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Analyzing (legally-criminologically) Heavy Burden Rule Based on fuzzy logic

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ABSTRACT

As opposed to the East Philosophy, Aristotle's divides everything into two black-white and yes-no categories. Also, in Aristotle Philosophy, there exist no middle states for logical concepts and results from logical reasonings. However, there exists no specified division in fuzzy thought and different elements belong relatively to various concepts and subjects. Present paper is based on this principle that, in reality world, everything lies on the space between two black and white limits, seeking to convey readers this message that although black-white (Aristotle) logic is in existence, it is a particular form of state of broader fuzzy logic. With the help of fuzzy logic, present paper tries to study heavy burden rule stating acceptance by perpetrators of act punishment, which is reflected in surah Al-Anam, Verse 164.

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INTRODUCTION

Fuzzy thought originates from a philosophical view with a several-thousand history as old as that of history philosophy. As philosophy of Divine religions is compatible with nature and instinct of human beings, inspired by the East philosophy fuzzy thought introduces the world as it is. But in Aristotle philosophy, opposed to East one, everything is divided into 2 black-white and yes-no categories, with no middle states for logical concepts and results from logical reasonings. According to this philosophy, it is not possible for us to be partially an honest person and partially a liar and/or to be a partially guilty and partially innocent one because mentioned logic (philosophy) neglects the third aspect of such a deviation, namely, being about to commit a crime. Aristotle Philosophy specifies and defines divisions completely, which are absent from fuzzy thought in which different elements belong relatively to various concepts and subjects. Fuzzy thought introduces a novel view being a generality of Aristotle logic. But the point is that classic mathematics being based on Aristotle logic is questioned by this view. Classic mathematics is a useful tool to express different concepts in cases where we deal with 2-value world; but need for more appropriate scientific tools to express more complex concepts of human life and environment has become apparent with human mind growth and scientific-technological developments. It is no longer appropriate and possible to display these emerging concepts through conventional mathematics which is based on 2-value measure. But fuzzy mathematics responds to this novel need: to express multi-value concepts rather than 2-value ones, to express world realities as they are. This paper aims at conveying readers this message that although black-white logic is in existence, it is a particular state of broader fuzzy logic. In Aristotle logic, the first and second preliminaries of any reasoning are absolute, exact expressions, so is resulting extrapolation. But the major drawback of this logical reasoning is that, in real world, nothing enjoys such an absoluteness that from which absolute extrapolations can be drawn, but rather those expressions that are stated as the first and second preliminaries of reasoning are uncertain and/or fuzzy ones [21].

Fuzzy logic:

Science has been always accompanied by a mistake seemingly made by all scientists. I recall these unforgettable moments of this day when I recognized this mistake of science, moments when I found out that science is not true and knew its error. Based on bases and principles of science, everything is subject to a fixed

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rule based on which the things are either true or false. In the past, scientists were analyzing their surrounding world on this basis. Although they were not always sure what was true and what was wrong and they might be doubtful about accuracy or inaccuracy of a specified phenomenon, they had no doubt about one item: each phenomenon was either true or false. Such a reasoning was dominating the logic and mathematics, that is, logical and mathematical phenomena had only 2 states based on classic bases and principles of science: True or False. Such an analysis of different logical and mathematical phenomena is the mistake made by science, in other words, science was mistaken in generalizing what was true for particular cases to all phenomena. In fact, different phenomena cannot be of one form of true or false and/or of zero or unit. Such a perception should not be used alone to evaluate logical and mathematical subjects; but rather everything needs to be measured relatively, so do all realities, for which some ratings are considered. In fact, everything is relatively true or false. Most of things which seem to be true are relatively true. Consistently, some degrees of uncertainty apply to correctness and falsehood of real phenomena. It is at this point that science was mistaken, that is, by its mathematical tool, science was stating that whole world's phenomena would be 100% true or 100% false, while, indeed, even one phenomenon with such a feature can't be found all over the world. Some things are not fuzzy, coming from math world. It is generally accepted that $2 + 2 = 4$, which is 100% true. But after artificial math world is left behind, all divisions and limits get blurred by fuzzy states which are referred to formally in sciences as multivalued states. In 1965, Lotfizadeh, then president of Electric Engineering Department of California University, Berkeley, published an article titled "Fuzzy Sets". In this article, Lukasiewicz's multivalued logic was applied to sets and groups of objects and things. Lotfizadeh gave label or name of fuzzy on such multivalued sets, that is, sets whose elements belong to them with different degrees such as sets of people satisfied with their jobs. He intended to keep fuzzy concept away from binary logic which was important at his time [21]. Based on fuzzy logic, now, this question raises that if a person commits a crime, how much he can be held liable for consequences and penalties of that committed crime.

Is this criminal the only person who is responsible for compensating losses as his punishment? or his liability is relative and other persons not committing the crime can be held liable for any reasons including liability due to other persons' acts, acceptance of theory of guilt or theory of risk?

Heavy burden:

Term heavy burden is primarily a derivative of *VeZR* (mountain) and *guilts* are interpreted both as *VeZR* and gravity, two of which are mentioned in Noble Quran, "... And no bearer of burdens will bear the burden of another so that the latter gets fully free from his own heavy burden" . Toting, taking and carrying a heavy burden means trespassing, offending [3]. Rule of negating heavy burden is among fundamental rules in jurisprudence (*Fiqh*), the essence of which is close to some *Fiqhi* rules. This rule essence is derived from abovementioned verse (164) of Surah Al-Ānām. Principle of dependence and implication of negative effects of an act is with act itself, that is, when a crime is attributed to a person, its negative effects are resulted to him. In modern law, this rule named the principle of punishment subjectivity is of particular importance, being considered as one essential elements of punishment in Islam [2]. In this paper, we study this rule history first and, then, we will know that collectivity of liability has been prevalent in Middle Age and the criminal's family members have been subject to reprimand and criminal liability unfortunately, but with advent of Divine religions, especially Islam, the principle of punishment subjectivity came into existence. In continuation of our paper, we deal with status and substance of this rule in modern law and Islamic *Fiqh* prior to stating its *Fiqhi* sources and its application in Islamic *Fiqh*. Finally, we scrutinize possible exceptions of this essential principle of criminal liability.

Historical study:

A) The Middle Age:

Historical studies show that collective liability has been prevailing in ancient times, adapted from Hammurabi's Code which was announced by Babylonian King about 2000 B.C and engraved on a stone tablet in the center of city in the sight of people. According to historians, it was adapted from older laws, namely; Sumerian laws and Eshnunna Code which had existed probably 2 centuries prior to Hammurabi's. We observe some orders under which, in some cases, a typical criminal's children were punished instead of he himself. For example, in a case where an architect failed to observe a building solidity in the process of construction as a result of which the house collapsed and led to the owner's death, he was sentenced to death, but if the owner's child was killed, the child of architect, who failed to build the house solidly, would be sentenced to death. And in relation to medical affairs, if a surgeon failed to perform his job successfully and a great figure's child was killed as a result, the surgeon's child would be sentenced to death. In this way, innocent children of criminals were punished in that age. Considering similarities between Ancient Iranian (Persian) and Hammurabi's Codes, historians believe that there existed liability for others' acts in Pars, with family members of criminals being liable criminally. If a person was held by the King an offender, his children would be responsible, too [4]. Unfortunately, no trace of principle of punishment subjectivity was seen around the world in ancient times and,

in addition, in some cases, the dead and animals were held responsible and punished. Established collective liability was denounced and abolished upon the advent of Divine religions, especially Islam, and heavily criticized by lawyers and philosophers during French Great Revolution. In 1791, eventually, with approval of French Criminal Law, the principle of punishment subjectivity became an Act and spread into other countries' criminal laws. It is one of major bases of criminal liability in today's world. Some believe that collective punishment was prevalent in Christianity, but many verses of Noble Quran negate this view; since Prince of Peace (Jesus Christ) never prescribed to punish some for the crimes their fathers had committed, but Christian interpretation is that Adam's sin is the origin of human beings' sins, that is, human beings transgress because their ancestor transgressed in Paradise and his guiltiness has been bequeathed by his offsprings. In Divine religions, therefore, punishment of a father's offence is not imposed on his son, with principle of punishment/reward subjectivity being ruling therein [5].

B) Modern law:

This rule is one of principled and basic bases of modern criminal law, based on which only the primary offender and his accomplices and abettors are liable criminally, whose acts consequences impede themselves, not their family members and relatives who have no criminal liability and who cannot be arraigned. This rule is, in fact, a response to the old sinful tradition and Great Dictatorial State of France. In those days, death (execution) was the penalty imposed on everybody offending the King and, in addition, his family members were sentenced to exile and confiscation. Such injustices were terminated by French Revolutionary criminal Law in Jan, 1791, which provides consequences and sentences shall be imposed merely on offenders, not on their families and relatives who are allowed to choose any businesses they wish. Concurrent with French Great Revolution, this principle was adopted by statutory countries. In this sense, Article 7 of Criminal Procedure of Iran approved on 02/09/1911 provides that criminal act prosecution is aimed only at perpetrators and accomplices. And this is the case for Procedure of Public and revolutionary Courts in criminal affairs. The United Nation General Assembly's International Covenant on Civil and Political Rights approved on 16/Dec/1966 provides in its Article 9 that "Every person shall enjoy personal freedom and security... corollary of personal security is that every person shall be held responsible only for his own acts while nobody shall be punished for offences committed by others". It is noticeable that this rule has been governing Islamic Criminal System since 14 centuries ago. In Noble Quran, the extent of individual liability has been determined so exactly that each organ of human body is required to respond. According to Noble Quran Logic, state of everybody depends on his own acts and conduct: "Every soul, for what it has earned, will be retained" (Surah: Al-Muddaththir; Verse: 38), since justice requires that each person be responsible for good or bad effects and outcomes of his acts: "If you do good, you do good for yourselves; and if you do devil, you do it to yourselves" (Surah: Al-Isra, Verse: 7). [8].

In other words, in some Verses of Quran, liability is based on fault measuring liability for reproachable acts, that is, in this legal system, any act and conduct of any person is calculated and evaluated so exactly that any act receives a proportional reaction and, on Resurrection Day, each human being will be accountable for what he has done during his lifetime. Noble Quran asserts feature of subjectivity of humans' liability in numerous verses, under which each person is personally responsible for his own intentional acts' and conducts' outcomes. In addition, each person is liable at his own capacity: "we do not charge any soul except with that within its capacity" (Surah: Al-Ánám: Verse: 152). What obtained from substance of related verses in the field of liability is that, in Quran Logic, creation system is based on taking assignment and its philosophy is to create knowledgeable, thoughtful and responsible humans, each of whom will be responsible, within his talents and capacity, for his acts while performing his personal assignments. Moreover, based on the substance of anecdotes and narrations, nobody is reprimanded for crimes other committed, but perpetrators themselves are responsible for their acts' outcomes [9].

C) Islam Creed:

In Al-Monir exegesis, Dr. Al-Zohaily states that verse 164 of Surah Al-Ánám indicates personal humans' responsibility for their own acts. This is a principle being glorious in Islam [10]. In Al-Mizan exegesis, Allameh Tabātabā'ee says that Verse 15 of Surah Al-Isra means an act, whether good or devil, accompanies and follows its doer, which is recorded against him and manifests itself to him on Day of Judgement, therefore, anyone who takes steps on and toward The Path is doing this on behalf and in interest of himself, not others who take wrong Path detrimental to themselves with no harm to others. No soul bears the burden of another's sin. So, the deviant who believe heavy burden of their deviation is placed on their leaders and/or imitators who believe their ancestors are held responsible for their deviation are mistaken extremely. Yes, this is true that leaders bear a burden as heavy as that of offenders since everyone who encourages a devil custom will bear a heavy burden until there are actors doing that devil, that is, those who have advised others to do something, saying they would be responsible for that, must be responsible on Day of Judgement. But all that is the heavy burden of void leadership and promotion of devil custom, not just the same heavy burden of the perpetrators so that the former

is held responsible essentially when the latter bears no heavy burden, and assuming that it is the same as the latter's, it means that two persons are tormented for one sinful act [11]. In honorable Majmá Al-Bayan exegesis, late Tabarassi says no one bears the burden of the other's sin, in other words, each person is responsible for his own wrongdoing and illegitimate acts, and no one is tormented for the other's sins. Our Holy Prophet (P.H) said, "There, right hand will not be suffering from and moaning of the pain of left one. This indicates baselessness of the idea that children of infidel people will be in the Hell with their parents [12].

According to Qartabi in exegesis of Al-Jamé Al-Ahkam Al-Quran, some of our (we Shaféie Scholars) opponents referred to Verse 164 of Surah Al-Ánám in order to annul unauthorized sale since, here, an unauthorized person performs a transaction at the loss of other, so it is annulled.

In response to this Shaféie's word, however, our (Māleki) Scholars say this honorable verse refers to afterlife rewards and retributions of unauthorized sales, not to the earthly ones; and we believe that such a sale is correct depending on the owner's consent.

In addition, they say that, according to the said verse continuation, no one bears the burden of the other and no soul is tormented for the other's sin [13].

It is noticeable that this advanced principle has been accepted and exercised by Islamic judicial system prior to the west since about 12 centuries ago. Having been stricken by Ibn Moljam, Imam Ali told his sons "know that no one but my killer must be killed; this discourse signifies principle of penalty subjectivity in Islam based on which no one but the offender, who must be reprimanded, is liable.

Quarzavi, a contemporary Sunni scholar, writes that this principle provides that each person is responsible for his own acts, not others', that is, no one bears the burden of the other's sin, albeit the latter be his relative or companion; a son never is punished for his father's offence, and vice versa. Justice and rights are the same things as what being stated by Holy Quran in many verses, quoting from its predecessors (other Holy Books), "Or has he not been informed of what was in the scriptures of Moses, And of Abraham, who fulfilled his obligations. That no bearer of burdens will bear the burden of another" (Surah: Al-Najm, Verses, 36-38).

Fiqh sources of heavy burden rule:

A) Verses:

The honorable Verse is repeated 5 times in Noble Quran, 3 of which are mentioned in this paper as follows: (1) And no bearer of burdens will bear the burden of another. And if a heavily laden soul calls another to carry some of its load, nothing of it will be carried, even if he should be a close relative. You can only warn those who fear their Lord unseen and have established prayer. And whoever purifies himself only purifies himself for the benefit of his soul. And to Allah is the final destination (Surah: Fatir; Verse: 18).

In this Verse, it is stressed that no burden of one is carried even by his relatives; next, it is stressed that to purify self is a personal task and whoever dose it he himself receives itsrewards which are irrelevant to others; therefore, like punishments, rewards are also personal.

(2) If you disbelieve, indeed, Allah is Free from need of you. And He dose not approve for his servants disbelief. And if you are grateful, He approves it for you; and no bearer of burdens will bear the burden of another. Then to your Lord is your return and He will inform you about what you used to do. Indeed, He is knowing of that within the breasts (Surah Az-Zumar; Verse 7).

(3) Or has he not been informed of what was in the scriptures of Moses. And of Abraham, who fulfilled his obligations. That no bearer of burdens will bear the burden of another. And that his effort is going to be seen (Surah An-Najm, Verses 36-40).

Verse 134 of Surah Al-Baqarah refers to this principle indirectly saying that. "That was a nation which has passed on. It will have the outcome of what it earned, and you will have what you have earned. And you will not be asked about what they used to do.

B) Narrations:

Quoting from Abu Rame'h, Abu Davood said, "My father and I went to the Messenger of Allah". "Is this your son?", asked Holy Prophet. "Swear by God of Kaaba, yes", replied my father. "Truly, I confirm this", said Holy Prophet while smiling. Then, He added, "But, be aware and know that he will not bear the burden of your crimes and you cannot bear his, reading this verse, "No bearer of burdens will bear the burden of another" (Surah Al-Ánám) [18].

Holy Prophet has said elsewhere, "No one will be reprimanded and held responsible for crimes his father or brothers commit" [19].

Imam Sadeq says, "Heavy burden of massacres and properties, with no mitigation of burdens of those committing such atrocities on Children of Israel as well as on those who tolerate infidelity and oppression, will be proven.

C) Consensus of opinions and wisdom:

Consensus of opinions: This rule is absolute in Islam, to which all Islamic Jurists, including Shiites and Sunnites, have resorted. Wisdom: Rule of heavy burden is an intellectual principle which absolutely condemns and denounces the act of putting one's burden on another's shoulder under the rule of wisdom. In fact, all reasons trace back to this one, that is, all verses and narrations are guided by wisdom. One might think that Quranic Verses, which are backbone of this Rule, Relate to afterlife and cannot be applied to earthly matters. From verses, but, Islamic Jurists have inferred general meaning being implemented in relation to earthly punishment matters.

Exceptions of heavy burden Rule:

A) Requirement of blood money on Aghleleh (The relative who pays expiatory sum for manslaughter and other fines; also know as Elderly):

This scenario is an obvious instance where one commits a crime the burden of which is carried by another, in other words, heavy burden of one is attributed to another (Vāzereh: one who bears another's heavy burden). Ayyatollah Amid Zanjani responds: Firstly, manslaughter is not, in fact, a crime because no intention, carelessness and negligence exist and, as a result, it does not fall within the subject of this Rule; secondly, for intentional murder, heavy burden is imagined for some respectful blood of a person killed unwarrantedly and essence of this act, which is an obscene one, is subject to heavy burden and bad effects; for this type of heavy burden, murderer and Elderly are the same, therefore, in the absence of Elderly, the burden is placed on Imam (leader) and, eventually, on society because blood of a Muslim is not wasted.

In this sense, Abd Al-Qader says, "To impose payment of blood money on Elderly meaning heavy burden of murderer is carried by others is an exception of Islamic general Rule, which is justified for justice to be exercised and compensation of ruined rights to be ensured.

B) State responsibility:

According to Islamic Law (Fiqh), a State is responsible for compensating damages caused by a wrongful order given by a judge, who is not guilty in this case since judgement is among responsibilities of Islamic government that entrusts this serious and sensitive job to judges doing it in order to preserve Muslims interests and in the name of them. Consequently, Islamic government is required to guarantee judges' errors, which is regarded a State responsibility. Imam Ali (G.H) argues that if judges make mistakes in murder and amputation cases, resulting damages must be compensated through Islamic treasure house. In this regard, Principle 7 of Constitution of Islamic Republic of Iran establishes whenever a person is damaged materially or spiritually due to a wrongful order given by a judge guilty or mistaken, in case of guilt, guilty is the guarantor according to Islamic measures, but, in case of mistake, government is responsible for compensating damages. In any case, respect of the accused is restored.

Conclusions:

From above discussions, it is concluded that Rule of heavy burden (principle of punishment subjectivity) has existed, and exists, in all Divine religions, but this humanitarian Rule had not been implemented in societies prior to Islam advent, after which this Rule has assumed a new form and been exercised. Another point is that although this Rule is signified by several verses and narrations, it is an intellectual Rule affirmed by common sense. In addition, verses and narrations as well as Muslims consensus of opinions are guided by wisdom. On the other hand, this is not an absolute Rule, having some exceptions which, of course, are not in contradiction with Rule of heavy burden, but rather they are in direction of its explanation. Finally, given fuzzy logic, we can achieve relativity of individuals' responsibility considering exceptions resulting and dominating heavy burden Rule in accordance with collectivity rule.

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