

A System of Human Rights in Islam?

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Abstract

This paper advances a framework for the evaluation of Sharia (Islamic law) with respect to the modern notion of international human rights law. The paper argues that certain universal standards of human rights and freedoms, as understood and formulated in international human rights documents, lack precise equivalents in Islamic law, and some generally-accepted principles of Sharia contradict corresponding principles of international human rights law. Sharia's response to the idea of human rights and traditional interpretation of Islamic law are hard to reconcile with international human rights norms and standards. It is also argued that the application of Sharia, public and criminal law in particular, is problematic and results in deficiencies and hardship in Muslim societies. This paper contributes to the debate on Islamic reformism and human rights in arguing that Sharia's contradiction of universal human rights norms cannot be avoided, and that traditional mechanisms of reform within the framework of Sharia are inadequate for achieving the necessary degree of reform. It is suggested that, based on a cross-cultural dialogue and intellectual debate, an essential and primary reform should define the objective foundations of human rights in reason and human dignity, not on Sharia criteria and qualifications.

Keywords: Islamic Law; Sharia; Islam; Human Rights; Dignity.

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I. Introduction

The present article here argues that certain universal standards of human rights and freedoms, as understood and formulated in international human rights documents, lack precise equivalents in Islamic law, and some generally-accepted principles of Shari'a contradict corresponding principles of international human rights law.¹ Shari'a's response to the idea of human rights and traditional interpretations of Islamic law are hard to reconcile with international human rights norms and standards.²

This article also argues that the application of Shari'a public law, criminal law in particular, would result in problems and hardships in Muslim societies.³ As will be discussed later, Islam has emphasized the importance of human honor and dignity. However, within the framework of Shari'a, certain forms of discrimination against women and religious minorities are considered lawful.⁴ Notions like full equality of men and women, Muslims and non-Muslims, and freedom of religion are in clear conflict with Shari'a principles. Based on Shari'a rules women suffer from an inferior status, and non-Muslims are at most second-class citizens. The idea of equal protection in Shari'a itself accommodates forms of discrimination. As Mayer states, Shari'a "mandates unequal treatment for the favored and disfavored groups in society". (Mayer, 1991: 98)⁵

Individualism, liberty, equality, constitutionalism and democracy -- notions fundamental to the development of human rights concepts -- are not established features of Shari'a. The concept of human being as private and individual as well as individual rights in the sense of entitlements are not recognized in Shari'a either.⁶ Shari'a upholds the supremacy of revelation over reason and hostility toward rationalism, and does not recognize reason as an independent source of law.⁷ According to Shari'a, human rights "are the privilege of Allah, because authority ultimately belongs to Him." (Khadduri, 1946: 243)⁸ We argue that these rights are only duties of individuals, not rights held by anyone. The

1. See: Mayer, 1994: 320-321; and An-Na'im, 1990B: 151.

2. See: Mayer, 1996: 270.

3. Several problems of substantive law, evidence, and procedure are raised by the prospects of implementing this branch of Shari'a. See: An-Na'im, 1990B: 101.

4. See: An-Na'im, 1990B: 179.

5. See also Savory, 1989: 834; and Mayer, 1994: 323-24.

6. See: Tibi, 1994: 289. Also See: Glenn, 2000: 177-78.

7. See: Mayer, 1991: 58. This issue will be discussed more in Chapter Two. The struggles between proponents of reason and revelation in Islamic intellectual history are described in Arberry, 1957; Khadduri, 1984: 34-39 and 64-70; Al-Shakankiri, 1981: 161-182.

8. See: the Annals at 77-8 in Donnelly, 2014: 307.

essential characteristic of human rights in Shari'a is that they constitute obligations. As Said states, "human rights exist only in relation to human obligations" (Said, 1979: 73-74) and that what really matters is duty rather than rights. Cherif Bassiouni rightfully notes that Shari'a "insists upon the fulfillment of individual obligations before the individual can claim his privileges." (Bassiouni, 1982: 13)¹ Coulson maintains that Islamic legal doctrine assumes only divine rights, of which the individual may be beneficiary.² Clearly, these characteristics of human rights in Shari'a contradict modern human rights principles. Shari'a rights are not human rights by international human rights standards; at most, they are legal rights held only as a result of one's legal or spiritual status.³ The scope and extent of these rights are subject to Shari'a qualification, and are limited based on gender and faith which affect many human rights and freedoms, including freedom of thought, conscience, and religion, freedom of speech, and the right to participate in public life. International human rights theory, on the other hand, does not permit "religious criteria to override or circumscribe human rights." (Mayer, 1994: 325)⁴

This study further argues that, as Savory notes, "there is no possibility of an Islamic state's evolving into a democratic polity." (Savory, 1989: 839) According to Islamic law, ultimate state sovereignty is vested in God, and Shari'a is the law of the land.⁵ As will be discussed in the next chapter, the notions of caliphate (the classical Islamic theory of political legitimacy and authority), *umma* (the community of believers), and *shura* (consultation) conflict with the conception of democracy, where sovereignty belongs to the people and equal participation of citizens in public life is protected by law.⁶ The attainment of justice and the Islamic doctrine's emphasis on the welfare of the community limit the scope of individuals' rights and liberties. Muslims, as believers, have certain duties *vis-à-vis* the community/state, but not individual rights in the sense of entitlements.⁷ The scope and extent of individual rights and freedoms, then, is conditioned upon the Islamic concept

1. See also Afshari, 1994: 260-261.

2. See: Coulson, 1957: 49-51.

3. See: Donnelly, 2014: 307.

4. On the conditions that can be placed on human rights in international human rights law, see: Buergenthal, 1981: 72; and Mayer, 1991:73-76.

5. See: Sajoo, 1990: 29; and Mawdudi, 1986: 9-13. Mawdudi holds that people's only role is to interpret laws for their application and to decide on matters for which there are no divine laws. See: Mawdudi, 1978: 3-5. This characteristic of Shari'a implies that human beings cannot change the law because their attitudes or their personal or communal needs change. See: Amin, 1989: 10-13 and 19. Also See: Sachedina, 2001: 73-75.

6. See: An-Na'im, 1990B: 78-85.

7. See: Tibi, 1191: 289; Sajoo, 1990: 29-30; Khadduri, 1985: 145.

of justice and the welfare of the community,¹ and individual entitlements can always be overridden for communal interests. In fact, in Shari'a pattern of human rights, the collectivity and duties are preferred over individual and rights. In contrast, the international conception of human rights safeguards "individual freedoms beyond the reach of arbitrary state authority thereby supporting the notion of 'fundamental' rights." (Sajoo, 1990: 26)

All these components support the study's overall argument that Shari'a lacks the modern notion of human rights and freedoms, as documented in international human rights law, and reveals the incompatibility between individual and collectivity-oriented concepts- which, in turn, derives from the conflict between, as Tibi notes, "man (reason)-centered and a cosmological theocentric view of the world." (Tibi, 1994: 297) The incompatibility between Shari'a rights and international standards and the fact that Shari'a system of government is not democratic have been admitted by many Muslim jurists as well as several Islamic governments' representatives in different international organizations. These statements will be presented as the discussion proceeds.²

The present study also disputes the idea that Shari'a, as a unified body of moral and legal principles, mandates a distinctive approach to human rights. Such a discussion seems necessary here because of its bearing on the study and the orientation that it will take. The study argues that there is no settled Islamic human rights philosophy that induces all Muslim jurists and scholars to look at the concept of rights in a particular way. With regard to human rights, Shari'a comprises many complex traditions, often vague and undefined, and therefore subject to different interpretations³ that, as Mayer states, "can and do create conflicts between religious doctrine and human rights norms or that reconcile the two." (Mayer, 1991: 179-185) The founding jurists relied on these traditions and interpretations of Shari'a sources to develop an Islamic approach to rights. One may find significant diversity of opinion among various schools of thought as well as among different jurists of a particular school.⁴ Due to the lack of established theoretical views on rights, however, Muslim jurists have been influenced by local cultures and political rule

1. See: Reisman, 1994: 516.

2. See also An-Na'im, 1990A: 22-25.

3. Chapters Two and Three of the thesis argue that the permissible scope of Shari'a qualifications on rights has been left vague and undefined, and, in practice, Muslim governments are free to determine the scope of rights provided in Shari'a.

4. See also An-Na'im, 1990A: 18-19.

throughout the centuries.¹ This study proposes that if one focuses only on the legal dimensions of human rights issue, one may find that the basic principles of dominant interpretation of Shari'a, regardless of the particular school of Shari'a, conflict with international human rights theory, as explained earlier. Some ethical principles of human rights do emerge from the fundamentals of Islamic law, and Shari'a does include some elements that bear on rights,² but there is no body of Islamic doctrine on rights.

The conception of human rights and freedoms as individual entitlements seems unknown in Islamic legal tradition and have no genuine roots in Shari'a.³ Islamic jurisprudence does not address "human rights" as such and provides "no explicit model of rights principles." (Mayer, 1991: 211) The advocacy of a system of human rights in Shari'a is based on a confusion of human rights and human dignity.⁴ Of course, a concern for human dignity is central to Islamic ethical and legal tradition, and Shari'a's social and political percepts "reflect a strong concern for human good and human dignity." (Donnelly, 2014: 307) According to Shari'a, as Said states, "it is the state's duty to enhance human dignity and alleviate conditions that hinder individuals in their efforts to achieve happiness." (Said, 1979: 87)⁵ However, this is not a recognition of human rights (entitlements) held simply by virtue of being human.⁶ In other words, Shari'a concern for human dignity does not imply human rights, and has not been translated into legal guarantees and protection for human rights and freedoms.⁷ Shari'a recommendations, in this regard, are of a moral and religious nature with no specific legal sanction and judicial enforcement.⁸ It may be plausible to say that Islamic law contains some elements of human

1. Historically Islam has been a very decentralized religion where a wide range of dissimilar opinions and competing schools of law can be found. One could say that Islamic legal tradition has been a culture of argumentation. This characteristic of Islamic law, which led to a tradition of tolerance of debate and argument among jurists will be emphasized in Chapter Two as well. See: Mayer, 1991: xiii and 1.

2. See: Sajoo, 1990: 24.

3. It seems that the usage of human "rights" and "freedoms" by Muslim scholars has been influenced by non-religious legal traditions. See: Donnelly, 2014: 307; Coulson, 1957: 50-51; Pollis & Schwab, 1980: 1-18. On fundamental human rights and freedoms, See : Brunelle & Cliche, 1998.

4. The study prefers Rhoda Howard's definition of human dignity, as "the particular cultural understanding of the inner moral worth of the human person and his or her proper political relations with society." "Unlike human rights, which are private, individual, and autonomous, human dignity is public, collective, and prescribed by social norms." See: Howard & Donnelly, 1986: 83. See also Howard & Donnelly, 1986: 805-807.

5. Also generally See: Tabandeh, 1970.

6. See: McDougal, Lasswell, & Chen, eds., 1980.

7. Donnelly rightly states that "although [Muslims] are regularly and forcefully enjoined to treat fellow men with respect and dignity, the bases for these injunctions are not rights but divine commands which establish only duties, that is, which deal only with right in the sense of what is right." Donnelly, 2014: 306-307.

8. Amin, 1989: 57; and Sachedina, 2001: 79-81.

rights, but, certainly, the concept of human rights as the individual's claim against the state is not recognized in a legal tradition that privileges the community over the individual.¹

It has been argued that the concept of human rights as documented in international human rights law is the creation of Western liberal theory, and that human rights as such could not be considered a universal norm. According to this argument, because other cultures and traditions maintain different approaches to the issue, before applying human rights in any society, the religious beliefs and cultural and historical particularities of that society should be carefully considered.² Cultural relativists are inclined "to deny the legitimacy of using values taken from Western culture to judge the institutions of non-Western cultures." (Mayer, 1991: 9)³ They also tend to challenge the validity of any comparative examination of, for example, the concepts of Islamic and international rights, "because such comparisons are believed to involve judging Islamic norms by the criteria of international law, which the relativists view as an alien, Western system." (Mayer, 1991: 10) On the other hand, cultural relativists tend to endorse the legitimacy of values, norms, and rules that are produced within the framework of a given cultural system as authentic products, the authenticity of which is accepted by the people of that culture.⁴

The cultural relativists' argument has been supported by several Islamic and non-Islamic states as well.⁵ These governments maintain that human rights "must be considered in the context of a dynamic and evolving process of international norm-setting, taking into account the various historical, cultural and religious backgrounds and the principal legal systems".⁶ Although these governments avoid a direct challenge to universality of human rights via the

1. See Howard & Donnelly, 1986: 81-3. Pollis and Schwab present an extreme version of the argument that the concept of human rights is in some way irrelevant to Third World. They write that "it is evident that in most states in the world, human rights as defined by the West are rejected or, more accurately, are meaningless." See: Pollis and Schwab, 1980: 13.

2. See: Pollis and Schwab, 1980: 1-18; Afshari, 1994: 246-252; Howard, 1993: 315-320; and Adler, 2018: 22-26.

3. Sa'id Raja'i Khorasani, Iran's then-ambassador to the United Nations once stated that "the Universal Declaration of Human Rights, which represented secular understanding of the Judeo-Christian tradition, could not be implemented by Muslims and did not accord with the system of values recognized by the Islamic Republic of Iran." UN Doc. A/C. 3/39/SR. 65, Para. 95.

4. See: Teson, 1985: 870; Renteln, 2013: 61-87; Falk, 1992: 54; Friedman, 1993: 5; Tibi, 1991.

5. Many Asian and Middle Eastern states as diverse as China, Vietnam, Singapore, Malaysia, Syria, Pakistan, Yemen, Iran, and Saudi Arabia joined in fighting against universality of human rights. See: Thurow, 1993: 17; and Clayton, 1993: 7.

6. The Resolution of the Twenty-first meeting of foreign ministers of the Islamic Conference Organizations, held in Karachi, Pakistan, in April 1993, in anticipation of the Second World Conference on Human Rights, held in Vienna, in June 1993 in Mayer, 1994: 371.

endorsement of a qualified universality, they give priority to cultural and religious factors over human rights.¹ The cooperation of several countries from various cultural backgrounds in challenging the principle of the universality of human rights during the 1993 Vienna World Conference on Human rights was significant. They appealed to culture and religion, on the one hand, and to national security, on the other, and tried to discredit international criticisms of their human rights record.² In the Muslim world, the Islamic governments' participation in the debate on human rights issue is not only a response to the development of the international discourse, but also a response to reports of human rights violations in their countries by international observers, such as the Human Rights Commission and Amnesty International.³ It also reflects the pressure and demand from within the Muslim countries for greater democratization and respect for human rights.⁴

It should be also added, in passing, that the objection of some Muslim governments to international human rights standards has led some orientalist and scholars to believe that human rights are distinctively Western and discordant with Islamic culture;⁵ and that the promotion of the principle of universal human rights would result in cultural conflict and the rise of Islamic fundamentalism.⁶ Although the present thesis argues that notions like individualism, constitutionalism, human rights, and liberty are unknown in Shari'a, it by no means follows that Shari'a is the whole of Islam or Islamic culture, in view of the diversity of Muslim societies. Many Muslim scholars have supported the idea of international human rights on Islamic grounds, and the demand for human rights and democracy is increasing in Muslim countries.⁷ Many Muslims, however, as Mayer notes, "resent the West's

1. See: Mayer, 1994: 371-372 and 375.

2. See: Mayer, 1994: 371-379; and Mayer, 1994: 280-282. Also Cerna, 1994: 740-752.

3. Since Muslim jurists generally claim that Shari'a is a comprehensive system for universal human rights (see Chapter Two) and applicable to all societies, regardless of their cultural variety, the argument of Islamic states for the cultural relativity of human rights seems incompatible with that claim. Since Muslim governments are aware that Shari'a is not the origin of international human rights law and that Shari'a laws contradict international norms and standards, they have to resort to the cultural relativists' argument in order to justify human rights violations in both Shari'a and their countries.

4. See: Halliday, 1995: 154.

5. See: Huntington, 1993: 22. The article generated sufficient controversy and attention to convince the same journal to publish several comments on Huntington's thesis. See: Lubjuhn, 1993: 2. Huntington offered a rebuttal in Huntington, 1993. See: Mayer, 2014: 309-314.

6. See: Huntington, 1993.

7. The human rights movement in Muslim countries contradicts the Western mindset and stereotypes that the gap between Western and non-Western cultures cannot be bridged. See: Mayer, 1994: 379-388; Howard, 1993: 315; Said, 1994; E. Said, 1993: 62; Al-Azm, in Rothschild, 1984: 349-367; Donoho, 1991, 345 and 353; Hussein; Olson; & Qureshi, eds., 1984; Daniel, 1993; Binder, 1988: 85.

rhetorical endorsement of universality where it is accompanied by a double standard in the actual application of rights principles.¹

Although the debate on cultural relativism versus universality of human rights is beyond the scope of this study, a few points are noteworthy. First, it should be pointed out that most of the states that support the idea of cultural relativism in human rights issue tend to be undemocratic and repressive, regardless of their cultural backgrounds, and, in the Islamic context, regardless of whether or not they apply Shari'a laws.² Many Muslim governments use Islam as a pretext for denying rights, and appeal to Islamic culture only to justify deviations from international standards. The schemes for the Islamization of rights, proposed by Muslim governments, are also used to justify enormous violations of human rights in these countries. It is in their political interest to resort to Islamic culture and civilization in order "to find rationales for asserting the non-applicability of international rights norms" (Mayer, 1994: 373) and to respond to the reports of human rights violations by international human rights organizations.

Moreover, the study disputes the existence of a distinctive Islamic culture and civilization with regard to the human rights issue, one which differs from the Western approach and stands in the way of adopting international human rights norms and standards.³ There are over fifty Muslim states in three continents of the world, with different cultural backgrounds and a variety of social, legal, and political systems.⁴ There is not a single, distinctly Islamic position on this question that relies on Muslim cultures and traditions.

Many Muslim scholars have responded positively to universal human rights ideals and argued on Islamic grounds for the applicability of international human rights law in Muslim countries. Some Muslim states have supported universal human rights norms in international forums as well.⁵ The Muslim governments' resort to Islamic culture and tradition, therefore, does not seem appropriate, and only serves their political interests. However, a dominant

1. See: Mayer, 1994: 313.

2. Human rights violations under basically secular and socialist regimes and under monarchies that show little interest in applying Islamic law have been as severe as those in countries where Islamic law is heavily relied on, and the rights violations in both groups of countries are in many respects similar. Countries like Iraq, Libya, Syria, and Bahrain, and others like Iran, Saudi Arabia, and Sudan, are examples of these two groups respectively. See: Mayer in Lindholm, & Vogt, eds., 1993: 119; Ghabbian, 1997.

3. See: Mayer, 1994: 402.

4. See: Halliday, 1995: 155.

5. Tunisia, for example, was in the forefront of the battle for universal human rights in the 1993 Vienna Conference. See: Halliday, 1995: 155-156. Ironically, Tunisia's own human rights record is quite poor.

Shari'a interpretation of human rights issue predominates in the Muslim world, which conflicts international human rights law. This thesis examines Shari'a as a body of legal provisions, not Islamic culture -- which accommodates a diversity of opinions and is not an obstacle to democratic freedom and the recognition of human rights. Therefore, Shari'a's contradiction of international human rights law is by no means a confirmation of cultural relativism. Although the interpretation and practice of historical formulation of Shari'a are influenced by the sociological, economic, and political circumstances of a particular community and culture in time, a Shari'a interpretation of rights, from which human rights violations result, prevails among Muslim jurists everywhere.¹ Therefore, unlike Mayer's view that "the stakes in the battle over human rights standards are ultimately political," (Mayer, 1994: 211) this argument shows that Shari'a, too, is an obstacle to establishing human rights norms in Muslim societies. As we will see throughout this thesis, Shari'a qualifications on human rights and freedoms do restrict international standards.

Finally, although the modern concept of human rights is of Western origin, and first emerged in Europe and North America, it does not follow that the idea and principles of human rights are essentially and exclusively connected with Western culture and philosophy, and hence only applicable to Western societies.² Human rights are rooted in human nature and dignity. The Universal Declaration of Human Rights speaks of the "inherent dignity", "spirit of brotherhood", and "inalienable rights" of the "human family". (UN Doc. A/C. 3/39/SR. 65, Para. 95) It endorses civil and political liberties as well as social and cultural rights, and prohibits slavery, oppression, torture, and discrimination. In a cultural context, none of these conceptions seems alien to the ideals of non-Western cultures and traditions. In fact, as Bielefeldt puts it, human rights and freedoms "do not compete with cultural and religious traditions directly, but concentrate on political and legal aspects of human coexistence." (Bielefeldt, 1995: 601) Therefore, regardless of the Western origin of human rights concepts, the establishment of cross-cultural foundations and dialogue might foster the development of the concept of universal human rights in its ethical and legal claims,³ without imposing a particular set of Western values, but instead aiming at

1. See: An-Na'im, 1990A: 15; and Mayer, 1994: xiv.

2. Rather, human rights are historically connected with the experience of pluralism and multiculturalism that have become realities of many societies all over the world. See: Bielefeldt, 1995: 593-594; and Sajoo, 1994: 27-28.

3. See: Tibi, 1994: 285-286; and Adler: 2018: 20-22.

the recognition of a universal minimum of human rights in pluralistic and multicultural society of the world.¹ “What counts”, Reisman notes, “is the treatment of individual human beings, regardless of the origin of the authority sanctioning the treatment.” (Reisman, 1994: 510) Justifications of human rights violations and discriminations based on cultural relativism would deny the universality of claims of all human beings to dignity, and would definitely conflict with the idea that there are certain human rights demanded by all human beings, regardless of their cultural and religious traditions, race, or gender.

Traditional mechanisms of reform within the framework of Shari’a are inadequate for achieving the necessary degree of reform. They are limited by the restrictions of Shari’a principles and, as An-Na’im notes, “will create extremely serious problems in practice.” (Mayer, 1994: 34)² The current study, more a ‘work-in-progress’ than a final or conclusive statement, proposes that any approach to human rights must first seek to establish and demonstrate how the basic human rights derive from, and are directly attributable to, the fundamental characteristics of the human personality. It should locate the objective foundations of human rights in reason, human dignity, and natural law, as noted earlier. From this perspective, human rights are not a religious matter. They are extra-religious and comprise those basic values that deal with all human beings equally, whether they are believers or not.

This argument relates to both An-Na’im’s and Soroush’s theories. As An-Na’im’s reform methodology, it holds that pragmatic solutions and traditional reform techniques within Shari’a limits would only generate theoretical and practical problems. Muslim scholars should then “call for the establishment of a new principle of interpretation,” (An-Na’im, 1990B) in order to make Shari’a laws more compatible with international human rights norms and standards. More importantly, this argument coincides with Soroush’s theory that any interpretation of Shari’a is bound by the presuppositions in the scholar’s intellectual worldview -- and therefore extra-religious factors should be considered here as well.

Furthermore, this study argues that practical problems have almost always been the cause and motive behind the reform movement in Muslim societies. In other words, the direction of religious reformism has mostly been a

1. See: Bielefeldt, 1995: 594.

2. See: An-Na’im, 1990A: 46; Taha, 1996: 175; An-Na’im, 1987: 491; An-Na’im, 1987: 17.

movement from the inside towards the outside, from Shari'a's deficiencies towards the realities of the time, towards finding a desirable harmony saving religion in the modern world. The study proposes that a dialogue between what is internal and what is external to religion would result in the compatibility of Shari'a principles with international human rights standards, and may allow Muslim societies to solve their ongoing difficulties. This proposal is not a modern version of Shari'a, nor does it relate to Shari'a at all. It is a rational argument. It provides the intellectual foundations for Islamic thought in the field of human rights, first and foremost.

Notions like justice, freedom, and human rights are generally defined on rational and intellectual grounds and cannot be determined by religious criteria and qualifications alone. Fundamental human rights are intended for the development and full realization of the human personality, which is thought to be the foundation of human dignity -- with all the responsibilities that this implies -- which distinguishes humankind above all other creatures. The human intellect and will are indispensable, and liberty is their most eminent characteristic, the very foundation of human dignity and responsibility. Therefore, human rights are derived from, and are directly attributed to, the fundamental characteristics of human personality.¹ Human rights are also political and legal standards. As a political means of recognizing human dignity in a legally binding structure, they have to do with political justice, establishing the normative criteria as "genuinely modern safeguards to facilitate human life with dignity. To provide such safeguards is the purpose of human rights." (Afshari, 1994: 248; Donnelly, 2013: 64)

The role of extra-religious issues in understanding and interpreting religious sources helps harmonize what is internal and what is external to religion.² In the Islamic context, it could render Shari'a principles more compatible with the realities of modern time and provide theoretical and practical solutions.

What supports this proposal is that every religion has, in one way or another, contributed to the idea of rights, raising the value of mankind and merit of human honor and dignity.³ Any religious society can prepare its own laws and legal system based on these general principles as well as its

1. See: Freeman, 1994: 491-514; Kasper, 1990: 253-269; Perry, 1993: 1027; Donnelly, 2013: 16-19; and Donnelly, 1986: 52.

2. See generally Marty, 1996: 97-106; Berman, 1974: 107; and Berman, 1993: 1-20.

3. See: Hersch, ed., (UNESCO: 1968); and Henkin, 1987: 589-590; An-Na'im, 1990A: 47-48; and Kasper, 1990: 253-269.

collective rationale, wisdom, and human nature in its own historical context.¹ Human rights law requires an adequate intellectual framework as well. Muslim scholars should acknowledge human rights as individual entitlements, and promote the idea of equality of all individuals before the law, regardless of gender, religion, etc. In Muslim societies, neither men nor believers should derive their rights from their gender or faith. The idea of human rights assumes that all human beings are autonomous persons, not only components of family or community.² Human rights could be applied only in a society where the concept of the individual has been introduced and well situated in its cultural patterns. In other words, a civil and plural society with democratic political structure is the kind of society in which human rights are appreciated and human freedoms are enjoyed.

1. The philosophy of law stipulates that historicity is a necessary dimension of any law even if one believes that laws should be linked to religious sources. Legal norms are, from this point of view, always conceived within a place and time-bound framework. Laws and regulations are rationally formed and executed according to the needs of society. See: Knox, trans., 1965: 14-18; Dworkin, ed., 1977: 1-2. Also generally Dworkin, 1977: 38-65; Morawetz, 1980: 5-10; Kant, 1974. In Muslim societies, nevertheless, the problem emerged when early jurists considered Shari'a provisions as sacred and eternally fixed laws, and applied them beyond time and circumstances. While, the existence of laws and rules in Shari'a may be necessary or justified, Shari'a laws coincided with the establishment of the first Islamic state by the prophet in Medina, reflecting the needs of that society for laws. The Qur'an is not and does not profess to be a code of law or even law book. It establishes certain basic standards of behavior for the Muslim community. It may contain some legal rules, but these pertain only to an earlier phase of Muslim society and its leadership in Medina. They were not meant to govern every Muslim society; although this is how they have been so understood by Muslims. Therefore, those parts of Shari'a which deal with the legal aspects of human life may be considered as time-bounded and not an essential part of religion. See: An-Na'im, 1990A: 20-22; 18-19; and Bielefeldt, 1995: 595.

2. Needless to say, the individualistic feature of human rights does not deny the social dimensions that human rights contain. See: Mayer, 1991: 47.

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