

Investigating Equity in Islamic Jurisprudence

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Abstract: In the general sense of meaning, justice is synonymous with equity, however, equity, unlike justice. All of the religious rules are mandatory and require the compliance of all people. In Islamic jurisprudence, there are many emphases on observing equity in the affairs of Muslims so it seems that, the root of equity must be searched in Islamic references. Almighty God, though is confident about the preaching style of the prophet, but has expressed this issue with doubt so that, whether the messenger is right or the other people and there is no third way.

In this paper we summarize the equity in Islamic Jurisprudence.

[Reza Najaflou, Ayatollah Seyyed Mohammad Mousavi Bojnourdi, Hosein Shafiei Zeini. **Investigating Equity in Islamic Jurisprudence.** *Rep Opinion* 2019;11(1):81-83]. ISSN 1553-9873 (print); ISSN 2375-7205 (online). <http://www.sciencepub.net/report>. 5. doi: [10.7537/marsroj110119.05](https://doi.org/10.7537/marsroj110119.05).

Keywords: Equity, Islamic Jurisprudence, affairs of Muslims

1. Introduction

Equity, on one hand, means equality in terms of quantity and on the other hand it means the verdict based on conscience. Generally, equity is a principle beyond the justice according to the conditions of an individual.

In the general sense of meaning, justice is synonymous with equity, however, equity, unlike justice which is a standard measure, has a personal norm thus, jurispudent, in inferring the rules, should take advantage of this rule in order to make adjudication (Fatwa).

The importance of equity becomes more evident where, the rules of justice are unable to deliver justice, and therefore, equity helps justice to establish a true adjudication.

In legal doctrine, England has announced to be the birth place of equity whereas, in Islamic jurisprudence, there are many emphases on observing equity in the affairs of Muslims so it seems that, the root of equity must be searched in Islamic references.

Equity is a general rule and is not dedicated to a specific subject. One may say that, it is often used in judgment, but it does not question the generality of the rule and in every case where there room for equity, it is used because equity is a matter of human's nature beyond the religion. Therefore, it cannot be separated from human; all affairs are rooted in human nature which is clearer in the equity.

All jurisprudential rules are based on Sharia including equity. Understanding a jurisprudential rule could be based on the Holy Quran and authentic narrations of the religious leaders, as well as consensus from innocents' traditions and which their authority comes from the signature of the lawgiver.

2. Material and Methods

All of the religious rules are mandatory and require the compliance of all people. This obligation, sometimes, is in the form of mandatory judgment, and sometimes is in the form of situational judgment. according to the discussions on the evidences of this rule, we will explain in the following that, the obligation for lawgiver to observe the rule is clearly evident from jurisprudential rules and concerning that, in Islamic jurisprudence, lawfulness and unlawfulness are considered in terms of worldly, otherworldly, and jurisprudential consequences, the mandatory nature of this rule seems more sensible.

There are several verses in the Holy Quran conveying the sense of equity so that, some had ordered to establish equity and some, using equitable reasoning, approved it. As an example, we can refer to verse 90 of Nahl Surah which says: "The Lord has commanded you to establish justice and charity and forgiveness on relatives.

Imam Ali, in a narration on interpretation of this verse states that, justice in this verse means equity. One may argue that, the verse commanded to observe justice, equity, and. The answer is that, since the word justice and charity are used together, the purpose of the verse is beyond justice because equity is above justice and is along with devotion; therefore, the concept of justice, in this verse, is more apt to equity than justice. This means that, the personal nature of equity and attention to special circumstances are considered by the holy lawgiver.

In addition, Almighty God, in order to express himself to people has mentioned the equity: "O messenger, say to people who is the provider who gives form earth and sky, me or you may are in the guided path or in the obvious error".

Almighty God, though is confident about the preaching style of the prophet, but has expressed this issue with doubt so that, whether the messenger is right or the other people and there is no third way.

God says that, since they disagree with you and from the other hand, it is not possible for both groups to be right or wrong together, ask them who the provider is. If they answer the question with equity they will find themselves in deviancy. Moreover, in verse 82 of Maede Surah God has introduced the Christians as the friends of believers since when they found that Islam is truth, they equitably converted without fighting while they have no compulsion to do that. In fact, the equity they observed in explaining the Islamic ordinances and matching them with practical realities of human life is their key to victory guidance.

Moreover, in another verse God guides the believers to justice and equity. From Quran's perspective, equity is as a human's property which is rooted in the nature of human beings.

That means that, based on human's creation, there is disposition toward justice and hate toward injustice and discrimination. This is the fact that humans found it in themselves and judge by it. Although sometimes, worldly matters make him/her away from this fact but in verses 7 and 8 of Infitar Surah, God mentions that, "the Lord put justice and moderation inside you, and formed as he wanted". It means that, justice is rooted in human nature and is the cause of stability in that nature of human.

There are narratives of the Prophet on observing justice for example, the Prophet once said to Ibn Masoud: "O son of Masoud, act people with equity and advice your people for good, otherwise the God will torment them while you are among them; the Lord does not want to destroy villages and cities while they are reformers.

In Nahjul Balagha, Imam Ali advised the treasury agents to establish equity: "Be equitable in your relationships with people and be patient in fulfilling their needs".

In addition, in another true narration, one was claiming that he owns two dirhams and another was claiming that the dirhams are shared among us. Imam Ali said that, the one who claims that they are shared, in fact he confesses that, he has no right in one of the dirhams and the another dirham belongs to his friend, but the second dirham should be divided between.

In another narration quoted from Imam Jafar Sadiq, a business sold a garment to someone for 30 dirhams and sold the same garment to another one for 20 dirhams. Since the cloths were identical, the sold ones were not clear. Thus, Imam Jafar Sadiq commented to sell both garments and give the three-fifths of the new price to who purchase the garment for 30 dirhams and give the rest to other one. The one

who paid 20 dirhams offered two garments to another and told him, these two are the same although the prices are different. You choose what you want. He said that, what kind of proposal is this?

Imam Jafar Sadiq said that, this proposal in relation to those men who own their property is an example for equity, also in jurisprudence, many rules and provisions are based on equity. For example, if several people are partners in some money and their shares are not equal, if they ask for an expert to divide the money between them, everyone must pay the remuneration fee proportional to their share. Because if they pay equal remuneration fees, it is possible that, the money of one be lower than the remuneration fee and many of the jurisprudent commented that, it is against the principle of no harm. It seems that this issue is another example of observing equity in Islamic jurisprudence.

3. Results

Shiite believes in good and bad aspects of actions. In this regard, the authority of reason in human affairs is innate and does not need to forge the authority of the lawgiver since that, according to the authentic narration: "everything ruled by Sharia will be ruled by reason too" and vice versa. In this issue, equity, like justice, is considered good from the scholars and injustice and the tyranny are considered bad and wrong. According to the mentioned principle, the lawgiver, as the head of scholars, has commanded to observe equity in various issues since that, in many cases of disputes we face in the courts, we observe with the problem of rigid and nonflexible rule. Here, the reason's approach in order to achieve an appropriate and equitable solution is benefitting equity to prevent injustice and establishing the balance of justice.

4. Discussions

Equity means using clean conscience and justice to recognize and implement the truth in the courts in order to resolve conflicts based on conscience and ignoring the rules of the law.

Jurisprudential rules are very general formulas that are being used to inference rules. We can mention some characteristics of this as generality, being canonical, and implying on mandatory sentence. In addition, the jurisprudential documents on equity include Quran, tradition and reasoning which all commanded to observe equity or they judged and argued based on equity. This approves the confirmation of lawgiver on including equity in Islamic sharia laws. One can say that, the origins of equity is rooted in Sharia laws rather than the laws legislated by lawmakers.

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1/23/2019