

HUMAN RIGHTS IN ISLAM: A CRITICAL ANALYSIS IN THE LIGHT OF INTERNATIONAL HUMAN RIGHTS LAW

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ABSTRACT:

This paper explores the Islamic approach to human rights law and the emphasis it places on obligations, rather than the Western focus on rights. It will make a case for the effectiveness of the Islamic language of duties, and proposes that it does not, in fact, conflict with the Western language of rights, for two main reasons. First, the proposition of placing obligations on individuals for the sake of society, although not widely practiced in the West, does exist there, and this will be discussed in detail. Second, the language of duties can significantly enhance the language of rights, as long as the ultimate aim is shared by both Western and Islamic ideologies. This shared aim must include the upholding of the basic principles of morality, such as freedom, equality and autonomy.

Key words: Islamic Human Rights, Western Human Rights, Rights and Duties, Basic Morality.

INTRODUCTION

Ongoing, and controversial, discussions about human rights make it important to focus on what we really mean by the term, from both a Western and an Islamic perspective (since both of them represent the prevailing ideologies constituting international human rights law).² The aim of this paper is to explain the different methods of approaching human rights, namely the rights approach and the obligations approach. It argues that human rights are essentially a mechanism for applying certain principles in an ideology.³ This mechanism transforms ideas from theory to practice, making them more effective and practicable. So, if such principles exist in theory in both Western and Islamic ideologies, one can conclude that the two share same basic principles; the only difference is that while one prefers that such principles are upheld through the language of rights, the other favours the language of duties. Furthermore, this paper asserts that the languages of rights and duties have a similar effect when it comes to the application of human rights. In other words, any right for one person should constitute a duty for another, and a duty for someone should constitute a right for someone else. For example, the Holy Quran proclaims the duty of an individual not to violate the privacy of others.⁴ This presumes, from a Western point of view, that there is a right to privacy which cannot be violated.⁵ Another example is Article 10 of the Universal Declaration of Human Rights, which stresses the right to a fair trial for individuals;⁶ it subsumes an obligation on states to establish an effective judicial system.⁷

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² Ibraheem Madcore, *The Islamic Way of Thinking* (1st edn, Samerco Publisher 1984) 9–12.

³ Ahmed Abdulsalam, *Arab Politics* (The Tunisian Company 1985) 12–13.

⁴ “O you who have believed, do not enter houses other than your own houses until you ascertain welcome and greet their inhabitants. That is best for you; perhaps you will be reminded.” (24:27).

⁵ Emad Kasawnah, ‘The Method of the Holy Quran in Presenting Provisions Verses’ (2009) 5(2A) *The Jordan Journal of Islamic Studies* 18–20.

⁶ “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

⁷ Tabliah Al-Qutob, *Human Rights in Islam-Comparative Study* (Dar Al-Feqr Al-Arabi 1984) 90–93.

HUMAN RIGHTS IN ISLAM

This section explores whether Islamic law endorses rights, duties or both, by considering some religious texts contained in the main source from which it draws – the Holy Quran. This section also looks at the link between Islamic law and the position of God. In other words, it clarifies how some spiritual aspects of the law can enhance the effectiveness of Islamic human rights law.

The Concept of Human Rights and Duties within Islamic Law

In Islam, the term “right” refers to one of God’s names and the definition of the term “right” in Arabic refers to *haq*. This word implies one person’s authority over another. However, the term “right” has a variety of meanings in the Arabic language and in the Quran itself.⁸ One of its direct meanings is “advantage”, something which all human beings inherently possess. In the Holy Quran, it is also translated by the words truth, duty, constancy, justice and the opposite of falsehood.⁹ In any event, it has to be admitted that the language of rights is very rare in the Islamic context, as most rulings are expressed through the language of duties. That is to say that even if the term “rights” does exist (“And from their properties was [given] the right of the [needy] petitioner and the deprived”¹⁰), it is still related to God and the importance of following His commands and orders. Similarly, when Professor Ali Usman describes that the Holy Quran renders a right to justice from the verses, “Indeed, Allah commands you to render trust to whom they are due and when you judge between people to judge with justice...”,¹¹ he derives this right from the individual’s obligation to obey God, whose orders are, Muslims believe, always righteously motivated.¹²

Therefore, it can be said that there is no clear definition of the concept of rights in Islamic texts. Instead, Islam indicates moral rules, predominantly in the shape of duties, to be practiced by Muslims. Therefore, and on account of Western influence, Islamic scholars have started to embrace a plethora of different factors when considering rights. In other words, owing to the advances made by Western civilisation and the universality of the human rights claim, Muslim scholars have started searching for rights within Islamic law in an attempt to show similarities with the Western approach. As Bilhari Kausikan argues, “[f]or many in the West, the end of the Cold War was not just the defeat or collapse of communist regimes, but the supreme triumph and vindication of Western systems and values. It has become the lens through which they view developments in other regions.”¹³

As a result, many Islamic scholars and jurists claim that Islamic ideology contains human rights, just as Western ideology does. For example, Mashood Baderin claims that duties always imply rights, as is the case when the Holy Quran says, “O you who have believed, do not enter houses other than your own houses until you ascertain welcome and greet their inhabitants.”¹⁴ Baderin argues that the right to privacy arises from the duty not to intrude on another person’s privacy.¹⁵ The fact that the Islamic text includes the language of duties rather than rights should not inflict a fundamental conflict between the West and Islam since the rule of moral decency, which involves respecting the privacy of individuals, should prevail. In a

⁸ Soubhi Saeed, *Islam and Human Rights* (Dar Al-Nahdah Al-Arabia 1994) 3.

⁹ Yoosef Al-Badawi, *Ibn-Taimia’s Sharia Purposes* (1st edn, Dar Al-Nafes 2000) 91.

¹⁰ The Holy Quran 51:19.

¹¹ *ibid* 4:58.

¹² Ali Manzo Usman, ‘Social Human Rights in Islam and the Universal Declaration of Human Rights (UDHR1948): Comparative Study’ (2012) 3(5) OIDA International Journal of Sustainable Development 39, 40–41.

¹³ Bilhari Kausikan, *Asia’s Different Standard* (92 Foreign Policy 1993) 24.

¹⁴ The Holy Quran 24:27.

¹⁵ Mashood Baderin, ‘Modern Muslim States between Islamic Law and International Human Rights Law’ (PhD thesis, University of Nottingham 2001) 55–57.

similar vein, Ibin Nujaym defines a “right” as “that to which a human is entitled”, while Shalabi defines it as “every benefit comfortable to Sharia”.¹⁶

Similarly, Mohammad Kamali argues that the definition of rights under Islamic law should recognise four elements: first, that it is something (an act/benefit/interest) established by Sharia; second, that there must be a decisive permission to, or, at the very least, no explicit prohibition of, the right concerned; third, the legally responsible person to whom the right applies should be bound by a duty to respect that right; and fourth, the right-bearer may be an individual, or individuals, or God.¹⁷ Therefore, it is observed that the prescriptions in Islamic law which may take the form of prohibition, command or sanction can be seen through *Ijtihad* (independent reasoning of Muslim scholars) as either rights conferred to Muslims or duties imposed on them. This should not be a problem so long as the moral rule is ultimately respected.¹⁸

Importantly, one of the reasons why Islamic law tends to pay attention to duties more than to rights in expressing its rulings and judgments involves the nature of the relationship between God and the individual in Islam; the idea of duties seems to be more specific and accurate than the language of rights.¹⁹ In other words, since muslim individuals are obliged to obey God, the orders should be framed in a decisive way, holding the individuals accountable if the orders are not performed. As Mohammad Kamali argues, “A person having a duty must be told specifically, not in general terms, what he/she may or may not do. But a right to life and property, stutable as it is, is very general and may be correlated with a long list of duties.”²⁰

Spiritual Aspects of Islamic Human Rights Law

The theology of Sharia states that individuals must believe that God has ultimate power since He is the creator of the world.²¹ Therefore, the validity of rights depends on the individual’s submission to God’s law, which is believed to be the perfect law. This language necessitates the premise that individual muslims must behave towards one another as God considers they should. Consequently, they will be rewarded by God, or they will be punished in either temporal life or the afterlife.²² Therefore, it is submitted by most muslim scholars that rights in Islamic law are divided into the rights of God (*huquq Allah*), the rights of humans (*huquq al-ibad*), and a combination of both. It should be noted that the idea that God has rights does not mean that He needs those rights for Himself, rather that they represent a means for maximising the prosperity of human beings.²³ For example, since it is believed that God is the creator of the earth, the most important right for Him is to be worshipped by every muslim.²⁴ This right guarantees freedom and liberty for individuals since they will not be subjected to anyone on earth except God.²⁵ Moreover, some scholars, such as Al-Shaibi, take the proposition further, arguing that God’s rights can play a vital role in enhancing the rights of humans, if one considers that everyone must obey His teachings. For example, God orders people to judge with justice,²⁶ a rule that, if followed, serves individuals well, while at the same time illustrating compliance with God’s orders.

¹⁶ *ibid* 41–43.

¹⁷ Mohammad H. Kamali, ‘Fundamental Rights of the Individual: An Analysis of *Haqq* (Right) in Islamic law’ (1993) 10 (3) *The American Journal of Islamic Social Sciences* 340, 344–345.

¹⁸ *ibid* 357–358.

¹⁹ Mohammad Othman, *Rights, Obligations and International Relations in Islam* (Dar Eqra 1982) 77–81.

²⁰ Kamali (n 17) 364.

²¹ Tamier Arief, *Governing by God’s Order* (Dar Al-Aqlaqe 1982) 66–67.

²² Paul Kurtz, ‘On Human Values’ (2006) *Science and Spirits* 35, 35–36.

²³ Saeed (n8) 84–87.

²⁴ The Holy Quran 51:56.

²⁵ Baderin (n15) 48–51.

²⁶ The Holy Quran 4:58.

In this respect, Al-Qarafi argues that there is no ruling in Sharia that is entirely independent of God's rights, since all rights and duties are derived from His commands.²⁷ However, the factors adopted in determining whether a ruling represents a right of God, a right of an individual, or a combination of the two, are subject to interpretation and thus vary among different Islamic schools of law.²⁸ In any event, in essence, the Holy Quran asserts basic principles of moral decency which are delivered and implemented by individuals through both the language of rights and the language of duties. This leads one to conclude that ideally, in the Islamic context, the role of "law" enforcement should be obsolete: following the law should be a fundamental priority for everyone. In other words, people's respect for God's law should enable them to exercise self-control and self-censorship in applying Sharia.

In addition, the duties or rights are sourced in God, as the Holy Quran affirms: "These are the limits of Allah, so do not transgress them. And whoever transgresses the limits of Allah – it is those who are the wrongdoers."²⁹ Therefore, they are holy, and actualising them is also holy. In Islam, it is believed that God knows about the secret thoughts of each individual, as the Holy Quran affirms: "And if you speak aloud – then indeed, He knows the secret and what is [even] more hidden."³⁰ This belief invalidates the need for formal control to implement duties or rights. By connecting them to the will of God, they are amply implemented, something which no formal control could achieve. This is an important difference between the two ideologies – rights subject to God's law or moral law rather than exercisable against the law.

THE EMERGENCE OF THE TERM "HUMAN RIGHTS" AND THE RELATIVE VALUE OF "DUTY" IN THE WESTERN DOMAIN

"Human rights" – a relatively modern term – is defined as certain inalienable rights which are conferred solely on the basis of humanity. These rights represent core truths about being human and dictate the essence of many other basic rights, such as freedom and equality. In 1948, the UN Charter included the term for the first time.³¹ The Universal Declaration of Human Rights (UDHR) is heavily involved in determining human rights. It was declared at the end of the Second World War as a response to the atrocities and conflicts of the past.³² As Henry Steiner affirms, the UDHR "has retained its place of honor in the human rights movement. No other human rights document has so caught the historical moment, achieved the same moral and rhetorical force, or exerted as much influence as on the movement as a whole."³³

As previously touched upon, the formulation of the language of rights was undertaken, for the most part, by a number of Western states, all of whom were members of the UN in 1945. In other words, many states and communities, especially Islamic ones, did not participate in constructing the language of rights for reasons such as colonialism.³⁴ Although other states took part in the UN and participated in enacting subsequent human rights declarations at a later time, they did so in the context of an already established system of rights based on philosophical assumptions made in their absence. It is argued that this situation has put pressure on the new members in the UN, who face the choice of either approving what has been agreed before them, or refusing the agreed framework and facing opposition from the majority of the world.³⁵ As a

²⁷ Baderin (n 15) 50–51.

²⁸ Kamali (n 17) 354–355.

²⁹ The Holy Quran 1:229.

³⁰ *ibid* 20:7.

³¹ Henry J. Steiner and Philip Alston, *International Human Rights in Contexts: Law, Politics, Morals* (Oxford University Press 2000) 137.

³² Bertrand Russell, *History of Western Philosophy* (The Committee of Publishing and Translation 1967) 38–40.

³³ Henry Steiner, 'Securing Human Rights: The First Half-Century of the Universal Declaration and Beyond' (1998) *Harvard Magazine* 45.

³⁴ Abdullah Ahmed An-Na'im, 'Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives' (1990) 3 *Harvard Human Rights Journal* 13, 15–17.

³⁵ Russell (n32) 57–63.

consequence, the concept of universal human rights, which emerged in the West, has prevailed in international domain.

Although the West prioritises the individual over society, it is important to realise how some “rights” are restricted (and therefore which duties are introduced) and on what basis those restrictions are justified. By referring to the International Bill of Human Rights, it can be concluded that absolute rights are extremely rare, and, therefore, there is an increased possibility of imposing duties. Moreover, these articles assert that the proposition of imposing duties on individuals and placing limitations on rights is a convention that the West is familiar with,³⁶ and that doing so does not jeopardise the protection of individuals.

However, since the main focus here is the individual’s interest, two main points should be considered before any duties that may affect rights are imposed: the importance of the fundamental interests of individuals, and how this process will have to be applied through appealing to rational justifications, since even leading proponents of individualism argue that rights should be restricted by laws that recognise the security and integrity of other individuals.³⁷ Nonetheless, any duty should also consider the individual’s demands. Clearly, such duties may vary according to the basic needs of the individual.³⁸ The only exception that permits the violation of the individual’s freedom is when such freedoms violate the freedoms of others, or pose harm to them.³⁹ This is because the prosperity of individuals is prioritised over everything else; if there is a possibility of harm, either physical or emotional, the protection of the individual’s security outweighs everything else, even personal preference.⁴⁰

A COMPARISON OF WESTERN AND ISLAMIC HUMAN RIGHTS LAW

This section concerns the proposition that human rights or duties are solely mechanisms for applying the basic rules of morality. Such rules are advocated by both the West and Islam. However, when each ideology intends to apply such rules, the West uses the language of rights while Islam uses the language of duties. This difference in implementation is the result of cultural and historical factors. Ultimately, it is argued that this does not present a conflict at the level of principle between the two ideologies.

Basic Morality as a Basis for Human Rights

It must be noted that the classifications of the acts, whether they represent a right or a duty, are not a primary goal in themselves, rather that they express certain ideas within an ideology. For this reason, we should focus on ideas which refer to morality itself, rather than the mechanism through which morality is applied. To put it differently, in the case of inheritance, we can say that x has the right to inherit or that y has an obligation to give x his share of inheritance, as long as the same end in both scenarios is served, that is, x receives his inheritance. Therefore, when we say that Islamic law calls for human rights, we mean that they are concluded from Islamic law, which primarily calls for the same subject but in the shape of duties. As Mohammad Kamali confirms “... the reality, existence, and significance of rights in Islamic law is undeniable; it is merely the form in which concepts are communicated, a certain view on the same reality, rather than a denial of that reality.”⁴¹

As Louis Henkin contends, human rights “reflect a common sense of justice, fairness, and decency”.⁴² For example, the moral law forbidding murder is interpreted as a right to life. In this example, the right to life is conferred solely to protect a moral rule which is the preservation of life. As David Stamos asserts, “Human rights according to such a view

³⁶ Frederic Megret, *Research Handbook on the Theory and History of International Law* (Edward Elgar 2011) 205–206.

³⁷ Anwar Raslaan, *Public Rights and Obligations in Variable World* (Dar Al-Nahdah AlArabia 1993) 19–23.

³⁸ Fathy Al-Dreney, *The Right and the Extent of Power to Restrain it* (3rd edn, Al-Risalah Organization 1983) 49

³⁹ Ali Mohammad, *The Political Western Thinking* (Dar Al-Maarefah Al-Jameah 1981) 33–37.

⁴⁰ Al-Dreney (n38) 29–30.

⁴¹ Kamali (n17) 342.

⁴² Louis Henkin, *The Age of Rights* (Columbia University Press 1990) 2.

constitute a means only, not an end, which raises the question of whether there are better means available for the desired ends.”⁴³ In such case, if the end goal is seen as the law of morality then the means to this goal can be applied differently by each ideology: they can, for example, use either human rights or human duties. Ian T. Ramsey confirms that it “is also important to recognize that certain human interests are so fundamental and so general that they must be universally acknowledged in some form and to some degree in any conceivable moral community”.⁴⁴

This demonstrates the proposition that there is a universal minimum standard of morality which represents the nature of individuals as social entities and responds to the fundamental needs we have in order to live with one another.⁴⁵ These needs are essential for maintaining social cohesion and harmony; if they are not fulfilled, social life would be almost impossible and life generally would become impaired.⁴⁶ In other words, the basics of morality, which are associated with fundamental human needs, are not like other virtues “such as humility and chastity, which are optional subjects and are based only on pictures of human nature, which men are free to adopt or not as they choose”.⁴⁷

The Languages of Rights and Duties: An Analogy

The dominant language that communicates the rulings of Sharia to individuals is the language of duties. This means that individuals are held accountable to perform certain obligations towards others in order to achieve the essence of Islamic moral decency.⁴⁸ However, due to Western influence, Muslims have started to adopt the language of rights as well.⁴⁹ For example, Muslim scholars such as Mashood Baderin interpret the duty to God not to interfere with anyone’s privacy (expressed in the Holy verse “do not enter houses other than your own houses until you ascertain welcome”) as a right to privacy. Here, the right of privacy derives from a duty owed to God.

Indeed, it is argued that the Holy Quran sees no great difference between conferring rights on individuals, on the one hand, and imposing duties on individuals for the benefit of the community on the other, since they will both, ultimately, amount to the same thing. There is a correlative relationship between rights and duties, since a conferred right cannot be effective unless there is a duty on others to respect that right. In other words, if there is no obligation on others to respect a certain right, then this right will become a mere interest with no legal claim.⁵⁰ For example, the Holy Quran expressly prohibits murder.⁵¹ This provision may be seen either as an obligation not to kill individuals, or as a right to life for individuals; in any event, the Holy Quran aims to preserve the lives of humans. In a similar vein, the Holy Quran orders individuals not to trade unless in a lawful way and with mutual consent. This can be seen either as respect for the right of owing a property, or as an obligation not to steal or control properties without the consent of their owners.⁵²

All this supports the notion that the end is more important than the means. In addition, almost all rights have corresponding duties in respect to individuals, and they may be looked upon as two readings of the same reality. As Benn and Peters point out, “right and duty are

⁴³ David Stamos, *The Myth of Universal Human Rights: Its Origins, History, and Explanation, Along With a More Humane Way* (Paradigm Publishers 2013) 64–65.

⁴⁴ Ian T. Ramsey, *Christian Ethics and Contemporary Philosophy* (SCM-Canterbury Press Ltd 1966) 291.

⁴⁵ Basil Mitchell, *Morality: Religious and Secular* (Clarendon Press 1980) 45–55.

⁴⁶ Joel Feinberg, *Moral Concepts* (Oxford University Press 1969) 67–68.

⁴⁷ Mitchell (n 45) 55.

⁴⁸ Othman (n 19) 74.

⁴⁹ *ibid* 71–72.

⁵⁰ Al-Badawi (n 9) 36–38.

⁵¹ “whoever kills a soul unless for a soul or for corruption [done] in the land – it is as if he had slain mankind entirely. And whoever saves one – it is as if he had saved mankind entirely.” (5:32).

⁵² Kasawnah (n 5) 23–26.

different names for the same normative relation, according to the point of view from which it is regarded.”⁵³ For example, if one has a right to a property, this presumes an obligation to refrain from entering it on whoever happens to be in a position to enter that property.⁵⁴ Therefore, Joel Feinberg confirms that “it is unquestionably true that when one party owes something to another, the latter has a right to what he is owed.”⁵⁵

CONCLUSION

It is clear, then, that Western and Islamic human rights discourse share many common terms, but that they have different nuances and implications. Many Western human rights identify – whether consciously or not – with 1400-year-old Islamic principles and values. It is important to reiterate that the term “human rights” is a product specifically of modern Western civilisation, but that Muslims have been influenced by the West, and have subsequently started to use and interpret Islamic law through the language of rights too – though not exclusively.

Ultimately, when we consider Western human rights and Islamic human rights, the differences result from different interpretations and practices. In other words, the differences emerge when explaining the meaning of terms such as morality and dignity, on account of different cultural and historical factors. An example that illustrates the fundamental unity of Western and Islamic views is that both doctrines emphasise the importance of freedom of expression. However, the principle is considered in the context of certain cultural and ideological parameters in each doctrine, since there is arguably no universal definition of the principle. As a result, Islam dictates that these principles respect the rights of the community and serve Sharia aims, while the West requires that these principles serve the individual’s needs in society. So the same principle exists in both doctrines, but with different implications.⁵⁶

⁵³ Stanley I Benn and Richard S Peters, *Social Principles and the Democratic State* (Allen & Unwin 1969) 89.

⁵⁴ Joel Feinberg, *Rights, Justice, and the Bounds of Liberty: Essays in Social Philosophy* (Princeton University Press 1980) 134–135.

⁵⁵ *ibid* 130.

⁵⁶ Elizabeth Mayer, ‘Universal versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?’ (1994) 15 *Michigan Journal of International Law* 307, 307–311.