

Islamic Legal Philosophy's Incompatibility with Global Human Rights and Brief Comparison with Christian Philosophical Theology.

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Abstract

This paper examines the arguments on the discordancy between Islamic jurisprudence and the Universal Declaration of Human Rights. It also make a short evaluation on the Christian perspective towards human rights, concluding that the Christian's worldview is flexible and adaptable because it is based on philosophical theology, rather than the Islamic rigid principles which has its basis upon legal philosophy.

Upon an examination of some prominent human rights scholars from both the secular, Islamic and Christian circles, one can observe much concern for the continuing justice and world peace between two clashing civilizations. However, under Islamic legal philosophy, there can be no liberty without limitations.

This paper also provides several examples of how Shari'ah is implemented in several countries, causing anxieties over its infringement to the basic global human rights. Fortunately, there are some passionate Muslims and Christian legal scholars that attempt to reconcile the Shari'ah and the UDHR.

Introduction

The ultimate purpose of *Shari'ah* within the framework of Islamic legal philosophy is to provide a practical and comprehensive service to the welfare of the humankind. Many equate the term *Shari'ah* with the restrictive laws of Islam, but actually *Shari'ah* generally means the

‘pathway of God’ towards goodness.¹ It act as a guide (means) rather than demand strict compliance for achieving the desired spiritual, social and physical welfare of the human kind (ends). As a ‘pathway of God’, it inferred that *Shari’ah* provides the rules or the means for moral reasoning or the necessary direction, or the infallible, indispensable divine guidance for human well-being in all societies throughout all ages. It is claimed to be the imperative fundamental building block in search for the proper legal duty, rights and obligation in accordance to Allah’s will. This divine law is strictly applicable in changing times where new-fangled lifestyles or moral practises, bioethics, internet, innovative science and technologies were never heard of or debated when *Shari’ah* was first inked. Of course, not every Muslim scholars or jurists would agree with this. However, all Muslims will agree that the very basic foundation and sources of Islamic legal theory rest upon the revelation given by Allah to his messenger, the Prophet Muhammad.

On the basis of this belief, most Muslims genuinely affirm that this divine law encompasses every aspects of the human life including ethics, family relations, economics, politics, criminal laws, legal and evidential principles, and especially human rights. With audacity and sincerity of faith at various degrees, most Muslims claim that *Shari’ah* is the non-negotiable divine foundation for constitutional principles and the grundnorms of the Islamic legal system, or preferably the global legal system. Hence, it should be the leading influence for global human rights or at least compatible with the Universal Declaration of Human Rights (UDHR). This essay will provide few but sufficient examples for discussion that their bold

¹ Some merely affirms that *Shari’ah* in its technical sense denotes the law laid down by Allah, whilst the Islamic jurisprudence (*fiqh*) is to understand Allah’s law. The author here do not attempt to further discuss this highly controversial academic disciplines between the *furu al-fiqh* (branches of understanding) and *usul al-fiqh* (the roots of understanding) and its over-lapping functions. Definitely not to venture into their competing schools of thought of *fiqh*. However, on prima facie, we generally understand the Muslims’ confessions that *Shari’ah* and the sources for their Islamic legal philosophy are basically divinely mandated and therefore act as a guide or strict rules for the Muslims to comply with, especially in regards to human rights. Since it was divinely mandated, surely it is assume that it should be a perfect law and compatible with the Universal Declaration of Human Rights agreed by most cultures and communities.

claims of ‘divine guidance’ and philosophy of law for human rights are somewhat doubtful due to apparent incompatibilities. Unless there are practicable solutions and worldwide acceptance of reinterpretation of *Shari’ah* and *fiqh* in the Islamic legal theory and practices, the debate of its incompatibilities with the UDHR charily continues.

What is so significant about the UDHR that we are concerned about its compatibility with the religious legal philosophy of a quarter of the world’s population? Basically, after the horrendous cruel violation of human rights during the Second World War, a document was drafted by representatives with various legal and cultural backgrounds from all regions of the world. After much deliberation, the drafters of the UDHR took exclusive cognisance of the inherent dignity and of the equal and inalienable rights of all members of the human family. These are to be the foundation of freedom, justice and peace in the world, which is clearly stated in its preamble. Finally, this Declaration was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A) as a common standard of achievements for all peoples and all nations. Almost all nations and communities from all cultures and religions theoretically accept these fundamental human rights to be universally protected. Thereafter, UDHR has inspired a rich body of legally binding international human rights treaties. It continues to be an inspiration to us all whether in addressing injustices, in times of conflicts, in societies suffering repression, and in our efforts towards achieving universal enjoyment of human rights. It represents the universal recognition that basic rights and fundamental freedoms are inherent to all human beings, inalienable and equally applicable to everyone, and that every one of us is born free and equal in dignity and rights.²

² Available at <http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html>.

However, a *Shari'ah*-based type of Islam is rather at variance with this universal value because it is not compatible with democracy and the international human rights. We shall begin discussing human rights from a theistic Christian worldview, merely to demonstrate that not all religious-based philosophy are similarly incompatible with the UDHR. Thereon, we shall identify the numerous uncomfortable principles laid down in the Islamic laws that somewhat seems discordance with the UDHR.

Christian Perspectives of Human Rights

Like the monotheistic religion of Judaism, the source of knowledge on man's duties and rights for both Christianity and Islam rests primarily upon divine revelation. Thus, its universal concept of human rights draws from God-revealed scriptures. However, Muslims and Christians differ in their understanding of human rights, at least in a theological and socio-political point of view. Both strongly support human rights and human dignity within their own measure of emphasis and definition.

Amongst Christians themselves, the support and understanding of human rights differs to some extent. For example, McCurley and Reumann recognised that human rights are an important ethical concern in the modern world. They acknowledge that there are ways "to connect this ethical concern with the scriptures," because there are "a whole series of areas where biblical thought relates to the modern concern for human dignity and rights". However, viewed historically, human rights are "rooted in the assumptions of deism" which, "in its

concept of God and its view of human autonomy, was far removed from any notion of God who acts in history or of people in bondage to sin to self, redeemed by Jesus Christ.”³

Even many nominal Christians, living in the highly modern sophisticated Western societies professing to be believers of Jesus Christ, unconsciously portray an extreme worldview of deism. They seem to believe that God created the world but thereafter has exercised no providential control over what goes on in it. Human reason is the basis for human rights, rejecting the orthodox claim to a special divine revelation of truths that go beyond reason. Thus, they can flexibly work alongside with the atheist, exercising their human reasoning in establishing universal human rights.

This deist roots of human rights tradition contributes much concern to many. Ecclesiastical historian and former Church of England priest, Edward Norman who lectured in University of Cambridge for many years, similarly expressed a concern that human rights advocacy is mired in a secularised view of the world, and argues that “the Christian passion for Human Rights exactly corresponds to the development of ideas within the Western intelligentsia as a whole.”⁴

There are theologians on the other side of the coin who rigorously argues that biblical revelation justifies support for human rights. For example, Jacques Ellul argues that human rights are part of God’s covenant and thus are central to the witness of the church. In his book *Le Fondement Théologique de Droit*, Ellul strongly argues that in the judicial relativism of the modern era “established human rights are in no way protected against arbitrary power,” as “the

³ Foster R. Mc Curley and John H. Reumann, “Human Rights in the Law and Romans (Series A),” in George W. Forell and William H. Lazereth (ed.), *Human Rights: Rhetoric or Reality*, (Philadelphia: Fortress Press, Justice Books, 1978).

⁴ Edward Norman, “*Christianity and the World Order*” (Oxford: Oxford University Press, 1979), p. 31.

discernment of right and wrong” is simply “given over to an all-powerful state charged with making its own criteria”.⁵ Every human right, according to Ellul is grounded in the saving event of Jesus Christ. Anything outside Jesus Christ could not bring about justice because in the Bible, law is justice and Jesus Christ is God’s justice. Thus, in the Bible there are no natural rights because man’s rights are in the Lord. Man has no other right but that which is in the Lord and given by the Lord.⁶

Similarly, Distinguished Research Professor of Philosophy Rev. Dr. John Warwick Montgomery⁷, also a lawyer and philosopher, vehemently stress that Christians should affirm human rights from a biblical perspective. He argues that if the principles of law of evidence are applied, the witness of the New Testament to Jesus Christ as the risen Son of God will be found credible, even to withstand hearsay objection. Thus, the only logical conclusion is that the teachings of Jesus Christ can be seen to reveal God’s will and to establish a foundation for human rights. What obviously follows is that “once you have met God incarnate, you have no choice but to trust Him: as to the way of salvation, as to the reliability of the entire Bible, and as to human rights.”⁸ Undoubtedly, that is the Christian philosophical theology of human rights.

Save the application of the legal rules of evidence as argued by Montgomery, the other reasoning given above by the Christian scholars does not seem to be dissimilar with some of the Muslim argument on human rights. Like Norman, Muslims express a concern that human rights advocacy is mired in a secularised view of the world. They strongly refute the idea that

⁵ Jacques Ellul, *The Theological Foundation of Law*, trans. Marguerite Wieser (London: SCM Press, 1960), p. 9.

⁶ *Ibid.*, 48 – 49.

⁷ Also Director, International Academy of Apologetics, Evangelism and Human Rights at Strasbourg, France and Professor Emeritus of Law and Humanities, University of Bedfordshire.

⁸ John Warwick Montgomery, *Human Rights and Human Dignity* (Edmonton, 1995), p. 160.

the initiation and continued development of the concept of human rights are attributed exclusively to Western culture⁹ and also having great anxiety over the much secularisation of universal human rights. No doubt, the Muslim recognised that human rights are an important ethical concern in this modern world, but instead of its connection with the scriptures as acknowledged by McCurley and Reumann, they insist that the connection should only be based on the Quran. Just as Ellul's belief that "*my rights are in the Lord*", Muslims equally claim that their rights are in Allah. Man has no other right but that which is in Allah and given by Allah in the Quran. In Islam, God-given human rights are seen as the means of assuring human dignity.

Both Muslims and Christians can claim that their human rights rest on their God-revealed scripture. Instead of the assertion that there are clear biblical warrants for human rights, as argued by Montgomery, the Muslims can also claim that there is strong assertion that Quran vividly warrants rights for human. Unless either party has adequate evidence sufficient to prove beyond reasonable doubt, a claim remains a mere claim. However, at this juncture this paper does not attempt to embark into which claim of divine revelation is credible, adequately able to resolve its epistemological problems, leaving the discussion of proof for some other papers.¹⁰

Again, this paper here neither seeks to discuss the ontological argument of both faiths nor the authenticity and reliability of each religious scripture. It is an attempt to provide the material issue that is thought to be a major obstacle for Islam to be compatible with contemporary human rights. A brief explanation of the concept of human rights as viewed by

⁹ *Human Rights in Islam* (Geneva: International Commission of Jurist, 1982), p 3.

¹⁰ E.g. Henry Hock Guan Teh "Legal Apologetics: Principles of the Law of Evidence as Applied In the Quest for Religious Truth" *Global Journal of Classic Theology* (Vol. 5 No. 1). Available at <http://www.globaljournalct.com/editorial-board/?issue=vol-5-no-1-0705>

the majority of the evangelical Christians has been discussed above, hopefully to remind the readers that the Human Rights advocated by the West is by no means a total redolent of Christianity.

Although the Muslims are currently deeply divided among themselves on the question of what kind of human rights protection Islam provides, many Muslim lawyers would acknowledge that contemporary Islamic practices in many respects do not conform to the true principles of Islam. Whichever school of thoughts they belong, the Muslims would not hesitate to agree that the protection of human rights are provided by divine revelation, except for their different exegesis of the Quran.

Origin and Development of Human Rights: First may not be the best.

With a sense of pride on the Islamic intellectual beauty and the intense superiority complex, there are Muslim scholars boldly who claim that Islam was the first to recognise basic human rights. They claimed that almost fourteen centuries ago Islam set up guarantees and safeguards that have only recently been incorporated in the UDHR.¹¹ Some Muslims seem to be annoyed by the claim of secularists that human rights are a modern achievement and they are not found in traditional religions. The standard of achievement are obviously subjective and the varied rights provided by traditional religions depends on each prejudiced interpretation, whether it aptly provides individual rights and justice in the modern world.

¹¹ *Human Rights in Islam*, p 9.

One example given by a liberal Muslim scholar is that ‘the principal aim of the Qur’an was the removal of certain abuses to which women were subjected.’¹² The existing institution that constituted to the vulnerability and the degrading status of women was demolished. In addition to that, Islam conferred rights on women in the seventh century that women in the West have no such right until recently. On the contrary, even before the establishment of Islam, secular philosophies and traditional religions already have their own concepts of human rights. Whether it is political, sociological, theological or legal in nature, its ideology or dogma to a certain extent touches on the issues of individual rights and human dignity. Various histories and cultures before the time of Muhammad, whether influenced by a particular traditional religion or not, have their own principles on the value of individual dignity and individual autonomy. Even at the time of the Pharaoh, ancient Egyptian women were the equals of men in every area except occupations. Egyptologist Barbara Watterson writes:

*In ancient Egypt a woman enjoyed the same rights under the law as a man. What her de jure [rightful entitlement] rights were depended upon her social class not her sex. All landed property descended in the female line, from mother to daughter, on the assumption, perhaps, that maternity is a matter of fact, paternity a matter of opinion. A woman was entitled to administer her own property and dispose of it as she wished ...*¹³

Another example, from a non-traditional religious aspect, the European development of human rights may start from the Greek *polis*. Although its concept did not incorporate citizen right for women and slaves, it has its own concept of property rights of individual and other rights. It may not be perfect or closely related to the contemporary human rights of the 21st

¹² Fazlur Rahman, “The Status of Women in the Qur’an,” in Guity Nashat (ed.), *Women and Revolution in Iran*, (Boulder: Westview Press, 1983), p. 38.

¹³ Available at <https://www.ancient.eu/article/623/women-in-ancient-egypt/>

century, but they are the first, if not, one of the first institutions in recorded human history to develop a concept of human rights. However, it definitely does not mean that their concept is universally accepted. Nor it has provided a reasonable and equitable protection or treatment towards human dignity. The same argument applies to Islam. Whether it is the first or earlier than the modern Western institution to confer human rights, there are still material problems distinctly manifested both in the scriptures or philosophies of prominent Muslims considered to be lacking in providing reasonable and equitable human rights protection to individuals. The first may not be the best or correct. Likewise, the first to decide that the shape of the world cannot be right if they concluded it was flat. Together from its defects and controversies, as we shall discuss below, its many contradicting versions and so-called official Islamic ideology have impaired its concept of human rights. Thus, Islamic law in itself constitute an obstacle to the progress of human rights. The Quran and the many Islamic human schemes provided by some prominent Islamic scholar either diluted or eliminated the advancement of global human rights protection afforded by international law.

As far as the human rights from the European perspective are concerned, the system of *polis* gradually broke up in the third BC and gave way to the concept of ‘humanity’ developed by the Stoic philosophers. The Stoic saw reality as immersed by the divine logos or reason: man as a reasonable being takes part in the divine principle of this world. Relying on recorded history, they were the first to accept slaves as fellow human beings even though such concept did not make much impact on the political or economic situation of that time.

The laws even from the Old Testament were well written before the height of Roman political philosophy and obviously many centuries before the establishment of the Christian Theology thereafter or the dawn of Islam, has to a certain extent either attributed or directly

develop a comparable history of human rights. Even some cultures, religious, philosophical and political system from the Far East developed their own human rights at their own time and space. Indeed, Islam is not the first to recognise human rights.

From the sphere of Northern and Western Europe, human rights had gradually developed and the emphasis of individual rights begins to take shape within certain circumstances. The oldest document considered to be a basis of the UDHR was the “Magna Carta Libertatum” of 1215¹⁴. Unfortunately, it only recognised rights and privileges of barons, church and freemen. Only since 1679 did others have these rights. This may give Muslims some honour because the Quran recognised more rights to more classes of people earlier than 1215.

The Renaissance could be considered as the first quantum leap for the separation of the state and the church. Then the Enlightenment put human ratio at the centre, independent of any divine revelation. It replaced equality before God by reciprocal human equality and human ‘majority’ or self-determination. After gaining independence from the British through a bloody war, the American promulgated the 1776 “Virginia Bill of Rights”. Subsequently, it inspired the *Declaration des Droits de l’Homme et du Citoyen* of the 1789 French Revolution. Through this new order, a person no longer depends on the will of the king, nobility or clergy. Via the slogan *liberté, égalité et fraternité*, they advocated respect for the natural, innate and inalienable rights of men as men.

¹⁴ Medieval Latin for "the Great Charter of the Liberties" (commonly called Magna Carta) is a charter of rights agreed to by King John of England at Runnymede, near Windsor, on 15 June 1215. It was first drafted by the Archbishop of Canterbury to make peace between the unpopular King and a group of rebel barons. The Charter laid down rights such as protection of church rights, protection for the barons from illegal imprisonment, access to swift justice, and limitations on feudal payments to the Crown.

The last two centuries, the development of human rights have paved way into the constitutions of most countries all over the world as a basis for their socio-political framework. Thus, these fundamental rights contributed to and prepared the way for conceivable universal contemporary human rights. Its essence is the respect for personal dignity of a human being and principles of political ethics. The modern concept of human rights became more popular and necessary worldwide only after the experience of two world wars. The United Nation was established and consequently led to the United Nations Declaration of Human Rights, with some room for improvement.

Obviously, the United Nations concept of human rights is not the only way to value and protect human dignity. Whilst there are Muslim scholars claiming that some cultures and religions have already incorporated human rights for many centuries,¹⁵ there are those who intrepidly claim that Islam is the only expression of human right since it is revealed by God. ‘Human Rights’ according to Muslims are the natural rights, which are the ‘God-given rights’. Individuals enjoy these rights by virtue of being human.¹⁶ Montgomery noted that considerable scholarship has been devoted to the implications of Islam for human rights since the assumption that the Quran is in itself a law code, that Islam ideally makes no distinction between divine law and human law, and that the Islamic way of salvation is strictly legalistic.¹⁷ Therefore, conservative Muslims insist that it would be wrong to adopt any form of human-made law when the law has already set out by Allah himself.

¹⁵ So Moustafa A. Ali i: M.S.Khan, “An International Seminar on the Holy Quran”, in Arabica-Revue d’Etudes Arabes, Tome XXXI, Fascicule 2, p. 219.

¹⁶ Mohamed Berween, “The Fundamental Human Rights: An Islamic Perspective”, International Journal of Human Rights, (2002) Vol. 6 No. 1: p. 63.

¹⁷ Montgomery, *Human Rights and Human Dignity*, p. 115.

During the United Nations Human Rights Conference in Vienna, June 1993, a delegation from Muslim countries were among the leading contesters of the universality of human rights. One of them¹⁸ spoke strongly that for Muslims, human rights could only be derived from the Islamic *Shari'ah*. Many Muslims have argued that Islamic law does not need to be supplemented, let alone superseded, by legal systems which come from non-Islamic sources. This is the motive behind the 'fundamentalists' who want Muslim states to base their constitution and their law on the *Shari'ah*. There are other liberal Muslims, however, who have resisted any attempt to go back to the *Shari'ah*, and want to see law codes based on a combination of Western law and *Shari'ah*. For example, A. An Naim has made a forceful and well-argued plea to Muslims to reform the *Shari'ah*. In his view, *Shari'ah*, like any other system, should conform to the need for a universal application of human rights.¹⁹

To ensure his country does not entangle with some of the controversial laws of Islam, Kemal Ataturk took the steps of abolishing *Shari'ah* law altogether in Turkey in the 1920s. Whilst acknowledging that Islam lays the duty of constantly promulgating Islamic values upon every individual Muslim,²⁰ the former Pakistan Foreign Minister Zafrulla Khan recognised that Quran itself in Sura 5:102 discourages the tendency to seek regulation of everything by Divine command, pointing out that such regulation would become restrictions and burdensome.²¹

Conversely, there are Muslims who not only reject any amalgamation or influence of secular human rights with their Islamic society; they want to see the whole Western society adopting *Shari'ah* law. Khurram Murad has the intense inspiration to introduce the principles

¹⁸ The Saudi Minister of Foreign Affairs spoke for other Muslim colleagues present.

¹⁹ Abdullahi A. An Naim, "Religious Minorities Under Islamic Law and the Limits of Cultural Relativism" *Human Rights Quarterly* (Vol. 9, No. 1); and "Quran, Shari'ah and Human Rights" (1990) 2 *Concilium*.

²⁰ Muhammad Zafrulla Khan, *Islam and Human Rights*, (The London Mosque, 1976) p. 60.

²¹ *Ibid*, p. 25.

of Islamic law to the western society. He admitted that he has no hesitation in suggesting “*that the movement in the west should reaffirm and re-emphasise the concept of total change and supremacy of Islam in the western society as its ultimate objective and allocate to its highest priority.*” He further suggests that this movement shall only be realised by the struggle of the locals as they have the power to change the society into an Islamic society.²²

It is with this contention we will focus on next, the demand for Islamic influence and the nature of Islamic human rights with regard to its defect and its inapplicability and incoherence to the modern age.

The Call for Islamic Human Rights

It would be appropriate here to briefly mention some of the Islamic human rights principles and the arguments for the implementation of *Shari ‘ah* law as the basis of human rights. In 1980, Muslim scholars during a seminar on Human Rights in Islam organised by the International Commission of Jurists, University of Kuwait and the Union of Arab Lawyers, unanimously affirmed that Islam’s codification of human rights constitutes a solid foundation for an effective exercise of human rights and freedoms and protection against any infringement of them.²³ It is believed that Islam can “create a society based on a deep sense of moral responsibility and justice in order to preserve human dignity accorded to man by God.”²⁴

²² Khurram Murad, *Islamic Movement in the West: Reflections on Some Issues* (The Islamic Foundation, Reprint 1983) p. 9.

²³ Note 9 above, p. 11.

²⁴ Rashid Ahmad Jullundhri, “Human Rights and Islam”, in Alan D. Falconer (ed.) in *Understanding Human Rights: An Interdisciplinary and Interfaith Study*, (Dublin: Irish School of Ecumenics, 1980), p. 34.

While some conservative Muslims demonstrated much concern over the secularisation of human rights, Mohammed Allal Sinaceur argues that contemporary human rights are recognised as compatible with Islam. He explained that “human rights in Islam are human rights in the light of Islam, Islam as the outward medium through which its believers attain their true value, through which is realized the right to right [sic] and the right to truth.”²⁵ However, he did not vividly clarify what exactly meant by contemporary human rights. As later discussed, “*freedom*” in the contemporary secular sense as in the UDHR are not exactly the same as what some present Muslim states defined in their constitution.

Unfortunately, freedom accorded by Islam is not compatible with global human rights. Article 18 of the UDHR provides that everyone has the right to freedom of thought, conscience and religion, which includes the freedom to change his religion or belief, and practise it either privately or publicly. Article 19 further provides that everyone has the right to freedom of opinion and expression without interference. On the other hand, the Iranian Constitution,²⁶ strictly adheres to the Islamic principles, clearly shows that it is not compatible with the UDHR. Article 9 of the Iranian Constitution, in summary, prohibits any individual, group or authority to infringe in the slightest way upon the political, cultural, economic and others under the pretext of exercising freedom. “*In the slightest way*” could adversely interpreted as no such person has the right or freedom to express his or her opinion or criticism orally or in writing in any manner be it causing insignificant or major influence over any suggestion of change of the present political, cultural or economic system of the country. How an expression in a slightest way could be calculated as infringement absolutely depends on the interpretation of its authorised clerics. One dare not imagine any discourse on the simple market system, which

²⁵ Mohammed Allal Sinaceur, “Islamic Tradition and Human Rights”, in *Philosophical Foundations of Human Rights* (Paris: UNESCO, 1986), p. 211.

²⁶ Constitution of the Islamic Republic of Iran of 24 October 1979 (amended 28 July 1989).

happens to be at variance with the Islamic economic system, may be calculated as infringement of Article 9, and thereon leading to harsh punishment.

A more forceful example could be drawn from Article 13 of the Iranian Constitution, which only allows Zoroastrian, Judaism and Christianity to be practised within the limits of the law. This would clearly mean other religions like Buddhism or Hinduism are considered illegal. Article 14 justifies this restriction of religious freedom by referring to the Quran. In such a case, Article 13 presumed to be of Islam, and if it is of Islam, it is clearly not compatible with the contemporary human rights as declared in the UDHR. Furthermore, the traditional Islamic beliefs are unlike the contemporary concepts of human rights in that rights are understood as God-given rather than as natural to persons and as subject to governmental control rather than as a check and balance on governmental power.

The religion of Islam emphasizes temporal human rights on earth more than Christianity does. It could be argued that Quranic verses on the political and social rights and duties are more numerous than the verses from the New Testament in regards to human rights. Although the Islamic authoritative sources (i.e. the Quran, Sunna and the Hadith) may not be exhaustive, at least it can provide more direct guidance on governmental administration of a society than the sources from the Christian's New Testament. This is simply because Islamic law is the epitome of Islamic philosophy, the very spiritual and physical core manifesting Islamic way of life, the pivot of sustaining social ethics, the kernel and essence of Islam itself. Therefore, the whole embodiment of the *Shari'ah* represents Islam's priority for the governmental administration of the society, of which includes law and human rights. These laws understood by Muslims reciprocally as religion and religion as law. Law, rather than

theology is the prior emphasis in Islam. Hence, it is not Islamic philosophical theology but rather Islamic legal philosophy.

Zafrulla Khan explains, “*Islam seeks to stimulate and deepen that consciousness. It emphasizes our duties and obligations, so that each of us, by due discharge of them, should help to safeguard freedom, justice and equality for all and should promote and foster human welfare and prosperity in all spheres – social, economic, moral and spiritual. It seeks to establish a pattern of society which, in all the changing and developing circumstances of a dynamic world, would maintain its character of beneficence in all spheres of life – individual, domestic, national and international. For this purpose it furnishes us with a framework of beliefs, duties, obligations, exhortations and sanctions. It also provides us with guidance at all levels and in all fields.*”²⁷

Fervently believing in these Islamic attributes, Muslims since a century ago has strong and mixed feelings towards the ideas of human rights propounded by the West. After the world wars and the dismantling of the Western imperialism, Islam is responding on both the theological and ideological levels to new situations, especially in the Middle East. Not to miss out the economic and political advantages for being part of a global family, however, Muslim countries are persuaded to join the United Nations, thereby subject themselves to much pressure in implementing laws to protect human rights. Thus, since the mid-1950s, international human rights concept have permeate the Muslim societies of the Middle East, creating an aspiration to Muslims who hope for greater freedom and democracy from despotic government and yet to conservative Muslims an intense resentment against Western influence.

²⁷ Khan, *Islam and Human Rights*, p. 14.

Subsequently, several influential Muslim philosophers and writers emerged. Some attempt to establish areas of common ground between Islamic law and international human rights, whilst others call for the total rejection of any Western legal models for human rights, insisting on proliferating strict Islamisation program. This is the pivotal question whether their Islamic model of human rights is compatible with the contemporary human rights.

In addition, on 5 August 1990 in Cairo, Egypt, member states of the Organisation of Islamic Cooperation adopted The Cairo Declaration on Human Rights in Islam (CDHRI). It provides an overview on the Islamic perspective on human rights, and affirms Islamic *Shari'ah* as its sole source and general guidance for human rights. This declaration is extensively acknowledged as an Islamic response to the UDHR. Though it has similar flavour of protection of rights as the UDHR, it has restrictions within the boundary set by the *Shari'ah*. This is where it arouses debates on its controversies and incompatibility with the ideals of UDHR. Women and members of other religions do not have the same rights as men under *Shari'ah*, and the limited freedom of expression for religious reasons, blasphemy can be punishable by death, are some of the examples which are clearly in opposition to the UDHR, and especially to Western civilization.²⁸ This concern was also expressed by Professor Christine Schirrmacher²⁹:

A type of Islam which follows Mohammed not only in his religion but also in his political activities, in his law giving, and even in his conduct of war (as the jihadist groups do) is not compatible with Western civilization. And even a type of Islam which does not call for violence but which uses purely political means to establish and enforce Islam while

²⁸ Many of the clauses in the CDHRI limit the rights contained therein by reference to the *Shari'ah*: in particular, Articles 2, 7, 12, 16, 19, 22 and 23.

²⁹ Professor of Islamic Studies at the Evangelisch-Theologische Faculteit (Protestant University) in Leuven, Belgium as well as at the University of Bonn, Germany in the department of Islamic Studies and Middle Eastern Languages. Dr Schirrmacher is also head of the International Institute of Islamic Studies (IIS) of the World Evangelical Alliance, and lectures on Islam and security issues for the German Parliament as well as other government and EU institutions.

*regarding all aspects of Sharia law as binding on the Muslim community and beyond as it is interpreted in classical Islamic theology is not compatible with Western civilization and law. The classical interpretation of Sharia law, as established in the very centers of Muslim theology, does not allow equal rights for women, prescribes the death sentence for people who are lapsed from Islam, and allows only an official second-class status as publicly subjugated for Jews and Christians.*³⁰

The emphasis of CDHRI was reiterated on Human Rights Day, 10 December 2007 by the Pakistani Ambassador to the UN Human Rights Council. He said that the CDHRI “*is not an alternative*” to the UDHR but “*complementary*”. Regrettably, no further or clearer explanation is given on what he meant by “*complementary*”. Furthermore, the Universal Declaration was not even mentioned in the Cairo Declaration but only states that: “*All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari’ah*”, and “*The Islamic Shari’ah is the only source of reference for the explanation or clarification to any of the articles of this Declaration.*”

Just as much as the Islamic States are concerned with the secular model of human rights, many secularist and even liberal Muslims are concern with the many controversies and defects of the Islamic laws either due to the various interpretation of the Islamic authoritative sources or ‘Islamic flavoured’ philosophies propounded by conservative Muslims themselves. And with this, we now turn our focus to some of its controversies and defects that are blatantly inconsistent with this present-day ideal of equality, justice and freedom.

³⁰ Available at <https://www.worldidea.org/news/4787/is-islam-compatible-with-western-civilization-christine-schirmmacher>.

Arguments, Controversies and Incompatibilities

One of the main spiritual values of Islam is to uphold human dignity by ensuring there are justice and equity. According to Rashid Ahmad Jullundhri, a Pakistani scholar, “Islam wants to create a society based on a deep sense of moral responsibility and justice in order to preserve human dignity accorded to man by God.” He further argues, “without the practical recognition of the basic rights of man all talk of human dignity will remain empty verbiage.”³¹ Thus, Islam covers many aspects of human rights which include the right to life (Sura 5:32; 16:97; 6:151); rights against racism (Sura 49:13); rights to justice (Sura 4:58, 135; 5:2,8; 49:9); rights of a basic standard of living (Sura 51:19); rights to co-operate and not to co-operate (Sura 5:2); rights of privacy (Sura 49:12; 24:27); the rights to work (Sura 94:7-8; 53:40). There are also rights to education without distinction of gender or class – based on the insistence of Prophet Muhammad that all knowledge comes from God and the right to possess property – in the capacity of a steward or life tenant, not as an absolute owner, since only Allah holds property in fee simple absolute (Sura 3:186; 2:27-30).

In his article, Mohamed Berween³², strongly disagree with Jack Donnelly,³³ Ann Elizabeth Mayer,³⁴ Jerome Shestack³⁵ and Bassam Tibi³⁶ that human rights are a modern achievement developed in Western culture and are quite foreign to Islamic culture. He supported and listed several Muslim scholars who argue that Islam has come to free human beings from any servitude. Berween also briefly laid down the main fundamental rights of

³¹ See note 24 above.

³² *The Fundamental Human Rights: An Islamic Perspective*, p. 61.

³³ Jack Donnelly, *Universal Human Rights: In Theory and Practice* (London: Cornell University Press 1989).

³⁴ Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics*, (London: Westview 1991).

³⁵ Jerome J. Shestack, “The Jurisprudence of Human Rights”, in Theodor Meron (ed.), *Human Rights in International Law: Legal and Policy Issues*, 2nd edition (Oxford: Clarendon 1985).

³⁶ Bassam Tibi, “The European Tradition of Human Rights and the Culture of Islam” in *Human Rights in Africa, United Nations, 1970 – 1990. Amnesty International Reports* (London: Amnesty International Publications 1990).

Islam, i.e. life, dignity, justice, and equality under the law, basic necessities of life, freedom of expression, privacy, property and the right to revolt. He and other Muslim scholars like Mashood Baderin³⁷ consistently try to suggest that Islam is compatible with international human right and it is Islam that is able to create a society based on a deep sense of freedom, responsibility and justice in order to protect and preserve human dignity to all human beings.

It has to be admitted that the Quran is itself a law code, having no distinction between divine law and human law. Thus, one does not need be surprised there is a great deal of instruction, rules and enforcement in all aspects of a human being, both regulating his inner spirituality and his relation with the society as a whole. It is in effect the law by itself and since it is from Allah, there is no room for doubt that it should be the absolute principle for human rights. As Kenneth Cragg aptly explained the role of law in Islam and the relationship between law and theology like this: “*Islam understands law as religion, religion as law ... Law, rather than theology, has the prior emphasis in Islam. Broadly, it is obedience to the will of God, rather than fellowship in the knowledge of God’s nature, which is paramount.*”³⁸ In other words, to many Muslims, Islamic law is not merely compatible with the International Human Rights, but it transcends any human-made principles of human rights nationally or internationally. Mashood Baderin put forward clearly that the words of the Quran are, to Muslims, immutable. Giving examples from Sura 26:192 and Sura 45:2, he further emphasizes that they are the exact revealed words of God upon which the concept of legality is based in Islamic law.³⁹ If this were the case, there are no logical explanation to reconcile any antithesis between the original Islamic law (since it should be unchangeable) and the contemporary

³⁷ Mashood A. Baderin, “Establishing Areas of Common Ground Between Islamic Law and International Human Rights”, *International Journal of Human Rights* (Summer 2001) Vol. 5 no. 2: pp. 72 – 113.

³⁸ Kenneth Cragg, *Islam and the Muslims* (Open University Press, 1978), p. 49 quoted from Colin Chapman, *Cross & Crescent, Responding to the Challenge of Islam* (Inter Varsity Press) p. 101.

³⁹ Note 37 above, p 76.

human rights. This is also taking consideration from the various incessant conflicts such as freedom of worship, apostasy, legal status of women and non-Muslims, corporal punishment, etc. Realising this, Mashood Baderin justify by stating that Islamic law is not, *stricto sensu*, monolithic as is ordinarily assumed. Its jurisprudence recognises a pluralistic interpretation of its sources, which in turn begets differences of opinions that can be very significant in relation to international human rights.⁴⁰ He equate it with Kelsen's pure theory of law and the 'ultimate rule of recognition' in Professor Hart's concept of law by stating that Quran forms the foundation or the basic norm, the *grundnorm* of Islamic law.⁴¹

It would not be possible to contain the scores of controversial defects of Islamic law that is manifestly at variant with the contemporary human rights in this short article. However, the main area of conflicts always revolves around freedom of religion, corporal punishment, religious discrimination and especially the legal status of women.

Discrimination against Women

Carnegie Scholar in Islamic Law Khaled Abou El Fadl humbly admits that "*the Sunna contains a large number of traditions that could be very empowering to women, but it also contains a large number of traditions that are demeaning and deprecating toward women.*"⁴² Nevertheless, there are Muslims pride themselves by quoting Sura 4:4 to indicate that dower previously owed to the bride's father is now owed to the bride. Unlike the pre-Islamic custom, the Muslim bride now is considered a person whose consent must be obtained to validate a marriage contract. This demonstrates the improved social and legal status of Muslim women

⁴⁰ *ibid*, p. 74.

⁴¹ *ibid*, p. 76.

⁴² Khaled Abou El Fadl, *Reasoning With God: Reclaiming Shari'ah in the Modern Age* (Rowman & Littlefield, 2017) p. 38.

in general. However, such slight improvement was only a comparison between the pre-Islamic and the post-Islamic culture. Its strict traditional laws regarding women, or any residual from liberal Islamic interpretation to recompense its previous harsh practices, still undermine the idea of equal rights. For example, the man is permitted to marry up to four women under certain circumstances. To conclude a marriage contract the woman relies on a male representative who has some authority in shaping the agreement. The husband can repudiate his wife unilaterally. Many Muslims disapprove of this practice and legal reforms in many Islamic countries have restricted the husband's traditional right to unilateral divorce while giving the wife more rights to demand divorce.⁴³ The laws of inheritance entitle male heirs to twice the share to which female heirs are entitled. Some countries went to the extreme by restricting women from holding high position whilst Saudi Arabia for many years until recently do not allow women to drive cars.

The State Government of Terengganu passed some State Enactments in line with their political goal to impose *Shari'ah* in Malaysia. Some provisions are scorned upon as contrary to the Malaysian Federal Constitution, both violating human rights and discriminating against women. Its controversial laws includes where a woman who reports that she was raped will be charged with *qazaf* (slandorous accusations) and flogged 80 times if she fails to prove the crime.⁴⁴ The standard of proof seems to be very difficult to achieve. It requires at least four witnesses⁴⁵ whom must be adult male Muslims⁴⁶ and considered just.⁴⁷ Each witness shall state clearly that he has actually seen the act complained of and in the case of *zina* (adultery) the four witnesses shall state that they have actually seen the act of penetration of the sex organ of

⁴³ Norman Anderson, *Law Reform in the Muslim World* (University of London/Athlone Press, 1976) pp. 118-123.

⁴⁴ Ss. 7, 8 and 9 Enactment No. 4 of 2002 Shariah Criminal Offence (Hudud and Qisas) Terengganu Enactment.

⁴⁵ *Ibid.*, s. 43.

⁴⁶ *Ibid.*, s. 44(1).

⁴⁷ *Ibid.*, s. 44(2).

the male partner into that of the female partner of the copulating part and further there shall neither be contradiction nor inconsistency among the witnesses in such testimony.⁴⁸ It seems this might impose a heavy burden of proof on an unmarried woman who is pregnant to prove that she was raped; otherwise she is presumed to have committed *zina*. The failure to draw a distinction between rape and *zina* in the *hudud* (Islamic penal) law of many Muslim countries have led to rape victims being charged for *zina* and *qazaf* because they were not able to produce the four male witnesses required to prove that they were not consenting parties to *zina*.

Similarly in 1979, Pakistani President Zia ul-Haq purported to “Islamize” the laws of Pakistan with a new criminal code, the Hudood Ordinance. The provisions included, among other things, the crime of *zina* (extramarital sex) whereby four eyewitnesses were required for prosecution of this crime of *zina*. The *zina* provisions of the Hudood Ordinance added the crime of rape, termed “*zina-bil-jabr*” (*zina* by force) as a subset of *zina*, and consequently required four eyewitnesses to prosecute this crime as well. Sadly, this Quranic-based legislation had the tragic result of some rape victims being prosecuted of *zina* for lack of four eyewitnesses to prove the non-consensual nature of the sexual intercourse.⁴⁹

It is argued that Islam does not treat women as equals with men, in fact far from equal as vividly demonstrated from its religious attitude towards them as evidenced from the following Hadith. According to Al-Bukhari,⁵⁰ after Prophet Mohammed learned that the Persians had named a woman to rule over their country after the death of Kisra, Abu Bakra heard the Prophet ask: “Who has replaced Kisra?” The answer was, “They have entrusted power to his daughter.”

⁴⁸ *ibid.*, s. 45(2).

⁴⁹ See *Mst. Zafran Bibi v. The State* PLD 2002 FSC 1.

⁵⁰ *Sahih Al-Bukhari* Vol. 1, which is considered by Muslim scholars to be the undisputed compilation of the prophets, tradition and the most authentic book after the Quran.

Then the Prophet commented: “Those who entrust their affairs to a woman will never know prosperity.”

Another Hadith quoted in Sahih Al-Bukhari (Hadith No. 301): “*Allah’s Apostle once said to a group of women: ‘I have not seen any one more deficient in intelligence and religion than you. A cautious, sensible man could be led astray by some of you.’ The women asked: ‘O Allah’s Apostle, what is deficient in our intelligence and religion?’ He answered: ‘Is not the evidence of two women equal to the witness of one man?’ They replied in affirmative. He continued: ‘This is the deficiency of your intelligence’ ... ‘Isn’t it true that a women can neither pray nor fast during her menses?’ The women replied in the affirmative. He said: ‘This is the deficiency in your religion.’*” Women are also viewed at as a toy,⁵¹ ungrateful,⁵² having duty to satisfy husband’s desire even preoccupied at the oven,⁵³ inferior to men,⁵⁴ useful objects like animals and plants created for men,⁵⁵ etc.⁵⁶

Being women, wives have a duty to obey their husbands, and husbands have the right to punish their wives if they disobey. Sura 4:34 says, “*Men are the managers of the affairs of women for that God has preferred in bounty one of them over another, and for that they have expended of their property. Righteous women are therefore obedient, guarding the secret for God’s guarding. And those you fear may be rebellious admonish; banish them to their couches, and beat them*”⁵⁷ The power to chastise their wives is the husband’s human rights and sadly, this is still taught by established Islamic legal philosophy.

⁵¹ Tuffaha, Ahmad Zaky, *Al-Mar’ah Wal-Islam* (Dar al-Kitab al-Lubnani, Beirut, 1985), p. 180.

⁵² Sahih Al-Bukhari Vol. 1 Hadith No. 28.

⁵³ Mishkat Al-Masabih, English translation, Book 1, Section “Duties of Husband and Wife”, Hadith No. 61.

⁵⁴ Sura 2:228 and Sura 4:34.

⁵⁵ At-Tafsir Al-Kabir, Razi, Commenting on Quran 30:21.

⁵⁶ Available at <http://www.iranian.com/Opinion/2002/January/Feminism/>

⁵⁷ Arberry translation.

Religious Discrimination

Conservative Islam assigned different ranks and rights to people of different beliefs. Only faithful Muslims qualified as full members of the political community. Although the Jews, Christians and Zoroastrians enjoyed considerable autonomy in matters of self-administration, religious law, and family law, they were considered *dhimmis* who received limited protection if they submit to Muslim rule and accept a number of conditions governing their conduct. *Dhimmis* had to pay a special capitation tax known as the *jizya* and were excluded from serving in the military, since as non-Muslims, they could not be expected to fight in holy wars on behalf of them.⁵⁸ Theoretically, the others are considered to be polytheists or unbelievers and either had to embrace Islam or accept death.⁵⁹

Apparently, Article 10 of the Universal Islamic Declaration of Human Rights (UIDHR)⁶⁰ provides that the religious rights of non-Muslim minorities are governed by the principle that there is non-compulsion in religion, which is based on the well-known Sura 2:256 often quoted by moderate Muslims. The traditional interpretation of this verse is that *dhimmis* should not be forced to convert to Islam. In contrast, it has not traditionally been interpreted to mean that the prohibition against compulsion in religion precludes *dhimmis* or other non-Muslims from being subjected to discrimination based on their religion. Furthermore, it is difficult to reconcile with other clearer verses that are faithfully followed by more fundamental Muslims:

⁵⁸ Mayer, *Islam and Human Rights: Tradition and Politics*, p. 135.

⁵⁹ Joseph Schacht, *Introduction to Islamic Law* (Oxford: Clarendon Press, 1964) pp. 130-131.

⁶⁰ Islamic counterpart to the UN's UDHR prepared by the Islamic Council, affiliated with the Muslim World League. Ratified in 1981 and presented to UNESCO.

Fight those who believe not in Allah nor the last days, nor hold that forbidden by God and his apostle, nor acknowledge the religion of truth. (Even if they are) of the book, until they pay the Jizya with willing submission, and feel themselves subdued. (Sura 9:29)

This verse expressly teaches that the Muslim should make war with those unbelievers who do not accept Islam as being the true religion, even if they are Christians or Jews.

O prophet! Strive hard against the unbelievers and the hypocrites, and be firm against them ... (Sura 9:7)

I will instil terror into the heart of the unbelievers: Smite you above their necks and smite all their finger-tips off them. (Sura 8:12)

Corporal Punishment

Although today many countries all over the Islamic world rarely carry out the traditional *Shari'ah* penalties, such as amputation of the right hand for theft, amputating a hand and a foot for highway robbery, or stoning for adultery, there are still few countries that continue to apply⁶¹ or that have reinstated⁶² these punishments. The State Government of Kelantan in Malaysia passed its modified hudud law⁶³ but it would be almost impossible for them to enforce as the executive authorities are within the jurisdiction of the Federal Government. At the

⁶¹ Saudi Arabia.

⁶² Pakistan, Iran and Sudan during the late 1970s and early 1980s.

⁶³ Syariah Criminal Code (II) Enactment 1993 (Hudud Enactment) was passed by the State Legislative Assembly of Kelantan in 1993.

northern part of Sumatra, Aceh is the only province in Indonesia that is still enforcing the *Shari'ah* law and violators are punished by public caning.

The issue is not how many Islamic countries maintain such harsh penal laws but the pivotal controversy is since such law originates from Allah, being the ultimate *divine grundnorm*, could *Shari'ah* be compatible with the contemporary human rights, in the sense they do not violate it and cause injustice?

Apostasy

Article 18 of the UDHR states that everyone has the right to freedom of religion, freedom to change his religion and freedom to manifest his religion in teaching, practice, worship and observance. On the contrary, Article 10 of the CDHRI states that seeking to convert people from Islam to another religion or atheism is prohibited. Hence, this clearly reveals that the unalienable human right propounded in the UDHR is not defended by the OIC, leaving open the door to the persecution of thousands of people because of their religious beliefs.

The existence of the law against apostasy in Islam makes it almost impossible to be compatible with contemporary human rights as it infringes Article 18 and 19 of the UDHR. It is not just only against apostasy but it imposed death on such 'crime', which can be looked upon as unjust and inhumane.

Some passages from Bukhari's collection of Hadith seem to indicate that Muhammad taught that Muslims who leave the Islamic faith are to be murdered. For example, Bukhari, Vol. 9 Book 83 Hadith 17 – "Narrated Abdullah: Allah's Messenger said, 'The blood of a Muslim

who confesses that none has the right to be worshipped but Allah and that I am His Messenger, cannot be shed except in three cases: in *Qisas* (equality in punishment) for murder, a married person who commits illegal sexual intercourse and the one who reverts from Islam (Apostate) and leaves the Muslims.” In Hadith Volume 9 Number 57 which states that, “Whoever changed his Islamic religion, then kill him.” Also in Sahih al-Bukhari Vol. 9 Book 84 Hadith 64: Narrated Ali, “No doubt I heard Allah’s messenger saying, “*During the last days there will appear some young foolish people as an arrow goes out of the game. So, wherever you find them, kill them, for whoever kills them shall have reward on the Day of Resurrection.*”

Another flagrant definition of the official tradition coming from Bukhari stresses that shedding the blood of another Muslim is allowed in three situations i.e. defection from Islam after accepting Islam, adultery, and committing a murder that is not a revenge killing. In 17 Nov 2015, a Palestinian man was sentenced by a Saudi Court to death for apostasy on the alleged blasphemous statements during a discussion group and in a book of his poetry, is one of many examples the incompatibility of Islamic legal philosophy with UDHR.

Suggested Solution

Still holding on to *Shari’ah* as the law of the Creator and the laws of creation, from their primordial and immutable essence to their contingent and temporal manifestation, Professor Khaled Abou El Fadl⁶⁴ provides constructive suggestions how Muslims can make Islam more relevant to the modern context of secular human rights. In the beginning of his

⁶⁴ Omar & Azmeralda Alfi Distinguished Professor of Islamic Law at UCLA, School of Law.

book, *Reasoning with God*⁶⁵, Professor Khaled inferred that human rights or the moral trajectory of the traditional Islamic laws may possibly come to terms in this contemporary age. He believes that this can be done not through basic theological framework or the most fundamental ritualistic practices of the Islamic faith, but rather through new historical contexts and emerging conceptions and meanings. Though the Quranic words remain the same, it is the numerous contingencies that mediate and qualify language and meaning which constantly shift and mutate.⁶⁶ On the presumption that Prophet Muhammad was the ultimate messenger of Allah's law and justice, Professor Khaled insists that "*Shari'ah [if] properly understood, is an essential and irreplaceable part of revitalizing and reengaging the humanitarian civilizing role of the Islamic message.*"⁶⁷ Having say that, he advises that this 'moral progress' only can be tenable with a dynamic interaction of non-Muslims.

How can the ever conflicting principles of non-Muslims or the secular UDHR compliment with the Islamic legal philosophy of many different interpretations? Another note of concern is to what extent, the interpreters and decision-makers (most probably the politicians and the government authorities) of the *Shari'ah* objectively and honestly interpret with utmost due diligence? Professor Khaled wrote:

The conceptual distinction between Shari'ah and fiqh was the result of recognizing the limitations of human agency and also a reflection on the Islamic dogma that perfection belongs only to God. While Shari'ah was seen as an abstract ideal, every human effort at understanding or implementing this ideal was considered necessarily imperfect. In theory, Muslim jurists agreed that even if a jurist's determination is ultimately wrong, God will not hold such a jurist liable as long as he exerted due diligence in searching for the right answer.

⁶⁵ Note 42 above.

⁶⁶ *ibid.*, preface p. xix –xx.

⁶⁷ *ibid.*, p. xxvi.

Beyond this, Muslim jurists debated whether in the final analysis, on every point of law there is a single correct position but this position is known only to God, and it is only in the Hereafter that this truth will be revealed ... According to one group of legal theorists, those who are ultimately proved to be wrong will still be rewarded for their due diligence, but those who prove to be right will receive a greater reward. The alternative point of view, however, argued that on all matters of fiqh there is no single truth to be revealed by God in the Hereafter. All positions held sincerely of their search for the divine will – sincerity of conviction, the search, and the process are in themselves the ultimate moral values. It is not that there is no objective truth – rather, according to this view, the truth adheres to the search.”⁶⁸

The above quotation generates much concern since there are many Muslim scholars like Professor Khaled who believes that there will be no punishment from Allah even if both the Islamic laws and its legal philosophy are wrongly applied. Hence, it seems like as long as the branding of the name of Islam is used, as though like a franchise, the ‘product’ if applied wrongly will have no consequence. Then, such sense of religious patriotism is more cherished than true human rights rationally deliberated by rational minds. To them, it is not how Islamic legal philosophy is incompatible with the UDHR but how UDHR is incompatible with their Islamic principles, notwithstanding their internal conflicting interpretations.

Sometimes one may be tempted to draw adverse inference that the Muslim community intentionally creates incompatibility with the UDHR merely because it originates from Western cultures. In that sense, this would be faulty, if not bigoted and bias decision, based on Appeal to Authority and Genetic fallacy. I fully agree with Dr Christine Schirrmacher’s advice:

⁶⁸ Ibid., pp. xl – xli.

It is only proper to expect all citizens to affirm and promote human rights, democracy, the rule of law, and the legal tolerance of other religions, along with equality of rights and opportunities for all. This is neither racism nor xenophobia, not to speak of Islamophobia; these are simply self-evident truths. A form of Islam that limits the application of Sharia law to matters of prayer and fasting is compatible with Western democracy; a form of Islam that demands the acceptance of and public application of Sharia law as god given is not compatible with Western civilization and its institutions.⁶⁹

Conclusion

If Islam, like many other religions, is only to be regarded as a normative philosophy, able to change according to the contemporary universal ‘needs’ and culture, many of its teaching can be seen as a major contribution to human rights. If Islam is the ultimate revelation from God, however, there are no other ways to argue except that God is immutable and His laws are perfect for all mankind throughout the ages. If that were so, some of the laws as disclosed above are not compatible with the contemporary human rights. Either the modern society is immorally wrong, creating their own rights befitting their own lifestyle or otherwise.

Generally, Christians of all denominations to various extents do support human rights. However, they lack the audacity to claim that Christian law is compatible with or the only leading authority of contemporary human rights as understood by their philosophical theology.

Indeed, it is claimed that the fundamental legal philosophy of Islam is the justification for, and the primary methodological principles in interpreting the rational enforcement of the

⁶⁹ Schirrmacher, Christine, *Is Islam Compatible with Western Civilization*, World Evangelical Alliance News (6 July 2017).

Islamic way of life. It is asserted that *Shari'ah* should be the prime mover for the global value of human rights. They play the dominant role in sustaining and promoting the Islamic dream. However, some dreams may turn out to be a fantasy. And the fantasy of irresponsible politicians can turn out to be a nightmare if it is realised. Nothing in this world of reality is perfect. Like many fallible philosophical ideologies, religious or secular, the Islamic legal philosophy basic flaws need to be rectified in order to be acceptable and compatible with the global view of Human Rights. Unfortunately, its few foundational shortcomings outweigh the many beauties of Islam which inherently entails an incoherent, non-compromising and incompatibility principles with the UDHR.

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