

# The nature and expression of right and its division in Islamic religions

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## Abstract

Right is one of the most important issues of human life in living or transactional affairs .But it is looked from the distinct point of view, the main discussion of this present study of right means authority, privilege and ability, investigating the types of right is the one of the important matters in domain of right range .Does right have one type or has some different kinds? And if it isn't monopolized to one unique type, what is its classification criteria? In this article we have a look on some of its division and their types in clergymen and jurists point of view. At first we stated defining right and its origin .Here right means, kind of dedication that totally there has been before establishing the society and after establishing it has been emerged in different and various forms. After that we looked at its division, we expressed the right principles, and also rights types for the sake of rights owner the includes :god's right ,people's right common right and its evidence's in another division for the sake of right's place ,we can divide it in to financial ,non –financial personal right (Jus in persona Or right over another)juridical and non-juridical we can say that the foundation of this study is to investing ate the right ,its types ,its application in editing scientific points and its application in editing the subjective rules and finally in life.

**Keywords:** right; rights of Allaah; people's right; Jus in persona; financial right; Judicial right

## Introduction

Today's there is the claim of right about a lot of issues always, there is points in political ,legal and ethical about right ,as we live in a life full of rights ,what do these rights mean? And how is it justified? If we can find stable and reasonable analysis of right, we can decide about its proving or resection .although some people want to consider right as a proved and absolute issue and they avoid presenting philosophical and analytical discussions ,because they believe ,presenting this discussion will loosen the current trend about legal matters and will be followed by a lot of arguments and controversy ,but for rejecting this belief we should say that ,scientific is that can be exposed by criticism ,so that we can find better justification and reasoning with discussion and exploring the method of this current research is note-taking and referring to Persian and Arabic references.

## Right's definition

Right in different domains like philosophy and mysticism, jurisdiction, political philosophy law philosophy analects will be presented but in each one all of them will be looked in special out look right in syntax.

Right is an infinitive from, right (hagh) is from the rhythm of (zaraba) it's meaning in dictionaries means accuracy, prove, trust worthy, requirement merit ( Ibn Mnzor Al-mesry, 1983).

### **Right in specific contexts**

Definition of right between contemporary clergy men among Shiite contemporary law ,a lot of definition about right ,has been presented .

1- Allameh Bahr Al-Olom, one of the contemporary clergymen defines right as: any authority that has been placed for human in relation to others, even if it is credit like property or human or both of them (Allameh Bahr Al-Olom, 1984).

2-The first martyr (Shahid Aval)writes in the book of Alqvaed and Alfvaed about god`s right that : gods right means his command that implies to his worshiping .or is his worshiping so that if there is no commenced the phrase god`s right`s won`t be document fed (Al-amoli,1987).We conclude that in above mentioned speech commend is god`s right ,because human right that they should keep them also contains god`s right like transaction ,trustworthy punishment Limit(Order punished is Divine) capital punishment or blood money therefore there is god`s right without human right like commending to pray ,but human right without god right is impossible.

3- Allameh Tabatabai says: right is a kind of dedication that there has been totally before society establishment and after that has emerged in different form`s (Tabatabai, 1998) knows right from credit of society dimension and meant it by dedication or merit.

### **Right Pillar**

In every right, there are 3basic principles or elements:

1-Right owner: that is called entitled in law.

2-Right credit what belongs to right.

3-Right subject is someone who right is against him (Alzohili, 1990).

#### **First: Right owner.**

The right owner or someone who the right is for him can be great god in Personal rights rights and real person (Human like: Saeid, Hasan, Taqi)or credit or juridical person like partners ,institutions and un diversities' in other rights (Misbah,1998);(Alzohili,1990) being a natural person for all human is by being a womb ,provided that it is born ,unless it`s being alive is by chance ,born livingly of womb is accredited for hanafiyah and if born livingly by chance while aborting the womb is accredited among hanafiyah .If anyone is aborted any stroke and he`s born died in this case. But for another religion born livingly is necessary and if womb is aborted and born died .The blood money just should be paid (Alzohili, 1990).

Right owner if is a real person (natural) sometimes is a one person like husband or wife and vice versa, or sometimes right owner is more than one like when some people possess a house or garden or sometimes right owner is all the nation like any right that nation have on Islamic governor (Misbah,1998).

The end of natural person with real death or voluntary death like declaring someone death because of being lost or long absence and it is not clear if someone is dead or not ,and they are doubtful about someone death or there is a long time of someone`s absence will be accepted (Alzohili, 1990).There is no comment about juridical personality in Islamic Personal rights ,but juridical person can have right and duty like real person .so that we can say that juridical people are those people who have common activity and benefit or a big share of goods that is dedicated to any special activity and law accredits them and considers an independent character for them like government ,municipality ,Tehran university commercial corporations and endowments .The juridical issue can be about public or personal rights and

in any case can have like a natural person and have rights and responsibility (Safaei,2004) then we conclude that juridical identity can be right owner ,too.

### **Second: Right place**

It is something special that belongs to right like what is in **objectively right(Jus in re or jus ad rem) or jus in personam** .or some one's right who is a medium between a debtor and an in debated .so that indebted should pay the debt and the kind of duty is doing that worker paying the price or refusing of doing a work is avoiding an being harmful for yourself of doing a work is avoiding from being harmful for yourself for others ,or avoid of using other's deposit and duty taker people is sometime one special person or a special group of people like when indebted in regard to debt or not specific duty taker like general necessary rules that everybody should keep that (Alzohili, 1990).

### **Third: A person that right is against him/her**

(An identity can be real natural ) or juridical ,the real person is sometimes one person and sometimes all society people the meaning of this word that we use is a kind of relative when we say :’selection right or ‘person’s right ‘or ’men right on women ‘or vice versa ,we consider this relative meaning’ being relative means it doesn’t have any external equivalent and it just is presented about human arbitrary actions ,free people should do some duties and should refuse some of them .According to those should and shouldn’t do minating on people behavior ,some concepts like right and duty is born.

### **Kinds of right**

Right is divided in to some kinds according to different consideration that following they will be brought and in this classification we want to investigate the concept of easement and interest termini first division: according to right owner this part is in 3classification:

**1-God’s right 2-People right 3-Common right** between people right and god’s right or whatever is added between these two (Misbah, 1998) ;( Alzohili, 1990);( Ashori, 2004); (Alheli, 1970) .Some researchers consider the god’s right based on public right and people right equivalent with private law ( Ashori, 2004).

### **1-god’s right**

It is defined as “god’s right is god’s authority for investigating his human ,generally for doing some illegal work or giving up a legal deed juridical justice (Ashori,1997).In another definition of pure god’s right they are some rights that no can intervene in them but god and its origin is keeping the in dividable and social benefits and their proving or rejection has some special rules ,that the judge can give a verdict hosed on those special rules (Shushtari,2008).god’s right on his creatures in clued worshipping him and toying to approach him and doing some special Personal rights ceremonies and doesn’t have legal effects for others .also keeping some rulers resulted from social duties that their keeping is in favor of people (like punishing the criminal) without dedicating to a special group of people ,brings safety for people (Alzohili,1990);( Fahmi Abovsonh, 1968).

### **1-1- Examples of god right**

Example of type 1, faith and different ceremonies like say: Prayer (as-Salat) fasting, Zakat, hadj, fighting (Jihad) commending to good deed and avoiding from bad deeds (Enjoining the right and forbidding the wrong) alms swear and telling the gods name (In the name of God ( when slaughtering and like that (Alzohili, 1990).

Examples of type 2 supporting all people is the main feature of this type: avoiding from wrong deed and crimes like, adultery, drinking, usury and also presenting some punishment

(quantity) like adultery and theft (Ibn Najm Al-Masri, 1999) ;( Fahmi Abovsonh, 1968);( Amin,1939); (Ahmad Ibn Tyme, 1969);( Alzohili,1990)and punishment (Ta'zir) on different crime and protecting people`s right ,garden`s ways ,mosques and etc. (Alzohili, 1990) and what is related to public profit and all people and wrong deeds what is more clear about god`s right intention is more superior because all god`s right that will be gotten by human is because of special benefits like avoiding from prostitution and wrong deeds in saying pray and giving the profit of alms (Zakat) to the pampers and avoiding from what is forbidden (Fahmi Abovsonh,1968). And in one classification among the Hanafiyah clergymen they divide gods right in to 8sections (Amin,1939) that is out of scope of this article in some Criminal matters of god`s right like (usury , Surah Baqarah, verse 276)(looking at stranger women by men or vice; Surah Noor, verse 30-31);( Shushtarî,2008).

Some clergymen made a division in the book of law (Qaza) that differentiates god`s right from people right that are following:

gods right sometimes is not proved unless with 4witness who are men like adultery and gayness sodomy or Lesbianism and just adultery is proved by 3men witness and I women witness or two men and 4women and some of them is proved by two witness and that is any crime which leads to punishment ,except 3causes like theft atheism or wine drinking .Totally ,everything won`t be proved by one man witness or two women witness or one man witnessing and women taking oath solely when they are a lot (Al-heli,1970).

### **2-1-Ordinances of god`s right**

Principles and verdicts of god`s right are a lot we mention some of:

**1-Abolishing the god`s right with forgiving and neglecting them or peace or making it`s in tensely less is not legal then the punishment of theft won`t be abolished with forgiving the stealer by the stolen one and about adultery it won`t be abolished with husband forgiving or others or woman Permissible herself (Mousavi Ardabil,2002);( Alzohili,1990).**

**2-God`s right won`t be in heisted ,then it is not necessary for inheritor to do the missed prays of dead one unless he made a will and also inheritor is not forced to pay dead one fines and penalties(Alzohili,1990); (Mousavi Ardabil,2002).**

**3-Interference in punishment in god`s right suffices them anyone fornicates or steals frequently for all of them we consider one punishment because by punishment we want them suffer and by one punishment we punish them completely ( Alzohili,1990); (Al-kasani Al-hanafy,1990).**

**4-In god`s right warranty isn`t accepted but in people`s right; warranty means a kind of promise to bring back the culprit and criminal (Mousavi Khomeini,2008).**

**5-In people right the oppressed should claim to enact, otherwise judge can`t follow because it is against people`s(Mousavi Khomeini,2008); (Mousavi Ardabil,2002).**

**6-Issuing an absent verdict in people right is accepted but not in god`s right**

**7-Witnessing on witnessing is accepted in people`s right but god`s right (Mousavi Ardabil, 2002).**

### **2-People`s right**

This word is a juridical expression about law, witnessing and punishment we mean we have to support people benefit (Alzohili,1990); (Fahmi Abovsonh,1968). That is it is a kind of right that legislator has issued it so that people can reach to their appointed benefits for example “Survivorship” is people right “Garafi” considers people`s right as a kind of compromise (Alqrafi,1973).

The base and rule in these cases is that where ever people can breach any right that is people`s right and what can`t breach is not people`s right like usury and any damaging trans action that if contractor both of them are happy because they breach god`s law it won`t be

legal also theft and breaking in to one's private place for protecting your property adultery for keeping the face and faith adultery for keeping the generation and murder for protecting self that the consent of duty taker People is not considered in that (Al-amoli ,1987).We can say that pure people's right are those rights that the holy legislator passed them for all community members personally the origin of establishing these rules is that everyone who lives in a society as he she uses social rights also he should use some rights that should belong to him (Shushtarî,2008).

### 1-2- Kinds of people's right

The jurist had some classification about people's right as following: General and specific rights.

**Type 1) General right:** What is general benefit for all people without dedication to any one, and religion has put it for everybody and should keep it like keeping children and property and defending your belonging from aggression and enemies and paying the find general and public ways that are for people like education and using what is legal (Alzohili, 1990). And by public we mean everybody should use these benefits and everybody should protest them and the leader is responsible for these rights and another point is that public right is an absolute matter to corporate between gods right and public's right (Fahmi Abovsonh,1968);(Al-mavrdi,1974).

**Type2) Specific rights:** what is Appointed for one people or group of them like human's right toward his house job wife and soon then human can main palate them and he/she can abolish them (Al-Bukhari,1975);(Amin,1939).( Abi yalai,1975).

Another examples of specific rights are as follow: copy right (Shushtarî,2008), keeping the (and lord right toward his )belongings the right of buyer in money customer in goods person's right in changing any property that has been lost or damaged wife's right in her allowance Alimony that should be paid by husband mother's right to patron her in font father's right in authority on his children ,human right to get his payment while working and soon (Alzohili, 1990)that are examples of specific right in people right based on Imamieh jurists ,author conceder's people's right in

Three categories in the book of "Sharaye":

1-Those are not proved unless by two eyewitnesses those are: divorce Zakat will and soon.

2-Those which are proved with 2men witness or one man 2 women as witness and swearing like: Leadership, seeing the moon, inner flaw women, Etc.

3-What is proved by men or women solely as following patron ship Zakat watching the moon women internal defects and soon (Al-heli,1970).

### 2-2-People's right principles and verdicts

People's right verdicts are mot .but we mention some of them:

1-we can make people right less and also we also forgive donate or Forgiveness or Permissible.

2-people right will be in habited.

3-intervention in people right isn't accepted in people right if there is repetition in punishment all the fine should be paid on its extent all the duties are met and right owner is always decision maker(Alzohili, 1990).

4-Compared to god's right , judge can issue absent verdict and returns back the right owner missed bane fits (Mousavi Ardabil,2002).Author in Sharaye says in some rights like debts and transaction there is absent verdict but in gods right like adultery and gayness isn't because the base of this rights is an discount. In any place if there is 2 rights there is verdict just about people's rights like theft that judge commands to bring back the stolen property, but they are doubtful about cutting the if hand (Al-heli, 1970).

**3-God and peoples right (common)**

Common right is that in which accumulated in god and peoples right and divided into two categories: type god's right is dominant in it. Type II: People's right is dominant in it.

**Second division: The validity of the rightful owner**

We can have several classifications, that some of them are:

**1- The financial and non-financial rights****1: Financial rights**

It is an advantage that every century gives to his people in order for getting finance needs and its aim is to adjust some relationship by using things and eject between people this type of rights his exchangeable by money: possession right using and exploitation right and giving back right or doing any special job (in reduction of law and study in Iran law(Katoozian,2006). In Islamic law they consider the financial law to its owner that is property matter and place and its subject like the buyer right to the price and customer right to the goods and Easement, Survivorship and selection Option right and tenant right to the house (Alzohili,1990).

Some characteristics of financial right: they are exchangeable with money or commodity: like giving money and getting goods or commodity or getting house rent, Responsibility dissipater and soon (Alghrnaty Al-maleki, 1998).

**Second: Non-financial rights**

It is an advantage by that you can provide some ones emotion and ethical needs .subject of this right is people non-financial relationship , it isn't worthy finding , and it isn't exchangeable directly .introduction of law and Iran law(Katoozian,2006). In Islamic law , non-financial law belong to something out of property (physical), like capital punishment right , freedom right with all its kind , woman right in divorce and when man doesn't pay her allowance (Alimony) or because of reproductive defects of man or became of life loss or long absence or custody of man and right of pat runs hip and guardian slip on self and natured and political rights (Alzohili,1990) Non-financial right isn't exchange able with money (Al-kasani Al-hanafy,1990) or missed fasting or pray ceremonies of some one that her she should do as compensate .

**2-Personal rights (jus in person am) and jus in re (rights objectively)****First: Personal rights (jus in person am)**

It is a kind of right that religion has characterized significant and evident interest and relationship between one personal some one place and indebted right has to pay the debt like buyer right in giving money in customer right in giving goods and commodity and human right in debt and an alternative of any property that has be missed and wife right or relatives in paying alimony or refusing of any out ion like the de posit or right on deposit for not using of deposit (Alzohili,1990). So in personal (Personal rights) right there is 3element: right owner .right subject or place and inhibited in introduction on law and Iran's law (Alzohili,1990);( Katoozian,2006).

**The subject of Personal rights can be of these following:**

**1-Trans faring property** e.g.a land lord appoints in an agreement to Trans for his property to other with special condition.

**2-Doing a special job)** commitment for building a statue drawing a picture, surgery operation and soon,

**3-Refusing for doing something:** that duty taker promises to refuse doing something like commitment of Trans fever of rights businesses (rights goodwill) so that not to trade in the

city or neigh boyhood of transfer taker, not to establish an organization like that in production on law and Iran law ( Katoozian,2006).

### **Second: jus in re (rights objectively)**

**jus in re (rights objectively)** means any authority that one has on something and show it directly or indirectly **jus in re (rights objectively)** has two bases: 1-A person who is right owner in clouding natural or juridical person 2) Something that is the matter of right(Alzohili,1990);( Katoozian,2006).

In Islamic jurisdiction **jus in re (rights objectively)** means whatever religion appoints for man and special thing for him it mean any relationship between owner and the goods Perpetuation Certain and it is caused by a perseverance of right owner and authority and his companionship on that thing that is called **jus in re (rights objectively)** like possession right and owner perseverance and his authority on what is his property and ownership right like Easement, rights passage, rights waterways or using the wall of neighbor house or حق الاجتنباس the deposit itself for paying back the debt (Alzohili,1990).

### **Characteristics of jus in re (rights objectively) and personal right**

**1-**In **jus in re (rights objectively)** the thing belongs to owner of **jus in re (rights objectively)** like human right in an occupied place for example if anyone occupies something or somewhere and give it to another one ,it`s owner can give it back but in personal right ,right is for (Obligation)of duty taker ,he will have this (Obligation)and it is not transferable ,unless duty taker ,taker an attorney at law for doing that.

**2-**Right of advantage or merit for the owner of **jus in re (rights objectively)** for the owner of **jus in re (rights objectively)** he has priority on other debtors and when a loan is guar ran teed by any deposit and after a while the depositor is broke Mortgagee is superior than other creditor and loan gives .but for the owner of personal right it`s not true and he has no priority on others and when they divide the loan giver property ,everyone takes similar share unless in some exceptional cases like : emergency condition the alimony of his /her progenitor is superior than other in heritors and allowance for the wife and small children is preferential on other debts :or it is public benefit that debts of government is superior than others

**3-****jus in re (rights objectively)** will be destroyed if it`s subject or place is destroyed when destroying **jus in re (rights objectively)** ,right is out of credit and agreement will be cancelled,when anything is wants to be sold and before deliver to the stomper it is destroyed agreement will be abolished and customer doesn`t need to buy the price and when a landlord house is fired ,their agreement will be can celled .but in personal right when goods or commodity is destroyed ,there will be a right for the owner ,because debt belongs to (Obligation)and not special commodity( Fahmi Abovsonh,1968); (Alzohili,1990).

**4-**The subject of **jus in re (rights objectively)** is always tangible but personal right maybe is supervising to do something or refusing that .in some cases when the subject of Personal rights right is something material it can be the same commitment for handing in a house or generally (selling the railroad ticket(Katoozian,2004).

### **3- Judicial and non- Judicial right**

In another classification, we divide the subject of right to legal and Personal rights right.

#### **First: non-legal (Personal rights)**

Any right that is proved in religion and judge can`t prove it and it is not in the supervision of judge like :debt ,which loan giver can`t prove it but loan taker should try to give it back another example temporal marriage which their marriage isn`t registered in any place or judge ,their marriage is proved Personal rights ly and following that Personal rights verdicts like :alimony and proving the progenitor identity and so on is proved (Ibn Qdamh,1980).

Then is Personal rights right judge sent is based on witness and when there is no witness, there will be verdict for indign correctly.

### **Second: legal right**

It is a kind of right that judge can intervene ,like a women who is divorced Error there was no intention of Unilateral of divorce; In appearance, the judge actually knowing the truth will warrant and is the divorce decree. But divorce is not the jus in person am (Alzohili,1990).

### **Conclusions**

**1-** What are the right criteria for classification? In this research, some of the word jurisprudents and jurists have been investigated divided forms. In this study, the definition of truth and its origin is discussed. The right can be defined: Right is an allocation, which briefly existed even before the formation of the society, and so it has been appeared in diversity and variation of forms of society.

**2-** After that we've dealt with expression division and we have the Right elements.

**3-** Types right, the owner right to credit, including: Right Allah (god) right people and the right common and instances and precepts and they are listed.

**4-** And in other rights to enumerated in the right place can to be divided be credited to rights to non-financial and financial rights, Individual rights and the right objective (Jus in person am and jus in re), Judicial and non-judicial rights.

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