

“The functions of science of psychology in jurisprudence (Feqh)”

Hamid Rustaei Sadrabadi¹, Razieh Jamaati Ardakani²

1. A member of faculty in group of Jurisprudence and Law at Meybod University of Ayatollah Haeri

2. A member of faculty in group of psychology from Ardakan University

Corresponding Author email: rustaeihamid@yahoo.com

Abstract : The psychology is descriptive and empirical science while Islamic jurisprudence (Feqh) is credible and compulsory knowledge. But despite of the existing distinctions in nature and mission between two sciences, there are some fields for synergy among these two sciences, which may be measurable. Of them one can refer to similarity and commonality in subject, domain, and practicality. Whereas the juristic injunctions are subjected to real expediencies and vices thus psychology may remarkably contribute to developing the juristic injunctions with presentation of psychological analyses of juristic injunctions. Likewise, proposing contingent juristic subjects and further richness of jurisprudence knowledge (Feqh), developing domain in jurisprudence, and paving the way for establishment of academic major ‘psychological jurisprudence’ are assumed as some of other functions of psychology science in jurisprudence (Feqh) and among various branches of psychology, developmental psychology (growth) and psychopathology play the most prominent role in this field.

Keywords: Psychology, Islamic Jurisprudence (Feqh), Developmental psychology, Psychopathology, Psychological jurisprudence

Introduction

Compared to most of human sciences, psychology includes the potential for influence and further interaction with Islamic Jurisprudence (Feqh). Although, psychology is a descriptive and empirical sciences and jurisprudence is a compulsory knowledge. But with respect to the existing commonalities among jurisprudence and psychology, the psychology science may serve the jurisprudence and affect on it. It should be noticed of course that the effect of psychology is of objective and real type and not requisite and forbidding form but the psychological data and results may be objectively employed in jurisprudence knowledge and used them in jurisprudential inference operation. Nonetheless, effect of psychology on jurisprudence does not mean direct impact in jurisprudential injunctions since the jurisprudential injunctions are documented by fully religious and compulsory evidences and based on the real expediencies and vices while function of psychology in jurisprudence does not denote intervention in inference of injunctions and their function should be explored in other fields. Some questions may be raised regarding functions of psychology science so that in this article we intend to give answers to them: What is definition of psychology and jurisprudence? And what are the subject and domain and mission of each of them?

Can psychology science serve the jurisprudence knowledge and play any role?

Definition of psychology

In this section we define lexical and terminological concept of psychology. Lexically, term ‘psychology’ includes originally a Greek root that is composed of two words ‘psyche’ and ‘logos’. According to different Persian translations, the first term denotes ‘spirit’, ‘soul’, and ‘mind’ and the second term stands for ‘recognition’, ‘expression’, and ‘study’ (Man, transl. Saatchi, 2009; Azimi, 1957). But, in terminology, ‘psychology’ is the knowledge of mental phenomena and their conditions and study on internal experience (emotional perceptions, feelings, thoughts and desires). In fact, psychology denotes knowledge of scientific study on various aspects of mental behavior and process and their relationship with each other (Azarbaijani & Salary, 2002).

Subject, goals, and domain of psychology

Based on the given definition for psychology, it is clear that subject of psychology comprises of its different behaviors and aspects and mental processes of human. Although, in some branches of psychology titled ‘comparative psychology’ it is dealt with study on behaviors of animal and their comparison with human as well, study on behavior of animals is not deemed as the subject for psychologists but it is considered as

only a conduct and device for exploring and study on human's behaviors since in many issues, particularly in laboratory methods about psychology, there are some ethical constraints for conducting experiment on human and the psychologists have to inevitably study on behaviors of animals. Thus, it can be implied that human is general assumed as subject in psychology and with respect to the given definition in more details the subject of psychology is composed of three major axes: 1) various studies on it; 2) Mental process; and 3) The relationship between various aspects of behavior and their relevance to psychological processes (Huffman, transl. Bahirayee, 1999).

The psychologists have mentioned four main goals for psychology science: 1- Description of behavior and psychological processes; 2- Interpretation of behavior; 3- Prediction of behavior; and 4- Control of behavior (Shariatmadari, 1987; Linda Lyles, transl. Bonab & Gahan, 1995). Recognition and description of human's behavior and mental processes are the foremost objective in psychology. The psychology science tries to make us familiar with periods and phases of human's growth and the related physiological and mental requirements and problems and way of human's recognition and perception. In addition to description of behavior, psychology also interprets the behavior; namely, it discusses about the infrastructural causes and mechanisms of behavior and describes how a behavior and its related pattern take place. Prediction of behavior is another objective in this science. The psychology also tries to predict behaviors of individual by means of results from two previous phases; in other words, with recognition of the conditions and backgrounds for emerging of behavior and knowing its causes and tools, psychology may predict what kind of behavior a person will display in the future (Shariatmadari, 1987).

Today, domain of psychology has been noticeably developed and it has approximately covered all aspects of human life totally and related to all aspects of human life. It is discussed about various aspects of human behavior in this science whether these behaviors are tangible and visible or are hidden and unseen. Similarly, it is talked about mental and psychological processes in psychology as if they are the same hidden behaviors of human and all of these fields are explored. Therefore, various branches of psychology have emerged and they still going to be generated and reproduced (Linda Lyles, transl. Bonab & Gahan, 1995).

Definition of jurisprudence knowledge

The meaning of term 'Feqh' (Islamic Jurisprudence) has been transformed over the time. Initially, this term was used as meaning of 'deep

perception of Sharia (Islamic religion)' and it has covered all religious teachings including ideological, moral, and religious injunctions (Motahari, 1979, Shalabi, 1986, Al-Zahili, 1990). But gradually with trend of specialization of sciences and importance of jurisprudence in life, term 'Feqh' was excluded from its general concept and was used in its terminological meaning and it was specified to practical Sharia injunctions and their evidences. Term 'Feqh' (jurisprudence) has been utilized in two concepts and there are two definitions for this term: one is the so-called concept among theologians and it denotes 'knowledge to minor Sharia injunctions from its sources and evidences' and the other meaning, which has been further used in discourse among the jurists and it includes 'A group of injunctions and instructions inferred by Islamic qualified clergymen from the reliable sources and it has been reflected in juristic books and practical religious treatises' (Makarem Shirazi, 1997; Moosavi Khomeini, 1989). Therefore, term 'Feqh' denotes both the reflected jurisprudential injunctions mainly in practical religious treatises and the enclosed injunctions for interpretation of their reasons and deductions even the topics relating to subjects of religious injunctions and generally to what it assumed as efficient in proving religious injunctions (Moosavi Khomeini, 1989).

Subject, goal, and domain of jurisprudence

Many jurists argue that 'activities of religiously- obliged persons' is the subject of Islamic jurisprudence but most of contemporary jurists claim that devoting subject of Islamic jurisprudence to activities of religiously- obliges persons may cause exclusion of some of definite juristic injunction from range of jurisprudence. The subject of Islamic jurisprudence is not exclusively specified to actions or activities of religiously- obliged persons since such an attitude requires assuming most of juristic issues as marginal including the topics regarding prayers of children and their other actions as well as conventional injunctions, which discuss about external objects such as water laws, the purifying and impure agents (Moosavi Khomeini, 1989).

Thus, it seems that devoting subject of jurisprudence exclusively to activities of religiously- obliged persons is deemed as a type of restriction of jurisprudence and it causes exclusion of some part of definite jurisprudential issues from domain of jurisprudence. Hence, it can be stated that the subject of jurisprudence is human behaviors and what are related to various aspects of his/ her individual and social life. In other words, although the major part of jurisprudence subject is composed of activities of religiously- obliged persons, the behaviors of matured

and obliged humans are not only mentioned in Islamic jurisprudence but it is discussed about human's behaviors are related to his/ her individual and social life from moment of birth to death (Makarem Shirazi, 1997).

The objective and mission of jurisprudence is to lead Islamic injunctions and rulers on the stage of human life and it expresses these rules and injunctions at any period and time proportional to temporal and spatial requirements and real needs for human in religious field and also it discovers and present Islamic viewpoint about any novel event and phenomenon and finally prepares the ground for human salvation (Motahari, 1979).

Jurisprudence domain is as large as range of Sharia. In this sense, Martyr Motahari writes: "The domain of jurisprudence is too wide since it includes all of subjects for which Islam proposes practical command. Among Islamic teachings, Islamic sciences-ideological and moral issues are excluded from domain of jurisprudence" (Motahari, 1979). Therefore it may implied that all of voluntary behaviors of human, whether apparent and visible or intrinsic and invisible as well as dimensions and aspects of individual and social life of human, are included in domain of jurisprudence and jurisprudence may and shall infer and deliver religious compulsory and forbidding injunctions about them.

Fields of synergy among psychology and jurisprudence

There are two major differences among psychology and jurisprudence so that primarily they make the interaction among them as improbable: one is difference in nature of these two factors and the second is distinction in their goals and missions. The jurisprudence and psychology are two different sciences in terms of nature since the psychology is descriptive knowledge and of empirical type while jurisprudence is a mandatory science and of credible and compulsory type. There is also some difference among them in terms objective and mission. The mission and goal of psychology is devoted to four fields including description of behavior and mental processes of human, interpretation behavior, prediction of behavior and its control but goal and mission of jurisprudence is the inference and presentation of religious requirements and omissions in various field of voluntarily behaviors and other aspects and existential dimensions of human and individual and social aspects of his/ her life.

Despite of such distinctions, there are some fields, which make synergy and interaction among psychology and jurisprudence. Before exploration of these fields, it necessitates expressing this point that

the presupposition for exploration of interaction among jurisprudence and psychology is to examine them in climate of Islamic community in such a way that with assuming use of psychology science in an Islamic community, we explore their relation and effect in jurisprudence as a religious and Islamic knowledge and rather than this assumption, it does not seem too justifiable to discuss about interaction and influence and affection among these two sciences. Given this assumption, it seems that there are some possible fields for interaction and synergy among these two disciplines to which it is briefly referred:

Similarity in subject

The common feature exists among jurisprudence and psychology is that both of them discuss about human's behaviors. In other words, these two sciences take different viewpoints to human behaviors but human behaviors are the common subject among psychology and jurisprudence even though human behaviors are not considered as total subjects for all of both fields. Therefore, both jurisprudence and psychology discuss about a common subject under title of human behaviors.

Similarity in domain and extent

In jurisprudence knowledge, it is discussed about all human behaviors at any age and for all of human's existential, individual, and social dimensions and no related behavior and event exist about human and his/ her life for which the jurisprudence has not commented and not proposed an instruction. On the other hand, psychology also included wide range and field of its function covers throughout human life, especially some of its branches such as developmental and growth psychology explore all life periods and times and type of physical and mental developments in human. It seems that the range of using these two sciences may be assumed as one of the fields for interaction and synergy between two sciences.

Sharing in functionality

There are other common features among jurisprudence and psychology i.e. practical nature of them since on the one hand the jurisprudence is composed of a group of injunctions and requirements and forbidding acts for life and all of its injunctions are typically executed during life period of human Muslim- and for this reason the jurists call jurisprudential injunctions as practical religious injunctions- and on other hand, as an empirical science, psychology will be followed by several outcomes and achievements used in human life and principally improvement of human life is the existential philosophy (*raison d'être*) for such sciences. Therefore, they possess perfectly the

functional and practical feature. This characteristic may be also considered as one of the common fields for both of them.

Psychological functions in jurisprudence Interpretation of contingent issues

In modern concept, the psychology science is a novel knowledge that is spread at high accelerated speed. Due to its practicality and wide range of influence in human life and possessing various branches in different fields, this science may put forward new subjects versus the jurisprudence and invite the jurisprudence to be present in such fields and commenting about these issues.

Therefore, employing this knowledge and using its data in an Islamic community may propose various new subjects in the field of jurisprudence and presentation of new and so-called contingent subjects will act mainly as providing the ground for comprehensiveness in the jurisprudence. For instance, the subjects relating to clinical and counseling psychology, laboratory psychology, and particularly the researching subjects in psychology may be assumed as the related contingent issues in psychological field to which the jurisprudence has mission to respond them. Discussion about the general necessity for study on some of psychological branches including the clinical psychology with respect to incidence of mental acute diseases in the society and rate of entry of experts in private fields of individuals' life for their treatment and probably disclosure of others' secrets during therapeutic trend and permission or non- permission to enter into some fields such as hypnotism and similar areas and hundreds of other new subjects within the stream of psychological science may contribute to further dynamism and richness of jurisprudence knowledge.

More comprehensive identification of jurisprudential subjects

The assumptive and if-then fatwas are seen sometimes in process of issuance of fatwas and responses to requests for religious fatwa; for example, the grand qualified Islamic clergymen (Mojtahed) write 'if the issue is in this way then it should be done in that way or based on this assumption, the resulting decree will be in this way and so forth' and this trend may lead to confusion and wandering of the persons who imitate from those clergymen and it may cause even creating negative attitude and subjectivity in some of religious imitators and followers and satirical criticism by the ill-will persons. The most main function of psychology in jurisprudence is concerned with axis of subjectology (science of subject). Any jurisprudential premise is composed of subject and predicate. Any subject

requires specific decree that differs from the decree of other subjects. Furthermore, modifications in a subject may prepare the ground for change in the given decree. Even the least change in subjects may cause modification of the injunctions. Thus, the role of subjectology is undeniable in Islamic Interpretive Reasoning (Ejtehad) and jurisprudence. Psychology may give noticeable services to jurisprudence in the field of subjectology and refine the subjects and prepare more duly platform for the injunctions. We refer to some branches of psychology that affects further on jurisprudential subjectology, in the followings:

Psychopathology: Psychopathology is a branch of psychology that explores abnormal or pathological behaviors and discusses about three main axes including 'semiotics', 'etiology', and 'pathogenesis' (Dadsetan, 1997). The psychopathology discusses about mental disorders and in some cases it may be effective in recognizing the given subject and it can contribute to the qualified Islamic clergymen and jurist (Faqih) in some injunctions and subjects including obsession and its levels, being excessive doubting or not, suffering from periodic mania or not, and intention and committing some crimes willfully and protects him/her from confusion regarding the subject. Similarly, this branch of psychology may also assist the jurist in other subjects and help him/ her in recognition of subjects of injunctions. The intellect is deemed as one of the general qualifications for doing religious obligation in Islamic jurisprudence therefore some issues may be effective in inclusion of injunctions and their levels such as possessing of faculty for perception and understanding the injunctions or not and being conscious or not in this regard.

Developmental psychology: Developmental (or growth) psychology studies on periods and phases of growth and development in humans from birth to death and change in human's behaviors during these periods and phases (Atkinson et al, transl. Baraheni et al, 1996; Ghazanfari, 2001). This branch of psychology play prominent role in jurisprudential subjectology since it explores human's growth developments from birth to death and it typically covers all phases and periods of human's life and interprets the relevant facts to human such as potentials and talents, physical and rational and social growth of individuals, and weaknesses and constraints in different periods of human's life so these facts may be highly effective in recognition and determination of subjects of injunctions. This impact will be disclosed when based on the famous Shiite attitude; we know that the religious injunctions are subjected to real expedencies and vices and based on the facts and developmental psychology play an outstanding role in presentation of

the facts relating to human and his/her life. Here, we imply some examples of effects of this branch of psychology in jurisprudential subjectology:

The Children related subjects

These subjects include discerning minor and non-discerning minor. For instance, it can be heuristic in subject of custody of infant. Custody of infant and its period, differences among custody of girl and boy and difference of parents regarding subject of custody are some of subjects and issues that growth (developmental) psychology may play role to determine them since the child's characteristics in this period and emotional differences between parents as well as sexual differences of girl and boy and type of their emotional and social needs and rate of dependence in either of girl and boy on one of parents are considered as subjects, which can be presented in developmental psychology.

Likewise, the issues such as discerning age and its criterion and differences of children in reaching to discerning age, discerning rate and degree in children, the environmental impact in reaching of child to discerning age, and exercising prayers etc are assumed as subjects for which one can request for help from developmental psychology.

The subjects relating to adults and youth

Some of relevant issues to adults and youth are those subjects for which developmental psychology data may contribute in recognition of subject and type and quality of their related injunction, including puberty and its time, wet-dream and obligation for performing ablution, permission and or forbidding of contracts, Islamic limits and discretionary punishments, religious necessity for marriage and its period, religious insanity and growth, and other similar issues here it needs to long time to express all of them.

Subjects relating to old people

Some of them including necessity for prayers such as fasting, prayer (Salat), pilgrimage of Hajj, subject of Islamic veil (Hijab) for old women, menopause and its difference among women, enforcement of discretionary punishment on old women compared to old men are some of the issues on which the results and achievements in developmental psychology may affect.

Discovery of mysteries and wisdoms latent in religious injunctions and presentation of scientific analyses

As we implied before, based on Shiite jurisprudential doctrine and most of Sunnite denominations, the juristic injunctions are based on

real expediencies and vices; namely, as long as doing an activity does not include intrinsic expediency, Sharia never commands to do it and the Sharia does not prohibit any action until it is followed by instinctive vicious consequence and no juristic injunction is without expediency and latent wisdom while human salvation is the existential philosophy (raison d'être) of Islamic injunctions. Nonetheless, whereas religious injunctions are compulsory and jurisprudence is not responsible to propose and interpret their existential philosophy and wisdom thus their hidden mysteries and facts will be left hidden for most of religiously-obliged persons. Modern psychology science is one of human sciences under its aegis the achievements in some of mysteries and wisdoms of religious injunctions can be discovered and an attractive image of juristic injunctions can be presented with proposing psychological analyses based on scientific findings and motivate the individuals to pay further attention and for better performance of religious injunctions so that one may express in this regard that none of human sciences includes function of psychology science and basically commenting about most of the aforesaid cases will be restricted to psychology.

Developing jurisprudence extent and establishment of new juristic majors

The psychological science may contribute to jurisprudence range in the field of psychology and prepare the ground to establish new majors. Establishment of a new major such as 'psychological jurisprudence' may be assumed as one of the paramount functions of psychological science in Islamic jurisprudence that could not emerge regardless of the existing scientific data in this science.

Discussion and conclusion

The psychology is an empirical humanistic knowledge that discusses about psychological behaviors and processes in living organisms and its mission includes description, interpretation, prediction, and control of behavior of the living organism particularly human. And also jurisprudence (Feqh) is a religious and compulsory knowledge in which the mission is to discover and present requirements and forbidding issues of human's life in various dimensions. Despite of the existing difference and distinction in these two sciences in terms of nature and mission and due to the existing backgrounds in Islamic community because of their wide use it may provide the possible mutual impact and affection for these two sciences therefore one can refer to similarity and common field of this subject and similarity in extent and domain as well as similarity in their practicality in this regard.

Whereas psychology sciences deals with interpretation and description of realities and human's behaviors and his/ her mental processes thus it is widely used in human life so it may have many functions and services in jurisprudence in this regard the branches of developmental or growth psychology and psychopathology will affect more on jurisprudence than other branches. Presentation of frequently-involved juristic subjects, developing domain in jurisprudence and preparation of ground for establishment of major of 'psychological jurisprudence', and also possible presentation of psychological analyses on juristic injunctions are considered as other functions of psychological science in Islamic jurisprudence. Although psychological functions in jurisprudence are not limited to above-said cases and they include a wide range, the given cases were discussed and explored as the related prominent examples in this regard.

References

- A group of authors, (2004), Ejtehad (Islamic interpretive reasoning) and time and place, vol. 3, Qom: Institute for codification and publication of Imam Khomeini (RAH) works
- Al-Zahili, W., (1990), الفقه الاسلامى و ادلته (Islamic jurisprudence and its evidences), Vol. 1, Damascus (Syria): Dar-UI-Fikr Institute
- Atkinson R, et al, (1996), Hilligard psychological field, Transl. Borhani at al, Mohammad Taghi, vol. 1, 10th and 15th Ed, Tehran: Roshd Pub
- Azarbaijani, M. Salary, M. (2002), General psychology, 1st Ed, Tehran: Yaghoot Pub
- Azimi, S., (1957), Principles of general psychology, 7th Ed, Tehran: Dekhoda Pub
- Dadsetan, P., (1997), Developmental psychopathology (from childhood to adulthood), vol. 1, 2nd Ed, Tehran: SAMT pub
- Esfarjani, Y., (1976), General psychology, Tehran: Javidan Pub.
- Ganji, H, (1999), Fundamentals of general psychology, 1st Ed, Tehran: Ravan Pub
- Ghazali, M. , (1984), احياء علوم الدين (Revival of religious sciences), vol. 1, 2nd Ed, Beirut (Lebanon): Dar-UI-Qalam Institute
- Ghazanfari, A, (2001), General psychology, 1st Ed, Isfahan: Shahid Modares Cultural Center
- Hoffman K et al, (1999), General psychology (from theory to practice), Transl. Bahirayee et al, Hadi, vol. 1, Tehran: Arasbaran Pub
- Lyles, L, (1995), Psychological abstract, Transl. Bonab Mehdi & Gahan Nissan, 1st, Tehran: Dana Pub
- Makarem Shirazi, N, (1997), Juristic regulations, vol. 1, Qom: School of Imam Ali Ibn Abitaleb
- Mann, N, (2009), Principles of psychology, Transl. & excerpt: Saatchi Mahmud, 7th Ed, Tehran: Amir Kabir Pub
- Moosavi Khomeini, R, (1990), تهذيب الاصول (Refinement of Islamic methodology), vol. 1, Qom: Dar-UI-Fikr Institute
- Motahari, M, (1979), Introduction to Islamic sciences (juristic principles and jurisprudence), Tehran: Sadra Pub
- Shalabi, Mohammad (1986), المدخل فى التعريف بالفقه الإسلامى و قواعد المكيه و العقود فيه (The entry for definition of Islamic jurisprudence and Mecca rules and the related contracts), 2nd Ed, Beirut (Lebanon): دار النهضة العربية (Arabic Movement Institute)
- Shariatmadari, A., (1987), Introduction to psychology, 3rd Ed, Isfahan: Mashaal Pub