

Evaluation Of Islamic Human Rights In Accordance with Modern International Law

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Abstract

Since 1945 To Date, The United Nations Expanded new international law Structures in cooperation with the majority of the world's nations, which were mainly based on a Western hermeneutic of rights. Whereas this issue could not satisfy the Muslim nations. Cultural differences and ideological concepts soon led Muslim scholars to seek solutions to create a new order. When solutioning these discussions on Islam and Western human rights discussion into a typology they can provide insights where adaptability and non-compatibility lies, and where possible reinterpretation is needed. The purpose of this article is to explain the concept of human dignity and examples of Human rights from the point of view of Islam, to explain its relationship in the Islamic legal system with inherent dignity and human acquisition pay. The concept of human rights is a modern concept and the like Other modern concepts have entered Islamic literature. Topics raised This field has formed a special conceptual discourse from which to the discourse of Human law is interpreted as Islamic.

Keywords: Islam, Human rights, Human dignity, Discourse, Cairo Declaration

Introduction

Human rights are a new concept in Islamic thought. It is clear that this is the case in the religious texts of Islam. No discussion has been opened, but in different chapters of the Qur'an and Sunnah it can be seen and the jurists have explained their meaning on this basis. Human rights, which is a modern concept, has entered Islamic literature like other modern concepts. Discussions about human rights discourse have formed a special concept from which to discourse Islamic human rights are interpreted. In the discussion of Islamic human rights, due to the citation and reference to Islamic law, witness a different representation of We are phenomena and issues related to these rights. The evolution of human rights is indeed indebted to the great religions. It is God who has historically had the greatest emphasis on equal human rights. There is no doubt now that religion has profound effects on the fulfillment of human rights and can even have pure foundations and roots. Searched for human rights in religions. The Islamic human rights system due to the establishment of laws and legal regulations on human nature and based on the rule of adherence to beliefs and principles. The acceptance of other religions as well as the observance of the basic principle of justice make human rights universal. In Islamic jurisprudence, religion and sharia are intertwined and this legal system is based on a spiritual basis.^۱

The purpose of this article is to explain the concept of human dignity and examples of human rights from a perspective Islam should explain the relationship between the mentioned rights in the Islamic legal system with inherent and acquired human dignity. This article raises the question of how the discourse of human rights in Islamic thought can be explained, and relies on It is based on the descriptive-explanatory method that in Islamic thought, the discourse of human rights is based on the principle Human dignity can be explained, and accordingly, the observance of human rights is obligatory and its violation violates human dignity and is therefore forbidden. Undoubtedly, such a goal is achieved by referring to texts and teachings Islam on the one hand and referring to the views of Muslim researchers on the other hand is possible.

Concepts: Human Rights Route

The Universal Declaration of Human Rights, which was adopted by the UN General Assembly on 10 December 1948, was the result of the experience of the Second World War. With the end of that war, and the creation of the United Nations, the international community vowed to never again allow atrocities like those of that conflict to happen again. World leaders decided to complement the UN Charter with a road map to guarantee the rights of every individual everywhere. The document they considered, and which would later become the Universal Declaration of Human Rights, was taken up at the first session of the General Assembly in 1946. The Assembly reviewed this draft Declaration on Fundamental Human Rights and Freedoms and transmitted it to the Economic and Social Council "for reference to the Commission on Human Rights for consideration in its preparation of an international bill of rights." The Commission, at its first session early in 1947, authorized its members to formulate

^۱Keshtkar, Mohsen (2013), "A Natural Study of the Right to Life in the International Human Rights System and the Human Rights System". Master Thesis, Faculty of Law, Qom University.

what it termed "a preliminary draft International Bill of Human Rights". Later the work was taken over by a formal drafting committee, consisting of members of the Commission from eight States, selected with due regard for geographical distribution.^۷

The final draft by Cassin was handed to the Commission on Human Rights, which was being held in Geneva. The draft declaration sent out to all UN member States for comments became known as the Geneva draft. The first draft of the Declaration was proposed in September 1948 with over 50 Member States participating in the final drafting. By its resolution of 10 December 1948, the General Assembly, meeting in Paris, adopted the Universal Declaration of Human Rights with eight nations abstaining from the vote but none dissenting.

Human rights are moral principles for certain standards of human behavior and are regularly protected in municipal and international law. They are commonly understood as inalienable, fundamental rights "to which a person is inherently entitled simply because she or he is a human being" and which are "inherent in all human beings, regardless of their age, ethnic origin, location, language, religion, ethnicity, or any other status. They are applicable everywhere and at every time in the sense of being universal, and they are egalitarian in the sense of being the same for everyone. They are regarded as requiring empathy and the rule of law and imposing an obligation on persons to respect the human rights of others, and it is generally considered that they should not be taken away except as a result of due process based on specific circumstances.

doctrine of human rights has highly impressive within international law and global and local institutions. Actions by states and non-governmental organizations form a basis of public policy worldwide. Theory of human rights suggests that "if the public discourse of peacetime global society can be said to have a common moral language, it is that of human rights". The strong claims made by the doctrine of human rights continue to provoke considerable skepticism and debates about the content, nature and justifications of human rights to this day.^۸ The precise meaning of the term right is controversial and is the subject of continued philosophical debate; while there is consensus that human rights encompasses a wide variety of rights such as the right to a fair trial, protection against enslavement, prohibition of genocide, free speech or a right to education, there is disagreement about which of these particular rights should be included within the general framework of human rights; some researchers suggest that human rights should be a minimum requirement to avoid the worst-case abuses, while others see it as a higher standard. It has also been argued that human rights are "God-given", although this notion has been criticized.

Islamic Legal System and Human Dignity

As noted, in the Islamic legal system, human rights are based on the concept of human dignity; Therefore, understanding its view of human rights requires understanding the concept of human

^۷Daly, Erin, *Dignity Rights, Courts, Constitutions, and the Worth of the Human Person*, Philadelphia: University of Pennsylvania Press, 2012.

^۸Koskenniemi, Martti, *The Preamble of the Universal Declaration of Human Rights*, as a part of the book Eide, Absjorn and Alfredson, Gudmundur, *The Universal Declaration of Human Rights: A Common Standard of Achievement*, the Hague: Martinus Nijhoff Publishers, 1999.

dignity from the perspective of Islam. Thus, dignity has two directions: current or acquired, which is realized on education and self-improvement. It is far from perfect; And the essence that governs the structure of human oncologists, which has an existential status and value Shows Human.

In the Islamic system, human rights or the rights of the nation are obligatorily divine-human and there is a religious need that recognizes these rights in the framework of inherent dignity and considers monotheism and piety as the guarantor of its better and better performance on the complete results.

Human Rights from Islamic View

Islam knew more about the values of Human Rights that had only been known in the West for 1400 centuries ago. Even though it is not a 'declaration' or formal affirmation that Islam recognizes Human Rights, the values contained in Islamic teachings clearly reflect that Islam is pro with Human Rights. It should be noted that the prophet Muhammad had previously mentioned the article on human rights in the Wada Hajj. This is summarized in a hadith "From Abu Umamah, the Prophet said: 'Whoever seizes the rights of a Muslim, then he has the right to go to hell and unlawful to enter heaven', A man asks: 'Even though it is something small, Apostle?' He replied: 'Even though it is only a piece of arak wood". In Islam, the essence of human being is the same, what makes it different is on the level of piety. Human Rights in Islam are clearly stated in the interests of humanity, through Islamic sharia which is revealed through revelation.^۴ Muhammad Ahmad has given the understanding that Human Rights are inherited in human nature and fundamental as a mandate and present of GOD which shall be protected and respected by every individual, society, or country.^۵ Even researchers emphasized that Human Rights in the perception of Islam had provided a form of protection, security, and anticipation of various basic Human Rights owned by every human being. The protection is presented in the form of anticipation of various things that will threaten the existence of the soul, the existence of honor and descent, the existence of material possessions, the existence of mind, and the existence of religion. The Islamic Human Rights system contains basic principles of equality, freedom and respect for fellow human beings. Equality means that Islam views all humans as equal and have the same position, have the same justice (proportional), the only advantage enjoyed by a human being on other humans is only determined by the level of piety.

Sources of Islamic law

Islamic law, contrary to the laws of the subject, does not originate only from the intellect and conscience of man, the source of Islamic law, the God of the world. Fortunately, he is the one who is properly aware of the interests and corruptions of affairs and relations and the continuity of affairs, and the time of legislation is the well-being of society. Takes into account, not personal or group

^۴Tore Lindholm, Article one of the UDHR, part of the Book Absjorn Eide and Gudmundur Alfredson, The Universal Declaration of Human Rights: A Common Standard of Achievement, Martinus Nijhoff Publishers, 1999.

^۵Beck, Ulrich, What Is Globalization?, Massachusetts: Black well Publishing, 2000.

interests and unwarranted partisanship; Therefore, the legislative authority is unique to him.^۱ To receive "God's rule" and divine laws There are four competent authorities and these four authorities are as follows:

1-Quran

The first basic source of legislation in Islam is the Qur'an, of which about five hundred verses (known as the verses of the rules) are relevant. It is in accordance with the rules and practical rules. This book has been known as the greatest legal source since the time of the Holy Prophet (PBUH) Muslims always refer to it to know the teachings of deception and to obtain the laws of life. This is the belief of all Muslims That the Qur'an is the strong rope of God, whoever acts according to it, is blessed, whoever judges according to it, judges and Whoever calls people to it has called to the right path.

2-Tradition

The laws of human life are more than enough to end with just five hundred verses; Therefore, it is necessary to explain in detail each of the rules We are another helper, which is the "tradition". The Qur'an is a constitution that deals more with general and fundamental issues; It is the Prophet and his infallible successors who must detail according to the necessities and circumstances of the time.

And express the place and enrich and enrich the society in terms of the laws of life.

3. Consensus

The third source of legislation in Islam is "consensus". Consensus means that all Islamic scholars agree on a religious ruling Have an opinion and a unity of opinion. Of course, it is necessary to point out that the Shiites consider consensus as an independent principle before the book and does not know the Sunnah, like what the Sunnis believe; Rather, the Shiites believe that this consensus indicates an "innocent vote" and for this reason, it is known as the third source of legislation.

4-wisdom

The fourth source of legislation in Islam is known as "reason". On how the intellect is the source for the laws of Islam and the extent to what extent is it involved in law-making? There is a sharp difference between Shiite and Sunni scholars, and in this short article, the opportunity Do not deal with it.

^۱Alston, Philip & Goodman, Ryan, International Human Rights, Oxford: Oxford University Press, 2012.

Cairo Declaration^۷

Following the pervasiveness of the human rights discourse and the ratification of various human rights instruments, conference members an Islamic group consisting of representatives of the governments of the Islamic country also drafted a declaration called "Islamic Declaration Human Rights" presented in a 32-article text presented to the Tehran Conference in 1989.^۸ This text in the 19th Summit of the Foreign Ministers was discussed at the Cairo Conference on 5 August 1990 and finally approve in 25 Article and an introduction by the members of the conference Islamic arrived.

the U.N. General Assembly had decided to use this momentum to build a global consensus on basic freedoms at the World Conference on Human Rights, which took place in Vienna in 1993. However, the international debate on human rights began to shift as the Cold War drew to a close. The cleavage between the West's civil and political rights and the Soviet bloc's economic rights evolved into a dichotomy between traditional Western liberalism and the Global South's demands for a voice in the emerging world order.

The decision to convene the World Conference intensified the Global South's deliberations on human rights. In 1990, the OIC adopted the Cairo Declaration; in 1992, members of the Non-Aligned Movement formulated the Jakarta Message; and in 1993, Asian states and NGOs issued the Bangkok Declaration. All these statements, while affirming the universality of human rights, elevated non-interference, economic rights, and respect for cultural differences. They asked for a balanced view between rights and duties, individual and community rights, and between a desire for progress and respect for traditional values.

In addition to the above, the Cairo Declaration^۹ was a product of the rise of an Islamist perspective. In 1948, Muslim states' representatives were active in the preparation of the UDHR and other international covenants such as the ICCPR and ICESCR. With the conspicuous abstention of Saudi Arabia, Muslim states joined the UDHR and many also ratified the covenants, albeit frequently with Sharia-based reservations. Yet in the 1960s and '70s, the tides changed. The politicization of human rights during the Cold War, the failure of international law to deliver on Muslim-priority issues such as Palestine and Kashmir, as well as both U.S. and Soviet support for various authoritarian regimes and interventions in Islamic nations, often in the name of "human rights," fueled the Muslim world's disillusionment with the global discourse on universal freedoms.

This disillusionment was an important contributing factor that allowed political and revolutionary Islam to dominate Muslim perspectives on human rights. Intellectuals, such as Pakistani Abul A'la Maududi (1903–79) and Egyptian Sayyid Qutb (1906–66), urged Muslims to choose Islam over capitalism and socialism as a comprehensive framework of governance to address society's economic, political, and social ills. Scholars formulated a framework for human rights based on Quranic teachings of social justice, the inherent dignity of man as God's vicegerent, and the idea that all are

^۷ Cairo Declaration on Human Rights in Islam (1990), Organization of Islamic Conference

^۸ Spohr, Maximilian, United Nations Human Rights Council, Between Institution- Building Phase and Review of Status, In Max Planck Yearbook of United Nations Law, Editors Armin von Bogdandy, Rüdiger Wolfrum, Netherlands, Leiden: Martinus Nijhoff Publishers, 2010.

^۹ Haas, Michael, International Human Rights: A comprehensive Introduction New York: Routledge, 2008.

equal under God. Although rarely at the political helm, Islamists' ideas dominated Muslim intellectual currents in the 1980s and '90s. The Iranian revolution, the Soviet Union's withdrawal from Afghanistan, and the Soviet bloc's subsequent collapse all served to further popularize the Islamist vision.

Iran played a crucial role in preparing and promoting the Cairo Declaration. The Islamic Republic was the most ideologically driven Muslim country and championed its post-revolutionary political system as ideal for other OIC states. Iran sought to assert its political leadership of the "ummah," or global Muslim community, and did so by confronting Western states. Human rights were a core component of the Islamic Republic's ideological campaign and in 1984 the country challenged the UDHR. Within the U.N., Iran's representative called the document a collection of secularized ideals informed by Judeo-Christian traditions incompatible with Sharia. Reintegrated into the OIC after being marginalized during the Iran-Iraq war, the Islamic Republic used the organization to assert its leadership on wedge issues between the Muslim world and the West. Globalization is inspired by the theme of civilizing mission by the name of universalism and human right. The domination of economic and politic from the process of development is focused on west that Eurocentric, linear in style to the global unity. If seen clearly, those things are the denial of the existence of human which are colorful and dynamic. The defensive act toward United Nations in Universal Declaration on Human Rights which is campaigned by West countries in the frame of homogenous globalization, in fact is not only come from the countries of OIC member but also come from Cina, Rusia and some Africa countries. Developing countries in Asia and Africa are worries about globalization expansion. They had seen this thing as the new imperialism which do its homogenous in the sector of economic and culture. Not all places with globalization or modern West thought can be dominant. Recently, the discourse of human right is more reflecting the concept of universalism which is involving the intrinsic appreciation toward plurality and variety in the world in which is based on dynamic equity. Researches of international contemporary law had given a space for law scientist to do a law comparison which is slowly but sure started to understand the fundamental relation between halon minilab and halon manzanas.¹ International law can also be analyzing through new approaches. One of the law experts who develop new approaches to international law in is David Kennedy, a Global Law and Policy at Harvard Law School. Today, approaching the world anew demands more. If we step back for a moment, we could say that international law promises to play a series of quite distinct functions in international society. Many look to international law for the expression of universal values, most commonly in human rights canon. But we know now that people disagree about the most fundamental things, that values are not universal, and that even human rights can often be part of the problem as the solution.^[10] One of the new approaches in the international law is digging and analyzing back the history that become the background of the implementation of international law regulation of human right. The history mentioned here, is the holistic history about how the politic, economy, culture influence that law. Involving history in the process of implementing a law is not a new thing in Islam. However, the phenomenon today, shows that passion or spirit to study the history of sharia Islam drop drastically. Even if there is any passion for it, the analyzing conducted partially, not holistically, only to be social justification toward individual assumption of certain group assumption.

¹Keane, John, Global civil Society? Cambridge: cambridge University, 2003.

From this condition, there is a complex *prima facie* motive to investigate other law systems included Islamic law. The existence of Cairo Declaration on Human Rights in Islam as the source of international law in human right sector until today still gets the challenge from the Western society.

The other obstacles of the implementation of Cairo Declaration on Human Rights in Islam also come from the IOC countries member is that all references to human rights in the OIC documents stipulate that these principles should be applied in accordance with the member states' constitutional and legal systems. There needs to be a way found to define these stipulations, and create "a yardstick that each individual member state can look at to measure the distance between the Islamic human rights model and its own laws and practices. Another important challenge was how to "deprive the extreme voices" in member states from claiming they represent Islam. Actually, the problem of good faith of OIC member countries to applicate the Cairo Declaration on Human Rights in Islam into their constitution and law system is not only faced by OIC. The same dilemma is also faced by international organization such as UN due to the difference between the law system and government system of the member countries. *Erga omnes* obligation from countries member of international organization with the new approaches in international law can be conducted through the concept of accountability.¹ The aims of accountability are wider than these traditionally recognized as the objectives of states and international organizations. Accountability is in essences an instrument to secure control of public power. Accountability serves a variety of complementary but sometimes also competing objectives. The aims of protection of the rule of law and compensation and satisfaction of victims there are traditionally linked with state responsibility remain potentially as aims of the broader concept of accountability. But thinking in terms of accountability may open new and broader dimensions, highlighting for instance the contribution of accountability to the protection of democratic values, both in the sense of involving citizens through democratic procedures, as well as involving them in public accountability processes.

Sharia, Sovereignty, and Human Rights

In the 1990 Cairo Declaration, the OIC laid out many of the rights articulated in the UDHR. Indeed, the organization defended the preservation of human life, the protection of one's honor, family, and property; and upheld the human right to education and medical and social care. Yet, it did not commit to individual equality and non-discrimination, especially on issues related to gender and the rights of non-Muslims.

From an international human rights perspective, the OIC stirred controversy because the Cairo Declaration claimed adherence to Sharia. In the preamble, it was stated that "fundamental rights and universal freedoms are an integral part of Islam, and that such are binding divine commandments" revealed to the Prophet Muhammad in the Quran. The centrality of Islamic law is clear from the declaration's articles. Article 22 stated that "Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah." Article 12 affirmed that "Every man shall have the right, within the framework of Shari'ah, to free movement," although,

¹Mc Luhun, Martin, understanding Media, London: Abacus, 1973.

nothing is said about every woman. Finally, Article 25 further made Islamic law supreme by declaring it the document's "only source of reference."

Such shorthand and cursory use of Sharia gave rise to important shortcomings. Firstly, the Cairo Declaration never specified what the term constituted. Given the diversity of opinions on Sharia across time and between and within "madhabs," schools of Islamic jurisprudence, it is impossible to know what rights are protected by the document. Moreover, limiting rights to a Sharia compatible framework of values would render them meaningless due to the comprehensiveness of Islamic law. For instance, Article 22, mentioned above, guarantees the right to express one's opinion freely so long as it does not contradict the principles of Sharia. Yet, because Islam is a religion known to govern all parts of a Muslim's life, this means that free speech would be limited in all spheres. Not to mention, the OIC never clarified exactly what constituted a contradiction. Furthermore, several of the Cairo Declaration's articles violated international law.¹ Article 10 designated non-Muslims to a subordinate status and prohibited conversion from Islam. In addition, the declaration did not recognize freedom of assembly and association or protect women from discrimination. Indeed, Article 12 provided the right to freedom of movement solely to men while Article 6 declared them as being the head of the household.

Conclusion

Yet, by far, the Cairo Declaration's greatest shortcoming was its empowerment of states over individuals. In the modern world, the governments of Muslim countries, especially Sunni ones, have increasingly incorporated Sharia into their domestic legal systems and subsumed it under their authority. In the absence of an international body that has the final say over Islamic law's interpretation, the 1990 declaration relegated human rights to the discretion of states. This was a deliberate choice on the part of the OIC, which sought to co-opt the language of Sharia to protect national sovereignty.

Human Rights are the global issue that have discussed by people around the world. Many countries concern about this issue and legalize it into Constitution that must be obeyed by the citizen. However, Islam from the very beginning it exists has regulated its adherents dealing with Human Rights issue, even before the issue appears in the middle of society. Islam regulates five main things that must be maintained by each individual: Respect for Religious Freedom, Respect for the Soul, the Right to Life and the Honor of the Individual, Respect for Property, Respect for Freedom of Thought, and Must Guard the Descent. Islam gave to mankind an ideal code of human rights fourteen centuries ago. These rights aim at conferring honor and dignity on mankind and eliminating exploitation, oppression and injustice.

Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered. Human rights in Islam are an integral part of the overall Islamic order and it is obligatory on all

¹Sinclair Sirin, The Vienna Convention on the Law of Treaties, Manchester University Press, second edition, 1984.

Muslim governments and organs of society to implement them in letter and in spirit within the framework of that order. It is unfortunate that human rights are being trampled upon with impunity in many countries of the world, including some Muslim countries. Such violations are a matter of serious concern and are arousing the conscience of more and more people throughout the world.

I sincerely hope that this Declaration of Human Rights will give a powerful impetus to the Muslim peoples to stand firm and defend resolutely and courageously the rights conferred on them by God. This Declaration of Human Rights is the second fundamental document proclaimed by the Islamic Council to mark the beginning of the 15th Century of the Islamic era, the first being the Universal Islamic Declaration announced at the International Conference on The Prophet Muhammad (peace and blessings be upon him) and his Message, held in London from 12 to 15 April 1980. The Universal Islamic Declaration of Human Rights is based on the Qur'an and the Sunnah and has been compiled by eminent Muslim scholars, jurists and representatives of Islamic movements and thought. May God reward them all for their efforts and guide us along the right path.

References

- ۱- Keshtkar, Mohsen (2013), "A Natural Study of the Right to Life in the International Human Rights System and the Human Rights System". Master Thesis, Faculty of Law, Qom University.
- ۲- Daly, Erin, Dignity Rights, Courts, Constitutions, and the Worth of the Human Person, Philadelphia: University of Pennsylvania Press, 2012.
- ۳- Koskeniemi, Martti, The Preamble of the Universal Declaration of Human Rights, as a part of the book Eide, Absjorn and Alfredson, Gudmundur, The Universal Declaration of Human Rights: A Common Standard of Achievement, the Hague: Martinus Nijhoff Publishers, 1999.
- ۴- Tore Lindholm, Article one of the UDHR, part of the Book Absjorn Eide and Gudmundur Alfredson, The Universal Declaration of Human Rights: A Common Standard of Achievement, Martinus Nijhoff Publishers, 1999.
- ۵- Beck, Ulrich, What Is Globalization?, Massachusetts: Black well Publishing, 2000
- ۶- Alston, Philip & Goodman, Ryan, International Human Rights, Oxford: Oxford University Press, 2012.
- ۷- Cairo Declaration on Human Rights in Islam (1990), Organization of Islamic Conference
- ۸- Spohr, Maximilian, United Nations Human Rights Council, Between Institution- Building Phase and Review of Status, In Max Planck Yearbook of United Nations Law, Editors Armin von Bogdandy, Rüdiger Wolfrum, Netherlands, Leiden: Martinus Nijhoff Publishers, 2010.
- ۹- Haas, Michael, International Human Rights: A comprehensive Introduction New York: Routledge, 2008.
- ۱۰- Keane, John, Global civil Society? Cambridge: Cambridge University, 2003.
- ۱۱- McLuhan, Marshall, Understanding Media, London: Abacus, 1973.
- ۱۲- Sinclair, Ian, The Vienna Convention on the Law of Treaties, Manchester University Press, second edition, 1984.