegitimacy or obligatoriness and clarify a doubt on decree? If yes, is application of the rule of negating oppression and the principle of justice in "doubts on decrees" restricted to cases where there is no text and tradition, or even if there is literal legal evidence on a subject, we can resort to the principle of justice and

the rule of negating oppression?

A comprehensive and justified explanation of Martyr Mutahhari's view depends on dealing with these questions and ambiguities, and he has not sought to offer this comprehensive explanation. Rather, he has smartly referred to avoiding the maximal view of *Shariʿa* in the sphere of justice and necessity of keeping the position of justice and rational perception of it in the generality of Islamic *Shariʿa* and adjusting the arrangements of collective life and necessity of the jurists' attention to the principle of justice.

5. The author's opinion

What was mentioned in the previous pages in the reports of various opinions and views about jurisprudence and justice and, consequently, the relationship between *Shariʿa* and social justice show how broad this discussion is, and how effective the discussions on theological and jurisprudential foundations in choosing each specific approach and view is. In the following sections, the author attempts to explain his chosen view about the role and function of the Islamic *Shariʿa* and jurisprudence regarding social justice and its establishment in the Islamic society with the help from the following materials.

A) In the first step, it is necessary to separate the major issues and questions of the present discussion to clarify what concerns each question is focused on and what contributions dealing with each makes in solving other issues. This separation and distinction of the issues both prevents the simplification of the present issue and prevents the baseless reduction of an issue to another one.

It seems that two main questions form the foundation of the present discussion:

1. What is the role of justice in the Islamic jurisprudence and *Shariʿa*?
2. Does practicing the Islamic jurisprudence and being

committed to *Shari'a* provide the social justice?

These two positions of discussion cannot be reduced to one another. That is, a detailed discussion in the former does not contain the answer to the latter one, and the aspects of discussions in each as well as the basic and secondary issues of each must be investigated separately.

The first question is related to several important questions each of which has its own serious jurisprudential discussions. The most serious one is related – in the first place – to the *Shari'a* itself and the laws enacted by the Holy Legislator: "Have these laws been enacted on the basis of justice and are their being just a rational matter or a legal one?" The theological discussions pertaining to the question of whether the essential nature or non-essential nature of goodness of justice and evil of oppression as well as the theological discussions pertaining to the legitimacy or rationality of justice are all dependent on this phase of the discussion.

The second angel and stage related to the first major question is pertaining to the possibility of using the principle of justice in the process of jurisprudential inference. Can the jurist's perception of justice and oppression assist the jurist in his jurisprudential inference in "doubts of decrees" as a jurisprudential rule such as the rule of "no harm" or the rule of "purity"? Do the principle of justice and the rule of negating oppression enjoy such an authority and validity to be able to prevent resort to the generality or specificity of a tradition and the literal evidence? Clearly, this axis of discussion can be proposed after getting free from the rationality of justice and negating the merely legal nature of justice.

Paying attention to the mood of the first main question and the related discussions shows that the second main question is quite different from the first main question and one cannot be reduced

to the other. In the second question, the problem is whether adjusting the *Shariʿa,* practicing the Islamic laws and practical commitment to the jurisprudential secondary laws can alone provide all what is expected from the Islamic social justice? The answer to this question is clearly related to the questions such as the following ones: "what is social justice and what is its scope?", and "what is the criterion for something being just in any sphere of the social justice?" Of course, it is equally related to the important question of whether the discussion on social justice is basically a legal and jurisprudential one or sciences other than law and jurisprudence contribute to the establishment of social justice. In a deeper layer, the second question is also involved in the specific theoretical discussions regarding expectations of religion, historical nature of *Shariʿa*'s laws or their being meta-age and ethereal. Apart from these theological and foundational discussions, if we accept that – for instance – establishment of economic justice in a contemporary society necessitates the conscious managerial interference in various economic processes, from the production, distribution and presenting services to providing proper laws and regulations as well as adjusting just and efficient economic rights; and if we accept that the jurisprudential and legal dimension responsible for the legal aspect of economic justice is only a part of all-out attempt for establishing the economic justice, then it is clarified that the mere inferred laws cannot cover all these scientific, epistemic and managerial efforts. In other words, the road map and the operational model for establishment of justice in various spheres of collective life cannot be – by itself – the product of jurisprudential considerations, and the change from the status quo to a just situation necessitates a variety of situational knowledge and scientific theorizations as well. However, the jurisprudential

and legal aspects are among the epistemic pillars.

In short, two main questions under the major discussion of *Shariʿa* and justice must be discussed separately, and the sphere of each must be preserved so that one may not be reduced to the other.

B) Some Quranic verses order us to observe justice, like the following ones:

<div dir="rtl">الف) اعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ</div>

Do justice; that is nearer to Godwariness,… (Māʾida, 8)

<div dir="rtl">ب) إِنَّ اللَّهَ يَأْمُرُ بِالْعَدْلِ وَالْإِحْسَانِ</div>

Indeed Allah enjoins justice and kindness, …(Naḥl, 90)

<div dir="rtl">ج) كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلَّه</div>

Be maintainers of justice and witnesses for the sake of Allah,…

(Nisā, 135)

1. Apparently, these verses establish and enact some law independently, not signing some previously existing command. They specify an independent obligation for the Muslims, not guiding them to act according to a rational guidance or a religious decree. If they were signing or confirming something, there would be two probabilities:

2. First, they may have been guiding to a rational order. That is, to the extent that the reason is able to understand the decrees and subjects, these verses invite us to accompany it, and refer to the confirmation of the reason's judgment of the goodness of justice. Indeed, they do not enact the religious obligation of observing justice along with obligations such as prayer, hajj and fasting in Ramadan.

3. Second, they may be confirming some commands. That is, they may guide us to religious decrees. In other words, considering the fact that in the criteria of religious laws, the justice is taken for granted, and the Holy Legislator has enacted them because they provide justice. Thus, He guides

us to follow religious laws. Therefore, "do justice" means the necessity to follow religious laws. Indeed, it is not the case that, apart from the divine orders, a new obligation called 'being fair and establishing justice' is enacted.

4. These two probabilities are both opposing the appearance of the verses and it is understood that they are enacting laws to the effect that establishing justice is necessary. This perception is reinforced by the verse 25 of chapter Ḥadīd[1] which mentions establishment of justice in the society as the philosophy of the prophet's being called to prophethood in the social dimension, regarding this as the main duty of the Muslims.

Now, the question is who are the addressees of these commands? Restricting such Quranic calls especially to the individuals in the Muslims' society is not right. As ʿAllamah Tabataba'i has mentioned in his *al-Mīzān,* verses such as the following ones address all believers, and the obligations mentioned in these verses do not oblige individual members [of society]; rather, it is a duty for the whole community to obey (Tabataba'i, 1397 SH, vol.4, p. 130).

وَلْتَكُنْ مِنْكُمْ أُمَّةٌ يَدْعُونَ إِلَى الْخَيْرِ وَيَأْمُرُونَ بِالْمَعْرُوفِ وَيَنْهَوْنَ عَنِ الْمُنْكَرِ

There has to be a nation among you summoning to the good, bidding what is right, and forbidding what is wrong. (Āl ʿImrān, 104)

وَجَاهِدُوا فِي اللَّهِ حَقَّ جِهَادِهِ

And wage jihad for the sake of Allah, … (Hajj, 78)

أَنْ أَقِيمُوا الدِّينَ وَلَا تَتَفَرَّقُوا فِيهِ

'Maintain the religion, and do not be divided in it (Shūrā, 13)

Some jurists have explained this in technical terms as follows:

Religious obligations are of two types: individual and social. For

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1. Certainly, We sent Our apostles with manifest proofs, and We sent down with them the Book and the Balance, so that mankind may maintain justice…

instance, daily prayer is an individual obligation. Although 'maintain prayer' is an order addressed to the public, the 'public' in it is *istighrāqī* (literally, submersive) and include all members of the community one by one, who are then obliged to maintain prayer. In social obligations, however, the society – because it is a 'society' – receives obligation, and the expediencies of the society is considered; and the 'public' in such cases is a collective public (Muntazeri, 1415 AH, part 1, p. 569).

Since in such obligations individuals have not been addressed because of their individuality and are not able to do such social obligations, management of realization of social commands is up to the government and those agents appointed by it (Muntazeri, 1415 AH, part 1, p. 570). Thus, the enacting law of seeking justice and establishing it in the Islamic society has – apart from the individual dimension in those tasks wherein the individual is able to do – a social dimension, and the Islamic society – headed by the Islamic state and regime – has the duty to establish justice and obey the command of establishing it.

C) Those who have a maximal view of *Shariʿa*'s inclusion of justice and reduce establishing social justice to adjusting *Shariʿa* with and enforcing religious laws and practical commitment to jurisprudential fatwas ignore the delicacies of discussions pertaining to establishment of social order and regulating various spheres of collective life according to public and inclusive rules and regulations.

In individual affairs and religious obligations related to all dutiful individuals, it is quite possible that the variety of jurists' fatwas inflicts no harm, and committing to *Shariʿa* – in individual affairs and worships as well as some part of civil affairs – is attained by referring to the fatwas issued by the selected jurist and the legal authority. However, in those affairs related to adjustment of

collective life and the rules and regulations of the state, two basic and important points must be noted:

1. First, major affairs and social adjustments cannot be entrusted to variety of fatwas and numerous jurists' inferences. Rather, it is necessary to determine major affairs of the country and the main lines regulating the collective life according to the certain fatwa. Indeed, leaving the members of the society to follow their selected jurist would lead to schism in the society, hindering the creation of social order and causing people's bewilderment in legal disputes and transactions with governmental organs and institutions as well as persons.

2. The religious law and fatwa cannot – by itself – be regarded as rule and regulation; rather, it is the source for legislation. In adjusting laws and regulations related to the management of the society's affairs, especially in contemporary societies wherein social arrangements in various spheres face many social, mental, economic, political and international complexities and concerns, legislation must be done along with consideration of all these objective and supplementary concerns. While being the basis of source for legislation in the management milieu of the Islamic society, religious law and fatwa do not consider the thematic concerns, objective expediencies, and versatile social complexities. Therefore, claiming that by merely attending the religious laws and enforcing *Shari'a,* both the desired social order intended by Islam is gained and Islamic justice in the social sphere is realized is resulted from inattention to the two abovementioned facts.

D) In the first section of this article, we clearly stated that the social justice is a broad concept with various layers and states; and it is not restricted to "distributive justice". Indeed, removing any

injustice in the social sphere – whether related to distribution of facilities and natural and material blessings or related to structural and procedural affairs – as well as privileges and latitudes of officials or the contents of the laws and regulations includes all. The social justice must not be limited merely to removing deprivation or struggling with corruption, because it is tied to the fairness of all social arrangements and relations. Indeed, removing corruption and reducing deprivations are the preliminary step for the all-out establishment of justice, but they are not equal to or similar to justice.

1. Such a broad perception of social justice causes the establishment of social justice to be the subject matter of many scientific disciplines and managerial planning as well as governmental interferences in various spheres of legislation and enforcement of laws. It is wrong to have an epistemic uni-dimensional view of it and highlight the jurisprudential and legal aspect or linking the establishment of the Islamic social justice to preparation of the jurisprudential theory of social justice. However, a great share of epistemic work regarding the establishment of social justice in the Islamic society belongs to jurisprudence.

E) In the first section, we clearly stated that the role of *Shariʿa* in establishment of social justice is different from the status of justice in the Islamic jurisprudence and *Shariʿa,* and the former must not be reduced to the latter. However, it must be noted that there is some overlapping points between these two main issues. One overlapping point is the fact that regarding the non-ritual laws of Islam, there are cases wherein a religious law or fatwa or the inclusion of a general or absolute jurisprudential evidence of some cases and instances may seem to be unjust for the public perception of the time. Here, the question is whether preserving

that legal decree and paying attention to such fatwas in regulating the collective life does not disrupt the social justice. Does the rational justice or the conventional justice have the capacity to hinder resorting to specificity and generality of a legal decree or prevent the influence of a fatwa or a primary religious decree in regulating the arrangements of collective life?

The views and opinions of authorities who have paid heed to this discussion are not equal. Some jurists maintain that considering the fact that religious calls are in people's conventional language (We did not send any apostle except with the language of his people [1]), understanding the concepts is up to the people and they are the authority for discerning the instances of those concepts. Just as identifying the instances of harm and hardship is up to the public convention, identifying the instances of the oppression negated by the Quran is also up to the public convention. Considering the Quran's emphases on negation of oppression from the divine sphere, any tradition whose generality or specificity or its explicit denotation is oppressive from the public viewpoint lacks the authority. This is due to a large body of evidences stressing on non-authority of traditions opposing the Quran (Majlesi, 1403 AH, vol.2, p. 242). Just as understanding the typical manifestation or the conventional understanding of the phrases of literal religious denotations is up to the jurist, the conventional understanding of justice and oppression and its instances is also up to the jurist. Indeed, understanding jurisprudence in discovering manifestations of words and phrases of a text, and understanding instances of these manifestations – whether due to being harmful or due to being oppressive and unjust – is not a personal thing and is suggestive of the conventional understanding (Ali Akbariyan, 1386 SH, pp. 253-310).

Contrary to the above view that absolutely recognizes the authority

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1. The Quran, Ibrāhīm, 4

of conventional understanding of the concept and instance of justice and oppression, regarding it as dominant over the appearance of the evidences and generalities or specificities of religious decrees, some other scholars have noted points – just as the evidences pertaining to principles of 'no harm' and 'no hardship' are prior to initial decrees –that prevent general judgment in this issue. One of the points is differentiating between specific convention and public rational convention. Specific conventions are formed in specific cultural contexts, and on many occasions, the conventional perception of a society may be different from the conventional perception of another society due to cultural difference. Certainly, we cannot rely on the fact that – for instance – the convention of some societies regard polygamy as unjust and make this fact dominant over the evidences of permitting polygamy to issue a fatwa for non-permissibility of polygamy on the basis of negating oppression to women. However, if something is identified – apart from a specific culture – as unjust from the viewpoint of public rational convention, it would have a different capacity and may be effective through inferring religious decree or hinder the generality and specificity of some evidences. For example, if some affairs such as inventions, discoveries or compilations of books create – from the wise people's view – a right for their authors and ignoring these spiritual rights is an instance of oppression according to the rational understanding of the wise people of the present era, the legitimacy of those rights and illegitimacy of abusing them is proved by evidences pertaining to negation of oppression.

Another point that must be noted is specifying the type of religious decree that is considered unjust by today's conventional and rational perception. It is important to know whether that religious decree was an instance of enacting a law or confirming the social and conventional arrangements of the time of the hadith. We must know whether that hadith was only expressing an external proposition or an initial decree

of Islam stated in the form of a true proposition. Some scholars maintain that many social decrees and non-ritual laws of Islam are of confirming type and are not enacted laws. These social decrees of Islam have been revealed in a time when the conditions of the people were quite different from our present condition. Thus, we cannot readily resort to the individual, situational or temporal specificity of the evidence, and many a time, titles such as benevolence, goodness, justice and the like which state the spirit of the *Shariʿa* can interpret, limit or expand the religious evidences pertaining to these social and non-ritual decrees (ʿAndallib Hamadani, 1399 AH, pp. 60-61).

One of the important points in the discussion on conventional judgment about religious decrees is that in some cases, the religious judgment is quite different from and inconsistent with the conventional judgment, and it is quite unjustified to expect no challenge between conventional understanding and the religious content. Accordingly, the pious people are committed to practice those religious laws for which there is specific religious evidence, even if that law was regarded unjust in the convention of the time when the decree was issued. One example is the religious decree of the difference between blood money of a man and a woman in more than one-third of the whole blood money. Therefore, regarding those decrees not confirmed by the public convention even in the time of their issuing, the conventional perception of the present time cannot create any difficulty in their validity.

A) If the social justice wants to rely on the jurisprudence and *Shariʿa* along with other epistemic and scientific capacities to the extent of its perception discussed in the present article, it is necessary for the traditional approach to jurisprudence to be replaced by a modern approach called "governmental jurisprudence". The traditional dominant approach in Imamiya jurisprudence regards the main function of the jurist to be inferring the secondary legal decrees from the related sources and perceiving those decrees and

obligations imposed by God on the general population of legally competent individuals. The jurist has no mission other than inferring legal decrees and managing affairs such as judgment and benevolent actions (*ḥesbiya* affairs). Thus, affairs such as enforcing these laws in the context of social arrangements, supportive institutionalizations, organizing requirements of these individual and sparse laws, considering the objective realities and mutable social and political conditions involved in enforcing social jurisprudential laws and the like are not among the duties of the jurist and the jurisprudence. The governmental jurisprudence, however, is an approach that places jurisprudence in the position of managing the Islamic society, not restricting it to inferring secondary individual laws. According to this attitude, governing and administering the Islamic society will be effective in actualizing the social virtues and values of Islam such as social justice, protecting the Islamic regime and Muslims' expediencies both in understanding Islamic laws and in the process of enforcing them. From this viewpoint, the Islamic jurisprudence would no longer be a science for inferring secondary laws free of objective issues in the sphere of the society and Muslims' life. Rather, it involves in major issues of managing the society and realities pertaining to Islamic government and regime (for further information, see Waʿizi, 1398 SH).

B) Establishing social justice and spreading justice in various spheres of collective life is dependent on "governance". Thus, it is the meeting point of the scientific and theoretical discussions with objective realities and capacities. The participation of Islamic sciences in the sphere of governance is not restricted to jurisprudence, even if we go beyond the individual jurisprudence to a social approach to jurisprudence and governmental jurisprudence approach. Although jurisprudence has the most

relevance to the sphere of public life among Islamic sciences, we must not ignore the prominent role of Islamic humanities. Regarding the spread of social justice as one of the main goals of Islamic governance, it is noteworthy that this mission is not just up to governmental institutes and organized governance. Rather, the Islamic society and public institutes must also play their role in establishing justice, and the religious knowledge and society's action and behavior must accept the just governance and assist society in actualizing it. Thus, the sciences focused on recognizing situations and explaining and offering solutions regarding positive cultural and social changes along with the science of jurisprudence contribute to just governance. As it has frequently been emphasized, the social justice is not only related to justice in its Islamic aspect. Indeed, this requires theorizations by other sciences according to Islamic doctrines and teachings as well.

Conclusion

1. Some formalist trends, especially Jihadi and Takfiri neo-Salafi, have regarded commitment to jurisprudential and religious decrees sufficient, and have considered any epistemic and legislative attempt for establishing social justice as negating God's legislative lordship and, hence, a heretical action.

2. Although Sayyid Qutb's thought in the position of a neo-Salafai thinker is quite far from Islamic formalism, he maintains – regarding the social justice – that *Shariʿa* has provided all necessary content and epistemic material and just requires executive guarantee (Islamic political system) as well as the cultural and epistemic readiness of the Muslims and the resulting practical participation, without needing human sciences or modification of model of justice in various spheres and theorization on justice.

3. Reason, religious law, and the rational convention are three epistemic

sources for discerning the decree and the subject of justice and injustice. However, various opinions have been mentioned regarding the role and status of *sharʿ* (i.e. religious law) and the room it opens for the other two epistemic sources. The maximal approach places all the responsibility of discerning on the shoulder of *sharʿ*, and the minimal approach considers the *Shariʿa*'s perceptions and judgments about justice and its instances to be restricted to the time of revelation and legislation, regarding the human's conventional and rational understanding dominant in later eras. The moderate and middle-point approach, supported by Martyr Mutahhari and others, maintain that the epistemic role of *Shariʿa* is consistent with the rational perception of justice.

4. It is necessary to distinguish between two main questions: questioning on the role of justice in jurisprudence and *Shariʿa* is different from the question on whether jurisprudence and *Shariʿa* are sufficient for establishing justice in the Islamic society. Each of these questions is involved in a series of theological, jurisprudential and epistemic discussions and we cannot reduce one of them to the other.

5. The Quranic commands regarding justice and fairness serve as enacting laws and the Islamic society and its political system are obliged to establish justice in various states of Muslims' life.

6. Obeying the orders related to establishing social justice requires the application of various sciences and right management as well as the road map and operational model for establishing justice in various social arrangements. The jurisprudential considerations are an inseparable section of this process. The epistemic and theoretical aspects, however, cannot be summed in the jurisprudential aspect, and the jurisprudential knowledge alone cannot shoulder all the epistemic weight necessary for establishing social justice.

7. The individual approach to jurisprudence – which regards the function of the jurists and jurisprudence restricted to inferring

secondary laws and taking over the responsibility of benevolent action – is insufficient for providing Islamic social justice. The social justice intended by Islam is possible only in the paradigm of the governmental jurisprudence as viewed in the sphere of major administration of the society, sighting the objective demands and conditions of the society, inserting these real and incorporated considerations in decision-making, enacting laws and modifying processes and structures.

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