

Distributive Justice and the Fundamental Human Rights

(Focusing on Rights to Healthy Environment)

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Abstract

Justice is the ideal of human social life which can bestow the society order and stability and open up the way of sublimity. Resorting to the justice mechanisms, a peaceful collective community together with balance and equilibrium of different interests and conflicting wills become possible. Here the issue is the establishment of role of distributive justice in balance of general affairs of society along with acceptance of the notion of equal distribution of facilities, resources, rights and wealth among all people without any bias and prejudice and just because of intrinsic generosity of human kind in the first place, and establishment of the system of redistribution of resources for removing any practical injustice in society in the second place. Applying such theory has a direct relation with the preserving of the fundamental human rights through which the rights are distributed according to the being human and capabilities and virtues within a fair competition and in this way the threats to the fundamental human rights are decreased. The right of keeping a healthy environment can also be guaranteed under this theory.

Keywords: distributive justice, healthy environment, human right, resource distribution system, threats

1. Introduction

The nature of creation and human life necessitates his enjoying of unprejudiced human rights and equality principle to be able to move along growth and sublimity path. What should be first taken into account in a political, social and legal system is the recognition of basic human rights and guarantee of those rights in a fair approach. It is no doubt that acceptance of the human basic needs by the society members and State is the first step to preserve and protect them.

Human rights, as a collection of civil, political, economic and cultural rights, need some worldwide virtues and principles in relation to the all of men without any prejudice and consideration of religion, race, color and political trend (Shirzad et al., 2014).

This paper aims to answer the question whether applying the injustice manner and attitude in the system of distribution of resources, facilities, wealth, power and other merits and natural human needs can lead to the fundamental human threats or not?

To answer the question we suppose that lack of respect to the principles and elements of distributive justice by people and State may lead to the violation of human basic needs and pose the risk of insecurity and interruption of society. This study approach is to investigate about the notion, elements and indices of the distributive justice on the basis of political and legal system, and effective ruling and its effect on guarantee and preserving of the basic human needs, decrease of varied threats to the basic human needs focusing on the right to have healthy environment, public order, public security, political and social stability, and fulfillment of society peace and social, individual growth in the society.

1.1 First Section – Basic Concepts of Distributive Justice

1.1.1 Justice Notion

Justice is a unique pearl which is related to the basic human needs. A world without justice is the one without human rights. In fact justice is among one of the bases of human rights. Justice is created with the collective community and establishment of political society. Justice is related to the balance and equilibrium between the

conflict interests of collective community.

Justice is a virtue which the nature is based upon, and welfare of people is based on its establishment and men seek it as the necessary measure governing on their individual and social affairs (Hashemi, 2005). Justice exhibits more in the social area where the conflict between people wills and their preferences is manifested and means that justice is “giving everyone his own share. Justice is the rule of freedom distribution and hence that of distribution of properties” (Steiner, 2003).

1.1.2 Foundations of Distributive Justice

The idea of general agreement for establishment of human society and exit from individual situation and try for protecting each other and satisfying of mutual needs became the foundation of establishment of a political society and State. The social life is included of some inevitable conflicts because of connection of natural and common interests and claims, and resolving these conflicts needs balance and equilibrium which can be organized under the theory of distributive justice. So, various schools have been established in the area of justice (Vaezi, 2009) which one of the strongest ones is the distributive justice. The theory of distributive justice means that the system of distribution of revenues, resources, facilities, wealth, and power and so on should be performed in three following steps:

- 1) Equality of enjoyment of resources, goods, wealth and public property
- 2) Earning revenue according to the share of participation in production, need, merits, and job
- 3) Redistribution of resources, goods and facilities (Evazlu, 2005).

1.2 Theories of Distributive Justice

There have been some various theories proposed about the fair and just manner of State and people about how of distribution of rights, resources and facilities which most of them are trying to answer the three below questions:

- 1) Which goods should be distributed?
- 2) Among which groups these goods should be distributed?
- 3) How is the exact and just distribution of such goods? Should it be according to the equal principle, in proportion with worthiness, social standing or needs of people? (2011).

The most important distributive theories include the following (Ibid, 2001, pp.30-35):

- 1) Equality theory: by this theory the goods should be distributed according to the equality principle. This theory returns back to the School of Stoicism and some scholars such as Cicero, Aquino, and Karl Marx
- 2) Merit and competency theory: from the view point of this theory everyone should enjoy goods as much as he deserves, and here the difference among theoreticians is their regard toward the concept of competency which can be manifested in the individual competence examples, according to the needs, in amount of participation in the production of social goods. Among the adherents we can refer to the Aristotle and Nozick.
- 3) Fair theory: the justice theory like the fair one is one of the main distributive theories, which is ascribed to John Rawls (Rawls, 2004). According to this theory the goods should be distributed fairly among the society members else the unequal distribution of one of or all of these goods leads to the more enjoyment of less prosperous social groups. The fundamental principles of this theory are as follow:
 - 1) First principle: every person in the society has the right to enjoy the most and widespread freedoms such as political freedom, speech freedom, community freedom and property freedom
 - 2) second principle: the social and economic inequalities are acceptable when a) bestow the less prosperous groups the most benefit, b) are related to the jobs, positions and situations which all people have equal opportunity to get them.
- 3) Historical right theory: from the view point of Nozick, it is justice that someone has some goods especially the right to properties and real State only if he acquired it by a history of observing rules.
- 4) Theory of maximization of welfare: within the utilitarian school (theory of John Stuart Mill), justice execution necessitates maximization of welfare of whole or average of the society. Fulfillment of the issue requires sacrificing some people goods for the purpose of achievement of others to this good.

1.3 Explaining Distributive Justice Theory

The ultimate aim of formation of a political society and State is establishment of order, peace, justice, tranquility, protection of human rights, and satisfying of social and individual needs. Achievement of this important issue on

the legal ground can be defined as “establishment of power to guarantee the fundamental rights of persons with the justice approach”.

It can be explained in this way that in the case of unlimited authority of rulers, the above mentioned aims cannot be achieved and in reality it may lead to the exploitation of people by the authorities.

In order to prevent such undesirable situation, the attitude of serving State with the function of preserving of the fundamental human needs is proceeding. Fulfillment of such State needs satisfying of value, procedure and structural grounds. But the most important guarantee method, in addition to such grounds, is the just behavior and manner of State in order to fulfillment of the mentioned aims in the social life. So, if a State does not behave fairly toward distribution and provision of rights, and social resources and facilities it may change to a suppressive State.

It is no doubt that unfair behavior of a State and its inefficiency in tasks fulfillment, and weakness of its political and legal structures provides the way of defensive measurements of people in different forms. One of the possible behaviors of people is State officers' abuse of utilization of public resources in order of their individual desires and privileging people from their certain rights, individual initiatives in satisfying claims and rights and a kind of resorting to the private administration of justice.

In this study we discuss that through a fair attitude and just distribution of wealth, power, and resources and right a desirable society can be formed, and protection from the fundamental human needs necessitates a structured and organized State which its measurements and decisions for distribution of power, wealth, resources and rights in the first place are in proportion with human existence with consideration of the principle of equality of humans and guarantee of equal opportunity for all, and in the second place it provides all people with fair distribution system with observing of the elements of merit, endeavor, creativity and ability of individuals in achievement of social gifts to make them feel happiness and self- growth on the fair competition ground. Such feeling by people along with desirable ruling structure paves the way of satisfying true rights and claims of citizens and decreases the possibility of crimes in order of illegitimate interests.

1.4 The Elements of Distributive Justice

The theory of distributive justice should follow the value, procedure and organizational elements in the society to be effective.

1.4.1 Value Elements

Each legal system is justified according to the value principles and guaranteed within various political, social, legal and the like institutions. The distributive justice theory can be regarded as the justified ground within the fair and just distributive system of power, wealth, resources and rights. So it needs values, indices and appropriate executional and practical elements. In this regard, the value elements play the role of bed of other elements which include the following cases:

1.4.2 Human Generosity

Human munificence is one of valued elements of the distributive justice theory and it is important because men are munificent by nature and protection of human dignity requires meeting the human needs and claims. Now it can be claimed that the distributive justice theory can be regarded as a mechanism for protection of human munificence and men can lead a sublime life via application of just distribution of resources and facilities. The human munificence indicates a kind of intrinsic value which exists in all people and the human nature necessitates it, and it is unchangeable. According to such concept, the duty is imposed on others to behave other people decently. So, the human munificence is a notion that states exact and severe moral conditions, therefore it is interpreted as “value” in view of Kant (Kant, 2004).

1.4.3 Value and Intrinsic Equality

Seeking for equality is a very old and main concern of people and always has been discussed as a substitute against harsh inequality (Ebadian, 2001). Equality is a complicate notion and can be taken into account in different areas such as “moral, political, social, gender and race equality” (Nagel, 1996). What can be discussed here is the essence of equality concept which means the value equality. In other words, all of creatures have intrinsic value and “no creature is superior to other in essence and in collective decisions the public interests should be taken into account equal with every person interests” (Dahl, 1999).

1.4.4 Opportunity Equality

It is a careful endeavor in line with explaining of the way of compensation of inequalities and deprivations which are imposed upon the individuals (Roemer, 2003). The opportunity equality states that all of people deserve

rights, resources and facilities because they are human and the State is obliged to provide all people with proper and equal grounds to flourish their gifts and creativity to be able to play role in the social milieu and the State should behave without bias and prejudice to distribute the resources and facilities according to the merits, creativity, and individual, social endeavor.

1.4.5 Lack of Prejudice

Prejudice and inequality can be regarded as the root of all of suppressions and ignorance of human rights. Because people are equal and valued in essence therefore “it is true too speak about human equality when we do not use a human as an instrument in the favor of others. Equality would be the result of such prohibition in the sense that nobody is superior to others from the view point of value (Rasekh, 2005). In fact such dignity is dedicated to human being and he is superior to other creatures because of having divine attributes which are bestowed to all equal. So “today the right of all people to human rights and fundamental freedom has become the focus of human right documents and laws” (Feiz, 2001).

1.4.6 Rule of Law

One of important elements of the distributive justice is the rule of law. Under the law all rights can be guaranteed and social affairs can be organized. The rule of law can balance two major concerns: on one hand the obligations granted to the State should be in such a way that let the State authorities and structures to hold the country, and on the other hand it is necessary to prevent from spreading of the power of the State and limitation of the fundamental freedoms of citizens by suppressive measurements. The rule of law keeps the two requirements of a healthy and organized society in balance. The main functions of the rule of law are control of the political power, order of public affairs, and guarantee of citizen rights.

The most important feature of the rule of law is that it is law that governs society and public affairs. “The rule of law limits the personal areas of power but the rule of man tries to expand it” (MacCallum, 2004). In fact, common concept of the rule of law or “the core of the rule of law” is included of the stable values of order and limitation which manifests in the slogan of the rule of law not in the rule of man” (Markaz M, 2006). Therefore within the rule of law there is less possibility of self- centering in contrast to the rule of man. So, the legal function of State and people in regard of distribution of rights and resources is a strong dam against the willful and personal measurements and guarantees a just and fair distribution of rights.

1.4.7 Public Participation and Supervision

Participation is combined with focus on every person right to policy making, and taking measurements in order to improve the general conditions of society. The recognition of democracy necessitates participation of all of people in creating of a value system, social do & don'ts and development of general policies and evident role of people in the general country administration. People supervision on the general holding affairs of country would confirm the democracy. Therefore equality of political participation and general supervision requires establishment of the distributive justice because lack of people presence in the general decision making within the role of participation and supervision may increases the risk of power abuse by the rulers and offenders who may deprive the majority from their fundamental rights.

1.5 Procedural Elements

Formation of a legal and just system requires adoption of behavioral and procedural elements in addition to the value bases. By the procedural elements we mean in a democratic system, the decisions, policies, rules and state programs follow participatory and multiplicity process. The distributive justice theory needs considering behavioral and functional elements and principles by the rulers in the charge of distribution of resources and rights to cover the measurements of formal officers in adaptation with the rights and deserves written in the value law and elements.

1.5.1 Fairness

In short, the fairness “means impartiality. Therefore fairness includes both order and rule (impartial execution of rules) and also reasonableness and means equal distribution of resources among the interested people” (Elklit & Svehsson, 1997).

1.5.2 Responsiveness

From political and legal terms it means “a person commitment to the undertaken obligations” (Rashidpour, 2005). In another definition, Randerson states that “justification, reporting and explanation are important aspects of responsiveness. It is also understanding of the public law to know what actions should be taken” (Ibid).

Responsiveness is one of the main indices of assessment of political system. In a democracy system decision

making about general affairs and interests are upon people which is proved by their representatives in the parliament. So, this is a right of people to have elected governors responsive to securing services and general interests. Therefore responsive system is tied with democracy. "The relationship between responsiveness and democracy is that responsiveness can secure values and democracy through meeting participation and intervention right of people in State decision making and programs. Inside and outside responsibility of State managers is preserving of democracy. Therefore, responsiveness is a tool for response to, and explanation of actions, decisions of a person or an authority to another institution which is associated with political and legal effects" (Zarei, 2001).

1.5.3 Information Access

Information access and the right to transfer it has established as one of fundamental human rights. In this line, it is upon the State to provide access of people to information. Within the distributive justice, the State should be responsive to people in terms of providing people with information about how of resources and facilities distribution according to the fundamental human rights and respecting of merits.

Today, information access has effective role in informed participation in formation and execution of general power. "fulfillment of an open society, limitation of State power against citizens and power enforcing from the part of people and lessen of authoritarian just is possible when people are aware of State affairs. Therefore right to access and transfer of information is a mechanism of power enforcing and possibility of informed participation of citizens in order of fulfillment of their rights and freedoms and also a guarantee for correct State function, its law-based conduction and legal use of power (Mustafa, 2003).

1.5.4 Clarity

The concept of clarity refers that decision making and execution in an institute and organization should be performed special rules, regulations, competencies and controls. It also means that people under the effect of such decisions and their execution, should have free access to information or that media offer understandable and simple information (Center of studies and education of Iranian civil society). Therefore clarity of decision making and execution of decisions decrease the lack of certainty and can have a substantial role in prevention and decrease of corruption among elements of a system.

1.5.5 Structural Elements

Valued and procedural elements of distributive justice when is applicable that their prerequisite and appropriate grounds have been provided. In fact, fundamental values and norms of human society fulfill within institutions and organizations in the executional level. Therefore, just conduction of State and society in distribution of rights and resources necessitates acceptance and design of legal and appropriate warranties. So, visualization of an ideal and just society 'should be along with organizational and structural warranties. Structures, organizations and State or civil bodies should be active in such a way that secures procedural, conceptual and value indices of democracy" (Zarei, 2004).

1.6 Controlling of Public Power

Controlling of public power and the method of application of legal authority of executors is a desirable strategy in order of just distribution of rights and resources system. The controlling mechanisms and position of limitations on the method of resources distribution is a guarantee of rights and deserves of people. The major power controlling is political and judicial controlling methods. The political control is imposed by the public and State oversight institutions, and judicial control is upon the Judiciary.

The judicial control is more effective because of its effects and more strong executing guarantees during implementation process of the distributive justice theory. The judiciary control is a kind of court proceeding in which judges investigate about non-legality of decisions or actions taken by authorities and general institutions (Farber, 2004). In another words "the court is missioned to investigate about legality or action of official performance of State representatives and officers in terms of adaption with law or violation of basic principles of justice" (www.wikipedia.com). In fact "emphasis on the concept of judicial control as a concept, a theory and an instrument for conformity of enforcing of the sanctions made by State forces with the "superior law". (Zarei & Markaz M, 2005).

1.7 Civil Institutions

Non-State organizations have obvious role in just distribution of power, wealth, resources and rights. Because within the civil institutions people can participate in general administration of country and conduct the action of executors in line with fulfillment of the distribution system and just execution of rules and people claims.

Because always it seems that State is more powerful than people and there is the possibility of authoritarian and willfulness, having intermediate bodies are necessary for people resistance against the State and expression of their wills. "Therefore, there is inevitable need of presence of intermediate bodies among the anonymous masses in order of effective participation of citizens in social and political affairs. Meanwhile these bodies are as balancing weight and relation which are capable to internalize various thoughts in the society and open up logical and peaceful conversation in a democratic and pluralist system" (Hashemi, 1998). Therefore with acceptance of a pluralist society and varied ideas it can be said that "civil society is the one that includes all institutions and mental movements which is placed between the State, individual and family areas" (Ahmadi, 2002). Totally, the civil society is the one which is composed of independent, optional and self-regulated groups which aim to promote the members' interests, desires and preferences. These groups can activate within union, trade, assembly, non-State organizations, party, syndicate, and media.

1.8 Free and Independent Media

The main base of formation of media and press is the freedom principle, especially political and information freedoms. Freedom of speech is among the political ones which can be demonstrated more than other cases within media and press. Media freedom in general terms means free searching, collection and acquiring of news and general beliefs and their transmission and broadcasting, free publication of newspaper and free receiving of these programs (Motamednejad, 1998). Now this wide freedom of media and press is called "information freedom" or "communication freedom". In special term "freedom of media and press means free publication and speech of newspapers and other periodical publications without any limitation and supervision before their publication and lack of their banning or close after publication (Ibid). One of the main functions of media is "to make State responsive to people, notification, civil education, relating people with governors and political supervision and control of political power" (Lange & Palmer, 1995).

The free and independent media have important role in the execution of distributive justice theory. Because officers of resources distribution may don't act according to the distribution justice principles, but media clarify their measurement with gathering and transmission of information about distribution and function of the executors and in practice with influencing public opinion and notification of people make the executors to be responsive to people and to act in line with distributive justice principles and mentioned deserves in the law.

1.9 Expertise Management

Expertise institutions with the required knowledge are necessary for formation of political system. The principle of rule of law and wisely distribution of power and jurisprudence necessitate management of affairs by expertise and competent people and institutions which act within legal duties and assignments according to the jurisdiction principle.

The expertise and efficient institutions have substantial roles in the fair distribution of rights and resources, because firstly they have legal jurisdiction within this system, secondly they act within the granted legal jurisdiction, and thirdly they enjoy enough knowledge for performance of duties.

In short, respecting of valued elements and procedures of distributive justice decreases the crimes committing in addition to guarantee of just distribution system of resources and rights, because major crimes are committed in the absence of true attitude toward human concept and unequal expectations of citizens from each other, weakness of the political system in execution of the granted responsibilities, undesirable power structure, undemocratic method of ruling, lack of power controlling mechanisms, removing the role of people in decision making, control of power execution, and finally lack of fulfillment of grounds and indices of distributive justice theory indices.

1.10 The Concept of Fundamental Human Rights

Human rights are a set of rights and freedom (Rosenbourn, 1980) which is intrinsic to human being. Therefore the society especially the State should secure them and design protecting mechanisms within executional measurements and rules. In fact, the fundamental human rights include the concept that each person has some rights because of being human (Sharifi TK, 2001). Human rights are undeniable ones and in relation with the fundamental needs of people which can be guaranteed in a true system and acts like a strong dam against authoritarianism and is the symbol of limitation of political power in the State relation with citizens.

Subsequent to approval of Universal Declaration of Human Rights, the concept of fundamental rights has developed and the international rights are developed impressed by moralism thoughts and human – based philosophies. Therefore, the human rights issue is the most important revolution of international rights in the 20th century. Today, the human rights adjust human relations and even relations of groups with the State and the

associated institutions, protect people against the State and oblige the State and associated institutions to observe the rights. According to the human rights and rules, basically humans have rights not duty. These rights include all of peoples apart from color, race, gender, religious and so on in all of times and places under any circumstances (Soleimanzadeh, A). The human rights are universal and should be respected in all of societies but according to the ruler ship in the political and legal system nature it may face with legal and legitimate limitations not against to fundamental and intrinsic claims and needs. So “what is the cause of gap between different legal systems is not authoritarian of one and limitation of the other” (Gorgi, 2004). Except from the imposed limitations on the area of fundamental human rights in different legal systems, their insertion in the international instruments and obligations has made them universal and proper grounds have been provided for their execution and protection.

1.10.1 International Instruments of Human Rights

The international instruments of human rights can be divided into the special and general documents of human rights according to their extent and support coverage. The number of international instruments is very great, and various general and special international instruments have been approved in line with spreading of development and support of human freedoms and rights, which some of its most important cases are as follow:

1- Universal declaration of human rights (1948), 2- international covenant on economic, social and cultural rights, 3- international covenant on civil and political rights, 4- convention on the prevention and punishment of the crime of Genocide, 5- international convention on elimination of all forms of racial discrimination, 6- convention against torture and other cruel, inhuman or degrading behavior, 7- convention on the elimination of all forms of discrimination against women, 8- convention on the rights of the child, 9- declaration on the elimination of any form of intolerance based on religion or belief, 10- declaration on the elimination of violence against women, 11- declaration on the rights of persons belonging to national or ethnic, religious and linguistic minorities (Mehrpour, 2004).

1.10.2 Cases of Fundamental Human Rights

Determination of the cases of human rights has been taken place according to the world human rights instruments and can be divided into “1, first generation civil and political rights, 2, second-generation economic, social and cultural rights, and third-generation solidarity rights” (Zakeran, 2002).

1.10.3 Civil and Political Rights

It includes 1- right to life, 2- security (such as body, reputation, property, housing, job, privacy (including family relationship, correspondence, letters, and email) and accommodation and travel securities), freedom of speech, information freedom, election and determination of destiny freedom, political participation freedom, group freedom, protection against “willful detention and illegal prosecution” (Himendowa, 2003).

1.10.4 Economic, Social and Cultural Rights (Second-Generation)

“in limited term it refers to the rights of individuals as the society members who affect it through their personal or job activity or by use of their own property, such as property right, business right, industry and commerce, job and working” (Tabatabaei, 2003 & Hemati, 2007). The most important economic and social rights and freedoms include 1- personal ownership freedom, 2- working freedom, 3- freedom and social welfare, 4- commerce and industrial freedom, 5- syndicate freedom, 6- cultural right and freedom

1.10.5 Solidarity Rights (Third-Generation)

It is based on a universal attitude and living. Because the earth is a place for life of human being, it should be protected. On the other hand, today humans have found universal and wide needs in addition to the personal and social ones which providing them need worldwide peace and collaboration of nations and States. Such necessity has been accepted as “solidarity rights” (Vakili & Askari, 2004) in the new world order. The important solidarity rights include 1- development right, 2- peace right, and 3- healthy environment right

1.10.6 The Right to Healthy Environment

The right to healthy environment as one of fundamental human rights and third generation of human rights is guarantee of the more fundamental right of life and healthy body and soul which protection of the right leads to preservation of balance between human soul and body. Protection of human health needs worldwide participation. Therefore it is upon all States and nations to prevent from marine, ground, air and space pollutions.

1.10.7 The Concept of Healthy Environment

From the aspect of international law, considering the value declarations of Stockholm, Rio, Johannesburg and

other environmental declarations, the concept of right including right to healthy environment like other moral concepts such as security is the result of social, economic and cultural life experiences (Mashhadi & Keshavarz, 2012). Articles 14, 15 of the international covenant of solidarity State about the right to health environment ‘each person and all of people have right to balance and health environment for economic, social, cultural and legal development. The member States undertake do not disturb the natural life conditions which harm the human health and collective community. The damage which is necessary for the collective development and there is no way to escape is acceptable’ (Ibid).

Human being as the creature with two kinds of capacities of having right and its execution is the only creature who is endowed with right, because having right necessitates knowledge and possibility of claim for that, and because other creatures are lack of knowledge and possibility for claim for right, they are not deserve for right to health environment.

Right to health environment as a fundamental and third generation rights plays an important role in guarantee of human health and life without pollution. Such approach brings to mind the relationship between environment and human rights “because legal support of human rights can be an instrument for protection of environment. Some rights such as right to life, freedom of speech, political participation, equality and so on include international legal instruments which necessitate more protection of environment. Some of lawyers have suggested that in confrontation with issues which afflict human by gradual destruction of environment, the new “right to environment” or “right to secure, health and proper environment” should be determined” (Parsa, 1999). The right to health environment itself includes several other rights such as (Firouzi, 2005).

1) The right to access to the environmental information, which refers to the right of people to obtain environmental information without limit and duty of organizations for delivering this information to the society members

2) The other right within the right to health environment is education of environmental issues. It is upon the States to educate people about the environmental issues. This can be done through schools, educational books and media.

3) The right to access to compensation is another division of the right to health environment. In order to this, each citizen should enjoy the right to judicial authorities and compensation for environmental damages (Eftekhari, 2003 & Abasi, 2011).

1.11 Second Section – Interaction between the Distributive Justice Theory and Decrease of Dangers in Relation to the Fundamental Human Rights and Healthy Environment

Examination of justice concept and distributive justice theory, its strategic elements and concept of human fundamental rights and right to health environment show the result that political society and collective community have inevitable conflicting interests, and in one hand one of aims of joint living is meeting of human needs and claims to provide with the fundamental human needs and rights. But insuring this aim needs a concept of justice to put the society in the route of human claims satisfaction. Therefore, the distributive justice theory became the base of such discussion. This section investigates about the effect of lack of respecting the distributive justice on imposing dangers to the fundamental human rights focus on protection from healthy environment in the line with answering the thesis question and establishment of the proposed hypothesis.

In order of analysis of the issue of lack of distributive justice in the society and its reflection on the intervention of fundamental human rights, especially the right to health environment, the distributive justice relation with the human rights and right to health environment is being investigated.

1.11.1 Connection of Justice with the Human Rights

The human being nature and existence his salvation is possible through social life resorting to justice and “all people have accepted that main ideal of human is justice accomplishment. The majority of people believe that freedom is not an end and is an instrument for justice fulfillment. Kant believed that freedom is the primary judgment of practical mind and Stated that without justice life is worthless” (Katouzian, 2004).

Within modern thought, several fundamental natural rights have been defined as human rights which are also called as core rights. These rights are primary principles of justice theory. Justice governs securing the personal and social rights and each action which intervene these fundamental rights is oppressive one. According to the new epistemology and anthropology, a just act is based on general principles insuring of the fundamental human rights. On the other hand, the social institutions are obliged to distribute their facilities and capabilities according to the justice rules and therefore that it can be said that equal right of people to social occupation is one of justice principles (Ghorbania, N). In fact, simple recognition of human rights in the legal and political system is not

enough, but securing of human rights is tied with justice establishment and just behavior of rulers to each other, and under justice principles and branches it is possible to organize the human rights.

1.11.2 Connection between Justice and Right to the Environment

Environment is a ground on which human being tries to meet his needs and his life is dependent upon the healthy environment which else would destroy. Therefore there should be a just and proper approach to protect from environment and persistent use of it. "Gaining of stable development is not feasible without exact and true reaction toward nature and environment. Traditional humans and civilizations were lived with nature and proper interaction with environment and had a kind of friendly relation with nature; while the modern people has stood against nature with conquering and changing nature but feels no responsibility for preserving nature and environment and just exploits nature" (Nasr, 2005), as if the modern human has forgot that earth is his cradle and that "elements of nature are ours, life of nature is ours, and damage to nature is damaging ourselves" (Nasr, 2005). Therefore, unbalance behavior of human being toward environment has endangered his life on the earth, which is a unique planet. This is a hostile way of life of human being with himself which would end in his failure (Ghorbani, 2006).

With attention to the conformity and match between nature system with divine rules and human instinct – which originate from divine presence- it can be found that if human being behaves in contrast with the divine rules and nature, he will received an anti- human reaction (Ibid, p.65). In its exact term, justice means we should observe the right of nature and also try to sustain our earth life utilizing religious and spiritual instructions and understanding of conformity between nature, religion and human.

1.11.3 Connection of Human Rights with the Right to Healthy Environment

Human rights is a set of fundamental human rights which are confirmatory of instinctive needs and claims of human which are at the service of guarantee of human nature and worth. With the guarantee of human holiness and instinctive human claims within right system, he can pave the way of sublimity. In this line, all established human rights act within a unit and integrated collection in order of preservation of human life. Therefore, right to health environment is not separable from other human rights generations. Every kind of intervention of right to environment has direct effects on other fundamental human rights such as the fundamental right to life, health, treatment, food, welfare, security and so on. Therefore we should establish a logical relation between human rights' generations. These rights have been discussed for individuals and right to life protection in the wide term and are not separable. It can be said that all of these rights are in one level and there is no right priority (Vakil & Askari, 2004).

The environmental rights are in deep connection with the first and second human rights generation, in such a way that intervention of the right to health environment leads to the violation of the connected rights, and respecting them in turn leads to fulfillment of the right to environment. Even, in some cases, application range of the mentioned rights is limited by respecting the right to environment. Right to health, property right, job in a proper and healthy environment, respecting the rights of people belonging to the minorities are among the human rights with environmental dimensions (Peace group of human rights seat, 2010).

1.11.4 Final Analysis of Distributive Justice, Human Rights and Right to the Health Environment

The main index of a prosperous society is guarantee of the fundamental human rights under the collective community and desirable ruling with just approach. The just behavior of State and nation brings human life happiness and fortune.

The first principle of Stockholm declaration also states that human being has the fundamental rights to freedom – equality and proper life circumstances to enjoy a healthy and prosperous life. He is responsible of preserve and protect environment for future generations (Ibid, p.82). Because here the main discussion about just behavior is the distributive justice theory, analysis of the above-mentioned claim is performed through the distributive justice theory.

1.11.5 Analysis of Bases of the Distributive Justice Theory in Connection with the Fundamental Rights and Environment

The distributive justice is based on the initial base of equality and freedom which confirms that in the first place human being have fundamental equal and just rights, and therefore law rulers and executors in the place of distribution of resources and rights have equal view and that all of the fundamental, intrinsic rights such as right to housing, welfare, health, job, and security are distributed among all people without impartiality. But in the present second place and considering of reality of society, imbalance of rights and resources distribution, deep gap between classes, richness and poverty, disadvantages and prejudice of resources distribution, there is need

for a kind of right and resources redistribution system, and applying a positive prejudice attitude and providing with a ground for expression of talents, creativities, and efforts to return society to its first and natural condition of equal enjoyment of fundamental rights, and more utilization of natural gifts, resources and wealth through just competition under the merits of creativity, invention and efforts.

The 50th principle of the Constitution of Islamic republic of Iran states that preservation of environment which the present and next generations should live in it, is upon the public and therefore any economic activity which causes environmental pollution or irretrievable damages to environment are banned.

In the case of lack of attention to such bases and just distribution system, the fundamental human rights are faced with some risks. In the case of ignorance of the first thinking principle of distributive distribution, which means the first equality position without prejudice, from the side of the State, rule makers and executors, we would witness power abuse and unfair distribution of resources, and facilities in favor of personal and group interests and we would face with the phenomenon of richness and poverty, weak and strong in such a way that in practice most of people would be deprived of the primary rights of a healthy life. Therefore through implementation of the first principle of the distributive justice theory all of resources and facilities would be distributed equally without any superiority, point and prejudice.

Observation of the second principle of the distributive justice theory meaning the redistribution system of resources and rights until access to the fundamental rights and establishment of balance in general utilization of resources in equal, with applying of the mechanisms of positive prejudice system, the maximum desirability for all people, creating a proper ground for utilization of resources according to the merits and competencies with respecting the first principle, is the necessary condition of protection of the fundamental human rights. In the case of ignorance of the mentioned principle by the State and people the fundamental rights of people would be at risk and happiness and fortunate of people may be change to misfortune.

The right to healthy environment, as one of fundamental rights of human which is bound with other human rights and inseparable, would be at risk in the case of lack of respect to the principles of distributive justice. Because exceeding enjoyment of natural resources by special group leads to disadvantage of the majority of people from the natural gifts, health right, food, welfare, and healthy weather and ground and the powerful classes abuse and destroy the natural resources for their benefits.

1.11.6 Analysis of the Elements of Distributive Justice Theory in Connection with Fundamental Rights and Environment

The bases of distributive justice within the executorial process need applied elements and indices; else it would be remain theoretically. Resorting to the desirable ruling principles and peaceful collective community, the major executorial elements of the distributive justice theory were mentioned. Now under these elements the use and effect of the distributive justice on protection from human rights and the right to health environment and prevention from risks to the fundamental human rights are being discussed.

1.12 Value Elements

Observance of human dignity and protection of human holiness are feasible with guarantee of his fundamental rights, else the person deprived from his claims and human needs become exploited and his life faces danger. Therefore with observance of human dignity, human being can enjoy the fundamental rights in proportion with divine values and nobody can exploit him. Because the natural blessings are bestowed in line with human sublimity and they should be used in logical manners and in line with his natural and intrinsic needs, lack of respect of justice and fairness in utilization of environment will lead to waste of fundamental rights of human being and disadvantage of people from the natural blessings which in turn intervene with human dignity.

In utilization of fundamental and environment rights and within the distributive justice system of environmental resources and fundamental rights, in the case of ignorance of value equality, most of people face with serious risks of poverty, disadvantage from rights and facilities in such a way that natural resources and wealth go under the control of a limited number of people who abuse their unlimited power to exploit people. The environmental risks induced by excess use of the people in minority increase severely which may lead to spoil of the natural blessings. Land-seizure in the northern part of Iran can be mentioned as obvious examples of lack of attention to the value equality by some people who deprive other from the divine blessings.

Under the law and obligations a society can reach organization and social order and adherence to law is the best social foundation for protection of the fundamental rights. Reaching this goal need enactment of law in proportion with natural needs of human being to arrange preventive and compensatory methods against any kind of violation of peoples' right and help to distribute resources according to merits and competencies. Lack of

respecting the legal obligations definitely will cause risks to the human rights. Therefore in the absence of compensatory strategies, human life and his personal, social position may face with serious damage. Protection of healthy environment is bound with legal obligations.

Presence of people in the process of legislation and general management of country, and their direct and indirect supervision on general affairs of country has substantial role in just distribution of resources and facilities. Willful and one-sided decision making of governors in regard of distribution of rights cannot be so assuring and there is fear of power abuse and individual and group utilization, but participation of people in the process of decision making of distribution of resources and their supervision on the method of distribution is the most effective mechanism of guarantee of human fundamental rights and protection of health environment.

1.13 Procedural Elements

Behavior and procedure of the State and public service providers has direct relation with observance of the human rights. If the State makes partial, unjust decisions, the resources, nature and environmental blessings become abused by special people and other people deprived from their rights, and if the State is not responsive for his actions and granted duties, different risks and difficulties will be induced for human rights, especially in the case of personal and deliberate decision making of some authorities without observance of legal conditions and in their own favor.

Lack of enough instruction and informing people about their fundamental rights and protection of healthy environment and lack of clarification of all of decisions made about income, wealth, and rights distribution system provide a proper ground for disturbing of individual rights and destruction of environment. Unequal distribution of wealth and facilities has led to the destruction of thousand hectares of forests which are among national assets. Burning of more than 1000 hectares of oak forests in Ilam province and Zagros Mountains is an obvious example of unjust distribution of facilities, because in Ilam province there was not even one helicopter to extinguish fire and it continued for four days and finally the native people extinguished it with bare hands.

1.14 Structural Elements

Lack of control and supervision on conduction of rulers for management of general affairs, has a substantial effect on the unjust distribution of rights and resources. Existence of controlling and supervisory organizational and public institutions makes the public officers and authorities to observe rules, being responsive, and have just distribution of resources. In this regard, existence of civil institutions such as parties, non-State organizations, guilds, associations, independent and free media can persuade rulers to just distribution of resources and observance of legal obligations.

Many cases of waste of rights of people are caused by lack of supervisory institutions or failure in correct method of supervision, lack of activity of public institutions in controlling the measurements taken by the State institutions. Therefore for prevention and suppression of crimes especially that of environmental crimes, all of social capacity should be used. The non-State organizations can play a positive role in this regard and in relation with the green crimes they can prevent from the green crimes and protect environment through making the public thought sensitive against these crimes and also by informing them about such matters.

Fulfillment of the excellent environmental aims can be difficult without considering the role of non-State organizations in different levels of formation, supervision and execution of environmental norms (Ramezani Gh, 2011). One of major reasons of dryness of Lake Urmia, burning of thousand hectares of forests, pollution of seas is lack of non-State organizations and lack of knowledge of people about the primary rights.

Legal execution guarantees, system of compensation, activity of independent, impartial judicial system can guarantee the just distribution of resources and rights system resorting to the just proceeding principles. In the case of absence of judicial control, the offenders of human rights and environment continue their illegal and profit-seeking measurements, but if the judicial controlling system executes the fundamental rights observing the just proceeding system of crimes, the ignored rights would be compensated and future violations prevented.

Protection of the fundamental rights and execution of just distribution of resources and rights are dependent totally on expert authorities and institutions which have acquired the seats according to their merits and knowledge and are competent for protection of the fundamental rights.

2. Conclusion

Protection of the fundamental rights is dependent upon the kind and function of a just political and legal system. The simple recognition of human rights within legal rights is not enough for protection of rights, but procedural, structural and applied guarantees should be considered in society, which in this line the distributive justice theory

can protect the fundamental rights during establishment and execution levels as an effective strategy and decrease the risks toward them.

The major damages to the human rights and environment have been occurred as the result of unjust distribution of resources, facilities, wealth and power. Therefore, implementation of theoretical bases of the distribution justice including the principle of equal distribution during development of rules and determination of limits of rights, merits, and protection of rights in the execution level resorting to the value, procedural and structural elements of the distributive justice theory, and granting rights according to the merits, creativity and efforts, is a practical guarantee in protection from the human fundamental rights and a preventive policy for decrease of risks toward human rights and a desirable strategy for protection of the right to environment. A short review of the most cases of violation of human rights and environmental damages show that unjust behavior and approach of actors of resource, facilities distribution and lack of just procedure of resources and rights distribution system have caused by ignorance of the equal principle, and lack of attention to the merits and competencies, and desirable ruling principles especially removing the active participation and supervision role of people in management of general affairs, violation of rules, lack of expertise management, lack of responsive and clear behavior of authorities and attention to the just judicial hearing have paved the way of posing risks to the fundamental human rights.

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