



Reconciliation between the Islamic Human Rights and International Law: Prospects and Complications

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Abstract

The relationship between International Human Rights and Islamic Law has been always an arguable debate at the international level. This issue can be considered by jurists in two aspects. First, from National Law perspective, especially in the countries in which the law, to some extent is affected by Islamic rules. Second, by view of International Law to see that to what extent, there would be compatibility or likely contradiction between human rights norms and Islamic Law.

Considering the historical aspect of the issue, this article is suggesting that although from the outset, International Law tried to separate religion from policy, but this historical fact would not prevent theoretical conciliation between religion and Human Rights rules. The review of the content of International Human Rights Law reveals that the rules in the systems in most part are compatible. However, in some cases the incompatibility between these two group of rules is observed. The existence of different basis under Islamic Law and International Law makes the least difference unavoidable. The constant dialogue between Islamic scholars and publicists can decrease this difference in future.

Keywords: Human Dignity; Human Rights; Individual Rights; Islamic Human Rights; International Law

Introduction

Nowadays, human rights has become a major political issue at the international scene, so that all countries around the worlds especially, Islamic one are dealing with this issue. The conflict between International Law and Islamic norms has been always a debatable issue at the political and scientific forums. So, in the western human right courts it is hold that there would be no compatibility between Islamic Law and Western Human Rights. For instance, the European Court of Human Rights in Refah

Party case reflects this position when it hold that Islamic Law is not in accord with European Convention for Human Rights.¹

The difference between Islamic rules and International Human Rights Law is rooted in the historical and philosophical backgrounds. This conflict of views reveals that some theorists believe that the universal concept of human rights is the result of western opinion which has no concern about multicultural situation in the world. This view caused the Islamic countries to hesitate over International Law norms and also during adoption of human rights instruments in the international organizations express their reservation against these norms. They sometimes prepare their own documents on human rights for adoption for the purpose of adoption of Islamic countries.²

This situation requires study on the admissibility of International Human Rights norms by Islamic countries. The first issue which should be dealt with is that in analyzing the concept of human rights, many Islamic scholars suppose that principles and basis of human rights are following the thoughts in the western countries (Ammareh, 1988, p.88). In the view of these scholars, Islamic theory on human rights is fundamentally different from the related theories raised in the West. This difference resulted in two different understanding of human rights in the Western and Islamic countries.

In the first view, this understanding seems to be correct. In this regard, the following points should be noted. First, Islamic Human Rights such as other branches in Islamic Law has a spiritual dimension which dictated by God. Second, the basis of these rights should be analyzed along with obligations which imposed on people. It is worth noting that in Islam any legislation is introduced in the direction of five interests which is the foundation for the protection of individuals and society. These interests are including: life, faith, wise, reputation and asset (Ammareh, 1988, p.89).

This general difference could make a big theoretical gap between Islamic and International Law as a matter of basis. Although it seems that this difference is a major problem that cannot be ignored but at the end, a conciliation between Islamic and International legal systems is possible.

Further, in spite of difference between bases of Islamic Human Rights and International Law system, they have no conflict in the content. The analysis of the content of regional instruments adopted in the governmental and nongovernmental international organizations reflects a harmony between them. However, there is a long way to settle formal and substance conflicts which exist between the Islamic norms and International Law.

¹ CEDH, *Affaire Refah partisi et autres c. Turquie*, 31/07/2001, available in :

[https://hudoc.echr.coe.int/eng#{"dmdocnumber":\["702044"\],"itemid":\["001-64174"\]}](https://hudoc.echr.coe.int/eng#{)

² For instance see the following instruments:

- Draft Declaration on Human Rights and Human Fundamental Responsibility in Islam, prepared by Association of Islamic World, 1979
- Universal Declaration of Islam, prepared by London Islamic Council, 12 April, 1980
- Universal Islamic Declaration on Human Rights, prepared by London Islamic Council and submitted to UNESCO in 19 September 1981
- Draft Document on Human Rights in Islam, submitted during Islamic Conference Summit in Taef in 1981
- Draft Document on Human Rights in Islam, adopted in the fifth meeting on Human Rights in Tehran in 1989
- Draft Declaration on Human Rights in Islam, prepared by Ministers of Foreign Affairs of members of Islamic Conference in Egypt in August 1990
- Draft Arabic Charter on Human Rights, adopted by members of Arab Union in 1982
- Charter of Human Rights and People in the Arabic World, adopted in December 1986
- Green Book on Human Rights in the age of Republics, adopted by Libya in 12 June 1988; For details of these documents see, MOTILLA, A (ed.), *Islam y Derechos Humanos*, Madrid, Trotta, pp. 27-52.

I. Basis of Islamic Human Rights and International Law: From Conflict to Conciliation

Analyzing the bases for unchangeable rights for human, suggest two separate direction in Islam and International Law order. While International Law which elaborated in the West has tried to keep distance from the fixed numinous norms and to codify its norms through rationality by focusing on the ability of human in creating the rules, the Islamic school conversely, is in favor of a conclusive role for God to create norms for human. At any rate, in a final analysis, this theoretical contradiction can be reached to a subjective conciliation in the interest of protection of human.

A. Contradiction between the Basis of International Law and Islamic Law

History of modern International Law reflects the separation between international and spiritual norms. The first lawmakers of International Law faced with a challenge to ignore Pope Power as a religious leader of the world. So, Vitoria, Spanish Christian publicist believed that Pope is just a spiritual leader who is not the owner of the world and his power as to the world should be denied. In this approach, the integrity of International Law as an independent system justified in the following decades.

In this regard, International publicists are unanimous in the Vitoria's opinion on the delimitation of Pope power and to separate spiritual power from secular one. This approach opened the way for the other publicists to gradually separate International Law from religion and to look it as an independent and nonreligious science (Zolein, 1383HS, p.364).

In the following years, the codification of International Law was followed by Suarez, the Vitoria compatriot. This came to full fruition because of Gentile endeavors in this regard. In the history of International Law, the idea of Albricos Gentile is the final point for the formation of International Law which deemed itself independent of any religious thought (Panizza, 2008, p.644).

The classic theoretical history of International Law affirms the significant role of Gentile in the separation of religion from International Law in the process of its formation. The following Gentile's Latin wording presents his position and the nature of legal system which is nowadays named International Law: "*Silente theologi in munere alieno.*"³

Grotius who is called the father of International Law and his idea impressed Gentile, has completed the process of separation between religion and law. He believed that the law is based on Natural Law and Voluntary Law.

The Natural law is born of nature and the will has no role in the process of its creation. Even the God will is not able to change it, because God is itself the creature of nature and whatever having unlimited power, He would not be able to create its adverse, as two plus two is inevitably equal to four.

But Voluntary law as it is called is originated from will. It is divided to two groups: law which is originated from God will and the other that is shaped from human will. Grotius says that spiritual law is the same that is written in the Holy Book and Voluntary Law is divided into three branches of Civil Law, Family Law and International Law (Zolein, 1383HS, pp.292-293).

³ "Hey the clergy, be silent and do not involve in a matter which is not your business."

In this context, International Law is different from the God will. This derives its power from consent of all or most of states. This approach is completely in contradiction with the idea that sees the rights solely from the God will.

In fact, Islam as a spiritual and divine religion suggests that God has solely right to legislate. It is believed that “God has absolute sovereignty over the universe and human”.⁴ This belief is based on this idea that “whole creation belongs to God and the great system of creation depends on Him”.⁵

In other words, in the divine Islamic system, the command is for God who justly rules and is the best ruler. In this regard, there exists a collection of Ayah (verse) in Quran which clearly demonstrates this aspect of Islam.

- There exists no ruling (sovereignty) except for God who justly rules and is the best arbiter.
- Just God has presidency over people and does not share His rein with others.
- The rule is only for God who is dignified.

Consequently, it is recognized that the God rules is the best solution for the society. It provides that:

- Is there any legislature other than God for the people who believes in God?

Passage of time and change of location has no effect on this general rule because in the Islamic beliefs, Quran is the message of God sent to people through Mohammad the prophet and it remains for people up until doomsday. It is said in Quran that “this Quran has been inspired to me to enunciate you and next generation who receive this message”.

It should be noted that according to the Islamic thoughts, Islamic rules is compatible with the human nature and elaborated in full moderation, so that they can be a guide for people forever.

Therefore, it is initially considered that there basically exists a contradiction between bases in Islamic Law and International Law. However, by taking into account of the human generosity and the position of human in these two legal systems, there is a possibility for converging of the systems.

B. From Theoretical Conflict to Subjective Concert in Support of Human as a Common Issue

The renaissance and separation of Europe from religious thoughts as a foundation for legislation resulted in the enlightenment stream to follow two intellectual rising:

- a. Attention to materialism that represents itself in the works of most recent philosophers in the West.

⁴ Quran, Yousef, 40

⁵ Quran, Nesa, 126

b. Making effort to put human in the core of legitimacy for legislation.

This declination is more specifically rooted in the expansion of humanism that has had a significant role in the formation of modern society of Europe and the origin of modern International Law. Under this school, the human has different abilities and with having knowledge and a sense of responsibility would be able to develop his/her capabilities. The humanism stressed on the position of human in the process of legislation.

The concepts such as free will, independence, tolerance of the other ideas and curiosity for independent apprehension of the world constitute the fundamental notions of this school. These self-made values were a key notion so that “human and its pertinent values are on the top of the values”.⁶

In this historical context and in relation to the concept of people and interpretation of social norms, the notion of “humanism or legal humanism” was born which was a revolution against the formalist interpreters of medieval.

While the mediaeval interpreters and annotators made their efforts to interpret the texts on the basis of the Christian divine law, “the Humanism Law” tried to return to the Roman law by looking into the human and its living condition. Although the followers were dissension on this approach and this approach could not be seen as an invariant one, but this is important because of the return to the human wisdom. This approach played a basic role in the formation of International Law.

Today, there exists no doubt that in their reasoning style, Grotius and other founders of International Law were extremely affected by “Human Nature law”. Therefore, it is said that two features of “Rationalism” and “Humanism” constitute the skeleton of International Law. These features which are the result of the attention to the human dignity are the common issue in International Law and Islamic Law. Despite the passage of International Law through the dangerous and rough rout of legal positivism, they are both having a mission to defend the human dignity.

The human dignity has a special position in Islam. In fact, among the other creatures, the human has a very distinguished characteristics so that he/she addressed as the best creature.

Quran, refers initially to the creature of human and the natural process of creation and then to the creation of earth and sky. It is evidently suggests that among the creatures this is human that has a distinctive features, so that human has been called as successor of God on the earth. Although this position has been established for the first human on the earth, Adam but this is not limited to him and includes humans afterwards.

In this regard, other Ayah can be noted in which God says: “This is God who named you as the successor on the earth.” Of course those who enjoy knowledge, belief and act such as prophets, saints and competent could reach to this position. In addition to be as the successor of God, the human has been granted greatness, honor and dignity and gave it dominance over the other creatures on the earth.

⁶ This is a definition of western humanism provided by Professor Mireille Delmas-Marty. For this look at: Mireille Delmas-Marty, *L’humanisme juridique entre Mythe et Utopie*, available in; <http://www.tout-monde.com/sites/mireille-delmas-marty---127humanisme-juridique-entre-mythe-et-utopie.pdf>

In Quran, God is talking about human dignity when it says: “we did dignify the human being.” The logical result from the introduction is that the common approach about human dignity would be resulted in the same approach for the protection of human. This matter is noticeable in the Islamic legal instruments supporting human rights.

I. Harmony in the Content of Islamic Human Rights and International Law

In this chapter while considering the content of instruments on Islamic Human Rights which have been adopted in the regional level, the eventual cases of conflicts between Islamic Human Rights and International Human Right Law have been studied.

A. Study on the Content of Islamic Human Rights Instruments in light of International Law

As it was said, for the cultural reasons, from the end of 1970s, Islamic societies have adopted for their own, different instruments relating to the Islamic Human Rights, among them the most important instrument is Declaration on the Islamic Human Rights adopted in Cairo in 1990. In its introduction, the religious basis for the human dignity has been recognized. It provides that:

“The member states of Organization of Islamic Conference believing in Allah who is God of the universe and creature of nature and blessing; God who created human as the best and gave him the honor and appointed him as his successor; believing that fundamental rights and freedoms according to Islam are an integral part of the Islamic religion and that no one shall have the right as a matter of principle to abolish them either in whole or in part or to violate or ignore them in as much as they are binding divine commands, which are contained in the Revealed Books of Allah and which were sent through the last of His Prophets to complete the preceding divine messages and that safeguarding those fundamental rights and freedoms is an act of worship whereas the neglect or violation thereof is an abominable sin, and that the safeguarding of those fundamental rights and freedom is an individual responsibility of every person and a collective responsibility of the entire Islamic society.”

In light of this introduction, the following points should be noted:

First, contrary to classic International Law that from historical point of view was established in confrontation with the church spiritual leaders, under the Islamic thought, human rights is based on Islamic teachings. The Cairo Declaration by using the first source of Islamic rules i.e. Quran, while ignoring the philosophical basis for the issue, it has tried to take into account the Islamic values and human dignity reflected in Quran (Alsabbagh, 1992, p.16).

Second, the issue of rights and responsibility has been together noted. In fact, under Islamic Law, the rights are raised along with the responsibility. This is a key point which has been considered by the signatories of the Cairo Declaration (Vasel, 1999, p.34).

Third, the issue of human rights basis has been considered in view of social justice. In fact, while the human rights has had different generations and nowadays the issue of the third generation and even fourth generation have been raised, the state members of the Declaration has made efforts to clarify

this point that the social justice as to the Human Rights is a fact that should not be disregarded, the issue that has been also regarded in Islam.⁷

On this basis, the content of the Cairo Declaration can be divided into the three sections. At the first section, the individual human rights has been noted. These rights have been explained by looking into their basis. This issue can be rarely seen in the similar human rights instruments. At the second, the relationship between human and society and also the effects of this relationship on the human rights have been regarded. Finally, the Islamic values are considered as valuables that cannot be defected. The latter part can be regarded as a confrontation with the western human rights. Under western human rights, the human has essentially accorded a value and so can disregard the religious values. However, according to Islam this is God who has given dignity to human and he naturally would not be able to ignore the creature and values of the religion (Altamsamani, 2012, p.12).

1. Individual Rights and Human Dignity under the Cairo Declaration

Under Article 1 of the Declaration the issue of close relationship between members of society has been noted. It is said that all humans belong to same family whose members are united by their subordination to God and descent from Adam; “all men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, color, language, belief, sex, religion, political affiliation, social status or other considerations; The true religion is the guarantee for enhancing such dignity along the path to human integrity; all human beings are God’s subjects, and the most loved by Him are those who are most beneficial to His subjects, and no one has superiority over another except on the basis of piety and good deeds.”

However, under Article 2, basis of human life is also regarded as a spiritual one when it provides that “[L]ife is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to safeguard this right against any violation, and it is prohibited to take away life except for a shari’a (...) prescribed reason.”

Accordingly, although a punishment such as life sentence is allowed under Islamic rules, but basis for this sentence has been thoroughly explained and its application is limited. Further, Article 2 provides that:

- “(b) It is forbidden to resort to any means which could result in the genocidal annihilation of mankind.
- (c) The preservation of human life throughout the term of time willed by Allah is a duty prescribed by Shari’a.
- (d) Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari’a-prescribed reason.”

⁷ For more study on the basis of social justice in Islam and its relationship with the human see: Souad El Gazouani, *Le concept de justice sociale dans l’Islam*, SN, 1985; Dina, Abdelkader, *Social Justice in Islam*, International Institute of Islamic Thought, 2000.

The same rule is applied during an armed conflict. Under Article 3 of the Declaration:

“(a) In the event of the use of force and in case of armed conflict, it is not permissible to kill non-belligerents such as old men, women and children. The wounded and the sick shall have the right to medical treatment; and prisoners of war shall have the right to be fed, sheltered and clothed. It is prohibited to mutilate or dismember dead bodies. It is required to exchange prisoners of war and to arrange visits or reunions of families separated by circumstances of war. (b) It is prohibited to cut down trees, to destroy crops or livestock, to destroy the enemy’s civilian buildings and installations by shelling, blasting or any other means.”

Under Islamic rules respect for human dignity would be continued even after his/her death. Article 4 of the Declaration sets out that: “[E]very human being is entitled to human sanctity and the protection of one’s good name and honor during one’s life and after one’s death. The state and the society shall protect one’s body and burial place from desecration.”

As regard to individual rights the issue of freedom for marriage has been specially noted. Under Article 5 the family has been regarded as a foundation of society and in the meantime, the freedom of women as to the marriage has been emphasized. This Article provides that:

“(a) The family is the foundation of society, and marriage is the basis of making a family. Men and women have the right to marriage, and no restrictions stemming from race, color or nationality shall prevent them from exercising this right;

(b) The society and the State shall remove all obstacles to marriage and facilitate it, and shall protect the family and safeguard its welfare.”

The important issue of equality between men and women and the child rights have been dealt with respectively under articles 6 and 7.

Article 6 provides that: “(a) Woman is equal to man in human dignity, and has her own rights to enjoy as well as duties to perform, and has her own civil entity and financial independence, and the right to retain her name and lineage. (b) The husband is responsible for the maintenance and welfare of the family.”

Article 7 sets out that: “(a) As of the moment of birth, every child has rights due from the parents, the society and the state to be accorded proper nursing, education and material, hygienic and moral care. Both the fetus and the mother must be safeguarded and accorded special care. (b) Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of the Shari’a. (c) Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with the tenets of the shari’a.”

The issue of prerogative and the need for education have been provided under articles 8 and 9 as follows:

Article 8: “Every human being has the right to enjoy a legitimate eligibility with all its prerogatives and obligations in case such eligibility is lost or impaired, the person shall have the right to be represented by his/her guardian.”

Article 9: “(a) The seeking of knowledge is an obligation and provision of education is the duty of the society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee its diversity in the interest of the society so as to enable man to be acquainted with the religion of Islam and uncover the secrets of the Universe for the benefit of mankind. (b) Every human being has a right to receive both religious and worldly education from the various institutions of teaching, education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner that would develop human personality, strengthen man’s faith in Allah and promote man’s respect to and defense of both rights and obligations.”

As to the other issues, we read as follows:

Article 10: “Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism.”

Article 11: “(a) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to Allah the Almighty. (b) Colonialism of all types being one of the most evil forms of enslavement in Islam. Peoples suffering from colonialism have the full right to freedom and self-determination. It is the duty of all States to support the struggle of colonized peoples for the liquidation of all forms of and occupation, and all States and peoples have the right to preserve their independent identity and control over their wealth and natural resources.”

Article 12: “Every man shall have the right, within the framework of the Shari’a, to free movement and to select his place of residence whether within or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall be obliged to provide protection to the asylum-seeker until his safety has been attained, unless asylum is motivated by committing an act regarded by the Shari’a as a crime.”

2. *Social Rights under the Cairo Declaration*

Article 13 of the Declaration is clearly dealing with one of the social aspects of the rights of people. “Work for all people who are able to do is a right which should be guaranteed by the government and society. Any human must be free to choose the competent job for the interest of himself/herself interest or for the interest of society. Any labor has a right to enjoy safety, health and other social securities. They must not be enforced to do a job which is not in their ability or to exploit them or harm them. Notwithstanding of their sex, labors have a right to equitably and promptly be paid for the work. They have right to vacation, allowance and promotions. In the meantime labors must be honest in their job and if they were involved in a dispute with their employer, the government would be under a duty to make its effort to impartially find a solution for the dispute to restore justice.”

Article 14: “Everyone shall have the right to earn a legitimate living without monopolization, deceit or causing harm to oneself or to others. Usury (riba) is explicitly prohibited.”

Article 15: “(a) Everyone shall have the right to own property acquired in a legitimate way, and shall be entitled to the rights of ownership without prejudice to oneself, others or the society in general. Expropriation is not permissible except for requirements of public interest and upon payment of

prompt and fair compensation. (b) Confiscation and seizure of property is prohibited except for a necessity dictated by law.”

Article 16: “Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical labor of which he is the author; and he shall have the right to the protection of his moral and material interests stemming therefrom, provided it is not contrary to the principles of the Shari’a.”

Article 17: “(a) Everyone shall have the right to live in a clean environment, away from vice and moral corruption, that would favor a healthy ethical development of his person and it is incumbent upon the State and society in general to afford that right. (b) Everyone shall have the right to medical and social care, and to all public amenities provided by society and the State within the limits of their available resources. (c) The States shall ensure the right of the individual to a decent living that may enable him to meet his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs.”

Article 18: “(a) Everyone shall have the right to live in security for himself, his religion, his dependents, his honor and his property. (b) Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference. (c) A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.”

Article 19: “(a) All individuals are equal before the law, without distinction between the ruler and the ruled. (b) The right to resort to justice is guaranteed to everyone. (c) Liability is in essence personal. (d) There shall be no crime or punishment except as provided for in the Shari’a. (e) A defendant is innocent until his guilt is proven in a fast trial in which he shall be given all the guarantees of defense.”

Article 20: “It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of maltreatment, cruelty or indignity. Nor is it permitted to subject an individual to medical or scientific experiments without his consent or at the risk of his health or of his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.”

Article 21: “Taking hostages under any form or for any purpose is expressly forbidden.”

Article 22: “(a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari’a. 1.. Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari’a. (c) Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical Values or disintegrate, corrupt or harm society or weaken its faith. (d) It is not permitted to excite nationalistic or doctrinal hatred or to do anything that may be an incitement to any form or racial discrimination.”

3. *Public Rights under the Cairo Declaration*

From article 23 of the Cairo Declaration onwards the issue of Public Rights has been raised. This part of the Declaration has been covered under the title of “Vilayat” or Authority. The Authority is a trust that in which abuse or malicious exploitation thereof is prohibited. Fundamental rights are guaranteed through the Authority. Furthermore, “Everyone shall have the right to participate, directly or indirectly in the administration of his country’s public affairs. He shall also have the right to assume public office in accordance with the provisions of Shari’a.” (article 23)

As it is seen, all rights and freedoms in this instrument is subject to Islamic Rules and these Rules is therefore, the only source for interpretation of the Declaration.

It seems that many issues raised in the Declaration is in harmony with Universal Declaration of Human Rights and other related conventions. However, there are still cases of contradiction between Islamic Law and International Law which are supposed to be solved.

B. Material Conflicts between Islamic Human Rights and International Law

As it was said, the common approach on the human dignity which historically has been existed in Islam and European Humanism incurred many common issues in these two important normative system that most of them can be seen in the Cairo Declaration. However, The conflict between International Human Rights and Islamic law can be seen in three parts:

1. The special regime for private Law especially regarding rights of women and child.
2. The rights relating to private life that bears a basic difference in scope and concept under European-western law and Islamic-Arabic law.
3. The system of judicial punishments under the Islamic Rules has caused some conflict between regional and universal norms of human rights from one side and the classic Islamic rules from other side. These conflicts specifically in some kind of punishments for crimes such as *Zina* (extra conjugal sexual relationship), *Lavath* (sodomy) and *Efsad-e Felarz* (corruption at Universe) have a different manifestation.

The function and approach of Islamic states are different in these fields. In the field of Private law, most Islamic Arabic countries have made efforts to reduce the conflicts. Tunisia, for example has eliminated the concept of unilateral divorce and also bigamy from its Family Law in 1956, the year of its independent from France. Further, the obligation of obedience of women from men was completely suppressed in 1993.

In the following years this moderation appeared in Algeria and Morocco which their legal system were more conservative than Tunisia. The 2004 Moroccan Family Law and also the 2005 Algerian Family Law initiated a great change in the family style. In these legal systems the law on obligation of obedience of women from men were deleted. Furthermore, the sex equality in the challengeable issue of transfer of nationality from mother to child was fixed. In fact, in Tunisia from 2001, Egypt from 2004 and

Morocco from 2007, mothers are able to transfer their nationality to children that their fathers have different nationality.⁸

Despite all the efforts to fill the gap between Islamic Human Rights and International Human Rights there are still significant difficulties relating to second and third parts above. Under the second part existence of cultural obstacles and in the third part Sovereign barriers are the most important constraint to reach a reconciliation.

Generally speaking, as it was seen in the Islamic Declaration on Human Rights, there is an effort to consider any rule relating to human rights by referring to the basis of the rules. This has been especially noted regarding Public Law and social participation of individuals. Although, the democracy as a value has not been existed in the classic Islamic rules, but the manner of reasoning in the Declaration reflects that there should be no consistency between them. In fact, the arbitrary decision of the governments and disregarding of human rights, i.e., the individual and social rights which have been established for any human being, is in contrary to Islam.

Conclusion

It is concluded that:

The normative system in Islam and International Law are different from historical and origin of formation perspective. While the Islamic normative system based on divine rules, the international law system by ignoring the religious basis for the rules, has only admitted the bases on the material data of human.

Despite difference in the basis, the existence some common factors in analysis resulted in the closeness of these systems.

The review of the content of specific human rights instruments reflects the conceptual similarity under Islamic and International Human Rights.

However, the existence of comparative and sometimes, absolute conflicts in some fields of both system cannot be ignored. The conflicts appears to be in the field of Private Law, demarcation between private and public life and also in the criminal punishment system.

The approach of Islamic countries during two past decades reflects a kind of reconciliation in the field of Private Law. However, the political tension and difficulties in the mutual cultural understanding in particular in the recent decades caused the increase of confrontation between these two systems on the human rights.

⁸ For the changes occurred in Private Law relating to women rights in the Islamic countries during past decades see: Ruiz Almodovar, *El Derecho privado en los países árabes. Códigos de Estatuto personal*, Granada, EUG/Fundación Euroárabe, 2005.

References

A. Books & Articles

Almokhtar Mohammad Altamsamani, Punishment of Apostasy, One of the Constant Pillars of Islam: A Critical View on Secular Discourse (in Arabic), Second Edition, Nasheroun Publication, Beirut, Lebanon, 2012.

CEDH, *Affaire Refah partisi et autres c. Turquie*, 31/07/2001, available in : [https://hudoc.echr.coe.int/eng#{"dmdocnumber":\["702044"\],"itemid":\["001-64174"\]}](https://hudoc.echr.coe.int/eng#{).

Dina, Abdelkader, *Social Justice in Islam*, International Institute of Islamic Thought, 2000.

Diego Panizza, *Politica e Religione nell'opera di Alberico Gentili*, in: *Alberico Gentili nel quattrocentenario della morte*, Giuffr , 2008.

Giovanni Minnucci, *Alberico Gentili tra diritto, teologia e religione*, Monduzzi, 2016.

Mohammad Ammareh, *The War of Terms between West and Islam* (in Arabic), Nehzatol Mesr Publication, 1988.

Mohammad Bin Lotfi Alsabbagh, *The Human Being In Quran* (in Arabic), Almaktab Aleslami, Cairo, 1992.

Mireille Delmas-Marty, *L'humanisme juridique entre Mythe et Utopie*, available in; <http://www.tout-monde.com/sites/mireille-delmas-marty--127humanisme-juridique-entre-mythe-et-utopie.pdf>.

Motilla, A (ed.), *Islam y Derechos Humanos*, Madrid, Trotta, pp. 27-52.

Nasr Farid Mohammad Vassel, *The Moral of Humanitarian Relationship in Islam: Rights and Obligations* (in Arabic), Altawfiqiah Publishing, Cairo, 1999.

Parviz Zolein, *The Basis of Public International Law*, Office of International and Political Studies, Tehran, 1382 H.S.

Ruiz Almodovar, *El Derecho privado en los pa ses  rabes. C digos de Estatuto personal*, Granada, EUG/Fundaci n Euro rabe, 2005.

Ruiz Almodovar, *El Derecho privado en los pa ses  rabes. C digos de Estatuto personal*, Granada, EUG/Fundaci n Euro rabe, 2005.

Souad El Gazouani, *Le concept de justice sociale dans l'Islam*, SN, 1985.

B. International Instruments

Draft Declaration on Human Rights and Human Fundamental Responsibility in Islam, prepared by Association of Islamic World, 1979.

Universal Declaration of Islam, prepared by London Islamic Council, 12 April, 1980.

Universal Islamic Declaration on Human Rights, prepared by London Islamic Council and submitted to UNESCO in 19 September 1981.

Draft Document on Human Rights in Islam, submitted during Islamic Conference Summit in Taef in 1981.

Draft Document on Human Rights in Islam, adopted in the fifth meeting on Human Rights in Tehran in 1989.

Draft Declaration on Human Rights in Islam, prepared by Ministers of Foreign Affairs of members of Islamic Conference in Egypt in August 1990.

Draft Arabic Charter on Human Rights , adopted by members of Arab Union in 1982.

Charter of Human Rights and People in the Arabic World, adopted in December 1986, Green Book on Human Rights in the age of Republics, adopted by Libya in 12 June 1988.

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