

Religion and Law: The Ratio of Law and Morality in Islam

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ABSTRACT

Religious, legal, and moral norms, which are an integral part of culture, have always existed. Islam has approached the rights, ethical norms of all living beings from different angles and paid special attention to these issues. According to Islam, rights are given to a person from the moment of his creation, not later. Normative rights, which covering human life, are also united with moral norms. Because there are moral norms at the root of any rule, and if there are no such norms, there can be no legal norm. That is why, when Islam speaks of human rights, it emphasizes morality, especially the principles of justice, and creates a link between law and justice. From the Islamic point of view, law and morality, justice; one of the main features of morality, are the main factors in the formation of a person as a social figure. Because law, morality and justice cover the issues that are necessary in the life of every person, which today we call it as Human Rights. The article focuses on the legal and moral norms of Judaism, Christianity and Islam, their proportions, social impact, and prestige, as well as the principles of human rights law and justice, other issues related to law and morality, and the differences between them. Research and analysis of some legal and philosophical aspects have been carried out here, referring to the authentic and authoritative works of both Islamic lawyers (faqih) and philosophers, as well as Western lawyer-philosophers (legal philosophers).

Keywords: *Islam, Islamic law, human, morality, justice, norm,*

Religion is a collection of divine laws and rules based on human nature. The purpose of the revelation of the divine messengers and the holy books is to introduce human rights, to create moral values among people, and inculcate them in them. That is why there was a need for criteria and evaluation among people. The religious, legal, and moral norms that have protected mankind for centuries have been always an integral part of culture. A person who lives with universal feelings strives to live in a community as a social being. Its main purpose is to observe the beauties that exist for man by God, not only through the emotional senses, but also through the inner and outer senses, and to make them the meaning of life. When talking about the connection between religion and law, it is very important to pay attention to the norms established in Islam for all creatures. Because these norms are analysed and studied based on different principles. According to Islam, Islamic culture is a completely secular and eternal culture. That is why, Islam has paid special attention to these issues by approaching people, human rights, and ethical values from different angles. The main goal here is to create a fair, legal structure based on moral norms and to fulfil socio-political requirements. From the Islamic point of view, individual, social, and political law is a set of privileges and talents that are officially recognized for each person and insisted on to be followed by others. This research focuses

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on the existence and interdependence of legal and moral norms based on Islam, as well as their differences.

In general, as in all religions, Islam has paid special attention to moral norms, as well as ethical qualities as the main criterion for being close to God and possessing human qualities. Moral norms are not only in themselves, but also in connection with several sciences, which the connection with law attracts more attention among them. The reason is that the main purpose of the rule of law is not only to maintain order, but also to restore social justice. Justice is one of the most distinguished features of morality, which is closely related to the rule of law. Of course, morality and justice are more prominent not only in laws, but also in legal structures and human rights. For this reason, it is important to pay attention to both the legal and philosophical aspects of these two concepts.

The Purpose of the Study

Islam has extensively discussed issues related to religious law and morality, especially human rights, and moral (ethical) values, and has insisted that they be always observed, regardless of the period. Given the urgency and importance of the issue at the present time, we considered it necessary to analyse the relationship between law and morality in accordance with Islam, its impact on legal structures and human rights, both from a legal and philosophical point of view. Because it is very important for both our present and future to recognize and promote such issues, which combine humanistic values.

Legal and Moral Norms in Religious Rites

When talking about the norms in regard to human and other living beings in both in Islamic law and secular law, first of all, the nature, a person's past and future must be analyzed accurately, that is to say, the connection between nature and human must be learned and understood profoundly. A human is not a being who lives alone without adherence to rules and other structures. It is necessary to recognize those rules and structures and to know their ethical characteristics in order to recognize such a being, because a human being needs them. The legislation, ethical norms, protection of human being within certain limits and evaluation of human-related actions are declared on the basis of laws in the "Torah", the first of the heavenly books. The "Torah" is not only a religious book, it also elucidates the existence of all living beings from the beginning to the end on the basis of legal and moral norms, and encourages humanity to adhere to these norms; that is to say, it is not just about the first creation, things, migration and other issues; if we analyze it carefully, we shall see that, the aim of human's creation is to be the head of all living beings on earth (Ancient Hebrew Torah 1917: 26-28). When we say leader, we are not talking about a claim to power. Perhaps the main goal is to regulate and develop human relations on the basis of established legal and moral norms. Legal and moral norms are not intended for one nation and one group. These are for the ascension of the human personality, and all human beings have a share in it. The famous German sociologist Max Viber addressed this issue in his book '*Sociology of Religion*' (Maximilian Karl Emil Weber: 1864-1920. *Sociology of Religion*) and called the principles of Judaism as '*Interpretation of Laws*' (Sakit 1991: 29). The legal, moral, and spiritual values that exist in Judaism are also reflected in Christianity. An analysis of Christianity on the basis of legal norms and ethical values reveals that legal, moral, and spiritual issues have been inherited from Judaism to Christianity. Because in Christianity, God is the source of human law. Jesus (pbuh) says in the *Bible* (New Testament): 'I have not come to abolish them (laws), but to fulfill them' (Friedrich 1969: 8-10).

The rules of law, which established by God, apply not only to human beings, but to all creatures. Because every creature has its own rights and the norms included in these rights, are designed to protect and develop the existing world (Charles et.al 1949: 1-2). Regardless of the period, sometimes existing laws have the opposite effect if they are not studied properly and applied in

practice, and as a result, the principles of religion and religion have a negative character in people's worldview. In all cases, whether religious or non-religious, a person must abide by the norms set for him, and improve himself as an individual, both in private and in public life, by adhering to moral norms. It should be borne in mind that, not only family behaviour and the environment, but also religious rites and the mechanism of their observance are one of the main conditions for human development. According to Islam, legal and moral norms are one of the main indicators for human perfection. Of course, in the development of man, along with legal and moral norms, attention must be paid to philosophical thought. However, in Islam, *fiqh* (called *usul-ul-fiqh*, اصول الفقه) is more important than the philosophical analysis of law, and *fiqh* is the first step in the study of Islamic law. *Huquq* (Law), in the plural form of the word *haqq* (right), is explained as follows: 'The right is a special power and authority, which is given by law to those who, in accordance with this law, make the right decision about themselves and the property, which belongs to him' (Sakit 1992: 51). But according to the famous Arab lawyer, Gazi Hassan Keyr: 'The right (*haqq*) is a privilege for individuals and legal entities of each country' (Hasan Keyir n.d. : 441). The principles of *fiqh* (Islamic law) as an official science have been studied by Islamic lawyers (Islamic lawyers are called '*faqih*' in religious texts). The main topics analysed here are –legal theory, ethical values, methodology of arguments, interpretation of legal texts, scientific evidence of legal rules, and other important issues related to law. Islamic law is recognized in religious texts as a law that is sacred, stable, unchanging, and protects moral values (Pashayeva 2018: 67). This begs the question: If Islamic law is stable and unchangeable, then, how can it be consistent with changing social concepts in legal theory? In general, can a stable law change, and if it is unstable, can it show ways of living while changing social necessity and accepting the means of subsistence? Although Islamic law is stable, it has also shown in the knowledge to which it refers the philosophical concept and theory of law. In all religious texts, Islamic law is recognized as a divine revelation, and as a socio-political, scientific, and cultural tradition. In addition, it analyses many specific issues not only from a religious point of view, but also in a social aspect. When we say that Islamic law is stable and unchangeable, this does not mean that Islam has existed as it has been since its advent. There are issues in Islam that are explained in accordance with time and period. That is why some of the existing issues are accepted, but some are not discussed because they are stable and unchanging (Pashayeva 2019: 133). If we analyse law in terms of concepts, then law is divided into two parts –public and private law (in Islamic texts it is also called 'same/identical' and 'individual' law). Public law is a set of laws and regulations established by an authorized person for the restoration of justice and the development of material and moral values. Personal law is a set of privileges and abilities that are intended for each individual, and from the Islamic point of view, it is important for others to abide by it. But when it comes to the definition of law by jurisprudence, there are rules and laws that govern society and the rights and responsibilities of people. This science deals with the analysis, development and evaluation of rules and laws. A person who studies law is called a 'lawyer' and in Islamic law this position is called as a '*faqih*' (Farajullah 2009: 561).

When talking about Islamic law, special attention should be paid to moral norms in Islamic legal systems. Because the Islamic legal system, in addition to being the core of Islamic law, also indicates all the rites of Islam. That is why Muslim scholars, when talking about the advantages of religion in legal systems and legislation, first spoke about the features of religion, and the most important of these features are justice, fairness, and conscience, which are closely related to the rule of law.

Moral Values in Islamic Legal Systems

The last of the religious and divine structures is the Islamic legal system, which refers to the *Quran*, the *Sunnah*, and the mind. Speaking about the main features of this system, it should be noted that the Islamic legal system is based primarily on *religion, morality, and spirituality*; that is, first of all, it

should be noted that the Islamic legal system is divine and religious. But ethical indicators are important in Islamic law system: If any law, ruling, or decision does not contain moral values, it is unacceptable for Islamic lawyers. Because the Islamic legal system was brought by a prophet chosen by God, not by ordinary leaders. Islamic law and its moral norms occupy an important place in the texts of the religion and in the rites of Islam and are inseparable from it; This is also confirmed by Western lawyers. The French lawyer Rena David (René David: 1906-1990) writes about this: 'There is not any Islamic scholar who is unaware of Islamic law. Islam is a religion based on law and morality, like Judaism'. Then he continues writing: 'According to Berg Strasser, Islamic law is an expression of the Muslim spirit, the most fundamental idea of Islam, and its core' (Mustafa et.al 2009: 2). Another important point that Rena David did not mention is that this divine and religious law is also based on revelation, which is based on ethical norms. Because any revelation, of course, instills ethical values in people. In this sense, the legal norms of Islam are not enforced by Muslims, who believe, but it was revealed to the prophets by Allah Almighty. These are important issues in the *Quran* and other authoritative texts that have been spread through the Prophet of Islam.

Another point here is that Rena David's comparison of Christian law with Islamic law complements the thoughts above: 'Even a small part of Islamic law is inseparable from Islam, because it is based on divine morality and revelation, and there is no force in the world that has the power to change its authority. There is no other rule than the Islamic morality and ethical norms to which every Muslim belongs to live in public life, and it is precise because of these characteristics that Islamic law has taken precedence in front of church law in Christian society. As is well known, the law of the church was not revealed by revelation, and it reflects the Christian faith and moral principles, and as a result, they are based on human thought, not divine word. That is why the various church rights of Christians began to develop over the centuries, and this development continues. However, Islamic law, being a part of the Islamic religion, is also based on Islamic morals and principles. Any right is unacceptable if it does not comply with the rules of morality and *Sharia*' (Mustafa et.al 2009: 5). An important issue should not be overlooked here; that is to say, the law referred to today is not considered a law, on the contrary, here Rena David's purpose in law is natural law, not positive law. Because the essence of natural law is based on the heavenly religions, not on the (positive) law and its principles, which will be studied later.

Another feature of the Islamic legal system is that it is *reality-based, comprehensive* and *public* (Mustafa et.al 2009: 5). Although legal entities aspired to this reality, they could not achieve it. This is because the scientists who put forward the principles of these structures and the organizers who laid the foundations for them did not pay attention to human existence and even made a mistake in recognizing its existence. But in the Islamic legal system, the legislator is God Almighty, who has a complete knowledge of all categories of human existence, decency, and its relationship with the universe. In this case, of course, the Islamic legal system will be considered a very comprehensive and social structure based on reality; That is, Islamic law, based on ethical values, regulates people's legal relations, focuses on social issues, and devotes divine laws to all areas of human life.

Another feature of the Islamic legal system is that it is complete and perfect (Mustafa et.al 2009: 7); That is, the reality of Islamic law indicates that it is a complete and perfect law. Islamic law is not only a comprehensive and public law based on ethical values, but also a comprehensive and complete system. There is no issue related to human existence that Islam does not express its attitude to these issues, and even the smallest issues have not been left out of Islamic law.

Another important feature of this structure is its emphasis on unity and cooperation. In Islamic law, unity, and cooperation, whether legal or illegal, are based on established ethical norms, systems, and structures.

These ethical norms, systems, and structures cooperate with each other without any contradictions, and most importantly, this comprehensive cooperation is based on reality. Because the Islamic legal system was created for real unity and cooperation (Mustafa et.al 2009: 8). Another

important issue here is that the Islamic legal system is related to human nature and unlike modern legal structures, it consists of two important pillars:

1. The Islamic legal system is not a secular system in essence, but rather it is based on divine and sacred values, ethical norms, that is, sacred deeds related to man. Islam is not only about religious rites and *Shari'a* issues, but also about the relationship between people in society, their rules of conduct, and a set of laws that are an important regulatory tool in the formation of public morality in general.
2. Islamic legal system, unlike other modern legal systems, is not divided into general and special sections. Because the laws of this system are established according to the verses of the Holy *Quran*, which have been always addressed to mankind and places; In other words, the Islamic legal system is an indicator of both the law and the moral (ethical) norms, which do not apply only to the community or a group, but even to an individual; as the Absolute Being says: *'We have honored the Children of Adam...'* (The Holy Quran: Al-Isra, v. 70). This shows that there is only one law in Islam, and this law applies to all mankind, regardless of religion or personal belief, based on moral norms or ethical values.

The legal norms which reflect moral norms and moral values are analysed in detail in Islamic law. They are: 'keeping the promise', 'Consultation within the law', 'Right to life', 'freedom', 'equality', 'justice', 'ensuring a just will', 'Protection of the right to abuse', 'Protection from torture', 'Protection of honour and dignity', 'Right to asylum', 'Right to public life', 'Freedom of thought, belief and speech', 'Freedom of religion', 'Protection of economic rights', 'Right to marry', 'Right to education and upbringing', 'Right to privacy', 'Right to choose one's place of residence', 'right to liberty' and other legal norms. These legal norms apply to all people, regardless of age, position, or medical condition (Muhaqqeq 1999: 457) and the verdict is made based on these norms, and the result is obtained. When talking about the relationship between law and morality in Islam, of course, human rights should not be ignored. This is because divine revelation, in addition to the soundness of human thought, also focused on human rights and emphasized in the holy verses that this should be observed.

The Ratio of Law and Justice in Human Rights

When talking about the relationship between rights and justice in Human Rights, it is very important to refer to the Holy Quran. Because ethical values, legal systems, and the ratio of truth and justice are reflected in the holy verses. In the Holy Book –all verses, dealing with human rights, call for truth and justice. Of course, the rights given to human beings and the observance of these rights in a just manner are of paramount importance in the advice that God Almighty has given to humans. When it comes to human rights, it means, these rights are not given to man later, they are bound to man and are born with him. From the time of man's creation, his desires and demands (rights) have been with him. The Absolute Being insists on the just observance of the rights of every human being, regardless of his identity or nationality: *'...and to judge with fairness when you judge between people'* (The Holy Quran: An-Nisa, verse 58). When talking about the relationship between law and justice in human rights, it is necessary to pay special attention to the social function of justice; In other words, it is very rare to call justice not only an indicator and a regulatory act, but also the main criterion that regulates social principles and subordinates it to a certain structure. Generally, justice is a social priority, also a moral and a physical value. Individual justice must cover all human desires (sensual, animal, mental) and be the criteria in all matters. It would be interesting to pay attention to the views of sociologists on this issue. According to sociologists, justice comes from a common conscience. But some of them do not accept the notion of public conscience and they say that the fair rule is that most

people think it is right (Katuzyan 2009: 626). The sense of justice is the basis of human rights in the human mind, and this sense is one of the important goals in the realization of rights. This goal seeks to protect human freedom and other rights. Of course, public law is also an important factor here. Because public law, in front of individual law, considers the common interest and state law as one of the goals of law. These issues are also reflected in the Holy Quran, the main source of Islam. Because the Holy Quran not only speaks of justice and human principles, but also calls for justice, ethical values, and the joint protection of individual and public rights. It is shown that the sense of justice is associated not only with words and deeds, but also with the human spirit. It is shown that the sense of justice is associated not only with words and deeds, but also with the human spirit. The divine counsel emphasizes justice, even in the case of kinship: *'...and when you speak, be fair, even if it were a relative; and fulfill Allah's covenant'* (The Holy Quran: Al-An'am, verse 152). Of course, human rights cannot be limited to justice, the role of fairness, conscience, customs, and traditions is great, all of which are united in moral values. But since our subject is the ratio of law and justice, it is necessary to focus on it.

The Goal of Law and Justice in Human Rights

An analysis of the divine words and religious texts reveals that man is made up of two parts: the soul and the body. When we talk about human rights, like man's belief and attachment to nature, his belief in the existence of another world after death (afterlife), man's relationship with God and himself, man's relationship with others, the core of the individual and society, and other issues like this, in addition, to be the main goal of the law, it also shows the need to create a goal. Each of these issues has its own purpose, and these goals exist in the law. Of course, any goal must be based on certain criteria to comply with the rule of law. If any goal is beyond justice, it cannot be called a healthy goal and cannot be achieved even if it exists; That is, the goal itself must have certain limits and norms that do not contradict justice. Because justice, first of all, has the property of correction; Law and justice assume the function of reforming both personal and public life, and considers this to be the main goal. It should be noted that according to Islam, justice is related to desire, through this, a person turns away from immoral deeds and acquires high moral qualities. The goal of human rights and justice is not only the improvement of public welfare and the administration of justice, but perhaps the main goal is to achieve the highest level of justice in human behaviour. The superior point here means that the human soul is enlightened by the observance of truth and justice. Of course, this may mean something else, but the enlightenment of the human soul is possible only after adhering to moral values. When a person sees the positive side of any action, it is known that he is happy and comfortable, both spiritually and physically. A normal person thinks about any action he has taken (whether it is good or bad), although not at that moment, later, and when he sees that he has done something wrong, then he becomes anxious, although it does not reveal it. But when the owner of a good deed feels that his action is positive, both his soul and body relieve, and in return for his deed, his conscience rises even higher. The ratio, purpose and superiority of law and justice in human rights is that it introduces man to the truth and his identity, as well as creates an unbreakable bond between soul and body. Islamic thinker Muhammad Hussein Tabatabaei writes about this: *'Some flaws in a person indicate that he needs to understand the truth. Indeed, the effects of these shortcomings constitute the weaknesses of human existence, and these weaknesses must be replaced by the acquisition of moral qualities by the will'* (Tabatabai 2007: 16).

When it comes to the goal of human rights law and justice, of course, it starts with individual rights; That is, individual freedom and the interests of the individual are one of the main goals of law and justice. According to the law, the state is an institution trusted by the citizen; The government must ensure human freedom; The government, to a certain extent, must create conditions for the expansion of human activity with others and eliminate the problems that limit public activity (Katuzyan 2009: 368). Of course, all this applies not only to the rule of law, but also to the existence

of fair decisions. Generally, whether in Islam or in civil law, the main goal of law and justice here is to assess human existence. Although the assessment of human existence is widely analysed in religious texts, but Western thinkers also have very interesting ideas about it. Philosophers and lawyers, who study law from a philosophical point of view, have written that purpose and goal are important not only in the philosophy of law, but also in other sciences. Among them, lawyer-philosophers paid special attention to this issue and doubted the existence of aimless law and justice: 'Law and justice are based on purpose, when investigating any action and making disciplinary demands' (Claude 1953: 462-463). In another source, the basis of rights is associated with the goal of law and justice: 'The essence of rights must be sought in the goal of law and justice' (Katuzyan 2009: 116). It is necessary to pay attention to an important issue here. It was noted above that the goal of law cannot be limited to justice alone. Of course, the goal of law cannot be limited not only by justice, but also by law. Because he is the head and guide of the state and law, with more influence on the creation and nature of the rights and laws regulated by the state. The advantage of the goal between law and justice is that it is both the guide of the law and the state, and it is responsible for its control. That is why, it is impossible to recognize the requirements of law without defining the goal of law and justice. But, unfortunately, no attention is paid to such an issue, which substantiates the essence of law and justice and its principles; More precisely, many valuable and influential works on law is spoken of the principles of law, but the goal of law and justice in human rights, which is the main subject of legal theory, is left out. Of course, just saying that the goal is law and justice does not solve the problem; that is, this topic needs to be analysed in depth. The lack of attention and exclusion of the subject is probably because lawyers focus more on the analysis of practical issues than on the philosophical aspects of law. But it is better that when discussing issues between law and morality, attention should be paid to the goal of law and justice. Because the goal of law and justice has an enormous impact on all areas of legal science and law. That is why philosophers have approached the issue in a radical way, not superficially, and have made philosophers think more, because this topic (the goal of Human Rights and justice) has penetrated directly into law.

To conclude, when discussing the relationship between law and morality according to Islam, it can be concluded that the rights of beings in all religions have an important impact on the formation of human life, social development, and the protection of moral values. That is why, it is impossible to distinguish between religion and law, religion and morality, law, and morality, because they have the same goal. The ratio and influence of legal and moral norms, which it was established by God, help a person to master the rules of real life, for all living beings. It explains ethical values and qualities, instils in people free thinking, high culture, and science, and most importantly, it prepares a person for the period in which he lives. According to Islamic law, the coexistence of legal and moral norms prevents unethical behaviour that is contrary to humanity, regulates human relations, and shows the ways to solve them, and leads all mankind to a true and united unity. The purpose of religion, law, and morality is not just to give people the rights they deserve. Perhaps the main goal is for the legal and moral norms that belong to mankind to prevail in the existing world and to constantly make demands for the progress and interests of the people in accordance with that period. The difference between the norms of law and morality in Islam and other norms is that Islamic rites are based on truth, justice, conscience, and fairness. It does not only say them, but also insist on their observance. The main goal of Islamic law, with reference to moral norms, is to show the rules of life necessary for mankind, and to demand that they be observed both in word and deed. Of course, here the main condition is the existence of legal systems and reliance on ethical values. When we say, the existence of legal structures, based on ethical values, it refers not only to moral norms, but also to Human Rights, which have been studied and tried to be observed at all times.

Another important issue discussed in the article is the relationship between human rights and justice. The Holy Quran emphasizes Human Rights, the regulation of these rights by moral values, and the observance of justice. Because Human Rights are one of the most pressing issues of divine

existence, which can only be observed through justice. That is why, law and justice are always together, but also affect each other. The ratio of law and justice is that any person should have a right based on reason and law; A person must not only fulfil the duties required by law, but also consider its principles sacred, and accept within the frame of justice without hesitation any issue related to law and morality. Of course, the existing legal and moral norms in Islam and the issues surrounding these norms are for the evaluation of mankind. Here the main goal is to create a real human symbol that understands its rights based on legal and moral norms, referring to the stable and unchanging scriptures (the Holy Quran).

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