

Islamic perspectives on human rights: a brief socio-historical overview

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Abstract

By exploring a Muslim view of human rights in an historical context, this paper enhances mutual understanding between diverse faith communities. In Islam, justice is a moral virtue and an attribute of human character, as it is in the Western tradition. However, the problem of human rights in the modern age became among the most challenging in Islam. The juristic articulations of Islam bear the influence of history and time, which may not be integral to its essence and must, therefore, remain open to evolution and improvement. Islamic tradition has created concepts which can be applied in a systematic engagement to develop contemporary commitments to human rights. The paper gives an emphasis on *wasaiyyah*, which is a commitment to justice and a balanced approach to all aspects of human life leading to the integration of all good in the world. It reveals this concept as one of the greatest losses of the Muslim world whose value needs to be re-affirmed. By doing so, it highlights the plurality of Muslim views on the UDHR and some Islamic human rights declarations, but also the ongoing cosmopolitanism implicit as a recurring theme in Islamic culture from earliest times.

In Islam, the concept of human equality denotes equal treatment for all human beings with due regard for their common rights and responsibilities regardless of ethnicity, race, colour, gender, class, conviction, faith and persuasion.¹ In Islam, justice is also a moral virtue and an attribute of human personality, as it is in the Western tradition.

Islamic law (Shari'a) is seen by its followers as the law of God. It also has a claim to universal validity.² However, the Islamic legal tradition is not a monolithic entity. Its main sources are the Quran, Hadith, *Ijma* (consensus) and *Qiyas* (analogy, reasoning). Islamic law lends itself to a variety of interpretations.³ There are a number of the Islamic schools of law (*maddhabs*) with more or less divergent views. On the one hand, it makes it more difficult to determine whether human rights norms and Islamic law can be reconciled. On the other, it also allows considerable scope for finding compatibilities.⁴ Therefore, there is no such thing as a single 'Islamic' view on certain legal issues.⁵

Frequently, questions around human rights and Islam are reduced to dichotomies without taking into account context and history.⁶ Consider the *Madina Charter (Mesaq-i-Madina)* which established peace and created justice, freedom, freedom of religion, a classless society, rules for co-existence with non-believers, and upheld the dignity of human beings; the *Ashtiname* (Testament), also called the *Treaty of Saint Catherine*, which protected Christians, their churches, residences and priests⁷; a *system of social insurance* under the second caliph, Umar ibn Khatab, which provided support to the poor and needy Muslims, Jews and Christians⁸; or the document *Aman*, issued by a Fatamids, which underscored Muslim commitment to just governance, not

¹ Imamovic, 1971: 301

² Cox, 2013: 309

³ Sardar Ali, 1998

⁴ Saeed, 2018

⁵ Cox, 2013: 311

⁶ Fazaeli, 2016

⁷ John Andrew Morrow, 2015

⁸ Andrabi, 2016: 23

only for diverse Muslim communities, but for Jews and Christians. Moreover, the Ottoman sultans proclaimed a number of *Ahdnames* pledging to all Christians and Jews that all their rights were recognised. These are evidence of human rights and an interfaith balance of cosmopolitan character.

So it would be wrong to conclude that the relationship between human rights and Islam has always been conflictual. Islam, like many other religions, is an old system of belief; democracy is a relatively new advancement of the modern world.⁹ In recent history, Muslim countries formulated a number of regional documents justifying their perspectives on the issue of human rights in Islam, such as the Universal Islamic Declaration of Human Rights (UIDHR) in 1981, and the Cairo Declaration of Human Rights in Islam (CDHRI) in 1990. These documents pointed out that man was of divine origin and human dignity could not be reduced to a series of secular norms. Thus, some Muslim scholars considered the UDHR as 'anti-religious and politically hegemonic, culturally Eurocentric', and 'founded on secular morality'.¹⁰

Some Muslims argued that there is a need for new interpretations of the basic sources of Shari'a to respond to the demands of life in the modern world.¹¹ Kamali pointed out that Muslim declarations are rather in convergence with international human rights law and 'human rights can be better advanced when they are culture-sensitive...'.¹² The CDHRI says that 'the Islamic Shari'a is the only source of reference for the explanation or clarification of any of the articles of this Declaration'.¹³ In fact, the CDHR is an 'Islamised' version of the UDHR, with 'law' interpreted as 'the Shari'a', and 'a democratic society' replaced by 'the community (*Umma*)'. But it opens questions as to the identity of the authoritative interpreters of the Shari'a and consequently can lead to different interpretations of these documents.¹⁴ It links what are thought of as universal rights to a specific religion—the universal is particularised within the dominant idiom of Muslim societies.¹⁵

In Islamic human rights scholarship, a distinction should be made between the positions of Muslim countries and that of the scholars of Islam. There is an obvious contrast in the interpretations between Muslim countries, in which the Shari'a constitutes a territorial law applying to everyone, and countries with a Muslim minority, in which the Shari'a is only a personal status, or a mere 'individual moral code for practicing Muslims'.¹⁶ Usually, Muslim countries which follow the conservative interpretation of Islamic law consider that international human rights law is not applicable or only partially applicable in their domestic jurisdictions.¹⁷ There are also Muslim countries which endorse a wide view of human rights, but do not support the manner in which this broad concept was developed in a fashion that 'has no connection with the Islamic vision'.¹⁸

The multiplicity of the interpretations in human rights discourse suggests that their variety and competition are a necessary condition for human progress. Muslim scholars advocated a wide range of opinions on the relationship between Islamic and international law from the liberals and/or reformists to the conservatives and/or fundamentalists—taking stances of 'compatibility' and/or 'non-compatibility'.¹⁹ Besides

⁹ Jallow, n.d.

¹⁰ Shacedina: 50

¹¹ Shacedina: 59

¹² Kamali, 2014:2

¹³ Ahmari-Moghaddam, 2012: 115

¹⁴ Karcic, 2009: 148

¹⁵ Hayatli, 2012: 3; Hashemi and Qureshi 2019

¹⁶ Karic cited in Bougarel, 2007: 5

¹⁷ Baderin, 2001

¹⁸ Cox, 2013: 310

¹⁹ Mayer, 1994

those who advocate strict adherence to the Universal Declaration of Human Rights and to international human rights standards in general, there are those who argue that Islamic human rights norms are compatible with international standards in many respects and that where they conflict, those areas could be reformulated and reconciled with international standards. Another approach is that of non-compatibility, which many Islamic governments and conservative Muslim scholars employ. They regard the Islamic legal system as being a 'superior code'.²⁰ However, there is no superiority for Islamic human rights, since human rights violations can also be found in Muslim countries, such as the persecuting of non-Muslim minorities for practising their own religion, or the denial of women's rights.²¹

Shah and Mayer consider that some Muslim governments, while critical of international human rights, lack a solid understanding of what human rights are under the international human rights system. In fact, the non-compatible approach is incorrect in its critiques of international human rights law because 'a large part of international human rights law is in fact in accordance with protections granted in Islam'.²² Ceric, a former Bosnian Grand Mufti, does not think that it was necessary for these Muslim documents to emerge, claiming that the 'UDHR is largely compatible with the core of al-Sharia, the highest purposes of human understanding of God's Law in Islam'. The question is why such Muslim documents came about: 'It is collective insecurities that have driven some Muslims to that point,' says Ceric. He interprets it as a loss of Muslim worldly power reflected in a 'self-imposed cultural insecurity syndrome' due to the lack of social order, justice and democracy.²³

The idea of human rights is not exclusive to one culture. It comes from both West and East as they share basic elements in understanding human rights and human existence.²⁴ It will be misleading to think that Muslim thinkers, even the most traditionalist among them, are against the need for universal human rights to protect human dignity and human agency in the context of a nation-state today. Even the staunchest opponents of the Universal Declaration of Human Rights, who regard it as being morally imperialistic and culturally ethnocentric, concede the fact that human beings have rights that accrue to them as humans.²⁵ All Muslim majority countries are member states of the United Nations and a number of important Muslim jurists have stated the view that the UDHR represents a binding international agreement for Muslim states too.²⁶

In the modern and pluralistic world, 'peoples and individuals need make no choice among religion, secularism, and human rights—the three can work in synergy,' argued An-Na'im.²⁷ Similarly, Monshipouri advocated that the 'fusing [of] secular and Islamic principles can effectively promote human dignity'.²⁸ In Fazul Rahman's view 'it is always possible to find the meaning as a core value, transcending time and place'.²⁹ Even 'if we take secularism to be understood as an aspect of the relationship between religion and the state, then an Islamic rationale for a secular state is entirely possible'.³⁰ Some Muslim scholars propose a reinterpretation of the Shari'a in order to

²⁰ Shah cited in Fazaeli, 2016; Ahmari-Moghaddam, 2012: 95; 87-8

²¹ Ahmari-Moghaddam, 2012: 95; 87-8

²² Shah, 2006 cited in Muedini, 2010: 4 Mayer, 2007 in Muedini, 2010:2

²³ Ceric, 2018: 7

²⁴ Ahmari-Moghaddam, 2012: 16

²⁵ Shacedina: 50

²⁶ Saeed, 2018

²⁷ An-Na'im 2007: 13

²⁸ Monshipouri cited in Shah, 2006: 8

²⁹ cited in Saeed, 2018

³⁰ An-Na'im cited in Fazaeli, 2016

bring its provisions into line with contemporary developments.³¹ For instance, Soheib Bencheikh, the Mufti of Marseilles, advocated a 'desacralisation of Islamic law'.³²

The juristic and scholastic articulations of Islam bear the influence of history and time, which may not be integral to its essence and must, therefore, remain open to evolution and improvement.³³ Shacedina asserted that religious doctrines possess the resources of working towards 'an overlapping consensus' that secular human rights advocates can ill-afford to ignore.³⁴ Fresh approaches would also help revitalise Islamic thought as we have learned from history. Muhammed Iqbal argued that the teaching of the Qur'an is a process of progressive creation that necessitates that each generation, guided but unrestricted by the work of a predecessor, should be permitted to resolve its own problems. Accordingly, a number of Islamic scholars argue that the Qur'an 'is a living text and can be reinterpreted to meet contemporary needs of given Muslim societies'.³⁵ Changes in individual behaviour as well as challenges in the political make-up can increase the need for interpretations of Islam which support democracy and human rights.³⁶

Secular societies in the West are not godless. A well-constructed secular state should be the best protector of religious freedoms, and the least likely to violate freedom of religion or belief. According to An-Na'im, a secular state, by offering security and stability, allows for Muslims to choose interpretations of Islamic sources suitable for the contemporary time instead of being bound to a so-called 'historical Shari'a'. Rather, they would be free to pursue new paths of self-determination and self-definition, coherent with modern principles of constitutionalism, human rights and citizenship.³⁷

One particular aspect of social virtue in Islam is social relationships between different communities and national entities, interpreted and dealt with as part of [inter]national ethics. In fact, the intercommunal and international form of virtue or righteousness, formulated in the Islamic doctrine, can be represented as being based on 'mutual upholding of a universal outlook transcending human biological and sociological limitations and differences'. It also includes the maintenance of a moral pattern and social code which is definite as well as universal, the maintenance of universal peace and harmony among humankind, the maintenance of social prosperity and security among *all* those who recognise the same principles with regard to international peace, human rights and the spirit of brotherhood.³⁸

In today's world's interconnectedness,³⁹ Muslims should rediscover their forgotten treasure, most notably *wasatiyyah*, which denotes just, balanced, merit, excellence, centred and middle. Moderation is one of the universal values also shared by most traditions and religions.⁴⁰ Wasatiyyah is one of the greatest losses of the Muslim world: 'it is the necessary compass that draws one back to the centre, back to the sense of balance and equilibrium that rejects outlandish experiments and placing unacceptable divisions between communities; between the wealth of the very few and

³¹ Karcic, 2009: 147

³² Littman, 1999; Karcic, 2009

³³ Kamali, 2014:1)

³⁴ Shacedina: 59

³⁵ [Shah].

³⁶ Baderin, 2007: 25

³⁷ An-Naim cited in Fazaeli, 2016

³⁸ Imamovic, 1971: 413

³⁹ Smith, 1991

⁴⁰ Ibrahim, 2018: 39

the misery of the mass; between the state and civil society; between favoured regions and impoverished hinterlands, and also between men and women'.⁴¹

Wasatīyyah is a commitment to justice. It is manifested in the balanced attention one pays to one's rights over, and obligations towards, others, as well as to the material and spiritual world. Islam advocates these values, not only among the Muslims themselves, but also in their relations with other communities and nations.⁴² Wasat is a doctrinal obligation and historical vision which requires a balanced approach to all aspects of human life leading to the integration of all good in the world.⁴³ *Wasat* refers to the 'middle way', a justly balanced way of life, avoiding extremes and experiencing things in moderation — the middle path bringing people together, while respecting their differences. It should neither be a flattering that leads us into assimilation, nor a rejection that leads us into isolation. But it should be an integrative force that leads us into a self-respectable, just, reliable and trustworthy life.⁴⁴ This approach may help Muslims to understand a newly emerging human rights movement and how it may fit within their tradition's ethical and spiritual perspectives. Wasatīyyah as such is a cosmopolitan 'pillar of Islamic civilisation'.⁴⁵

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⁴¹ Allawi cited in Mohamed. 2018:29

⁴² al-Zuhayli cited in Kamali, 2008: 24

⁴³ Ceric, 2008: 10

⁴⁴ Ceric, 2018: 7

⁴⁵ Kamali, 2008: 24

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