

The Relationship Between Islamic Human Rights and the Maqasidic Approach

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Abstract: Undeniably, the Universal Declaration of Human Rights Charter adopted by the United Nation in December, 1948 is a great step forward in the history of United Nation in respect of human rights issue. However, the rights enumerated therein characterized by deficiencies in conceptualization, flaws in formulation and injustices in application. Being subject to political agendas, economic pressure and culturally biased view points, they often serve the interests of certain organizations and powerful special interest groups. As such they, carry the residues of colonialism and imperialism. Thus, it could be said that this is a clear plan from the ongoing suppression and atrocities inflicted on poor and weak nations without any effective measures being taken by these organizations for their defense and protection. Double standard is applied when it comes to the violation of human rights. Weak states are vigorously pursued and hunted whereas powerful countries are blatantly exempted from prosecution. Islam as a divine and universal guidance lies a comprehensive framework of values that embodies universal human rights which is free of bias and deals with the abusers of the human rights equally regardless their races, religions and also color factors hence provides a universal criterion for human rights. Therefore, this study attempts to analyze the issue of human rights from an Islamic perspective in the light of the maqasidic (higher purposes) of shariah and delineates the mechanism for protection of human rights. Using both descriptive and analytical methods, the research concludes that Islam provides a comprehensive and practical mechanism for protection of human rights which are appropriate for all nations and human beings.

Key words: Islam, human rights, purposes of law, maqasidic approach, maqasid of shariah, intellect and property

INTRODUCTION

It is undeniable fact that human beings by birth are entitled to certain rights. The fulfillment and preservation of such rights are necessary for the existence and continuation of life. However, the determination of those rights has invited and also inflicted to be much debates and discussions. Some cultures in the context of discussion of human rights concentrate more on individual rights and freedoms whereas others insisting more focus on rights that ensure the survival of communities. The diversity of nations and tribes and hence, their varying laws and declarations make it impossible to be accepted universally no matter how morally out standing they are.

Unfortunately, under the influence of growing power and politics involved in the advocacy of human rights, certain people tend to view the Western ideas as

universal thoughts applicable to all, despite their inadequacy and biasness. This has led to the perception of the human rights doctrine as a tool for the propagation of Western moral imperialism and economic domination. This is rightly observed by Yusuf Saraf:

The United Nation is after all a political organization and its decisions are political decisions as such it is difficult to determine the availability and applicability of fundamental rights of men within a country purely on honest, rational basis hence susceptible to exploitation for political reasons

We have so many examples of this sort of violation from among which is the most recent one, the case of Libya where United Nations sanctioned military action against the Libyan regime due to the violation of human right-mass massacre of civilians by the regime. Whereas, the cry for taking the same action against Syrian regime

for heavy handed military use against the civilians due to economic and political consideration. Ironically in recent decades, abuses of human rights are being perpetrated often in the name of religion and to our dismay sometime in the name of Islam. However, it is imperative to bear in mind that merely on a ground of that such a country is known as Islamic, this does not necessarily means that it automatically practices Islam thoroughly. It is also of equal importance to realize that not all Muslims understand and follow their religion as they are supposed to be. This is rightly observed by Ilyas (1985):

There is a general tendency among scholars as well as layman both, Muslims and non-Muslims, to confuse Islam with what Muslims do. Whereas, what Muslims actually do may range from being Islamic, non-Islamic to anti-Islamic

Therefore, it is not fair to attribute to Islam any violation of human rights committed by Muslims. This is because such act might be due to their cultural affiliation rather than religious orientation. Al-Quran, the Holy book of Muslims as a divine book and guidance for all mankind sent down to the Prophet Muhammad (PBUH) contains rights and responsibilities granted by God. They are not subject to the whims and desires of human beings. It contains the basic rules designed for protection of individual rights and freedom. Moreover, it caters for individual rights in a manner that does not infringe upon the rights of community.

Being religion of universal application, Islam is concerned with respect, tolerance, justice and equality and its concepts of freedom and human rights are imbedded in the faith in one God. Hence, mankind's security and peace depend on his compliance with His commands and obedience to Him. For, He is the sole creator and sustainer of mankind and the universe and has bestowed to human beings with dignity and honor. The rights and privileges enjoyed by human being are granted by Him and are meant for everybody without discrimination. No one is in position to lay exclusive claim to these rights. In other words, one person is not worthier than another in terms of protection. Thus, each person is eligible to sustenance, shelter and security as commanded by God in the Quran:

O you who believe! Stand out firmly for God, be just witnesses and let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to piety and fear God. Verily, God is well acquainted with what you do (Quran, 5:8)

This verse signifies the equality of all mankind before God and that the true human rights can be achieved through obedience to Him.

MAQASID OF SHARIAH AS THE BASIS OF HUMAN RIGHTS

A thorough survey about commands and prohibitions in the Islamic law pertaining to the legal obligations, regardless of whether they are connected to matters of faith, legislation, worships or ethics, maqasid of shariah which brings to *maslahah* means securing of benefit and removal of harm is a main objective. In other words, attraction of utility or benefit and avoidance of harm is a focal point of all legal obligations. This can not be achieved unless five or according to a minority view, six higher purposes of shariah are secured and preserved:

- Religion
- Life
- Intellect
- Lineage
- Property

Some Muslim scholars have added a sixth, namely dignity but according to the majority, this is included under life while some include it under lineage. The preservation of these higher purposes is essential to the existence of society and continuation of human life. This would be obvious if we hardly attempt to explore the underlying reason of all legal commands and prohibitions in order to protect these maqasid. Thus, each command and prohibition is actually to attain one of these five basic maqasid.

Accordingly, religion represents a natural need of humankind, hence constituting an essential element of life. Soul represents the fulfillment of the instinct of life by its preservation and protection. Intellect is a prerequisite for legal obligation and a way to differentiate between good and evil via the right of thinking, volition and choice. Progeny or lineage represents inclination and the basic need for a different gender, requiring the right of fulfilling sexual desire in a proper and legally permitted manner, hence leading to the protection of the right of lineage. Property represents the fulfillment of desire for possession and its consequences such as the right of disposition and capacity of possession (al-Risuni., n.d.) Therefore, these elements representing the objectives of the Islamic law, constitute permanent basis for continuity and establishment of life hence, represent basic human rights which violation incur severe punishment. These five fundamental objectives, constituting contextual basis for human rights where in the Islamic legal framework are characterized as necessities.

It is important to bear in mind that no specific model is prescribed for their acquisition and fulfillment, except

that they should be obtained lawfully. For instance if food is complementary to preserving right of life as one of the main objectives thus it does not have to be a specific kind of food such as fast food. In this sense, diversity of cultures could be preserved too. Another example is language which is necessary for enhancement of the intellect.

It does not have to be more famous on the only English language; the native language of the culture must be preserved and protected. For, it is the medium through which link between the past and the present is established, hence preserving one's identity. It is also significant to bear in mind that Islam grants people some concessions or conveniences in cases of hardship such as in a case of sickness and also in traveling.

Neglecting these complementary matters will lead to hardships in life though not to cause a chaos. However, these maqasid of shariah are equally taken into consideration in shariah framework for practical life. In addition, consideration of elements belonging to the category of embellishment is also significant for they render human affairs or conditions more suitable to the requirements of the highest standards of moral conduct. To say it in Kamali (2009)'s words they denote interests whose realization leads to improvement and the attainment of that which is desirable. For instance, the observance of cleanliness in personal appearance and in spirituality, the inculcation of moral values, the avoidance of extravagance in expenditure and moderation in the enforcement of penalties. All these come under the category of embellishments, hence are complementary to the five basic objectives or rights.

Violation of these rights is seen as a great crime with grave consequences. The punishments for violation of these rights are specifically provided for in the textual sources of the law, hence are called as hadd or fixed punishments. The purpose of the fixed punishments which are unchangeable is to protect these rights. Therefore, the punishment of qisas or retaliation for highway robbery and hence, the spreading of corruption is to protect the right of life by maintaining social and psychological peace and security. The punishment of theft is designed to eliminate any real or expected threat to the right of property. Cheatings, deceits, fraudulent statements, monopolies, interest in banking transactions are prohibited and certain punishments are designed to preserve the right of ownership of property. The punishment of drinking and consumption of intoxicating substance is meant for the protection of the right of intellect, the means of thought and expression. The punishment for accusing innocent women of committing adultery (qadhf) is meant to protect dignity hence, leading

to the preservation of the right of dignity and honor. The punishment of adultery aims at protection of the right of lineage from destruction.

Consequently, the protection of the right to life and preserving religion, reason, human dignity and property constitute the five basic fundamentals upon which the general human rights are based. In Islamic legal framework as stated before, these rights are addressed under the doctrine of the objectives of shariah. Certain rules and provisions along with a mechanism for their protection and preservation are devised for their continuity and existence.

Looking at the contents of international conventions on human rights, it can be observed that they are not out of the context of these objectives. It is therefore, imperative to create the awareness among Muslims and non-Muslims that Islam strictly observes and respects human rights and has taken practical measures for their protection. It elevates such awareness to a level of a necessity without which the life of man can not be righteous.

This is necessary for the concern about the human rights is no more affluence or an intellectual luxury. It dominates international politics and is being fiercely debated. In fact, Islam stated human rights for >14 centuries ago and championed the cause much more earlier than any other institution, hence can be considered as the pioneer of human rights.

Whereas, United Nations and its related institutions ratified human rights six decades ago in 1948 and signed treaties calling for their protection by means of establishing international foundations tasked with monitoring their application in the contemporary world. Unfortunately, Islam despite its pioneering position in respect of human rights within the current circumstances is exposed to unfair accusations. This calls for concerted efforts by Muslim scholars to clarify Islamic position with regard to the issue of human rights. This is necessary to clear the cloud befogging critic's vision about Islamic position and commitment to human rights. Thus, establishing the fact that Islam is seriously observing over >14 centuries, the basic human rights, admitting religious and cultural pluralism and is open to all religions, cultures and civilizations for dialogue and cooperation in every field that may contribute to human welfare throughout the world.

STRATEGY FOR HUMAN RIGHTS PROTECTION

As mentioned before, the doctrine of higher purposes or objectives of shariah embodies five basic universal human rights which encompass all other rights in varying

degree of importance. They are of such nature that represents various aspects of life, material, intellectual, religious and worldly. Islam as Syed (2003) holds: Organize them all that they may be related together and thus, furnish an all-embracing unity in which it will be difficult to neglect any of its parts. One way of achieving this goal is by providing the essential necessities that ensure for the individuals their full rights without damage to the public goods. If all members of the society enjoy their legal rights to peace, tranquility, freedom and the general availability of all the basic human requirements, balanced with public welfare, they will all have the opportunity to live a fruitful life of fulfillment and contentment. Therefore, it adopts two folds strategy embodying negative and affirmative measures, for the protection of these rights.

Affirmative measures: This approach requires the adaptation of the measures that gradually lead to the creation and establishment of the basic constituent elements of these rights. For example, Islam preserve the right of religion by means of propagation and call for the establishment of the pillars of belief, the carrying of dawah (propagation/dissemination) to establish the bases of religion such as faith through uttering the oneness of God and the Prophethood of Muhammad (PBUH), performance of prayer, paying of zakat, poor due, fasting and pilgrimage. These measures along with other supporting acts are intended to protect and preserve the right of religion. In the same manner, Islam protects the right of life by maintaining proper nutritional care to satisfy the minimum requirements essential for decent health. Thus, man is not allowed to deprive himself of permissible food, drink, clothing, marriage and proper care under any excuse if that causes him harm.

Furthermore, Islam provides rules of marital life and encouraged marriage and the seeking of descendents for the same purpose. Therefore, transaction of sale and purchase to the extent that is required for preservation of life comes under necessity. Moreover, it preserves the right of education and knowledge by preservation and enhancement of its means, intellection, for it is the axis of human dignity and obligations. It plays central rule in respect of qualifying one to reward or punishment, for a person having mental deficiency is not subject of an obligation hence not subject to punishment. The significance of intellect as a tool of knowledge and education is clear from the fact that Islam holds those with knowledge in high esteem and considers them as the inheritor of the Prophets.

Islam protects the intellectual rights such as invention, initiation and discovery to their rightful owner

along with the resultant financial benefits. The right of property as the basis of worldly life and representing one of the balancing aspects of the nation's dominance over the world is preserved by creation of instinct of desire for property in human being. Islam permits attainment of property through permissible means, allows travelling in quest of sustenance and halal property through out the earth. It provides rules and regulations for management and acquisition of property and its valuation. It also organizes it in a balanced way where it is related rights and obligation or taken care of. It distinguishes between what can be considered as property and what can not. The right of dignity and its subsidiary elements are preserved by subjugation of nature to human beings and establishing his dominance over it. God has created universe and made it subservient to human beings so as to be utilized by them in order to carry out their duties as the vicegerent on earth. Besides, human being is bestowed with the faculty of knowledge and other qualities that distinguishes him from other beings. Hence, human being is respected and honored in the framework of shariah from the very stage of his creation even before his birth and has been given his rights. This is understood from men or women obligation to choose his or her good spouse so as to be able to bring up a good family hence, good descendent. Islam also entitles to human beings of some other rights after birth such as choosing a beautiful name for their kids and so on.

Negative measures: This approach comprises prohibitory measures by means of which destructive elements to the basic rights are negated. In the same manner as Islam has preserved the universal rights by affirming their constituent elements, it preserved them by negation of destructive elements. Thus, it repulses things or acts that are detrimental to religion or weakens its position. Such measures include prohibition of all deeds that are conducive to weakening religiosity individually or collectively. Therefore, it prohibits apostasy and considers it as a grave sin and prescribed death sentence as a punishment for such crime. Similarly, mockery of religion and blasphemous acts are prohibited. Jihad as a tool and mechanism of protection is adopted to protect the religion of Islam with its ultimate truth, justice and goodness and the Muslims themselves from those that wish them harm. To preserve the right of life certain measures are adopted. They include the prohibition of things which results in partial or total destruction of oneself. Therefore, one is forbidden to take his own life or cause partial or total physical destruction to himself or others. For, he does not own his soul or his own body. It is a sacred entity entrusted to him on a temporary basis

hence to torture or harm oneself intentionally or to commit an act leading to his destruction is forbidden. Such measures are meant to preserve self or soul, the essence of the right of life. It means that Islam consisting of every form of life which is sacrosanct and cannot be destroyed without justification.

Even unnecessary killing of animals or destroying other kinds of life is forbidden in Islam. Islam blocks all means that can contribute to insanity and mental disorder to preserve the right of education and knowledge. For, mind is the tool through which knowledge can be acquired as it is the condition for legal obligations and responsibilities. Thus, all harmful activities to soundness of intellect, such as consumption of intoxicating beverage and substance are prohibited. Consumption of such substance is considered as a serious offence hence, invoke a severe punishment. This is to preserve mind, the means of knowledge and education. The right of property is also preserved by prohibition of misappropriation or violation of one's own property without due process of law. To take other's property or use it without seeking his permission and consent is prohibited. The act of theft is forbidden and considered as crime that incurs punishment in this world and the world hereafter. This is due to the same reason which is to preserve the property right. Also other acts involving unethical behaviors such as deceit, treachery, fraud and other acts of similar nature are prohibited. All these measures are adopted for the purpose of preserving the right of property from violation. In the same manner, derogatory act and behavior are prohibited for the protection and preservation of the right of dignity. Not only acts that constitute physical violations are prohibited, it also includes acts that cause moral injuries, for example backbiting, espionage ill thinking about others. If these acts have a full sway in the society, they will cause severe damage to dignity, a right which Muslim society hold so dear. In sum, identifying the five basic higher purposes of life as a source of human rights and the two fold strategy for their realization hence, protection, underscore practicality and uniqueness of Islamic approach to human rights.

THE DISTINCTIVE FEATURES OF HUMAN RIGHTS IN ISLAM

Islam conceives human rights as divine gift. This is rightly observed by Mawdudi, human rights have been granted by God; they have not been granted by the kings or legislative assembly for if they were given by them, they could be withdrawn in the same manner in which they were given (Mawdudi, 2011). Since, human rights are conferred by God no legislative assembly or government

in the world has the authority or right to change or amend them. Furthermore, human rights in Islamic conception are not merely words on the piece of paper without practical consequences nor are they like philosophical concepts with no sanctions behind them. Thus, the basic human rights in Islam are not only conceptually acknowledged but they are actually realized through practical measures as stated in the preceding discussion. In fact, belief in the oneness of God and other pillars of faith jointly constitute the fountainhead of the basic human rights in Islam. This is because God created human beings in terms of free and self-governing and bestowed on them certain rights for the protection of which they are required to spare no physical and intellectual efforts. He forbids violation of these rights repeatedly in the holy Quran in the verses related to jihad and struggle in the path of God. These all indicate that all human rights granted by God to human beings on account of to guarantee the dignity and self-respect of the human beings. It is therefore from this vantage point that these rights derive their imperative and constitute an integral part of the Islamic perspective, servitude and the primordial state of human nature. Consequently, human rights in the Islamic point of view are regarded as a gift from God to His servants. God given gift is not the same as the gift given by people which can be retracted. They are ultimate rights that are firmly established for human beings.

In addition, Islamic human rights are very comprehensive and multi-dimensional in nature include all aspects of life, political economical, social and cultural. They are not confined to certain individuals but they are for every member of society without discrimination due to colour, race, place and language. The corpus of human rights are actually deemed as a part and parcel of the shariah which are impossible and illogical to be changed and altered. It is a fact that Islam is a final divine religion and the Prophet Muhammad is the last Prophet, hence the message given to him is permanent and remains intact as ordained by God as long as the world exists. It is imperative to bear in mind that Islam regulates its human rights in a manner that conform to the higher purposes of law and are not causing harm to the welfare of the community as a whole. However, the right of society is of primary importance and the rights of individuals have priority over the right of one individual (Amuli and Abdullah, 2003). On the contrary, human made treaties and resolutions are vulnerable to change and amendments no matter how firmly and emphatically they are expressed. Looking at the historical development of the concept of human rights, one would not fail to realize that Islam is a pioneered religion for the concept of human beings and then afterwards, it was followed by international treaties

and agreements on human rights adopted by United Nations. Thus, the human rights embodied in the charter of united nation declaration of human rights and the subsequent international agreements are reiteration of what Islam call for since fourteen centuries. Therefore, the sanctity of the presently threatened human rights which we call for their protection and respect is established in Islam 14 centuries ago, hence preceded from what is acknowledged in 18 century as the century of the human rights advent. In sum, human rights in Islam as mentioned before are original rights and divinely ordained. Therefore, human rights contained in the international treaties are merely recommendation and ethical decisions without having the force of law. Conversely, Islamic human rights are practical and realistic obligations which enjoy retributive guarantees and they are not mere recommendations or ethical decision on a piece of paper.

CONCLUSION

Islam presents a crystal clear concept of the human rights which are very unique and flawless. It adopts an integrated and practical approach for their realization and protection. The merit and advantage of Islamic approach as to relationship between human rights and maqasidic of shariah lie down in the fact that based on divine sources, al-Quran and the Prophetic Sunnah. It embodies all types of rights within its scope and covers all classes and groups of people. Balancing between all dimensions of human life, it provides a set of values that is suitable and appropriate for all time and place.

Being rooted of divined sources, Islamic human rights enjoy durability, resilience and stability as well as their observation and protection is accompanied with the blessing from God the Almighty. The embodiment of the spiritual aspect in the framework of human rights has far

reaching effect as it goes beyond the preservation of individual and societal rights to include international relations.

Human rights, therefore in Islamic conception are not merely words on a piece of paper without practical consequences nor are they like philosophical concepts with no sanctions behind them. Thus, it is not merely conceptual recognition that matter in the Islamic framework of human rights but it also appears as an actual realization through practical measures. In the summing up, it could be said that the relationships between human rights and maqasidic of shariah are closely linked each other on the reason of the fact that both originated from the same source, God the Most Almighty.

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