ISLAM AND HUMAN RIGHTS

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Barriers to Dialogue between Islam and Human Rights

The question whether or not Islam is compatible with international human rights has been a long debate. Their dialectical relations have been challenged by misperceptions and misconceptions regarding the two notions which hinder their meeting point. On the one hand, there is an influence of the "Western" perspective dominating the human rights discourse, bringing up a tendency for the adoption of "Western" values as a parameter for the human rights discourse. Ann Elizabeth Mayer (1999) contends that the minds of majority Muslims are filled with the assumption that human rights are 'principles established by the Western cultures" and, therefore, the Western cultures are to become a normative model of the universality of international human rights. It is true that the birth of international human rights was located in the West, but the whole concept of human rights can be adjusted with various human civilizations including Islamic civilization.

Islamic law is often viewed negatively in the West. Forms of criminal punishment in Islam like *hudud* or *qisas* and the political and human rights situations in many Muslim countries are often used as a proof by Western analysts that Islamic law lacks respect to human rights. This is supported by empirical studies. The survey of Freedom House, a Washington-based think tank NGO, on democracy and human rights in 192 countries worldwide, for instance, shows the minimum condition of democracy and human rights enforcement in Muslim countries. In 2003, of 56 states of the Islamic Organizations Conference (IOC) there are at least 30 being categorized as 'not free', 22 countries 'partly free', and only 4 classified as 'free'. Among the 56 countries, 22 (40%) are ruled by totalitarian regimes, and only 15 considered democratic, including in it Indonesia. The perimeter for democracy is quite simple, i.e. the existence of multi-parties, multi-candidates, and competitive elections.

The above reality is often used as a basis for the argument that Islam is not compatible with democracy or human rights. The fact that monarchies or dictatorships rule in many Muslim countries are clear evidence. Further, it is superficially concluded that Islamic culture constitutes a barrier in the development of democracy and human rights because it can accommodate neither of them. To understand this reality, one needs to have a deeper understanding of the social processes related to Islam and human rights from a broader perspective covering sociological, political, and historical aspects.

On the other hand, a basic barrier to establishing the relationship between Islam and human rights emerges because of rigid and static interpretation of shariah and the application of traditional Islamic law that is no longer relevant in the current context of human relations. In order to materialize its overall goal, which is promotion of public benefir (*maslahah),* shariah is to be understood comprehensively to include not only

legal, but also spiritual, moral, and ethical dimensions. It other words, it is necessary to move from shariah to maqashid shariah (goal of shariah).

Varieties of Islamic Law

Islamic law in its early inception is pluralistic and not monolithic. Its jurisprudence accommodates various interpretations from its sources, the Qur'an and Hadith, and produces significant differences of legal opinions. The complexities of Islamic law and its varieties do not mean that there is no certainty. The varieties and differences of legal opinions are appreciated as '*different manifestations of the same divine will*' (Kamali 1991). This reflects recognition of plurality in the society, supported by the Prophet's hadith, "Blessings for the Muslims lie in the different opinions of their jurists *(rahmah al-ummah fi ikhtilafi al-aimmah')*. This means that differences of opinions of Muslim jurists in interpreting sources of law on certain issues offer a wider scope which has equally strong legal status. Judges can appropriately choose the most humane and advantageous legal opinions for the cases they are taking care of. This is the basis for developing the principle of *takhayyur* or *ikhyar* (choice) which shows the flexibility of Islamic law. Appreciation to differences is an important principle in Islamic law.

A law basically is a product of legal sources and the methods of interpretation. Likewise is Islamic law. Therefore, distinction should be made between shariah as the source of law and fiqh as a product of human intelligence in interpreting and applying legal sources. Shariah covers a wider scope to include moral, legal, social, and spiritual aspects of Muslims' life. Fiqh covers legal or judicial aspect of shariah. So, Islamic law consists of two components: 1) divine revelation which is everlasting and unchangeable, called shariah, and 2) human interpretation to the shariah called fiqh.

The problem appears when one talks about shariah without proper understanding of what it really means. One may get confused when trying to understand shariah uncritically to include not only divine and sacred law but also human intellectual product which is fiqh. This human product of fiqh is often mixed with shariah and viewed as equally sacred and unchangeable. This mixing of shariah and fiqh has given an impression that Islamic law is static and rigid, because the scope of fiqh which should be dynamic and continually developing is mixed with shariah which is sacred and unchangeable.

If Islamic law is expected to reflect justice in line with its context of time and place, shariah is to be understood in its broad meaning which includes its moral, legal, social, and spiritual dimensions. Likewise, fiqh is to develop through reinterpretation and contextualization processes so as to reflect the fundamental values of shariah such as justice, equality, and *maslahah* (social well-being).

Islamic Responses in International Human Rights Discourse

There are at least four classes of Islamic responses to the international human rights debate (Halliday 1995, 152; Baderin 2003, 13). The first is that Islam is compatible with international human rights. The second is that true human rights can only be fully realized under Islamic law. The third is that the international human rights objective is an imperialist agenda that must be rejected. The fourth is that Islam is incompatible with international human rights. Most of the responses above, when viewed critically, are reactions of Muslims to what is often described as the double standards of countries at the guise of promoting international human rights. The responses reflect the entrapment of human rights between humanitarianism and international politics, rather than actual disagreements with the concept of human rights in Islamic law. Let us look at the analysis of each of these responses as presented by Baderin (pp. 13-16).

From the point of view of Islamic law, the view that Islam is compatible with human rights is the most sustainable. It is not merely by apologetically reading the Western notion of human rights into Islamic principles. It is primarily because the sources and methods of Islamic law contain common principles of of good government and human welfare that validate modern international human rights ideals. Respect for justice, protection of human life and dignity, equality of all human beings, are central principles inherent in Shariah. They are the overall purpose of Shariah, which is explicit in the Qur'an, *'God commands justice, the doing of good, and liberality to kith and kin, and He forbids all shameful deeds, and injustices and rebellion: He instructs you, that you may receive admonition."* (Q.S.an-Nahl/16:90)

The view that true human rights can only be fully realized under Islamic law is an exclusionist stance. Islam is not egocentric in terms of temporal matter; rather it encourages interaction and sharing of perception. Islam also encourages cooperation (*ta'awun)* for the attainment of the common good of humanity as depicted in the Qur'an, *"Cooperate with one another in good deeds and piety but not in sin and enmity,"* (Q.S. al-Maidah/5:5). The Prophet Muhammad (PBUH)[1] advised Muslims to seek knowledge as far away as to China (*uthlubul ilm walau bi al-shien),* which implies that Islam recognizes possible complementary routes for the betterment of humanity in temporal matters.

The view that international human rights regime is an imperialist agenda is not peculiar to the Islamic discourse on human rights. It is common in the human rights discourse in the developing nations (Mutua 1996, in Baderin, p. 14). This results from the fear of neo-colonialism, and a psychological effect of the past colonial experience of most developing nations under Western imperialism. That fear is sometimes strengthened by the Western nations' insistence on defining human rights only in the Western perspective without consideration for the contribution and understanding of other cultures.

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[1] This acronym stands for 'Peace Be Upon Him', a prayer which is commendable to recite after one mentioning the name of the Prophet Muhhamd.

If we understand international human rights as a universal humanitarian objective for the protection of individuals against State repression and for the promotion of human dignity, then the view that Islam is incompatible with human rights is unsustainable. It is because Islamic political and legal theory is always based on the principles of protecting and enhancing the dignity of human beings. There may be some conceptual differences between Islamic law and international human rights law, but this does not have to make them incompatible. It is sometimes argued that human beings have no rights in Islamic law, because they have to submit to God's command (see for example the views of Khomeini, Mawdudi, or Sayyid Qutb). This is also misleading.

It is true that human beings are to submit to God's commands, but this does not mean that they have no inherent rights under Islamic law. The principle of legality is fundamental in Islamic law, which means that all actions are permitted except those clearly prohibited by the Shariah (Baderin, p. 15). Hence, human beings have inherent rights to everything except for things specifically prohibited. To hold that human beings have no rights but only obligations to God expresses a principle of illegality, which makes life restrictive and difficult. This is inconsistent with the overall goal of Shariah (*maqashid al shariah),* i.e. the promotion of human welfare.

Muslims' rejection of UDHR is basically not caused by the concept of human rights per se. Their position only reflects a disappointment with, and protest against, Western hegemony and hence against any ideology considered as championed by the West such as democracy. They often refer to the 'double standards' of the West and their lack of sincerity to international human rights. In nearly all human rights resolution adopted at Islamic conferences, the issue of Palestine, for example, comes up as an issue of double standards in international relations and law. The view of an Egyptian critic, Ismat Sayf al-Dawla, is quoted by Baderin (p. 15) to give the illustration.

> I must admit that I am not a supporter of the *Universal Declaration of Human Rights* that the United Nations Organization issued on December 10, 1948. Our history of civilization has taught us to be wary of big and noble words as the reality of our history has taught us how big words can be transformed into atrocious crimes. We cannot forget that the initiators of the *Declaration of Human Rights* and the plain French citizens are the same people who shortly afterwards, and before the ink of the *Declaration* had dried up, organized a campaign and sent their forces under the leadership of their favourite general, Napoleon, to Egypt. We must not forget either that the United Nations Organization issued the *Universal Declaration of Human Rights* in the same year that it recognized the Zionist state that usurped Palestine and robbed its people of every right stipulated in the *Declaration,* including the right of life.

The contradiction between word and deed among Westerners is also recognized by Huntington (1996, p. 184) who observes that,

> "Non-Westerners … do not hesitate to point to the gaps between Western principle and Western action. Hypocrisy, double standards, and 'but nots' are the price of universalist pretensions. Democracy is promoted but not if it brings Islamic fundamentalists to power; nonproliferation is preached for Iran and Iraq but not for Israel; … human rights are an issue for China but not with Saudi Arabia; … Double standards in practice are the unavoidable price of universal standards of principle."

Of the various responses amongst Muslims to the discourse of international human rights, the view that Islam is compatible with international human rights is, I submit, the most sustainable one. However, this can be true only if there is 'continuous education and practical demonstration of sincerity and genuine commitment to the humanitarian ideals of international human rights, especially by the 'big' States at the helm of human rights promotion' (Baderin, p. 16). Without this effort gaps between Islam and international human rights will remain, sustaining misperceptions and misconceptions regarding them.

Muslims Scholars on Justice and Human Rights

The centrality of justice in Islamic value system is explicit in the following verse: "*We sent aforetime Our messengers with Clear Signs and sent down with them the Book and the Balance (of Right and Wrong), that men may stand forth in justice,*" (Al-Hadid/57:25). This verse confirms that justice comprises the goal of revelation of the Holy Books to human beings. Justice is the main goal of Islam and God has sent His messengers to build justice for humans. The Qur'an strongly emphasizes justice, and gives no compromise over its relativity. The effectiveness of shariah is basically measured as to how far it can provide justice to human beings.

The debate on the concept of justice in Islam basically derives from two different views. *First* is the view that justice is transcendental, based on revelation, and is abstract. This group views justice from the perspective of God's destiny (*taqdir)* and puts no relations with reality and human intellect. *Second* is the view that justice comprises two levels: transcendental, and human. Their debated are sparked around the fact that Islamic justice theory has failed to materialize. Recently, with the influence of Western secular thoughts, Muslim intellectuals began to use other perspectives and apply the pragmatic approach relevant to the current condition.

Muslim thinkers realize that the conventional concept of justice is no longer relevant in the current reality, which gives more weights to material advantages. This element of justice is introduced into Islamic political and legal system through the widely accepted methods of consensus (*ijma')* and analogy (*qiyas).* This may create tensions especially from the Scripturalists and Fundamentalists who resist external secular standards because they are viewed as in consistent with Islamic ones. However, a number of Muslim thinkers are the opposite. They welcome external standards so far as they are not in conflict with Islamic principles.

One of the thinkers who adopted a constructive approach is Jamaluddin al-Afghani (1839-97) and his loyal follower Muhammad Abduh (1849-1905), who offered a compromise by combining the standards of justice from Islamic and Western perspectives. After making journeys to several Islamic countries like Iran, Afghanistan, Egypt, India, and Turkey, Al-Afghani was surprised with prevailing despotism among Muslim kings. Various forms of injustices were perpetrated by authorities and legal elites to their people. These authorities, directly or indirectly, had fallen into the entrapment of Western colonials and collaborated with them to repress their own people.

Al-Afghani offered an alternative to end this despotism by inviting Muslim elites to involve their people in a participatory government. He was of the opinion that in order to realize Islam's principle of justice, Muslims have to be freed from foreign domination and acquired their own political legitimacy. His ideas were resisted by Muslim authorities, and he was even sent into exile. However, he never lost hopes that Islam with its impressive spiritual potential and with the extraordinary strengths of its followers will someday be freed from colonialism. Refusing Western materialistic views, Al-Afghani had the opinion that well-being in life could be achieved only when societies observed high level of religiosity and were able to establish social and spiritual control over authorities so that they would have no chance to perpetrate injustices and despotism.

Al-Afghani's ideas were developed by Muhammad Abduh who, in his position as Grand Mufti of Egypt, fought to enforce Islamic justice, not theoretically but in practice. Unlike conservative groups who relied on revelation textually, Abduh believed in human intellectual power in interpreting God's revelation. Abduh believed that Western legal processes were not completely contradictory to the procedures for justice in Islam. As a Mufti, Abduh gave examples of how justice was to be enforced and how laws were to be interpreted. One of his edicts (*fatwa)* was on the permission for Muslims to save money in a bank which gives interests. He was criticized for his argument that laws are to be interpreted with ratio and reason, and not adopted literally. If laws and ratio are in conflict, ratio is to be prioritized. This method had enabled Abduh to bring two main streams of conventional Islamic law system together, i.e. the textual stream and the rational one. This approach was successful in promoting the dynamics of Islamic law and in preventing stagnation, a condition required to achieve justice in the current modern times.

The following is a list of websites and names of Muslim scholars whose works and thoughts on human rights from Islamic perspective are widely quoted and debated. The accompanying websites addresses are meant to assist one in searching writings on them or their thoughts.

http://people.law.emory.edu/~abduh46/phfiles.htm
http://www.ntpi.org/html/humanrights1.html
http://www.ii-pt.com/web/papers/human.htm
http://www.flwi.ugent.be/cie/CIE/an-naim1.htm
http://www.ii-pt.com/web/papers/islam&h.htm
http://islamlib.com/en/page.php?page=article@mode=print&id=257
http://www.arches.uga.edu/~godlas/islamwest.html

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Baderin, Mashood A., *International Human Rights and Islamic Law*. Oxford: Oxford University Press, 2003

Huntington, S.P., *The Clash of Civilizations and the Remaking of World Order.* New York: Simon and Schuster, 1996

Mayer, A.E., *Islam and Human Rights: Tradition and Politics.* Boulder: Westview Press, 1999