



The Foundational Principles for the Possibility of Observing Human Rights in Islamic Criminal Jurisprudence

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Abstract

Human rights are seemingly in conflict with certain Islamic punishments, such as qisas (retribution) and bodily punishments like amputation and flogging. These punishments are perceived to contradict the right to life and human dignity. Consequently, Islamic jurisprudential rulings appear incompatible with human rights. Therefore, examining the foundations of both systems is necessary. In this article, an analysis of these foundations is conducted using jurisprudential and legal sources. The primary reason for this discrepancy, according to the author, relates to anthropological and legal foundations. Punishments in Islam are based on servitude to God, accountability, and human dignity, as they follow divine commands. However, human rights are founded on humanism and rationalism. Therefore, Islamic jurisprudential rulings are not only not opposed to human rights but are aligned with the preservation of social life and human dignity. Hence, it is suggested that researchers in the legal field further analyze and evaluate human dignity and the foundations of human rights.

Keywords: *Foundations; Islamic Jurisprudence; God-Centeredness; Human Rights; Humanism*

Introduction

Different legal systems have various criminal penalties based on the accepted foundations of that legal system, which are in accordance with the beliefs, culture, and customs accepted by that society. In the Islamic criminal legal system, penalties are based on religious beliefs, some of which seemingly do not align with human rights. Therefore, there is a need for research to address human rights challenges. Although there have been writings on Islamic punishments and human rights, the right to life, and human dignity, and generally, research closely related to this topic has been studied, none of these writings have fully discussed the jurisprudential foundations of Islamic penal provisions and human rights. Therefore, this article, extracted from a doctoral thesis on "The Islamic Jurisprudential Approach in Confronting the Emerging Obstacles to the Implementation of Criminal Penalties," first explains the concepts using Islamic jurisprudential sources, then discusses different views on the compatibility of Islamic jurisprudence with human rights, and finally, analyzes the foundations of Islamic jurisprudence and

human rights and critiques them. After criticism and examination, a scientific defense has been presented from a favorable perspective, considering the foundations of Islamic jurisprudence.

Concepts

The term "foundations" in plural form is understood to mean basis, foundation, cornerstone, basis, and root (Trehī, *Bitā*, p. 64. Dehkhoda, *Bitā*, p. 13, 20112). In the terminological definition, legal experts do not agree. Some believe that the word "foundation" has been used slightly beyond its philosophical meaning; that is, it not only expresses the compelling reason and hidden source of legal obligations but also addresses the main pillars of public law and seeks to explain the scope and authority in external manifestations. (Katozian, 1377, p. 9).

The concept of "foundations" in this article refers to the justifications that human rights have considered as the basis for their credibility in the general perspective on the world and humanity (worldview). Similarly, Islamic jurisprudence, within the framework of a comprehensive view of the world and humanity, the relationship between humans and the cosmic order, and the eternal nature of humans, has established its penal provisions based on God-centeredness, human responsibility in relation to the cosmic order, and the implementation of justice.

Collective rights are the right. (Jowhari, 1399 AH, p. 1460). The term "right" has been used in various meanings. "Right" means truth, justice, permanence, and certainty (Jabran Masoud, 1376, p. 689). Almighty God, Quran, an accomplished command, Islam, an established existence (Zabidi, n.d., p. 315). The command of the Prophet (PBUH) as an attribute of God (Ibn Manzur, 1416 AH, p. 257). The opposite of falsehood (Ibn Abad, 1414 AH, p. 386. Farahidi, n.d., pp. 3, 6.)

In terminology, jurists and legal scholars have different opinions about the concept of rights. Some have said it means "privilege and benefit" supported by the laws of each country in the context of administering justice (Katozian, 1377, p. 372). Some jurists have defined "right" as power and sovereignty that exists between two parties (Ansari, 1410 AH, p. 20. Tabrizi, 1407, p. 10. Khoei, 1412, p. 333. Kuhkamari, 1409, p. 54. Mosbah Yazdi, 1377, p. 26). On the other hand, some believe that "right" in itself is not sovereignty but rather sovereignty is one of its consequences and effects (Akhoond Khorasani, 1406 AH, p. 4). Some consider "right" as a weaker form of ownership, a kind of possession, with "rule" being its counterpart (Yazdi, n.d., p. 54).

From the total meanings, both linguistic and terminological, the following definition can be offered: Right is a compelling command whereby every entitled person can benefit from their specific privilege and share, and it is necessary for others to respect it. The focus of discussion in this article is to explain the foundations of Islamic criminal law and human rights, as some Islamic punishments are considered to be in conflict with the right to life and human dignity from the perspective of human rights.

Opinions

From the works of Islamic scholars on the subject of human rights and Islamic punishments, two different perspectives can be discerned. Some do not accept the legitimacy of human rights and consider them products of non-Muslim scholars' thinking. Others believe in the compatibility of criminal laws with human rights and advocate for the adaptation of penal laws to comply with human rights, which will be examined below .

1. Opinions on the Feasibility of Observing Human Rights in the Islamic Penal System

The proposal to discuss human dignity in jurisprudential matters is because human dignity has been emphasized in discussions about human rights. Therefore, some contemporary jurists have accepted the incorporation of human dignity into jurisprudential issues. They believe that human dignity should be interpreted in line with faith in God and human evolution. With this approach, human dignity should be used as a jurisprudential principle for solving new jurisprudential issues. If, in some cases, juridical rulings are perceived to be contrary to human dignity, secondary rulings can be applied to resolve this contradiction based on time, place, individuals, and circumstances. Therefore, it can be said that sometimes human dignity can prevail over certain rulings, and abstaining from implementing them is necessary to preserve human dignity. (Anonymous Authors, 1386, 13, Interview with Makarem Shirazi, 16-21).

Some believe that human dignity can be the basis for deducing rulings. The subtopic of human dignity is discussed in jurisprudence, and jurists explain many issues based on dignity. For example, regarding someone who is clinically dead and in a coma with doctors having given up hope, it is said that human dignity requires not to end their life because as long as there is breath, their dignity must be preserved (Same Source, Interview with Ayatollah Ma'arif, p. 248). Conversely, regarding a fetus with congenital defects, which jurists do not permit abortion for, it is argued that if the collective reason of humanity concludes that the welfare of society and human dignity necessitate removing imperfectly formed humans to preserve human dignity, then killing them is permissible. Because the main issue is human dignity, and in such situations, we act in accordance with dignity (Same Source, p. 249).

Some consider the principle of human dignity as dominant and non-negotiable. They believe that if any principle conflicts with human dignity, it should be excluded from the subsets of that principle, or its ruling should be aligned with the principle to ensure its preservation. Therefore, they argue that Islamic punishments are not intended to humiliate or insult individuals. Rather, their purpose is to punish, guide, and reform individuals, all in line with protecting human dignity, not against it. (The same source, Interview with Ayatollah Zamani, pp. 174-176).

Some believe that penal laws should be determined based on the circumstances of time and place. Because a certain issue may be beneficial in one time or society but not in another time or place. Therefore, crimes and punishments may undergo modifications due to changes in time and place, including the decriminalization of some behaviors and considering certain actions as criminal offenses, as well as mitigating or intensifying punishments (Makarem Shirazi, 2002, p. 259). Hence, considering the global situation and human rights, if the execution of some punishments leads to the degradation of Islam, based on secondary rulings, their execution can be postponed (Motahhari, 1995, vol. 2, p. 37), as executing hudud punishments has been prohibited in some cases according to Islamic narrations (Hurr al-Amili, 1988, vol. 28, p. 24). Therefore, to prevent the degradation of the religion, some jurists have forbidden certain behaviors that may lead to the degradation of the religion (Fazil Lankarani, 2007, p. 199). Even certain words and actions during mourning ceremonies that may lead to the degradation of the religion in the eyes of others have been deemed forbidden (Makarem Shirazi, 2008, vol. 3, p. 178). Therefore, by utilizing secondary rulings, it is possible for Islamic rulers to enact laws that are compatible with human rights.

i. Some Opinions Suggest the Impossibility of Respecting Human Rights in Certain Islamic Punishments

Among Muslim writers, some, influenced by the human rights approach, consider some Islamic punishments incompatible with human rights. For instance, they say, "It's a stain on Islam that some Islamic countries enforce degrading and inhumane punishments on criminals" (Sorouh, 1997, p. 8). They refer specifically to the punishment of qisas (retaliation) in cases of intentional murder and other corporal punishments. Others view Islamic penal laws as conflicting with Western thought, the provisions of

human rights declarations, and international human rights treaties. They find the punishment of apostasy irrational and a sign of weakness in traditional Islam. They argue that "denying harsh punishments and torture, as indicated in human rights documents, compared to historical Islamic rulings, is more defensible and rational, and historical Islamic rulings in these cases are not acceptable" (Kadior, 2014, pp. 126-127). They also argue that corporal punishment, if aimed at correction and education, is incompatible because it humiliates the criminal. Therefore, it is better to use other punishments such as imprisonment (Nurbaha, 2001, p. 78). Some others, influenced by human rights principles, consider corporal punishments as cruel, inhumane, and humiliating, advocating for their abolition and replacement with appropriate punishments according to the requirements of time and place (Rahimi Nejad, 2001, p. 78). Some have negated harsh punishments based on the Universal Declaration of Human Rights, recognizing the sanctity and dignity of humans in all circumstances without exception (Mujtahid Shabestari, 2007, p. 226). The essence of these statements is that some of the Islamic punishments should be eliminated.

In contrast to the above opinions, some Islamic scholars do not accept the legitimacy of human rights and consider it a product of non-Muslim thinkers (Qari Seyyed Fatemi, 2005, p. 453). Some argue that human rights are based on Western humanistic foundations and their aim is to weaken the religion and civilization of Islam (Badrin, 2005, p. 217). While Islamic punishments are not the result of violence, contempt, or ignorance. Instead, they are aimed at enforcing religious zeal to secure societal interests (Raei, 2002, p. 58). Some argue that it is the right of the offended that Islamic law entirely serves the interests of individuals by either averting harm or seeking benefits (Azzul-Din, 1993, p. 5). In other words, the foundation and basis of Islamic law are the wisdom and interests of the servants in matters of livelihood and the afterlife (Ibn Qayyim al-Jozy, 2002, Vol. 2).

Foundations

1. Foundations of Human Rights

1-1 Western Human Rights Are Based on Western Humanism

According to Western thinkers, the basis of human rights is humanism, and the Latin root of this term, "Homo," means human. Human beings have been placed at the center of rights. This term was first discussed in ancient Rome in the debate between "human" and "divine" beings. According to this theory, human beings should be the focus of all schools of thought and the center of existence. Therefore, in all areas, human beings and their understanding are considered fundamental. In this intellectual system, humans with their desires, tendencies, and ideals are considered the basis and criterion for everything. Everything is in the service of humans, and humans are in the service of nothing. One of the scholars, Foyr Bach, quoted by another scholar, believes that "humanism is about humans and the essence of humanity. Humanity is presumed to be the principle and foundation of the universe, and his intellect, which is inherently separate from divine revelation, is determined as the guide and teacher of human life" (Messbah Yazdi, 2004, p. 172).

1-2 Scientific Rationalism

One of the foundations of human rights is scientific rationalism. It is the belief that humans can understand the truths of existence and humanity through their own intellect, based on empirical findings and scientific theories, and establish laws and norms accordingly. Based on this principle, legal regulations in Western societies have been formulated based on continuous experiences and customary practices, and at the international level, human rights have been enshrined in a legal document called the Universal Declaration of Human Rights, based on the accumulated experiences.

1-3 Equality and Freedom

In modern human rights law, individuals are entitled to equal rights because they are born equal. Based on this perspective, the Universal Declaration of Human Rights was adopted in 1948. Article 1 recognizes humans in terms of dignity and equal rights. Article 2 of the declaration negates any form of discrimination based on race, color, creed, religion, language, or social status. Article 26 of the International Covenant on Civil and Political Rights also emphasizes effective and equal protection of human individuals.

The consequence of freedom is that legislators and rights setters cannot deprive individuals of it, and governments cannot create obstacles to it (Hashemi, 2005, p. 209). However, in terms of human rights, freedom is limited to legal freedoms to ensure public order and ethics, restricted to a democratic society, as stated in Article 29, paragraph 2.

1-4 Individualism

Individualism is a philosophical root of liberalism, and liberals' adherence to tolerance, acceptance, and freedom stems from this foundation. Accordingly, the individual understands their own values and no one has the right to interfere in their behaviors. Their freedom extends only to the point where it does not infringe upon or cause dissatisfaction for others. Human rights are also individual rights, aimed at protecting the individual from both the state and others, resulting in several consequences:

- 1 .The precedence of the individual over society.
- 2 .Freedom and choice are essential to individuality.
- 3 .The individual human is the subject of values.
- 4 .Religion belongs in the private sphere and is a matter of individual choice.
- 5 .The source of individual rights is human nature, and society is a matter of credibility independent of individuals.
- 6 .Relativism and reducing truth to the individual have replaced the attainment of truth by humanity (Drokhsha and others, 1391, 73).

1-5 Natural Rights

Natural rights are essential to human dignity and respect, constituting the minimum rights that individuals are entitled to in life. Accordingly, natural rights are immutable and not subject to time and place, meaning they are not established by humans. Instead, the established rights must be in accordance with natural rights.

The approach to human rights based on natural rights presupposes that there is something called "nature" apart from beings, which has brought humans into existence and endowed them with rights. This claim is scientifically rejected because there is no independent entity called "nature" (Mesbah Yazdi, 2009, p. 48). Secondly, the right that human nature necessitates is not absolute; for example, the right to "life" is a natural right of humans, but if a person takes the life of another, reason dictates that the killer forfeits the right to life due to violating another's right to life. Therefore, natural rights, with an independent approach to nature and absolutist thinking, which is considered the basis of human rights, cannot provide a valid basis for human rights .

2. Foundations of Islamic Criminal Jurisprudence

2-1 God-Centrism as the Legal Foundation in Islam

Islamic scholars believe that the monotheistic worldview in the philosophy of law has its own distinct intellectual system. According to this intellectual system, God is pure existence, and this pure

existence possesses absolute perfection devoid of any deficiency or flaw. Therefore, all perspectives, understandings, and legislations must be based on this intellectual system, namely monotheism (Tafsir Javadi Amoli, 1996, p. 110). Accordingly, God is the most fundamental basis of law in Islam. By "God-centricity," we refer to the centrality of monotheism in legislation. This type of monotheism pertains to the legislative realm, where the source of legislation in Islam is God, as He is the Creator and Owner of humanity.

2-1-1 The Bestower of Existence

God is the Creator of all beings, including humans. According to the Quranic verses, the initial composition of human existence consists of material and earthly elements (Surah Ar-Ra'd, 13:16; Surah Al-Hijr, 15:28). Therefore, a part of his tangible existence is derived from nature, to the extent that in the physical and material breakdown, the elements present in the human body are recognized as the same elements found in nature (Surah At-Tariq, 86:5-6). The only significant, complex, ambiguous, and unknown part of human existence is his soul and psyche, which transcend beyond material nature.

The existential relationship and dependence of humans on God is an innate matter (Surah Ar-Rum, 30). In both emergence and survival, humans are in need of God. The first intellectual premise of monotheistic thought is the belief that humans need the wise God in their existence and life, whose will is involved in the creation of the system of existence.

2-1-2 ownership of All Existence, Including Humans, Belongs to Allah

Ownership of all existence, including humans, belongs to Allah from the perspective of monotheism. Allah is the true owner of all beings. All celestial and terrestrial entities are the property of Allah, and ultimately, all beings return to Him (Quran, Al-Imran, 109). The real sovereignty of Allah over all beings signifies His true ownership. There are numerous verses and traditions regarding the real ownership of Allah, one of which is: "Allah is the sole owner of the heavens and the earth, and He creates whatever He wills" (Ash-Shura, 49). This verse indicates that the true ownership belongs to Allah, and besides Him, no one possesses anything; whatever they have is a gift from Allah.

The indications of Quranic verses regarding the ownership of Allah relate back to His Creatorship (Az-Zumar, 62). Even most polytheists acknowledged the issue of monotheism in creation, as mentioned in the Quran (Az-Zumar, 38). An ayah that complements the discussion of ownership is: "The keys of the heavens and the earth belong to Him" (Az-Zumar, 36; Ash-Shura, 12). This phrase implies Allah's ownership and sovereignty over the heavens and the earth. Therefore, this verse is evidence of Allah's ownership and the monotheism in His Lordship, providence, and governance over the universe (Makarem Shirazi, previous reference, 19, 523). For "all that is in the heavens and the earth belongs to Allah, and Allah surrounds all things" (An-Nisa, 126).

The real ownership of Allah is the most significant philosophical foundation of Islamic ownership structure, as mentioned in many Quranic verses (Al-Baqarah, 107; An-Nisa, 53; Al-Maeda, 17, 18, 40, 120; Al-Araf, 158; At-Tawbah, 116; Al-Isra, 111; An-Nur, 42; Al-Furqan, 2). Allah has also granted ownership of property to humans (Al-Imran, 26). Based on this governance, the sovereignty and management of the system of existence fall under the realm of absolute divine power. Allah has the right to enact any changes or modifications in the system of existence and its laws, which are based on the real interests of His servants. Thus, the basis of criminal laws in Islam is the ownership of Allah over all existence, including humans. Only He has devised laws based on the genuine interests of individuals and society, which ensure the welfare of humanity.

2-2 The Relationship between Human and the Universe

As the article outlines, the relationship between humans and God serves as the foundation for criminal jurisprudence in Islamic law. Additionally, the relationship between humans and themselves, with nature, and with fellow beings also forms the basis of criminal laws in Islam. This is because humans are evaluated based on their actions and behaviors. The article further delves into the relationship between humans and God, as well as their interactions with other individuals.

2-2-1 The Relationship between Humans and Allah

What matters here is to understand the nature of the relationship between humans and God. Delving into various types of relationships between humans and the Almighty would take us away from the subject of discussion. Therefore, we focus solely on the relationship between humans and their Creator, namely the relationship of a creature with its Creator, the relationship of a worshipper with the worshipped, the relationship of a subordinate with the commander, and the fact that humans are in need of God. Imam Hussain (peace be upon him) stated: "You are the One who bestowed blessings and bestowed favors. You desired goodness and adorned it with beauty. You granted superiority and perfection." (Supplication of Imam Hussain on Arafah)

On the other hand, the relationship between humans and God is that of a poor servant and a wealthy master, where humans seek what God desires, whether it is expressed through creation or divine legislation, and they implore God for assistance. For everything besides God is poor. Therefore, the relationship between humans and God is that of a creature with its Creator, a poor servant with a wealthy master, a slave with a master, a subordinate with a commander, and a worshipper with the worshipped. Islamic penal laws are among the divine commandments entrusted to Islamic jurisprudence for elucidation.

2-2-2 The Relationship between Humans and Other Humans

In this context, verses from the Noble Quran are used to highlight the social aspect of human existence in the context of creation and creation (Al-Hujurat, 13). In the noble verse, alongside an ethical command, reference is made to the social philosophy of the unique creation of humans, indicating that humans have been created in such a way that they form various national and tribal groups, with recognition of each other through nationality and tribes being a definite condition for social life. And social life is based on the relationships between humans. Because the mutual influences of individuals in society in terms of ethics, manners, and culture are inevitable. Based on this, Islamic teachings have also elucidated the etiquettes of social interaction in areas such as interaction with family, relatives, neighbors, friends, subordinates, Muslims, and ultimately interaction with non-Muslims, presenting do's and don'ts, among which the most important are mentioned.

Observing etiquette; (Al-Hujurat, 15, Al-Isra, 22-23). Charity; (Al-Ma'arj, 24, Al-Baqarah, 245, Ash-Shura, 38). Good manners; is one of the greatest virtues of humanity. As the Quran introduces the Holy Prophet (PBUH), who is the role model for Muslims, as having great morals, a compassionate heart, and breadth of mind (Al-Qalam, 2-3, Al-Imran, 159, Ash-Sharh, 7).

Speaking kindly; (Al-Baqarah, 83, As-Sajda, 53, Al-Hujurat, 11, Al-Mujadila, 7-11). Type of friendship; (Al-Hujurat, 10, Al-Mumtahina, 7, Fussilat, 34). Service to human beings; which is mentioned in the Quran as cooperation with each other in goodness and charity. Just as God describes the Prophet as the most eager in serving and helping others (Al-Ma'ida, 2, At-Tawbah, 128, Ash-Shu'ara, 3). Justice; As verse 2 of Surah Al-Ma'ida clearly calls on Muslims to act justly even towards disbelievers who have peaceful coexistence with Muslims, warning them not to deviate from the path of justice, as in that case, they would be subject to severe divine punishment. Based on this, human behavior towards other humans either warrants reward or punishment.

2-3 Central Justice

In Islam, justice must prevail in all aspects of human life, and the Holy Quran has recommended it in numerous verses (Surah An-Nisa, 135). However, here we specifically refer to legislative, judicial, and executive justice.

Legislation in Islam is based on justice, and God has considered establishing justice among people as one of the objectives of sending prophets (Surah Al-Hadid, 25). Divine laws are the most complete laws, expressing human rights and duties more comprehensively than any other school of thought or religion (Surah Al-Ma'idah, 50). Although the heavenly books preceding the Quran were more complete in their time, the Quran is the most steadfast divine charter for explaining human rights, duties, and responsibilities. Allah considers the Quran as a confirmation and guardian of the previous heavenly books and compensates for their deficiencies (Surah Al-Ma'idah, 48).

Establishing justice and fulfilling human rights depends on the existence of righteous judiciary courts that uphold proper judicial principles, ensuring social justice in society. Islam's strong emphasis on judicial justice and upholding rights is evident in its meticulousness in judging according to justice (Surah Al-Ma'idah, 42). Some commentators believe that everyone living under an Islamic government, whether Muslim or non-Muslim, is subject to Islamic laws in terms of rights and penal codes, while others believe that Islamic governments have the discretion to enforce Islamic laws for non-Muslims or refer to their own laws. In any case, judgment must be based on justice (Surah An-Nisa, 58).

Regarding governance based on justice, numerous Quranic verses exist (Surah Ash-Shura, 15; Surah Al-A'raf, 29), although mentioning them all is omitted here for brevity.

In judicial courts, the most important issue is the selection of judges. Imam Ali (AS) wrote to Malik al-Ashtar instructing him to choose the best person among the people for judgment (Nahj al-Balagha, 411). After selecting a judge, one should think deeply about his judgments, grant him as much as needed to meet his needs, ensure that he does not need people, and honor him enough so that his relatives do not seek influence from him, thus protecting him from their schemes (ibid).

This excerpt from Imam's letter to Malik al-Ashtar is used to emphasize the need for inspection and oversight of judicial judgments to establish justice in the judiciary system. The judiciary is responsible for punishing criminals to ensure the security of the nation and protect society from the oppression and harassment of aggressors against social rights. If corruption and injustice are observed, other social institutions cannot be expected to function properly.

From the Quranic perspective, the duty of all believers in life affairs is to establish justice and fairness (Surah An-Nisa, 135). Complete adherence to justice is when the one upholding justice always takes care not to deviate from it (Tabataba'i, 175). Therefore, achieving justice in executing punishments is more effective because it directly addresses rectifying injustices resulting from committing crimes. Imam Ali (AS) said: "I swear by God that if they offer me the seven continents with everything beneath the heavens to disobey God, or to extract a barley grain from an ant, I will not do so" (Nahj al-Balagha, 329). Executive justice dictates the implementation of a judgment that has been issued fairly and justly.

2-4 Human Responsibility

In Islam, human beings are regarded as creatures endowed with free will and choice. They have the autonomy to choose between two options based on their will, either opting for positive or negative actions, or abstaining from wrongdoing with the intention of seeking goodness (Ja'fari, 2008, p. 271). Allah has delineated the path of truth and falsehood for humanity (Bald, 10). However, He has also granted humans the freedom to choose their path (An-Nisa, 3). This implies that all accountable individuals are placed on the path of guidance, and the selection of this path lies within the will and

choice of humans, rather than being guided or misguided involuntarily (Tusi, n.d., p. 207). Ultimately, individuals determine the path of good and evil through their own choices, guided by the inspiration bestowed upon them (Tabataba'i, n.d., p. 20, 489). Therefore, in Islam, punishment is warranted for the wrongdoing of individuals who have chosen the path of evil through their own will and choice, as they are deserving of punishment.

3. Evaluation and Critique of the Foundations of Human Rights

Human rights are perceived as originating from the culture, customs, and norms of the Western world, and their universality and global applicability require a scientific, logical, and impartial discussion. Despite the dominant political discourse on human rights and the Western countries' political stance in confronting Islamic penal laws, a serious question arises: Can human rights, such as those outlined in the Universal Declaration and relevant conventions and documents, claim to be logically compatible with the cultures and beliefs of various other civilizations? It appears that harmonizing different cultures requires a universal standard by which the behaviors and norms of diverse societies can be evaluated and presented in the form of regulations and laws for everyone. However, such a universal standard does not exist because each society has its own specific criteria for its legal regulations.

On the other hand, human rights are based on secular humanism, which contrasts with the God-centered worldview. According to this perspective, human beings are considered the ultimate goal and purpose of existence, placing humans at the center of being. In this view, the only arbiter is human reason, emphasizing that rights begin and end with human beings. What is fundamental are human desires, pleasures, and inclinations, and if any ideology or religion is to be valid, it must align with human desires and cater to individuals' aspirations and desires. Therefore, in humanistic thinking, humans replace God and become the center of all values, as famously stated by the Russian writer Durant, "If there is no God, everything is permissible." Based on humanism, it is humans who establish rights and laws according to their own desires. This is where humanism turns into liberalism in the sense of permissiveness. Thus, the fundamental principle in law, based on liberalism, is the absolute freedom of individuals. However, to respect the rights of others, restrictions must be imposed on individual freedoms. For this reason, the Universal Declaration of Human Rights specifies limits to individual freedoms, not conflicting with the rights and behavior of a democratic society (Article 29, paragraph 2). Accordingly, each person's life belongs to themselves and does not belong to God or the state.

From the author's perspective, the result of humanistic thought is that such a view of humans, on one hand, severs the relationship between humans and the Creator, denying the sovereignty of God. On the other hand, it increases human desires in a way that minimizes the sense of responsibility towards God to a minimum. Therefore, it does not accept religious teachings and considers human life separate from spirituality, merely aiming to achieve material and worldly pleasures. This leads to unrestrained freedoms in various issues, including sexual freedom in the Western world, to the extent that same-sex marriage has been recognized in some Western countries. Giving priority to human desires makes even the worst immoral behaviors not only acceptable but also considered part of individuals' rights and defensible, as long as they do not infringe upon the rights of others. Therefore, sexual relations between men and women are considered free, and same-sex relations are defended, while some Islamic punishments are considered harsh and inhumane. However, Islamic punishments are legislated based on the legislative will of the Creator of humanity, according to real interests, and the Creator of humanity knows best what kind of law is in the interests of individuals to govern social affairs.

However, from the perspective of human rights, the only authority that addresses human beings and their rights is human reason. Is human reason capable of identifying human beings, their talents, and needs through scientific and empirical methods and establishing laws that provide for material, spiritual, social order, and security needs? It seems that although rational empiricism is part of the epistemological tools, it cannot understand anything beyond matter, which is beyond the realm of sense and experience.

Therefore, it cannot define and establish rights for humans. Because rationalism based on scientific and empirical methods is not capable of recognizing all aspects of existence, including human beings and their desires and needs, and the consequence of this approach is to go beyond religion and limit human rights to the realm of human reason. Therefore, rights that are only derived from the limited human reason cannot be comprehensive and complete.

This question raises the issue of whether the human described in the Western Declaration of Human Rights is the same as the creature conceived by the unconscious laws of nature, with no predefined purpose, whose life revolves around meeting worldly needs and fulfilling animalistic desires, as defined by Thomas Hobbes, Machiavelli, and their associates who argued that "man is a wolf to man and has no inherent worth"? Alternatively, is the human a being with spiritual dimensions, introduced by prophets and divine religions throughout human history, who has come into existence with divine wisdom, possesses dignity, humanity, and honor, and has a meaningful purpose in life? According to this latter perspective, through their own efforts, humans can achieve perfection and attain their humanistic goals, unless they engage in betrayal and crime, thereby forfeiting their human dignity.

Considering the first perspective, which regards humans as creatures derived from nature, as Thomas Hobbes described them, namely as creatures who desire everything for themselves, the intrinsic value and dignity of humans cannot be proven. This is because the foundation of dignity, which is the divine spirit within humans, is not mentioned in any of the human rights documents. Therefore, only human reason is deemed sufficient to understand humans and their rights. However, from the perspective of Muslim thinkers, human reason alone cannot fully comprehend humans and their rights. To support this argument, we recall the opinion of a Western thinker who stated: "Science is not firmly established; rather, the foundation of its theories is built on shaky ground, like a building erected on columns that have sunk into quicksand, rather than on a solid and clear foundation." Thus, to understand humans and their needs, there is a need for religion. This is because the mission of religion is to outline the foundations of human life and draw the general lines of human existence, and the purpose of religious legislation is to articulate matters that are in line with two specific principles.

Firstly, to guide and bring happiness to humans through teachings that, if disrupted, would violate the purpose of the prophets' missions and pose a threat to their objectives. Secondly, because it is not possible to recognize these needs through ordinary means. Human rights also possess these same two characteristics. Therefore, their elucidation falls within the realm of religion. Thus, a complete understanding of humans and their rights can only be achieved through religion, which introduces humans as creations and servants of God and delineates the rights bestowed upon them by the Creator, aimed at achieving human perfection and acquiring human dignity and honor.

One of the most fundamental rights of human beings is the right to life, which is supported in Islam and human rights. The right to life in human rights is based on natural rights, which initially had a religious coloration. One of the legal scholars quoted the perspective of Thomas Aquinas, who advocated natural rights, stating: "Natural rights can never conflict with divine rights, as natural reason can extract truths to some extent from the book of nature in a manner similar to how Jews and Christians derive them from religious scripture, but when rational laws conflict with divine ordinances, precedence is given to divine rights, as the conflict indicates a flaw in the philosopher's reasoning." It seems that natural rights, in the sense mentioned, do not serve as the basis for the Universal Declaration of Human Rights, as during the Renaissance, natural rights lost their religious coloration, and there was also an excessive rationalism in the field of natural rights. Human rights, on the other hand, were formed based on excessive rationalism. Not in the sense that Thomas Aquinas stated. This is because in conflicts between rational laws and divine decrees, Western human rights prioritize rational laws over divine laws, and the reason for this is the opposition of human rights supporters to Islamic penal laws, which are divine laws.

The human rights approach, based on natural rights, is either aimed at suggesting that their purpose is inherent in nature, separate from beings, something called nature and existence, which has brought humans into existence and granted them rights. This claim is scientifically untenable because there is no independent entity called nature apart from other beings, and secondly, the right that human nature requires is not absolute. For example, the right to life is a natural right of humans, and if a person kills another person, reason dictates that the killer, due to violating another person's right to life, forfeits the right to life. Therefore, natural rights, with their independent and absolute perspective on nature, which is considered the basis for human rights, cannot provide a valid basis for human rights.

What is referred to today as human rights is disconnected from human nature and innate disposition. This is because the framers of human rights lack a comprehensive understanding and grasp of human nature and disposition, and the rights formulated within the framework of secular and liberal democratic worldview are divorced from the realm beyond nature and confined to the material world. Regarding the right to life, the perspective of human rights differs fundamentally from that of Islam. The basis of the right to life in human rights is the inherent inclination of humans to self-preservation, which begins at birth and ends with death. However, firstly, human life in Islam is not merely limited to material and finite life in this world. Secondly, Islam considers the right to life to be applicable even before birth (during the fetal stage), deeming its preservation obligatory and its destruction prohibited. (Montazeri, 2006, 92). Moreover, both before and after birth, abortion is considered unlawful in Islam. However, human rights permit elective abortion. For instance, Article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) recognizes elective abortion as one of women's rights. The countries that have signed CEDAW and, on the other hand, have prohibited elective abortion and provided for penalties for it, have faced objections. For example, Croatia has been warned as to why some hospitals do not accept patients seeking elective abortion, and in 1999, Chile was objected to for prohibiting elective abortion and subjecting it to punishment. Even in the same year, Colombia was reported to declare elective abortion legal, and failing to do so would be considered a violation of Article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women. (Makarem Shirazi, 2006, 1, 87).

The concept of the right to life in Islamic thought is divine providence, where not only is life a right, but humans are obligated to preserve it because God has forbidden the killing of any person (Quran, 4:29). This is because humans possess a divine soul, which is a trust from God. Therefore, no one can claim ownership over their own life. Moreover, human life holds supreme importance in Islam, where killing one person is considered equivalent to killing all of humanity, and saving one person is considered equivalent to saving all people (Quran, 5:32), with no racial discrimination. Instead, human life, simply by virtue of being human, is valued and respected. However, in the realm of human rights, the right to life is interpreted merely as a material and worldly matter, ending with mortal death, with no consideration for any purpose of life after death for humans. Yet, in Islamic thought, the right to life is not limited to worldly life, and humans are not annihilated by death. Instead, goals for the true life of humans in the hereafter have been emphasized. These goals encompass a significant portion of human life, which has been overlooked in the Western legal system. Conversely, in Western legal frameworks, not only is there no consideration for post-mortem goals, but there is also no mention of preserving human dignity and honor after death, which is explicitly stated in Islam. (Jafari, 1998, 174).

Human dignity is not addressed in the theoretical foundations of human rights documents. However, the criterion and basis of dignity, from the perspective of some Western thinkers, is that humans, by virtue of having "natural rationality," inherently have the ability to think and decide, and can establish laws for themselves (Sullivan, 2001, 44). They believe that human beings are the ultimate aim and objective of all other behaviors, and thus claim that human rights documents are based on preserving dignity. This claim is acceptable only if positive and negative aspects of supporting dignity have been established. However, in terms of proof and application of rights, freedom, peace, and justice are supported in legal systems. However, from a negative perspective, which actions harm human dignity and

character, only the "material aspect" of humans has been considered. Therefore, torture and punishments that cause physical harm and suffering have been prohibited. However, actions that, from a spiritual perspective, harm human dignity and personality have not been prohibited. Hence, one of the major flaws of international human rights documents is the neglect of the spiritual personality of humans.

Actions that deprive human personality and dignity from a spiritual perspective, such as consuming intoxicants, are not prohibited in international documents. However, Islam considers such behavior a crime in support of human personality. This is because committing such acts leads to the loss of reason and reduces the perpetrator's personality to that of an animal. So how has human dignity been supported in human rights? Therefore, human rights must have regulations and measures to safeguard and protect human dignity, otherwise mere rhetoric about human dignity will be meaningless. As seen in international human rights documents, there is no legal provision for protecting the power of thought and safeguarding mental health. Therefore, human rights merely serve as a slogan for supporting human dignity, lacking strategies and regulations for its preservation and protection.

Conclusion

From the above discussions, it can be concluded that human rights are based on entirely different theoretical foundations compared to the intellectual traditions of ancient times and Islamic law. The understanding of human rights has been confined to the realm of human reason and has been divorced from religious expectations. From this perspective, rights are based on natural inclinations and instincts, with all duties and responsibilities also limited to them. Legal frameworks are contractual, regulated out of necessity and to mitigate interference with the rights of others, based on humanism and rationalism.

The necessity of preserving human life and dignity in Islamic jurisprudence and human rights law is considered fundamental in both legal systems. However, the perspective on punishments conflicting with the right to life and dignity differs fundamentally between human rights and Islamic views. The foundations of Islamic jurisprudence emphasize adherence to divine laws, centrality of justice, accountability, and human dignity, which are based on real interests and harms. The Creator of humanity is better aware of individual and societal interests within the human community than humanity itself. Therefore, not only is it possible to observe human rights within Islamic jurisprudence, but penal laws aligned with the right to life and human dignity are not in contradiction and are aimed at preserving social life and human dignity and securing the interests of human society.

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