

## A Methodological View to the Works of Shiite Jurisprudence

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### Abstract

In this research, with the aim of promoting the level of jurisprudential research and its more efficiency, comments and criticisms and suggestions presented in the field of methodology of famous legal works of regarding the issue of enjoining good and forbidding evil are detected and introduced. These criticisms include not paying attention to some important issues, despite development of too much of other issues, not finding new issue, and generalizations and not mentioning examples

**Keywords:** Jurisprudence, good, evil, methods, examples

### Introduction

Throughout the history, Islamic scholars have always tried to response to the questions of faith and provide legal and practical solutions and guidelines for their people and their future generations by relying on religious texts and sources and the sublime teachings of Islam, according to their time.

In addition to the efforts of Islamic scholars and thinkers to respond to the needs of thought and update the knowledge of God, they have done another great work, that is the fact, they have constantly reviewed and evaluated the scientific and intellectual heritage before themselves. And this has been a way of life and tradition among the seminary scholars who have criticized and improved the previous scientific works in the form of commentaries and different margins and tried to promote and improve their quality. Therefore, no work in the field of jurisprudence theology or philosophy can be found with one or more comments with a criticism in it.

### Review of Literature

Religious scholars headed the Supreme Shiite jurists, with their critical view have kept jurisprudence from within dynamic and active and used their Mujtahed nature and research as much as possible to Islamic thought and ideology to reach to its highest level in terms of content and quality. However, external review and historical perspective and attention to the evolution of jurisprudence and the development are in total of this science and methodological views to the works of jurisprudence are something that is rarely taken into consideration.

Morteza Motahhari is from the rare scholars who have paid attention to this aspect of the criticism and researched that, i.e. the view from the top and external to scientific research and methodological and historical criticism. Moreover, despite accurate and fair criticism of Western intellectuals and atheists, he has not neglected the critique of insiders' works and has paid attention to weaknesses in Islamic works alongside their strength points, and he critically considered two internal and external aspects. Articles of "The fundamental problem of the clergy organization" and "Ijtihad in Islam" in the book of twenty speeches of Professor Motahhari including works of some researchers as the book of "periods of jurisprudence" from Shahabi and the book "with the evolution of Ijtihad" from Shahid Sadr are rare works in which this criticism and external historical and methodological attitudes have been considered.

In most of these topics, yet the evolution in jurisprudence and paying attention to Ijtihad are considered necessary "the penetration of individualism in the interpretation of the law" (Sadr. Seyyed Mohammad Bagher, along with the evolution of jurisprudence, translation of Akbar Nabovat), "dependency of view of jurist and their demagogy" (Motahari, 20 speeches pp. 100-101), "not raised social philosophy in jurisprudence" (Motahari, Principles of Islamic Economics p. 27), "enclosure of jurisprudence in old issues" (Motahari, ten speech p. 104 and 258, 229 and 226 and the book of Islam and the requirements of time, p. 233 and human social evolution pp. 188-190), and "assuming the equality of religion and jurisprudence", have been cited as a fundamental problems.

Solutions have been primarily "specialized division of work in jurisprudence" (Talk of disintegration in Ijtihad), and constitute the "Council of jurisprudence" (Motahari, twenty speeches, p. 103-107), and "considering social arena of jurisprudence" (Sadr, along with the evolution of Ijtihad p. 17), and "considering the circumstances of the time" (Motahari Islam and requirements of time, p. 16, 1, 183-213), and "taken seriously other religious issues" such as theology and interpretation.

### **Methodology and Statement of the Problem**

In this study, we intend to consider the important points that deserve in the methodology of works and legal research and investigate jurisprudence problems that have been taken in this regard to be provided in the field of their reform. But, given the extent of religious books, among these works, the known courses of jurisprudence as "Alalmae Aldamshaqyeh" by Zayn al-Din al-Jabali Al-Ameli, and "religions of Islam" by Mohaqaq Heli, and "Javaher Al-kalam" by Mohammad Hassan Najafi compared to the other works, Shiite jurisprudence community have paid attention to it and selected it as sample; and we refuse the mentioning of similar and repeated samples but typically other works have been written in this style.

Among the jurisprudential issues, the issue of enjoining good and forbidding the evil is selected for this study because of the extraordinary importance that this sector has compared to other sectors of jurisprudence, and the hoping that the other researchers by studying and researching in other fields of jurisprudence and investigating other works can improve this research and confirm its results and achievements.

### ***Not Paying Attention to Some Important Issues***

In most jurisprudential communities that are seeking to complete a period of practical tasks, these tasks are discussed in fifty-two chapters and three titles of worship, transactions and rulings. Investigating these categories and why, how, and when they have arisen open a wide chapter of the discussion that is out of the subject of this study. Nevertheless, since it is related to the issue of this research, it should has been said for a long time and from the first time that writing jurisprudential assemblies was replaced by writings of pamphleteer and writing contents on specific chapters, enjoining good and forbidding the evil are considered as one of the 52 chapters. However in many jurisprudential communities, these two principals were omitted or without assigning an independent chapter they are studied within other chapters and this, while the importance of other chapters compare to this matter is as a drop than ocean by confess of jurists and stipulation of traditions (Abdoh "Nahj Al-Balagha" Hekmat 374 and Ibn Abil Hadid. "Nahj Al-Balaqa description, 2011) confirm this software called "Almajam Al-Faqihe" which has been prepared by an institution in Qom seminary in recent years.

In this application, it has been embedded more than three thousand works of jurisprudential or jurisprudence that are almost all works and among these three thousand books only 138 books have dedicated a chapter as enjoining good and in other works, this issue has not been discussed or

presented as a residual and complementation of jihad or ethical issues in the form of a secondary and peripheral one.

This problem has spread to practical treatises of reference imitation and the vast majority of theses of catechism of contemporary reference imitation have not raised this issue' and the ones who have raised it, have done it in very concise and to the extent of summary and translation of content of Tahrir Al-Vasila by Ayatollah Khomeini have relied without anything added to it or a new issue to be raised.

In the words of Professor Motahhari: "This content needs a deep historical research that investigates enjoining good rather than during the history as other jurisprudential chapters be developed and more expanded, gradually decreased of its extent and has been the lowest volume of jurisprudential chapters " (Motahari, Epic of Hussein, pp. 49-51). While other chapters that are not comparable with it extended unimaginably in any way and in terms of the importance and have been considered excessively. Such lack of paying attention to enjoining good is the cause of neglecting the action and enjoining good.

***Not seeking for new issue and sufficing to the old and repeated issues***

One of the criticisms that some of the contemporary jurists have expressed by the ways of governing the old jurisprudential works is the oldness of the discussed issues (Motahari. Ten books, pp. 104, 258, 229 and 226 and six paper pp 131-132, and "Islam and the requirements of time, p. 233 and human social evolution pp. 188-199 and referred to Mohammadi, Majid, book "Religion Pathology" p 118)

Miserable jurists and scholars of time as Sayyed Mohammad Baqir Sadr and Morteza Motahari have repeatedly complained about repeating past issues and neglecting new issues and have said the plan of old issues and connections of religious laws to old problems have caused aging rulings and manifestation of the Shiite jurisprudence as a lifeless science.

Tedious repetition of issues such as "Ataq" and "loyalty" and "Zaman Aqele" and "claim parity" that almost have no utility in today's societies and reduced luck of young and educated masses significantly to jurisprudence and has presented this jurisprudence as a tight garment for configuration of a society that is much larger than before, which is very annoying and uneven , unaware of controversial issues and surprising and other than legal matters of the third and fourth centuries and has nothing to tell. In terms of enjoining good and forbidding evil, this pest has shown itself evidently because all the works that have raised this issue except repeating several issues identified have not mention any new word and the main contents not exceed from several following titles:

- Sufficiency and necessity of enjoining good
- The definition of good and evil
- Types of forbidding evil
- The provisions of the necessity of enjoining good and forbidding evil
- Orders of enjoining good and forbidding evil
- Permitting Hodud and tenure of the position of judge from enjoining good and forbidding evil in idolatrous regime

In the current era, as well as between the years 1991 and 2001, more than 74 works in the field of enjoining good were published in Persian. With the encouragement and support of government officials, this issue has apparently extended and taken into consideration. Nevertheless, in such works, we can rarely find a new and modern discussion and only examples and methods of explaining contents have been changed. Even in the most works, names and titles of issues are

absolutely the same and it is amazed that the position of some contemporary young scholars aware of the presence of repeated works in the field of enjoining good try to publish another work that except collecting and classifying those issues, not have anything to tell. (E. G. Alkhrrazi. "Enjoining good and forbidding evil")

Increasing the volume of works without having new content and regardless of being boring for readers and considered the as of extravagance and waste of time, more than anything else, is painful to researcher who has to achieve all of the variety works by the great efforts and study and after the great efforts in preparing the study and does not find anything new in it. While from challenging topics of enjoining the good in throughout the jurisprudential works, no work can be seen as the discussion of "the relationship between enjoining good and forbidding evil with a plurality and multiplicity of religions and the need to respect each other's religions" and "interference of enjoining good in today's civil society with duties of various and complex institutions like the police and broadcast and press and parties with this responsibility in different forms" and "how to implement these two duties in international obligation and removing their conflict in different cases and with international norms and standards", etc.

As if, in the words of Professor Motahhari "There is a general tendency for the way gone and no one is bothered to take steps and pass the non-gone ways; and we prefer to pass the seven hundreds-year-old way to solve the doubt of Ibn Ghiba and go to beaten and good roads (Motahari, human social evolution p. 188-190) doubts. And, if we had a solution so far, these doubts have been resolved a thousand times and if we do not have it so far, we will not have it forever"(Motahari, Ten speeches, pp. 226-229). Unfortunately, in the words of professor Motahhari "in the current situation, except the practical treatises and surface works, it cannot be expected to find a new work from the clergies of Shiite" (ibid).

### **Generalizations and not mentioning examples**

In jurisprudential issues discussed, the sentence and its variants have been discussed but the elements and components of the sentence are less discussed independently; and even in textbooks related to the principles of jurisprudence course that in the present era is considered from approved courses of theology and in accordance with its objectives, this course has to deal with these fundamental issues, less attention is paid to this issue; while the lack of paying attention of researchers to this issue until the last stages of research can cause serious scientific errors. And for the same reason, I have raised the elements of sentence as a new heading for this lesson, and for sentence in addition to the subject, I have introduced other components like example and method and also the fact is that because without knowing the subject and the example and predicate, the implementation of sentence and act to duty is not possible, implementation and act to duty will be impossible.

In most of the jurisprudential books in discussing enjoining the good any example of good and evil have not been mentioned and few works of which have paid attention to them often more than three known examples, i.e. wine, music and illegitimate relationships between men and women, other examples have not been mentioned (Ulrike Freitag). Commanding Right and forbidding wrong in Islamic thought p 3) and only in very rare works written by aware scholars such as Qazzali, a complete list of evil is raised.

Qazzali provides a complete list of evils such as Evils of mosques, hospitals, markets and so on (Ulrike Freitag p 2.). And others such as Horr-e- Ameli, Ibn Ikhva and Mavardi have paid attention to examples in their works (R. K. Mavardi, pp. 310-319 and Horr-e- Ameli, Vasael-o-Shia, book *Enjoining good and forbidding evil*). Nevertheless, this relative attention in other works has been gradually decreased as far as among Shia scholars, very little attention can be seen in

mentioning examples and even in practical treatises that have been written for ordinary people and each oblige should act according to them and a complete list of obligations and prohibitions cannot be found even without mentioning examples.

Only if it is paid attention to express detailed rules and the duties of worship and if we pass the very brief work that one of the contemporary scholars has worked in the development of obligations and prohibitions, and listing them (see. Meshkini. "Vajeb and Haram") and from the book of *Deadly sins* by Shahid Dastqei that has sufficed to mention deadly sins, there is not any acceptable work being able to be introduced as a source of simple and reliable example for the religious enthusiasts to be able to see their religious obligations and prohibitions in it. And even those who had large religious studies in religious communities have commuted cannot claim that they know all the obligations and prohibitions.

This is not a pest that about the details of complex rulings and issues such as doubts of prayer that according to one of the authors is as a complex logarithmic table (R.K Shariati, A collection of works 7 / Shia / "Father, Mother, we are committed") in all treaties, detailed and complex contents exist, but to express the set of obligations and prohibitions that are the bases of all religious duties, no jurist written any work? instead of printing practical treatises with duplicate contents, is it not better for the scholars to investigate in the field of new goods and evils and publish a paper in the field of good and evil? Finally, is it not possible to raise non-explanation of examples of good and evil in practical treatises and jurisprudential works as a factor of closure and neglecting these two fundamental tasks?

If instances of good and evil are not accurately clear by jurists and the wise, it will have no other outcome for people due to their lack of knowledge of examples refuse the enforcement of rulings or they determine examples and through this, the holy law involves in misunderstanding and bad tastes.

Pained complaints about improper execution of rulings by some contemporaries, especially enjoining good and forbidding evil (Motahhari, Ten speeches, p. 61; Shariati, Shiite, p. 69) and regrettable stories mentioned from the tragic results of interference of people in the implementation of the tasks (ibid p.62) and based on them, Motahhari said that if enjoining good is this, it is better to stay Camden (ibid) that are certainly rooted in ignorance to good and evil examples. And no doubt, if the examples of good and evil were explained and were taken to the ordinary people, such regrettable disasters would decrease.

When Imam Khomeini as supreme jurist at the time with the responsibility of the sovereignty of the Islamic society speaks clearly about the necessity of awareness of jurists from the issues and modern science, and advises them to know the examples of provisions and provided for if a jurist declared traditional science of areas, but does not know examples, he is not a jurist and cannot take the responsibility of community affairs, (Imam Khomeini. Journal of Protector of Islam, the seventh year, p. 4-8), it is a crucial necessity that without recognizing examples of execution of rulings and doing them, it is impossible and may cause distort the law and taking adverse result. On this basis, this author has recommended in an article that recognizing examples as a new trend of jurisprudence major and with the name of "applicable jurisprudence" should be opened in the universities and be in the number of religious sciences and replace the major of jurisprudence and Islamic law that are something as summarizing the seminary courses with no clear benefit (R. K Journal of Keyhan Farhangi, 2000).

### **Conclusion and Suggestions**

Methodological investigating works of Shiite jurisprudence show that these works have some problems because of the absence of their authors at the scene of enforcement and their



deprivation from participating in management of community that have been due to the oppression and injustice of rulers of their time and their followers because of religious differences. Moreover, these problems have weakened practical aspects of those works and caused not having desirable and acceptable benefit in social life of people. These problems include "lack of paying attention to some important issues despite the development of other topics too much", "not having new issue", "generalizations and lack of mentioning examples", and accordingly it has been recommended to solve these problems by doing new researches at the present time by the help of constituting Islamic state in Iran based on the principles of Shiite religion. Numerous authorities that Shiite clergies have in governmental matters and even adding a major to majors of religious sciences entitled "applied jurisprudence" whose topic is the strategic study of jurisprudence and making the relationship between the general principles and legal raw materials with daily life of people and political and social issues.

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