

Philosophy of Law: An Islamic Sufi Approach

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Abstract

Purpose: The aim of this paper is to investigate the first causes of right, law and legislation, namely the philosophy of law. In order to know the principles of right, it is essential to recognise its aim. The concept of "*Justicia*" is in full agreement with Islamic law. Adaptation of duty to Genesis and nature is crucial to distinguish the legal and illegal domains of deeds. The legislation domain is one of the subjects of this paper.

Design/methodology/approach: In the Sufi viewpoint, justice stands for: "*Putting everything in its own place that causes its utmost growth*". This definition expands the domain of legislation by focusing on ethics and humanitarian transcendence. It not only considers equal living and civil rights for all the people but also provides more additional rights for those who are more aptitude to grow.

Findings: Determining law-making borders raises the major question of how far they should be extended, providing the acceptability and stability of laws.

Practical implications: People are not equal to each other, but this inequality is not to be for domination or exploitation of the others. It means that the talent and growth capability of every individual in different situations differ.

Social Implications: Real Islamic justice forces that everyone receives his right due to his growth eligibility and up to his level of inherent aptitude.

Originality/value: The depth of this approach has not been fully discussed yet.

Keywords: Philosophy of Law, Theosophy, Sufism, Mysticism, Islam, Legislation, Justice

Paper type: Conceptual paper

Introduction

Just as the means of regulating the relationships between people and government in all societies, the law is based on the attitudes of the people about how the regulations would be; therefore, the formation of legal rules depends on the people's understanding and perceptions about the circumstances. This is why the Philosophy of Law plays an important role in establishing social and legal systems and provides fundamental rules of social life. Philosophy of Law clarifies the reason for law binding, the valued basis of legal rules, law domain within the society, legislation aims, borders between law and ethic, and law and religion, criteria for distinguishing good law from bad law, logic and spirit of law and legislation, social changes and law development, and several similar instances before ordaining a law and along with it, (Katoozian 1986). Otherwise, the laws will not only regulate the relationships between the people and government in the society but also would create social chaos.

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In this paper, our goal is to examine those concepts that draw general guidelines in relation to the above matters.² So, after an introduction, the subsequent section discusses the concept of right and "*Justicia*" and gives a definition of justice and compares it to the other's viewpoints. Next, the adaptation of duty to Genesis and nature is examined, and it draws legislation domain. We will have a glance at supervising-counselling institutions as well.

Right and Justice in Different Legal Schools

Definition and origination of right are highly controversial in the legal literature and philosophical, social and political viewpoints as well, and each of them defines them differently. From the point of the result, the right is a special privilege that the law gives to an individual, and the collection of these privileges is called rights. Saint Thomas Aquinas (Italy: 1225-1274) divides rights from their point of origin to Natural Law (*Jus Naturale*) emanating from the humankind's nature, and Divine Law (*Lex Divina*) originating from divine commands, and Human Law (*Humanum Legis*) that human being has made it. Many scholars believe that the origin of law-making emanates from the oppressions that were carried in the oppressed nations, so they brought forth that there is a rule superior to the governor's rule, and they established the law based upon. Accordingly, the innate and natural law schools consider justice as the major basis of law, and both the lawmaker and the law-obeyer should follow the justice rules.

Another definition considers the law as an endeavour for settling justice in a given society. Positivism schools regard the governing power - and not the justice - as the basis for the establishment of the law, and the will of governing authority is regarded as the origin of law. Moreover, they recognise the administration of public affairs as the basis for legislation. Auguste Comte (1798-1857)³ does not encounter ethics and religion to affect the establishment of law, and he considers public conscience as a major basis for the formation of legal rules (Pickering 1993). George Ripert (France: 1880-1958) believes that the right originates from the government's power, but the lawmaker is not free and autonomous in legislating (Katozian 1995, 1986). He considers ethical values and justice as the main basis for all commitments, including the commitment of the law implementation. Friedrich Savigny (Germany: 1779-1861) knows the law as the fruit of public conscience as well as language and habits and says that the legal rules are made by a nation, and the nation is a unique concept including people in the past and present. In other words, the nationalism of every nation has initially become the base for the customs and traditions, and has ultimately formed the common law and influenced the regulative rules of the social relations, and has brought the laws of a nation into existence. Before him, Edmund Burke (England: 1729-1797) and Giovanni Vico (Italy: 1668-1744) and Montesquieu (France: 1689-1755) also believed that the law of every nation is related to her customs and special living conditions.

Understanding the basis of law necessitates the cognition of its aim. In Individualism school, the legal rules are based upon the provision of individual freedom and respect. John Locke (England: 1632-1704) believes that the people waive their rights and freedom just to a limit that is essential to form a government. In such a society, politically, all the powers of the country originate from the nation; and from an economic point of view struggle of individuals to preserve their personal benefits would end in public benefits and individual's wills; and from the legal point of view, the individual's will forms the spirit of the law. Moreover, the contract is a base for all legal solutions and institutions.

In Socialism school, the aim of the legal rules is to provide social happiness and security in the common relationships of people. Therefore, an individual does not have endless rights before public benefits, and for determining an individual's legal position, the concept of the legal institution is used. This concept is a set of legal rules that consider constant and specific joint relations in social life to achieve a specific goal. Accordingly, the government gets involved in wealth distribution, while in Individualism, the government guarantees the people's rights just like an outsider. Certainly, the attitudes belonging to both schools are

² See the author's books cited in the reference section.

³ Isidore Marie Auguste François Xavier Comte.

driven to the extremes. In Individualism, it should be said that the society is not made of groups of free and independent people, and not all the necessities of a society can be solved by the social contract, and in Socialism, the governments can destroy individual freedoms without certain seizing measure and so, decaying people's rights is fully probable. Certainly, all these schools have considered their own specific definitions of freedom, and they have ordained their legal rules for establishing their own defined "justice". In Aristotle's (Greek: 384BC-322BC) opinion, justice -as a common meaning- is referred to as all the human virtues. Cicero (Rome: 106BC-3BC) believes that everyone should be given the rights he deserves, provided that the others' benefits are safe. In other words, individualists believe that the rights of the people can be expanded up to the point that they do not hurt others' benefits. Other scholars define justice as a system that provides the superiority of necessary-considerable benefits, and they believe that if this concept fails, the regularity of the society would be driven into a compulsory-based situation, and hence only the powerful men's benefits are considered and respected.

Right and Justice in the "*Justicia*" School

To present the Islamic law attitude, here, we raise the concept of "*Justicia*" as the base. This school defines all legal rules based on a new definition of justice that had not been considered before deeply. Islamic philosophy states that "Justice" means "*putting everything in its own place*". As a mathematical concept, this definition refers to a "Local Optimum". This concept in a mathematical programming context means that inside the domain of independent variables, a point provides the maximum (or minimum) amount of the "Objective Function". The above definition of Justice shows the best state for an individual in relation to the domain of his own possibilities, so the "Local" prefix has been added to the above-mentioned expression of the "Local Optimum". Now, if the domain of possible states includes all members of society, the meaning of the "Local Optimum" will be changed to the "Global Optimum". A point or a state might be "locally optimal", but it would not be the "Global Optimum" of an "Objective Function", and not vice versa. Therefore, concerning the definition of Justice, we redefine it generally as: "*putting everything in its own place which causes its utmost growth*". In other words, not only the individuals' domains and their mutual interactions with each other are to be known as "Independent Variables" for this "Optimisation Problem", but also, the "Problem", from the mathematical aspect, contains the future times that brings "Dynamic Optimisation" into consideration. If we consider this definition for Justice, the individualistic schools as well as the socialistic ones are left behind and are more inadequate against *Justicia* School. Because no one of the two schools targets the human transcendence; but targets the human being's utilitarian desires. Based on the above attitude, *Justicia* School forms the fundamental view of Divine Law, and particularly the Islamic Law. Muhammad (PBUH) and all the Prophets (PBUT), in general, most of the time, judged based on the outward appearance of the events, and the Masters and the Imams of Right Guidance (PBUT) considered their judgments based on the inward reasons of the events on the most occasions. The basis of Divine Law results from the perceptions of the Holy Books or practices of the respected Prophets (PBUT), and all -in some ways- originate from the above-cited definition of Justice.

Individualism and socialism schools ignore the originality of human differences, even though they present them theoretically in an exalted manner. For example, the mottos such as "*everyone according to his needs and to his work*" are very noticeable and are also in the same direction as *Justicia*'s motto, but the schools which present this motto have no instrument to achieve it in the society. *Justicia* School believes that regulating social interrelationships does not suffice to be the legislation goal. Moreover, it not only cares about regulating the relationships among the people in the society but also thinks about how to achieve the maximum growth and transcendence of every single individual. Although the need to follow ethics for doing good and improvement towards perfection is considered in different law schools, but the attitude of *Justicia* School is something beyond the others. Individualism and socialism schools consider ethics as a secondary goal for individual justice and social justice implementations, but *Justicia* considers it as the main goal of justice implementation. That is, legal principles and rules should be defined and

regulated in a way that they push the man towards perfection.

Moreover, morals and law are different from their own diverse circumstances. For example, an ethic's goal is to correct an individual's faults and establish a utopia, and rules on the conscience and inner mentalities of the people, but the law pays more attention to the preservation of the regularity of society than the purification of the soul, conscience and humanism. As a result, although the law's goal is in the same direction as the ethic's goal, but it is not as far-looking as the moral is. On the other hand, the government and her ruling forces guarantee the implementation of legal rules, but the implementation of ethical rules is guaranteed by individuals' myths and their inner mechanisms. Justicia School by regarding its attitudes and concerns towards ethics and human perfection has expanded its domain of influence beyond the fulfilment of the law; that is, to prevail the morals throughout the society. So, it is more transcendent than the other legal systems, which more focus on people's material relationships and regard the ethics and transcendence of mankind in a lower rank than they should be considered. Justicia School believes in equalisation of rights in a perfect way than individualism and socialism schools. That is, it considers not only the crucial and citizen codes equally for all, but also tries to allocate the right resources to those who have more capability and ability to grow. In other words, in this school, justice does not mean numerical or mathematical equalities, but justice stands for growth potential. There is a similar motto in the socialist literature, which is relevant to the Justicia School. In the Communism Utopia, the distribution of rights is allocated on the base of this motto: "*To everyone as his need and to everyone as his value*", the right is to be bestowed. This motto appears to be a suitable material ideal for any society, if we add an intellectual content and a growth potential aim within it, we will get closer to the Justicia School. In other words, Justicia, takes this motto on a more important topicality: "*To everyone as to his growth and to everyone as to his aptitude*" the right is to be bestowed upon him. This means that the distribution of rights among the people should be on this basis that, if someone's growth capability and her/his intellectual or spiritual perfection eligibilities are more than the others, or s/he is more talented, in addition to the others' similar rights, the necessary conditions for flowering her/his talents are to be provided her/him too.⁴

The main reason for this type of attitude is that, not all the people are principally equal to each other and this inequity is presented neither for dominance nor for exploitation over the others, but for the aptitudes and capabilities of growth for all individuals and in different conditions are not equal. For example, an infant has the right to be cared for by her/his mother and having a mother is one of the child's basic rights, but, is it equal for a young adult as well as an infant? Of course, it is not. Watering a wheat field differs from a rice paddy. Does equality mean to water wheat fields and rice paddy equally? Men and women, with rough and smooth characteristics, are interrelated in matrimony and family life. Do the women have to participate in hard labours shoulder to shoulder with the men? On the other hand, do the women have to burden pregnancy, childbirth, milking and caring for child along with the housekeeping affairs and share in hard work with men out of the home? Certainly, based on the aptitudes of the people and even the creatures in general, allocation of duties and division of works demand different rights. In other words, every member of society deserves specific rights, and these rights should be bestowed on him. For example, the body deserves to be fed, but is this right equal for both infants and adults? Does the eye enjoy beautiful landscapes like the nose? Or does the ear receive suffering from unpleasant sounds as equally as the eye does? Certainly, every member or every creature deserves the right to its aptitude. This fact is being observed not only in natural affairs, but also the natural differences lead to social differences and make this phenomenon more observable in the society. Bestowing the equal right to all people is just inattention to their needs, potential conditions and aptitudes. And if all these considerations were observed, they would receive what rightfully are theirs, and real justice would be carried on them.

Quran presents this viewpoint in different propositions. These propositions are more interrogative than

⁴ See a similar debate about equal rights and non-equal nature of the people regarding male and female relationships related to the article 16 of the Universal Declaration of Human Rights in: His Honourable Haj SultanHossein Tabandeh (1966) Religious Evaluation of the Universal Declaration of Human Rights, Salih Publication, Tehran, Iran.

indicative or declarative, and might be because of the fact that the addressed people do not accept the existing differentiation among themselves, and secondly, presenting the subject as a question will arouse the thinking of the listener. About the differentiation in good and bad says: "**The good and the evil are not equal**".⁵ Believing in inequality of right and wrong is an innate matter. Everyone will be informed of right and wrong, and will understand the meaning of them⁶, and in a general logical major premise, it is said that:⁷ "**Say: the clean and the unclean are not equal, though the abundance of the unclean might amaze you, so be wary of Allah, O you who possess intellect, that you may prosper**". And says:⁸ "**Do you equate water provider to Hajj pilgrims and the maintenance of Holy Mosque as similar as someone who has faith in Allah and believes in the Last Day and wages *jihad* (endeavour) in the way of Allah? They are not equal with Allah**". Moreover, says:⁹ "**Allah draws a parable: a chattel which has no powers over anything and one whom We have provided a goodly provision and who spends out of it secretly and openly. Are they equal?**" It is interpreted:¹⁰ "From "goodly provision" it is understood: wisdom, knowledge, essence and possession in His property and kingdom; and "**spending out**" is its secret that, by its blessing and through the secret and hidden spending, someone would be bestowed the kingdom; and by "**spending out secretly and openly**" he would be initiated and taught by someone else apparent". He says:¹¹ "**Is he who believed in equal to whom is libertine? No, they are not equal.**" And says:¹² "**Is he who supplicates in the watches of the night, prostrating and standing, apprehensive in the Hereafter and expecting the mercy of his Lord is equal to whom he is not so? Say: Are those who know equal to those who do not know? Only those who possess the intellect to take admonition**". In addition, says:¹³ "**Allah draws an example: a man jointly owned by several contending masters and a man belonging entirely to one man: are the two equal in comparison? All praise belongs to Allah! But most of them do not know**". Moreover, says:¹⁴ "**Not equal are those of you who spent and fought before the victory. They are greater in rank**". And says:¹⁵ "**Not equal are those of the faithful who sit back -excepting those who suffer from some disability- and those who wage *jihad* (endeavour) in the way of Allah with their possessions and lives. Allah has graced those who wage *jihad* (endeavour) with their possessions and lives by a degree over those who sit back; yet to each Allah has promised the best reward, and Allah has graced those who wage *jihad* (endeavour) over those who sit back with a great reward: ranks from Him, forgiveness, and mercy, and Allah is All-Forgiving, All-Merciful**". And says:¹⁶ "**Are the blind and the seer equal?**" Moreover,

⁵ Surah:Fosselat, Verse:34. «وَلَا تَسْتَوِي الْحَسَنَةُ وَلَا السَّيِّئَةُ ادْفَعْ بِالَّتِي هِيَ أَحْسَنُ فَإِذَا الَّذِي بَيْنَكَ وَبَيْنَهُ عَدَاوَةٌ كَأَنَّهُ وَلِيٌّ حَمِيمٌ»

⁶ His Honourable Haj Molla Sultan Mohammad Bidokhti Gonabadi. The exegesis of Bayan Al-Sa'adah, Vol.12 Farsi Translation, P.504.

⁷ Surah:Ma'edah, Verse:100. «قُلْ لَا يَسْتَوِي الْحَبِيثُ وَالطَّيِّبُ وَلَوْ أَعْجَبَكَ كَثْرَةُ الْحَبِيثِ فَاتَّقُوا اللَّهَ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تُفْلِحُونَ»

⁸ Surah:Tawbah, Verse:19. «أَجَعَلْتُمْ سَفَايَةَ الْحَاجِّ وَعِمَارَةَ الْمَسْجِدِ الْحَرَامِ كَمَنْ آمَنَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَجَاهَدَ فِي سَبِيلِ اللَّهِ لَا يَسْتَوُونَ عِنْدَ اللَّهِ وَاللَّهُ لَا يَهْدِي الْقَوْمَ الظَّالِمِينَ»

⁹ Surah:Nahl, Verse:75. «صَرَبَ اللَّهُ مَثَلًا عَبْدًا مَمْلُوكًا لَا يَقْدِرُ عَلَى شَيْءٍ وَمَنْ رَزَقْنَاهُ مِنْ رِزْقِنَا حَسَنًا فَهُوَ يُنْفِقُ مِنْهُ سِرًّا وَجَهْرًا هَلْ يَسْتَوُونَ الْحَمْدُ لِلَّهِ بَلْ أَكْثَرُهُمْ لَا يَعْلَمُونَ»

¹⁰ Op. cit., P. 158.

¹¹ Surah:Sajdah, Verse:18. «أَفَمَنْ كَانَ مُؤْمِنًا كَمَنْ كَانَ فَاسِقًا لَا يَسْتَوُونَ»

¹² Surah:Al-Zumar, Verse:9. «أَمَّنْ هُوَ قَابِئُ آتَاءِ اللَّيْلِ سَاجِدًا وَقَائِمًا يَحْذَرُ الْآخِرَةَ وَيَرْجُوا رَحْمَةَ رَبِّهِ قُلْ هَلْ يَسْتَوِي الَّذِينَ يَعْلَمُونَ وَالَّذِينَ لَا يَعْلَمُونَ إِنَّمَا يَتَذَكَّرُ أُولُو الْأَلْبَابِ»

¹³ Surah:Al-Zumar, Verse:29. «صَرَبَ اللَّهُ مَثَلًا رِجَالًا فِيهِ شُرَكَاءُ مُتَشَابِهُونَ وَرِجَالًا سَلَمًا لِرِجَالٍ هَلْ يَسْتَوِيانِ مَثَلًا الْحَمْدُ لِلَّهِ بَلْ أَكْثَرُهُمْ لَا يَعْلَمُونَ»

¹⁴ Surah:Al-Hadid, Verse:10. «لَا يَسْتَوِي مِنْكُمْ مَنْ أَنْفَقَ مِنْ قَبْلِ الْفَتْحِ وَقَاتَلَ أُولَئِكَ أَعْظَمُ دَرَجَةً مِنَ الَّذِينَ أَنْفَقُوا مِنْ بَعْدُ وَقَاتَلُوا»

¹⁵ Surah:Al-Nisa', Verses:95-96. «لَا يَسْتَوِي الْقَاعِدُونَ مِنَ الْمُؤْمِنِينَ غَيْرُ أُولِي الضَّرَبِ وَالْمُجَاهِدُونَ فِي سَبِيلِ اللَّهِ بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ فَضَّلَ اللَّهُ الْمُجَاهِدِينَ بِأَمْوَالِهِمْ وَأَنْفُسِهِمْ عَلَى الْقَاعِدِينَ دَرَجَةً وَكُلًّا وَعَدَّ اللَّهُ الْحُسْنَى وَفَضَّلَ اللَّهُ الْمُجَاهِدِينَ عَلَى الْقَاعِدِينَ أَجْرًا عَظِيمًا دَرَجَاتٍ مِنْهُ وَمَغْفِرَةً وَرَحْمَةً وَكَانَ اللَّهُ غَفُورًا رَحِيمًا»

¹⁶ Surah:Al-an'am, Verse:50. «قُلْ هَلْ يَسْتَوِي الْأَعْمَى وَالْبَصِيرُ أَمْ فَلَا تَتَفَكَّرُونَ»

says:¹⁷ "The blind and the seer are not equal, neither are those who have faith and do righteous deeds and the evildoing. What they accept advice, in few!" Moreover, it says:¹⁸ "The blind and the seer are not equal, nor darkness and light; nor shade and torrid heat; nor are the livings equal to the deads."

The existence of differences in granting the right is not negligible, and the people stand in different ranks, but the rank of every creature is different from the other one, and there are not two equal creatures around the world, though there exist many similarities among them, they are distinct from each other. This distinction does not mean superiority for attaining and obtaining extra rights, but it stands for more aptitude, responsibility and capability.

Quran says:¹⁹ "And raised some of them above others in rank, so that some may take others into service, and your Lord's mercy is better than what they amass". And says²⁰: "Observe, how We have given some of them an advantage over some others; yet the Hereafter is surely greater in respect of ranks and greater in respect of merit." And:²¹ "They have ranks with Allah". These differentiations and ranks are the results of getting acquaintance and inner knowledge obtained by covering humanistic degrees. It says:²² "Whoever comes to Him with faith and has done righteous deeds, for such shall be of highest ranks". This difference is formed by the person's deeds, which is said:²³ "For such person, there will be degrees of merit pertaining to what he has done". "The degrees here mean both the higher degrees and the lower degrees".²⁴ And this difference exists in all humanity levels, even for the apostles. It is said:²⁵ "These are the apostles, some of whom We gave an advantage to the others". Surely this difference is not for supremacy or superiority over the others. It is said:²⁶ "It is He who has made you successors on the earth, and raised some of you in rank above the others so that He may test you in respect to what He has given you".

The points show that most of the legal rules in Islamic jurisprudence differ for different people. For example, many people consider the difference between man and woman as an unjust matter in Islam and they regard it as a discriminatory matter. Of course, entering into this subject needs a separate book but, it should just be said that one of the reasons for the destruction of family foundations in today world, especially in the West, is the attempt to establish equal physical rights for two unequal physics of man and woman. Even though, men and women have had no physical equity, their rights could be distributed on this base. I hope to scrutinise this subject in a separate paper regarding the juridical psychology of man and woman and matrimony.

Similar to the topics in Justicia concerning income distribution and economic justice, this subject has been recently taken into consideration by international communities such as World Bank that both equity and equality are to be considered simultaneously along with each other as developing targets for countries. In the subject of equity, the right distribution of possibilities is taken into account, but in the equality domain, distributions of opportunities are considered (Bourguignon 2005). This type of attitudes

¹⁷ Surah:Al-Mu'min, Verse:58. «وَمَا يَسْتَوِي الْأَعْمَى وَالْبَصِيرُ وَالَّذِينَ آمَنُوا وَعَمِلُوا الصَّالِحَاتِ وَلَا الْمُسِيءُ قَلِيلًا مَا تَتَذَكَّرُونَ»

¹⁸ Surah:Al-Fatir, Verses:19-22. «وَمَا يَسْتَوِي الْأَعْمَى وَالْبَصِيرُ وَلَا الظُّلُمَاتُ وَلَا النُّورُ وَلَا الظُّلُّ وَلَا الْحُرُورُ وَمَا يَسْتَوِي الْأَحْيَاءُ وَلَا الْأَمْوَاتُ»

¹⁹ Surah:Al-Zukhruf, Verse:32. «وَرَفَعْنَا بَعْضَهُمْ فَوْقَ بَعْضٍ دَرَجَاتٍ لِيَتَّخِذَ بَعْضُهُمْ بَعْضًا سُخْرِيًّا وَرَحِمْتَ رَبِّكَ خَيْرٌ مِمَّا يَجْمَعُونَ»

²⁰ Surah:Al-Asra', Verse:21. «أَنْظُرْ كَيْفَ فَضَّلْنَا بَعْضَهُمْ عَلَى بَعْضٍ وَلَآخِرَةُ أَكْبَرُ دَرَجَاتٍ وَأَكْبَرُ تَفْضِيلًا»

²¹ Surah:Al'i-Imran, Verse:163. «هُم دَرَجَاتٌ عِنْدَ اللَّهِ وَاللَّهُ بَصِيرٌ بِمَا يَعْمَلُونَ»

²² Surah:Taha, Verse:75. «وَمَنْ يَأْتِهِ مُؤْمِنًا قَدْ عَمِلَ الصَّالِحَاتِ فَأُولَئِكَ هُم الدَّرَجَاتُ الْعُلَى»

²³ Surah:Ahghaf, Verse:19. «وَلِكُلِّ دَرَجَاتٍ مِمَّا عَمِلُوا»

²⁴ Op. cit., P.230.

²⁵ Surah:Al-Bagharah, Verse:253. «تِلْكَ الرُّسُلُ فَضَّلْنَا بَعْضَهُمْ عَلَى بَعْضٍ»

²⁶ Surah:Al-An'am, Verse:165. «وَهُوَ الَّذِي جَعَلَكُمْ خَلَائِفَ الْأَرْضِ وَرَفَعَ بَعْضَكُمْ فَوْقَ بَعْضٍ دَرَجَاتٍ لِيَبْلُوكُمْ فِي مَا آتَاكُمْ»

had been set up in the direction that it lets the talents and the capabilities of the people grow and develop. In this situation, the human capital would be more productive, and the resources would be used better.

Adaptation of Duty to Genesis and Nature

One of the major problems concerning legislation is the adaptation of law to the natural innate characteristics of human beings. More adaptation of law to the natural innate characters of human beings will result in more efficiency of that law. More efficiency means an increase in the positive influence of law implementation and a decrease in its negative influence. The law has both positive and negative influences on society. If it is severe, intense and strict, it certainly, would damage and hurt the material and spiritual conditions of the people, even though it was useful for some groups. When punishment is severe, certainly, the population of some social classes who are irresponsible to the law will be hurt more than the crimes they have committed, and this leads to destroying their rights. One of the duties of legislation is to prevent crime commitment, but the law has another duty, such as educating individuals and promoting and protecting all groups and classes of the society. A legislator should act like a father who considers the interests of his most violator child, who is as the most criminal in the society.

In concordance with the religious commandments to the environment, it is said that:²⁷ "Survival and sustainability of commandments and rules in every religion differ according to the differentiation of the environmental situations, time, place and people; and up to the time that the same circumstances exist, that religion will be establishing and will not be abrogated. When there is no appropriateness between the commandments and the environment, the abrogation will happen, and abrogation will not be accepted when appropriateness exists. As the Islamic law is completely in accordance with nature, innate and wisdom, and none of them is in opposition to the innate aspects of human beings, and so, whatever is completely in accordance with the innate (like moral principles) is unchangeable; therefore, they will not become abrogated and extinct. Because, as we said, the abrogation happens when there is no appropriateness between the commandments, time circumstances and the people of that time. Nevertheless, Islam has no contradictions with the time and place circumstances and approves the command of wisdom -which is unchangeable-, and for different groups like travellers, present, healthy, sick, and others have specific orders due to their circumstances. And even praising and blaming citations in Quran are not pointed to the individuals, but they point to the actions or conditions because individuals are mortal and mentioning them conveys the characteristics, but the actions or conditions are general and include whoever has those conditions, and these types of orders cannot be abrogated. But the formal Islamic government may be weak, and lassitude and this is not because of Islam itself, but is due to the Muslims."

Drawing the border of law to distinguish the infringement from dis-infringement is very important. It is observed in many countries that the law has entered the area of morals and has considered many moral matters as criminal actions. On the contrary, it is also observed in many countries that the law has gone away from morals, and criminal actions have been defined in a way that moral considerations have been ignored. For example, making strict laws in the men-women relationship will result in ignoring the law because this law is in severe contradiction with the innate sexual desire of human beings. On the other side, making laws for free sexual relationships will also result in destroying the family institution as the basis of society. Drawing the crime borderline for this matter requires special knowledge and art which are not in the hands of ordinary humankind who himself is at one of the two sexy natural dispositions extremes. By studying the religious laws in the field, we can see that religions -like Islam- by imposing extremely strict conditions for proving the adultery have made this crime unprovable, and moreover, the

²⁷ His Honourable Haj SultanHossein Tabandeh Gonabadi, RezaAli Shah the Second (1993), Manifestation of Right in Secrets of the Karbala Event. Haghghat Publication. <http://www.sufism.ir/>

witnesses with less eligibility than the required level must be lashed hardly²⁸. That is, it shows the subject of the crime as an important and requital matter, but if someone commits it, s/he will not be punished, because the lawmaker knows that in the sexual relationships the dominant sexual appetite would cancel the willpower and impossible to abstain. The legislated punishment scares the people from perpetration. This wisest legislation manner is more or less observable in all of the Islamic commandments.²⁹

Moreover, it is easily perceptible about the divorce and the state of confrontation of couple's rights. In some countries, women's right is totally and easily ignored, and the women are not allowed to have even an official identification card, and their social identity is not defined at all; and instead, in some other countries, the women have been bestowed so many rights more than men that continuation of common marital life for both of them fall in difficulty. In some older laws of some countries like Italy, divorce was forbidden, because of Jesus' (PBUH) personal way of life; the maladapted couples lived in a hard condition and continued their joint life without satisfaction and agreement, or divorced illegally. In some countries divorce happens so easily that by raising a little quarrel and just by the woman's request, her husband loses his right even to contact his wife anymore, and has no right to send a gift for her or make a phone call to console his wife; unless the woman herself wants to contact her husband and invites him to talk or meet. The recent example has caused many Canadian couples go into hard family troubles.

In the existing legal systems, there are three types of explanations for divorce. In some countries, divorce breaks the matrimony relationship between the couple upon the request of the one side, and if the aim of marriage would be considered as unobtainable (the exact text of the Switzerland law and implicitly in the German law). In another group of countries, such as Russia and France, divorce is a punishment for the error and ignoring the duties of the one side (man or woman). Third, in legal systems such as Iran, divorce is defined as "removing the restrictions of marriage" concerning the point that "the worst thing to me is to divorce"³⁰. The latter involves ethics and the law equally, and it is a combination of the two former cited types of legislation.³¹

The divorce law in Islam mostly prohibits divorce and tries to preserve the families. But, when both parties cannot bear each other and by no means the, divorce option will be allowed. In Islam, the option of divorce has been given to the husband because he does not take the decision to divorce sentimentally as much as the woman does. The women's nature is so that their sensations are milder than men's, and consequently, they are motivated to act for divorce than men more easily and faster. Moreover, a specific period called "*Iddah*" (nearly 100 days) has been prescribed. If the couple decides to separate, both of them should avoid having sexual intercourse for the term period of "*Iddah*"³². On the other side, adultery has been prohibited severely, so that they cannot quench their sexual appetites. On the other side, the man is obliged to keep his wife in his home and not to expel her out even though she has committed adultery act (up to the end of her life).³³ Therefore, in any condition, it is most probable that they return to each

²⁸ To prove adultery, four just witnesses must see the intercourse by their own eyes. If they look through the case to become certain about the copulation, their justice condition is cancelled (because of trying to evil-search) and they are convicted to be lashed by 100 lashes. Even if three of them were qualified, all the four witnesses must be lashed, and the adulterers must be released.

²⁹ His Honourable Haj Dr. NoorAli Tabandeh (1999) Juristic and Social Collected Papers, Haghghat Publication, p.40.

³⁰ Narrated from the Prophet (PBUH). Kolaini, Al-Kafi, Vol.6, PP:54-55. Ketab Al-Talagh.

³¹ His Honourable Haj Dr. NoorAli Tabandeh (1999) Discussions about the family law, Juristic and Social Collected Papers. PP.27-40.

³² Surah:Al-Bagharah, Verses:227-228, "**But if they resolve on divorce, Allah is indeed all-hearing, all-knowing. Divorced women shall wait by themselves for three periods of purity [after menses].**" «وَأِنْ عَزَمُوا الطَّلَاقَ فَإِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ وَالْمُطَلَّقَاتُ يَتَرَبَّصْنَ»
بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكْتُمْنَ مَا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُنَّ بِاللَّهِ وَالْيَوْمِ الْآخِرِ وَبِعَوْلَتِهِنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَهُنَّ مِثْلُ
الَّذِي عَلَيَّهِنَّ بِالْمَعْرُوفِ وَلِلرِّجَالِ عَلَيْهِنَّ دَرَجَةٌ وَاللَّهُ عَزِيزٌ حَكِيمٌ»

³³ Surah:Al-Nesa, Verse:15, "**Should any of your women commits an indecent act, produce against them four witnesses from yourselves, and if they testify, detain them in homes, until death finishes them, or Allah decrees a course for them.**" «وَاللَّاتِي يَأْتِينَ الْفَاحِشَةَ مِنْ نِسَائِكُمْ فَاَسْتَشْهَدُوا عَلَيْهِنَّ أَرْبَعَةً مِنْكُمْ فَإِنْ شَهِدُوا فَأَمْسِكُوهُنَّ فِي الْبُيُوتِ حَتَّى يَتَوَفَّاهُنَّ الْمَوْتُ أَوْ يَجْعَلَ اللَّهُ لَهُنَّ سَبِيلًا»

other and remarry during the "Iddah" period. All these efforts of legislation are in accordance with human beings' innate that fulfil the people's rights according to their natures, desires and spiritual conditions, and in accordance to the expediency for their best individual interests as well as the social one. Simple conditions for returning and remarrying have also been legislated, which neglects that a divorce had ever happened.

Another example is the way of confronting with human being's anger force. In this connection, the punishment legislation is noteworthy. In the law of many countries, and even in the international conventions, the severe murder punishment is no longer under consideration, and it not only prevents murder commitment but also makes the murderer feel easy in perpetration. Islam accosts the death penalty more wisely than the ways some countries -especially in the west-facing it refuse the death penalty for the murderer. When a murderer shortens the life of a slain, then shortening his life is fair, though it seems cruel. Moreover, Quran says: **"O you who believe! Retaliation is prescribed for you in the matter of the murder; the freeman for the freeman, and the slave for the slave, and the female for the female. And for him who is forgiven somewhat by his (injured) brother, prosecution according to usage and payment unto him in kindness. This is an alleviation and a mercy from your Lord. He who transgresses after this will have a painful doom. And there is a life for you in retaliation, O men of understanding that you may ward off (evil)".**³⁴ In this verse, the Quran names the "murderer" as the "brother" of the oppressed, to mild the heart of the oppressed to refrain from retaliation and accept blood money instead. And says: **"And We prescribed for them therein: The life for the life, and the eye for the eye, and the nose for the nose, and the ear for the ear, and the tooth for the tooth, and for wounds retaliation. But whoso forgets (in the way of charity) it shall be the expiation for him. Whoso judges not by that which has revealed; such are wrong-doers".**³⁵

Legislation Domain

This subject is one of the basic discussions about the intervention of a government in her citizens' lives. In other words, to what extent are the government allowed to involve in the people's affairs? For example, is she allowed to decide on the colour of the people wearing? Or can the government make the decision for the types of foods her citizens eat or their food menu? Not necessarily, for the government to involve directly in these cases; she can also interfere indirectly. For example, if a government imposes a tax on the beetroot, it means that she subsidises sugarcane producers, and by this policy, she has imposed a disguised tax on the tea producers and subsidised the coffee importers indirectly. If we follow this line, we should ask this question, "is the government allowed to disagree with the tea consumption pattern of the people in this way, and is she allowed to limit it by means of "relative prices" and to change the consumption preferences and patterns of her citizens, even though she has not legislated any prohibiting law for drinking tea? This discussion is very fine and debatable that its negligence mostly provides changes and developments in different directions. In constitutional legal systems, the constitution distinguishes the legislation area based on the government's powers and members of the society and defines the main border and guidelines for legislation. However, it has always been observed that the legislator breaks the borderlines easily, willingly or unwillingly, through the legislative power, ratified approvals of the executive power or juridical procedures of judicial power. It means that each one of these authorities ratifies her own regulations, with an interpretation even in opposition to the spirit of the constitution.

³⁴ Surah:Al-Baqarah, Verses:178-179. «يا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَىٰ بِالْأُنثَىٰ فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتِّبَاعٌ بِالْمَعْرُوفِ وَأَدَاءٌ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ فَمَنِ اعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ. وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ»

³⁵ Surah:Al-Mā'idah Verse:45. «وَكُتِبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَهُ وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَئِكَ هُمُ الظَّالِمُونَ»

In the Monocracy, Monarchy, Authoritarian, Dictatorship or Tyrannical, Aristocracy and Totalitarian systems, the ruler, the king, the ruling body, the aristocrats or any individual or group who authorise herself, specifies the main legislation drawings in practice. The importance of taboos considered by the people, and their beliefs about different ideas, common laws, religion, symbolic things, superstitions, religious leaders etc., are also like the low and tall walls that determine the border of government intervention in the people's affairs. For example, in India, many people respect the cow, so, the legislation domain considers this sanctity, and if the respect of the public for the cows reduces, the government will change her attitude consequently. In other words, there are borderlines that prevent the unlimited intervention of government in the people's affairs. These redlines are constantly considered for authoritarian interventions in public affairs, even if they were defined by either the constitution or other taboos because crossing these lines will cause resistance, uprising and people confrontation.

These borders are usually changed during the process of changing the nation's beliefs, and principally, this is an evolutionary process of changing the law. For example, in Europe, wearing men's wear by women was so bad and unaccustomed that Joan of Arc (1412-1431) was sentenced to death in the fire for the guilt of wearing men's wear by the church in England. Nevertheless, in the same country, at the present time, men and women are so uni-dressed that sometimes it is not possible to distinguish their sexualities from their clothes. It should be noted that the reason to follow the law is based upon a set of subjects, and people protect the sanctity of law regarding one or some of these subjects.

Some scholars believe that, generally, people are obliged to obey the law for two reasons: first, the origin of the law, and the second, is because of its rationality. Plato (Greek: 428/427BC-348/347BC), Thomas Hobbes (England: 1588-679), and Friedrich Hegel (Germany: 1770-1831) consider the government as a superior origin of legislation. On the contrary, Protagoras (Greek: 490BC-420BC) and Friedrich Nietzsche (Germany: 1844-1900) have never considered any innate right to the government as the origin of legislation. Harold Laski (England: 1893-950) says that the citizens are only obliged to obey the law in the case that they find it in the direction of justice. Aristotle (Greek: 384BC-322BC) believes that the reason to follow the law is the habits.

However, totally, the factors such as respect, habit, government's authority, dutifulness, fear of legal prosecution, reputation, credibility to avoid the infamy of breaking the law, being concerned with specific law enforcement, welfare, and other similar factors can all be recognised as the reasons to obey the law. Those prejudiced or exploited people who feel themselves under the authority of aliens or oppressors tend to escape from the law. Generally, all the needs and expectations that their fulfilments depend on the sociality force the people to obey the law. When an individual recognises that disobeying the law brings him more benefits, so, he evades the law. This subject is a basic principle to estimate the amount of punishment for any crime, which means; the punishment for a crime is to be considered so much that the "mathematical expectation" of happening the crime would be negative. Statistically speaking, the "probability" of success multiplied by the gains resulting from the perpetration of a crime be a little less than the "absolute value" of the "probability" of failure multiplied by the harm of the punishment for that crime. The recent statement states that the probable gain is less than the probable hurt, and it is because, the extra punishment pressure for eradicating the motivation of crime would not be loaded with the people, and the cost for rendering punishments and penalties be kept lower.

Considering this point is very important that law-making and law obedience confront each oppositely. The more the law-making is, the more the people are restricted in actions, and the law obedience would be harder for the people. This phenomenon has been observed in most developed countries that because of not considering the law-making problems, there are always many laws, and it is referred to as a jungle of laws, so that a citizen can hardly find her easy solution among various laws. That is, by increasing the number of legal rules, less obedience will be achieved. This is why determining border of legislation is the most important affair in legislative systems.

In law-making, there are various theories, and some of them re-examine the origin of the legislator or

government. As a basic question: is the existence of the government a religious compulsion or a rational obligation? In addition, on this basis, is the obedience of the government a religiously correct compulsion or is it voluntary? Sharia law-making in the areas of Compulsory (*wajib*), Unlawful (*haram*), Recommended (*mustahabb*), Disliked (*makruh*) and Permitted (*mubah*) deeds, totally, need exact special attention that the legislation -concerning perpetuation of action or forbearance - would not be excluded from the list of what God the Almighty has prescribed for human beings in the Sharia law. The permitted action is a case in which its perpetration or forbearance is equal from the Legislator's religious viewpoint, and the ruler can make the law in the area of permitted actions. Some scholars have considered the area of the permitted actions as the arrangements for private life, so they are neither innovation nor legislation.³⁶ The fine point here is that can the permitted actions be restricted or forbidden by law-making? If yes, the law-making domain restricts the Islam Legislator's rules, and if it is not so, the choice for law-making is to be banned. Regarding the subject, we have to embark on the obvious principles resulting from the Islamic Law (*Sharia*), and the main philosophy of legislation and the philosophy and theosophy of a religious commandment should be perceived and then, towards its completion, the elaborated detailed command be innovated. Therefore, firstly, we have to engage in the theosophy of canonisation so that the principles of the philosophy of law be found and determined.

Investigating this phenomenon may raise the question: "in what area actually the legislation should be done?" Can the government make laws in all the fields and problems? And how can we draw a stable line which distinguishes the border of legislation, in which both the evolution of legislative principles be accepted, and rational stability be provided? Islamic law has a distinguishing borderline, which not only provides the stability of law-making, also distinguishes and restricts the area for the government's interference in the citizens' affairs. The main point in Islamic law-making is the ranks of rules, and generally, obligation and unlawfulness are not the same for all commandments, and the level of importance and the way of facing any of them are different. Classification of rules into the five classes of commandments is noticeable in this regard. If classified actions as Obligatory (*wajib*), Recommended (*mustahabb*), Permitted (*mubah*), Disliked (*makruh*), and Unlawful (*haram*) deeds are set sequent to each other, as cited, we see that they cover a complete domain of all activities from compulsory to prohibited actions. This sequence orders the severity levels of facing law with various perpetrations and forbearance. Although, in this relation, the "Recommended" action is near to the Obligatory one, and from the other side, near to the Permitted action, and the "Recommended" actions have the two types of "strictly Recommended" and "not strictly Recommended", but they have a preferential hierarchical category in a "fuzzy" logical concept. Moreover, this preferential hierarchical category can be observed in the "Disliked" and the "Unlawful" actions. Anyhow, juridical principles in Islam, especially in *Imamiyah* (*Shiite*), that the legislation resources are so that the importance of the Master of Authority and the Book (Quran) are superior to practice (tradition) and consensus of jurists, the above five classes of commandments find an especial position in which the area of legislation is distinguished much better. In this regard, the following matters are considerable:

- 1- Legislation is left to deliberation. Quran says:³⁷ **"Their affairs are on deliberation among themselves"**. The general "command of intellect" is the same. The wide range of necessary rules and regulations for society are placed in this category. Those criteria that are in accordance to intellect may be used in decision making about the legitimacy of rules. Because, originally, the theosophy of legislating some laws and leaving some others had been for this very reason that Unlawfulness (*haram*) and Lawfulness (*halal*) of partial commandments in different times and places are different. Hence, the Islam Legislator did not legislate for all the subjects and left many of them to the rational scholars that by considering the state of the people and also the different conditions, the best expediency is selected deliberately and in accordance with the God's will.

³⁶ Naeeni, Tanbihol-Ommah va Tanzihol-Mellah, P.74.

³⁷ Surah:Shoora, Verse:38. «وَأْمُرُهُمْ شُورَىٰ بَيْنَهُمْ»

- 2- Lawful (*halal*) is not changeable to Unlawful (*haram*) and vice versa. In fact, this principle, apart from the probable exceptional cases that exist for every general rule, expresses that, whatever Mohammad (PBUH) has known as lawful, is always lawful, and whatever is known as unlawful is always unlawful.³⁸ This lawfulness and unlawfulness are provable, and referable based on Quran and not upon the Prophet's practice narrations or jurists' consensus. Therefore, the lawmaker should not make lawful what the respectable Prophet (PBUH) has considered as unlawful, by making innovative law. The opposite is also true.
- 3- Punishment (*hudud*) and Chastising (*tazirat*) only include the social cases of unlawfulness. On the basis of this principle, punishments can only be defined for those actions and deeds whose social unlawfulness has been clearly mentioned in the *Sharia*, and they cannot be rendered for individual's deeds that have no social subsequences by making law or broad interpretation of the *Sharia* to punish. In social affairs, Recommended, Permitted, and Disliked actions cannot be used as the basis for making punishment laws that Punishment (*hudud*) and Chastising (*tazirat*) exist for them.
- 4- Law-making in the area of obligatory social actions is necessary. The obligation in many rules is itself an origination of the others' rights, and composing these rules defines a permissible and authorised legislation area for the people of society. Based on this principle, the Islamic government is obliged to make law in the affairs in which the perpetration or forbearance of an action by an individual, in relation to the other's rights - and not himself (the individual)- are considered as obligatory.
- 5- Law-making in the Permitted, Recommended and Disliked affairs is obtainable based on the social contract. Principally, accomplishing most of the arrangements, which their unlawfulness and obligation have not been mentioned explicitly, can be brought into the legislation process based on the methods of implicit contracts among the people or explicitly through the contracts and by considering the attitude of social contract institution. However, these affairs must not necessarily cause severe punishments for the offenders. For example, school enrolment can be considered as a social contract necessity, but sentencing the parents, who refrain from the enrollment of their children in the school, is under the question because education is not on the list of religious-social obligatory actions, though it is of the most "Recommended" actions.

These discussions are considered in criminal law and, generally, in the punishment philosophy. Generally, in the classic school of criminal law, which is a combination of the ideas of retribution benefit and absolute justice, the principle is: Punishment must not be prescribed for a crime, not more than the necessary level and not more than what justice necessitates. The lawmaker must not identify an action as a crime that is not disturbing society, even if it is opposite to ethics. In this school, retribution is commensurate to the criminal's personality. They can even be generalised easily to the adaptation of law to customs and common laws of the society. The laws must not expurgate the nation from her history because the culture and cumulated experiences of the society will be subject to interruption and separation. Examples of these types of legislation can be observed in the era of extremist ideologists and authoritarian governments. Usually, law-making in these types of governments is pushed towards the separation of people's culture from their history, which certainly, causes many cultural damages to the society.³⁹

Supervising-Consulting Institutions

The legislation process causes the accumulation of laws, and to understand them; specialisation is needed.

³⁸ Kolaini, Al-Kaafi, Vol.1, Ch.58, P.19.

³⁹ His Honourable Haj Dr. NoorAli Tabandeh, Cultural Iran-Political Iran. Juristic and Social Collected Papers, Haghghat Publication, PP.65-71.

His Honourable Haj Dr. NoorAli Tabandeh. Preserving Ancient Memorandum. Juristic and Social Collected Papers, PP.149-155. Haghghat Publication.

Technical services of especial people, groups and institutions become inevitable in this regard. In the legal activities of the private and public sectors, needing a lawyer is a common phenomenon. Law-counselling and authorised attorney are the services offered by the lawyers that depending on the level of complication of the people's activities in different economic, social, cultural, technical and military fields and the complexity of laws, are necessary mediums to advocate the right. The lawyers, individually or associatively in the attorney canons, form resourceful persons who play an important role in advocating the right and providing a supervising-counselling guide.

What has always been important in the history of law and has been paid little attention to its damages and subsequences is the problem of attorneyship for the falsehood against the truth. This problem is important from this view that some of the attorneys, despite the awareness that their clients are not rightful, act and try to rectify the right to the benefit of their clients. This form is not acceptable from the religious wisdom viewpoint. Quran negates this type of attorneyship and commands to cooperate and help in righteousness and warding off evil, and prohibits the people from cooperation in evil doings. It says:⁴⁰ **"Do cooperate in piety and goodness, but do not cooperate in sin and aggression, and be wary of Allah. Indeed Allah is severe in retribution"**. The attorneyship of falsehood is an attempt to overcome the truth, and is considered itself as adjutancy in crime. And so, for driving the process of the courts towards correction and peace, both partner and adjutant in crime should share the retribution of the criminal too. It means that the attorney should just try to advocate the rightfulness but not his client. Surely, there are always exceptions in the matter that lots of conflicts are raised by misinterpreting law by the parties to the dispute and their attorneys as well. Quran says:⁴¹ **"Whoever intercedes for good cause shall receive a share of it, and whoever intercedes for an evil cause shall share its burden, and Allah is the proponent of all things."** Attorneyship, as intercession and meditating, is also addressed in this verse. On the basis of this point, if he tried to advocate the right, he will be eligible to receive an attorney fee from his client, but if he tries to give back and falsify the truth for the sake of his client, he should accept a part of his client's retribution because of participating and adjutancy in the crime of his client. Certainly, applying this method will drive the attorney affairs into justly adjudication and honesty of lawyer, and will decrease the corruption of this job.⁴²

Moreover, the foundation of judiciary power must be based on just judgment and set up the justice, and a load of this power is on the shoulders of judges, and if the judge's correct action be accompanied by his sufficient knowledge and necessary protections from his position, the necessary conditions, for the fulfilment of judicial security and setting up the justice in the society will appear.⁴³ In this regard, from the macro point of view, the attorney can play an important role in the fulfilment of the judge's justice as a basis for supervising the sovereignty of law in the form of lawyers' associations.⁴⁴

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⁴⁰ Surah:Al-Ma'idah, Verse:2. «تَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ وَاتَّقُوا اللَّهَ إِنَّ اللَّهَ شَدِيدُ الْعِقَابِ»

⁴¹ Surah:Al-Nisa', Verse:85. «مَنْ يَشْفَعْ شَفَاعَةً حَسَنَةً يَكُنْ لَهُ نَصِيبٌ مِنْهَا وَمَنْ يَشْفَعْ شَفَاعَةً سَيِّئَةً يَكُنْ لَهُ كِفْلٌ مِنْهَا وَكَانَ اللَّهُ عَلَىٰ كُلِّ شَيْءٍ مُّقِيبًا»

⁴² His Honourable Haj Dr. NoorAli Tabandeh (1999) The letter addressing to the Respectful Head of The Judiciary Branch of the Government concerning the attorney and attorneyship in juridical department. Legal and Social Collected Papers. PP. 209-212, Haghghat Publication.

⁴³ His Honourable Haj Dr. NoorAli Tabandeh (1999) Judicial Security. Legal and Social Collected Papers. PP.48-52, Haghghat Publication.

⁴⁴ See His Honourable Haj Dr NoorAli Tabandeh (1999) Attorneys Association: Supervisory Institution over Sovereignty of Law, Legal and Social Collected Papers. PP.229-232, Haghghat Publication.

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