

Belief in the Concept of God's Oneness: Significance & Significant Spread through Tasawwuf

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Abstract

This article explores the significance and implications of the belief in the concept of God's Oneness. God Almighty is the source of all existence and Ultimate Reality of this universe. He is the Creator of the whole universe. The belief in the concept of one Creator teaches the lesson of love for all His human-beings and world-fellowship. The remedy for the Muslims' all woes and sufferings lies in this belief. This belief is the beacon of light and truth for discarding all types of superstitions. The Muslims should be realized about the high significance of this concept for the restoration of peace, prestige and integrity in the present circumstances. In the

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legal personality of children' is not correct. They have perfect legal status, which enable them to enjoy with their full rights. It is necessary that the role of Islamic civilization which it has played for safeguarding the interests of the children may not be ignored in the struggle of children rights. The Muslims states have to play in this regard leading role so that rights of children and their status in the Muslim societies reflect true Islamic teachings.

childhood, decrement, puberty and maturity. In western legal system these stages are divided into unborn child, pupil, minor and mature. Both in Islamic law and in western legal thoughts some rights of execution of will are recognized in favor of a minor who is close to attain the age of maturity but he can not execute it without rectification from his guardians which is called in Islamic law *wali* and in Roman law tutor or curators. Islamic law and other modern legal theories declare unborn child as eligible for rights. But the UN convention of children rights is silent about the rights of unborn children. The consequence of the absence of legal protection of the natural rights of the unborn child, both in national and international laws is that there is a constant violation of these rights. Therefore, there is an urgent need for a universal legal protection of these rights.

The above discussion shows that children are as important in Islamic Law as in any other legal System. The Muslim jurists do not ignore their legal Status. The part of legal capacity that makes them entitle for rights exists in their personalities even before their birth. They are eligible for all rights, which are required for their healthy smooth and satisfactory upbringing without any discrimination of male and female. This study also proved that the presumption 'Islamic Law has not recognized

requirements, obtain employment or enter into contracts in the course of his profession, trade or business. ¹

4- COMPARISON & CONCLUSION

The legal personality of a child is recognized in Islamic law and western legal thoughts. According to the different legal theories, Islamic as well as western, rights cannot be determined without legal recognition of a human being so the legal personality of a child is recognized for declaring him eligible of rights.

In Islamic law, legal personality of a person provides him fitness for execution of his rights and his duties. The western legal experts declare legal personality as the subject of rights and duties. In both legal systems we find similarities regarding legal personality of a child. The elements of legal personality, which are necessary for safeguarding rights of children, are attributed to them but the remaining parts of the legal personality, which impose duties on them, remain suspended until the attainment of puberty.

Both legal systems recognize different stages of child until he attains full legal capacity. Islamic law divides these stages into five levels; these levels are unborn child,

¹- Ibid,, p.12-13.

although in certain cases, for example, where the child has no parent, a special guardian may be appointed to him.¹

A pupil has no capacity to act for himself. His tutor manages his affairs and enters into legal transactions on his behalf in his own name. The general approach of the law in this regard based on the incapacity of the pupil, whose tutor must, in principle act on his behalf. If a pupil, enters into any contract it will be void and all legal acts must be performed on his behalf by his tutor. Where a pupil has no tutor or, having a tutor, purports to contract on his own behalf, he cannot be sued on the contract.²

A minor have a limited capacity. He may enter into transactions in his own name, but if he has a curator, he must obtain his consent to most transactions. Even if he does have a curator, there are certain things, which a minor is entitled to do alone. So, he does not need his curator's consent to make a will, enter into contracts for the supply of necessities, which are defined as goods suitable to the minor's condition in life and to his actual

¹ -Legal Capacity and Responsibility of Minors and Pupils, Scottish law commission, pamphlet, p.2.

²- Fraser, Personality and Child (3 rd Ed, 1906), p204; Legal Capacity and Responsibility of Minor and Pupils, consultative memorandum No. 65. 1985, Scottish law Commission, p.8.

necessarily contingent, indeed, for he may never be born at all, but it is nonetheless a real and present ownership. A man may settle his property upon his wife and the children to be born of her or he may die intestate and his unborn child will inherit his estate.¹The legal personality attributed to him by way of anticipation falls away (*ab initio*) if he never takes his place among the living. Abortion and child destruction are crimes but such acts do not amount to murder or manslaughter unless the child is born alive before he dies.²

The Roman law divides children into two kinds i.e. pupils and minors. According to case law the pupils are children under the age of twelve (in the case of girls) or fourteen (in the case of boys) and minor are young³ people between the ages of twelve or fourteen (as the case may be) and eighteen. Since there is difference in the legal capacity of pupils and minors, so the law deals them separately. A corresponding distinction is drawn between a child's "tutors" and "curators" as the two categories of guardian for pupils and minors respectively. A child's tutors and curators are usually his parents

¹- Fitzgerald, P.J., *op.cit.*, p.64.

²-Ibid, also see Pound, "Jurisprudence", (ST. PAU, MINN, WEST Publishing co, 1959) Vol. 4/ p.202.

³- Kaser, 'Roman private Law', (2nd et, 1968), p.66-67; Lea, 'Elements of Roman Law', (4th edition. 1956), P.87.

3.2- Kinds of legal personalities

In the light of above, definition legal personalities can be divided into following kinds.

A-Natural persons

A natural person is such a human being as is regarded by the law as capable of rights or duties; in the language of Roman law as having a status. As having any such capacity recognized by the law, he is said to be a natural person.

B- Artificial legal personality

The artificial persons are also called 'conventional' or 'juristic' person. They are such masses of property or groups of human beings as are in eye of the law capable of rights and liabilities, in other words, to which the law gives a status of legal personality.¹

3.3-Legal capacity of a child

The unborn child has a legal personality in the law of many states because he is subject of some rights that the law recognizes.² The law is not preventing unborn child from owning property before his birth. His ownership is

¹- Ibid, p97

²- Jude, I, Begbu, Rights of the unborn Child in International Law, (www.etruriante.it/jude/unborn.htm),p.1/3, 6/28/2004.

party to such relations. A minor with capacity to marry is not necessary married but his legal personality is conferred.¹ Gray thinks there can be no right, and therefore no legal personality, without a will to exercise the right. He states, a right should be given effect and there must be an exercise of will.²

Salmond on the other hand discovers a different quality, which, by his definition, is essential to a right. "Not being is capable of rights unless also capable of interests which may be affected by the acts of others".³ According to his definition, a person is any being whom the law regards as capable of rights or duties. Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is person even though he be a man.⁴

The above definitions identify rights, duties and will serve as essence of a legal personality.

¹- Legal personality and legal capacity appear to be synonyms and each legal personality/ capacity is function of particular purpose. See. *Ibid.*, p. 80.

²- Gray, *op. sit*, p25-26

³-Fitzgerald, P.J., "Salmond on Jurisprudence", (London', Sweet & Maxwell, 1966), p.273

⁴- *Ibid*, p.299.

corporation is a legal person. So also, in Hindu law, idols are legal persons.¹

To be a legal person is to be the subject of rights and duties. To confer legal rights or to impose legal duties, therefore, is to confer legal personality.² If society by effective sanctions and through its agent will coerce A to act in favor of B, B has a right and A owes a duty. Predictability of social action therefore determines rights and duties and determine legal personality. Whatever the controversies about the 'essential nature' of legal personality, there seems to be a uniform concurrence in these as respectively the test of its existence in a given subject, and the manner in which it conferred, whether upon a natural person or upon an inanimate thing.³

Among definitions to be found in discussion of the subject perhaps, the most satisfactory is that legal personality is the capacity for legal relations.⁴ This definition by Salmond suggest that the subject may have a capacity for legal relation without yet having become a

¹- Fitzgerald, P.J, Salmond on Jurisprudence (London, Sweet & Maxwell, 1966) p.298.

²- Gray, *The Nature and Sources of the Law*, (2d ed. 1921), p27; Smith, Bryant, 'Legal personality,' *Suspicious News Magazine* vol. 12, No. 1 (www. Antishyster. Com), p.80.

³- *Ibid*, p.80.

⁴- Salmond, *op. cit.* p.272.

not for those who represent them. However a child over seven may be liable for *ta'dib* (minor strictness that is usually applied on children for the purpose of training). Yet, this may not be interpreted to mean that minor can be awarded penalties if he is over seven.

C-The legal capacity of minor for worships

The (*ibadat*) worship is not obligatory on the child, as he does not possess the capacity for execution.¹

3- LEGAL PERSONALITY OF A CHILD IN WESTERN LEGAL THOUGHTS

3.1-Definition of a Legal Person

In contemporary concepts of jurisprudence, rights can not be determined in favor of a person unless he is declared as legal person having legal capacity. In the law, there may be men who are not persons; slaves are destitute of legal personality in any system, which regards them as incapable of either rights or liabilities. Like cattle, they are things and the objects of rights, not person and subject of them. Conversely, there are in the law, person who are not men. A joint-stock company or a municipal

¹ -Alsarkhsi,op,sit,p2/335; Sadr al Shariah,op,cit,p2/762; Niazi,op,cit;p118-119; Zahraa,Mehdi,op.cit.,p249 also see Fottrell Deirdre, Revisiting Children's Rights (London :kluwer Law International, ,2000)p.40-41.

duty. The final transactions are divided into the following three types for determining the liability of the discriminating minor:

Purely beneficial transactions: The transactions like acceptance of *sadaqah* and gift are falling in this category. These transactions are allowed to a person who has not attained puberty, but can discriminate and has been permitted by his *wali* (guardian) to exercise such acceptance.

Purely harmful transaction: The grant of divorce, manumission (*itq*), charity, loan and bequest (*wassiyah*) are considered transactions resulting in pure financial loss. These are not permitted to non-discriminating minor.

Transactions vacillating between profit and loss. Sale, hire, partnership, and other such transactions are considered valid if rectified by the *wali*.¹

B-The Legal Capacity of a minor in Criminal Matters

Muslim Jurists are agreed that criminal liability does not exist in the case of a person who has not attained the age of puberty. Because he is not a *mukallaf* and the *wali* cannot stand in his place for criminal offence: Punishments being deterrents for the offender himself and

¹ -Alsarkhsi, op, cit,p2/335; Sadr al Shariah,op,cit,p2/762; Niazi,op,cit;p118-119; Zahraa,Mehdi,op.cit.,p249

capacity of minor is categorized as deficient or defective. Minority infact is not a cause of defective capacity or even an obstacle in its way, but a necessary stage in the growth of human being. During this stage the human being is eligible for rights that are essential for his welfare but not liable for duties and punishments in case of non-performance of his duties. In Islamic Law minority does not affect capacity for acquisition or *ahliyyat al waujub* .All rights and obligations are acquired, as their establishment requires for the capacity of acquisition. The capacity for execution or *ahliyyat al ada* requires *aql* (for its fulfillment) and non-discriminating minor (*sabi ghayr mumaiyyaz*) lacks, because he does not understand *kitab*. He is therefore not liable for *ibadat*, financial transaction or punishment.¹ The further details of minor's religious, financial and criminal responsibilities are discussed below.

A-The legal capacity of a Minor in Financial Transactions

The financial transitions are established against the *dhimmah* of the *Sabi* (minor).Though he cannot meet them personally due to the absence of the capacity for execution, the Lawgiver allows his *wali* (guardian) to stand in his place and represent him through a substitute

¹- Sadr al Shariah, al-Thani al Mahbubi, Ubaid Allah bin Masud (d747/1395), "Sharh al-tawdih ala al tanqih", (Cairo), p.2/760

puberty, such as nocturnal emission for a boy and menstruation for a girl appear or presumed in case of delay in the appearance of natural signs. The identification of natural signs is usually based on local customs. At this stage the person is considered to possess full religious legal capacity, which is named as *ahliyyat al-ada diniyyah*. In this situation, the human being is liable before God for his religious duties.

E-Maturity

This final stage commences from actual physical and mental maturity with *rūshed*. The criteria for attainment the age of puberty is same for male and female. At this stage, the person is considered eligible for facing the risks and accordingly makes reasonable decisions. On reaching this stage the individual completes capacity for execution and declared eligible for each kind of *Khitab*. *Rushed* is a particular condition of this stage.¹

2.4-Legal Capacity of a Child (Minor) in Islamic Law

A human being remains child in two stages of his legal capacity. These two stages, fetus and child hood, can be denoted with the terminology of minor. The legal

¹- Niazi, op, cit; p.114-114; Zahraa, Mehdi,op.cit.,p.250.

ahliyyat al-wujub, as at this stage they become able to acquire rights and bear obligations but until he attains the age of actual or legal puberty, he lacks capacity for execution. Although all statements, expressions of will, actions and transactions that are carried out by the child itself have no legal value and produce no legal effect, the child can still bear certain obligations.¹

C-Discernment

This stage starts at the age of discernment and lasts until puberty. During this stage the child has full *ahliyyat al-wujub* and restricted civil discretion capacity that is called *ahliyyat al-ada al qasira*. The Muslim jurists developed this concept in order to meet the needs of the child.² In this stage the child is allowed to execute his capacity for the performance of certain kind of acts, which are not usually allowed to children.

D-Puberty

The fourth stage of capacity is started when a child attains full legal capacity after having full puberty. The Muslim jurist has indicated two ways of identification of puberty. It can be either factual, when the natural signs of

¹- Ibid.

²- Al-Zarqa Ahmad M., *al-Madkhal Fil Fiqh al-Islami* (6th edition, 1959) p2/733; Zahraa, Mehdi, *op.cit.*, p.249.

capacity is established for an unborn child or the fetus (*Janin*). Deficient capacity implies that only rights are established for the *Janin* and no obligations are imposed on it. The reason is that the *Janin* is considered part of the mother in some respects.¹ In other respects, the *Janin* enjoys a separate life and prepares for separation from the womb. His personality is therefore, considered deficient or incomplete. By virtue of this deficient capacity, the *Janin* acquires certain right: freedom from slavery, inheritance, bequest and parentage. On the other hand, the *Janin* is not liable for satisfaction of rights owed to other.² A purchase made by the *Wali* (guardian) on behalf of the *Janin* cannot make the *Janin* liable for the payment of the price. Likewise, the maintenance of close relatives and the membership of the (*Aqilah*) cannot be enforced against him. Once the child is born, these rights can be enforced against him, but not when the obligations were acquired during the gestation period.³

B-Childhood

The childhood stage starts at birth and lasts until the age of discernment. During this stage, children have a full

¹- Niazee, op.cit.p.248.

²- Al Sarkhasi, op.cit., p.2/334.

³- Niazee,op.cit., p115; Zahraa,Mehdi,op.cit.,p.248.

are not fully developed. Thus, a person may not have been born yet or he may not have reached full mental development. In other cases, the attribute of being a human may be missing altogether.¹

C- Imperfect Legal Capacity

Imperfect legal capacity or *al- ahliyyah al-qaisirah* is assigned in cases where the bases of capacity, being a human and possession of discretion are present but an external attribute has been introduced that do not permit the recognition of the legal validity of certain acts.²

2.3-Levels of Legal Capacity

The legal capacity of a human being starts from his creation in the boom of mother and it remains until his death. Its different levels develop with the development of human being. The Muslim jurists have identified five stages and their corresponding levels of legal capacity as under:

A-The unborn child (*Janin*) جنين

During the first stage, which exists during pregnancy prior to the birth of a baby, deficient or incomplete

¹- Zahraa Mehdi, op.cit.,p.248.

²- Al Sarkhasi, Abubakar Muhammad ibn Abi Sahl Ahmed (1090 C.E), "Usul al-Sarkhasi"Edited by Wafa al- Afghani, (Cairo, 1953), p.2/333-334.

is stipulated as well.¹ The jurists have imposed the condition of *rūshed*² on the bases of following legal evidence from the Quran:

وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ رُشْدًا
فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَن يَكْبُرُوا وَمَن كَانَ
غَنِيًّا فَلْيَسْتَعْفِفْ وَمَن كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ
أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ وَكَفَىٰ بِاللَّهِ حَسِيبًا (6)

[Make trial of orphans until they reach the age of marriage; than if ye find sound Judgment in them, release their property to them: but Consume it not wastefully, nor in haste against their growing up]³

This verse clearly shows two conditions that must be fulfilled before the wealth of orphans can be handed over to them. These are *bulughha* (puberty) and *rūshed*.

B- Deficient Legal Capacity

Deficient capacity or *al- ahliyyah al-naqisaa* is assigned to a person in whom the bases of legal capacity

¹- Niazee, op.cit., p113.

²-This term signifies the handling of financial matters in accordance with the dictates of reason.

³- Al-Qūran, 4:6.

candidate of *al-ahliyyah* must be (1) a person, (2) able to acquire right,(3)able to bear obligation; and(4)able to conduct legally effective action and transactions. In Islamic law, the child has capacity of acquisitions but he has no capacity of performance. It will be easy to understand legal capacity of a child in Islamic law after going through its kind because it will clarify his legal status.

2.2-Kinds of Legal Capacity in Islamic Law

The Muslim Jurists has divided legal capacity into following three kinds:

A-Complete Capacity

The complete legal capacity (*al- ahliyyah al-kamila*) is found in a human being after his birth and makes him eligible for acquisition of all kinds of rights and obligations. *Al- ahliyyah al-kamila* is established in a person when he or she attains full mental development, and acquires the ability to discriminate. The ability of discrimination is associated with the external standard of the puberty. However, attaining *bulugha* (puberty) alone is not sufficient. It is necessary for a person to acquire complete capacity for execution, in addition to puberty, the possession of *rushed* (discrimination; maturity of actions)