

Muslim Discourse on International Human Rights: The Problem of Harmonization¹

Wacana Islam mengenai Hak Asasi Manusia Antarabangsa: Masalah Pengharmonian

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Abstract

The concept of human rights as embodied in the Universal Declaration of Human Rights indisputably is a western construct. Since Muslim states at the official plane have committed themselves to its tenets by being signatory to it as members of the United Nations, their afterthought has triggered a debate among the academia about its harmonization with the Islamic notion of human rights. Some reject it in its entirety, others advocate its adoption even at the expense of some Islamic core values and yet another body of opinion sees it in total conformity with Islam. This paper argues that all the above perspectives in spite of their merits miss one important point, namely addressing the issue in the context of Muslim- nation- states interacting with the community of nations with their own specific value systems. Accordingly, the harmonization in line with the legitimate Islamic methodology is the real alternative which this presentation endeavours to articulate.

Keywords: International Human Rights, Muslim Discourse, Harmonization, Muslim States.

Abstrak

Konsep hak asasi manusia seperti yang termaktub dalam Universal Declaration of Human Rights tidak boleh dinafikan adalah pembinaan barat. Sejak negara-negara Islam yang rasmi telah bertekad diri kepada rukunnya dengan menjadi penandatanganan kepadanya sebagai ahli United Nations, renungan mereka telah mencetuskan perbahasan antara akademi mengenai harmonisasinya dengan konsep hak asasi manusia dalam Islam. Sesetengah menolak cadangan itu secara keseluruhannya, yang lain menyokong perlaksanaannya walaupun perlu mengorbankan beberapa nilai-nilai teras Islam dan satu lagi badan berpendapat ia selaras dengan Islam. Karya ini berpendapat bahawa semua perspektif yang tertera di atas di sebalik merit, mereka terlepas satu perkara penting, iaitu menangani isu ini dalam konteks Islam-negara-bangsa yaitu

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berinteraksi dengan masyarakat negara-negara dengan sistem nilai tertentu sendiri. Sehubungan dengan itu, harmonisasi menerusi metodologi Islam yang sah adalah alternatif sebenar seperti apa yang karya ini berusaha untuk menyuarakan.

Kata Kunci: Hak Asasi Manusia Antarabangsa, Wacana Islam, Pengharmonian, Negara-negara Islam.

Introduction

Western societies since medieval times struggled to emancipate themselves from the tyranny of despotic regimes and religious establishments. The rise of humanism with its emphasis on individual liberties provided the impetus for the emergence of movements for the protection of human rights against the brute powers of states. In this process, the adoption of Universal Declaration of Human Rights by the UN in December 1948 was nothing but the concretization of what Western mind was dreaming to accomplish. The irony, however, on the part of non-Western world including Muslim nations was that they began to realize the tension which its universalization presents to their traditions after they had formally agreed to abide by its tenets.

Nevertheless, the Muslim responses in this respect have not been unitary. This paper aims to examine Muslim discourse on managing its harmonization with Islamic view of human rights.

The Advent of Human Rights in the West

Modern international human rights² which have set the stage for contemporary debate on rights, particularly in the context of Muslim so-

² Human rights in term of genus, has evolved from the protection of some basic and minority rights contained in historical documents, such as Hammurabi Code of Babel 20 BC, Greece Code of Solo 560 BC, Rome's Twelve Tablets, Britain Magna Charter 1215 C.E, Bill of Rights 1628 C.E, American Act of Independence 1776, France Law of Human Rights and Citizen Rights 1789 and Institute de Droit International Declaration of International Rights of Men 1929. For the purpose of this paper, we concentrate on modern law of human rights as set out in Universal Declaration of Human Rights. For details see, Sulieman Abdul Rahman al-Hageel, *Human Rights in Islam*(Riyad: Dar Ashbilia, 1999); pp. 30-33; Tahir Mahmood, "The Islamic Law on Human Rights" in *Human Rights in Islamic Law*, Tahir Mahmood(ed.)(New Delhi, 1983), 59-68; M. Yusuf Saraf, "Evolution of the Concept of Human Rights and the Role of United Nations," in *Islamic Concept of Human Rights*, S.M. Haider(ed.), (Lahore: The Book House, 1978), pp.112-115.

cieties, refers to the body of rights which Universal Declaration of Human Rights (UDHR) envisages and enunciates. From the legal perspective, this piece of legislation is the culmination of efforts by the United Nation³ to realize its stated goal as embedded in the preamble of its Charter: “... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations, large and small.” To realize this, the Commission on Human Rights was set up on 29 January 1946. The Commission, by virtue of article 68 of the United Nation’s Charter, was mandated, among others, to come up with the triad international instruments, namely ‘Universal Declaration of Human Rights’, ‘International Covenant on Civil and Political Rights’ and ‘International Covenant on Economic, Social, and Cultural Rights’, epitomized as ‘International Bill of Rights’. The Commission⁴ began its work on April 1946 and completed the draft on human rights on 6 December, 1948 which subsequently was endorsed by the General Assembly in its meeting in Paris by virtue of resolution 217A (111) on 10 December 1948, known as Universal Declaration of Human Right. Among 90 countries participating in voting, all of them voted in favor while the Soviet Block (six communist states), Saudi Arabia and South Africa abstained albeit of not voting against it.⁵

³ United Nation is the world body which was established in 1945 in San Francisco. The impetus to institute such a world body came from the world’s the four major powers with the idea of thwarting the causes for the flare-up of any future destructive international conflicts similar to the two infamous World Wars. See Saraf, *ibid.*, p.122-123; Sulieman, *ibid.*, p.73-74; Peter Bailey, *THE CREATION OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS*, <http://www.universalrights.net/main/creation.htm> (accessed 12/06/2012). See also The Universal Declaration of Human Rights, <http://www.un.org/en/documents/udhr/history.shtml> (accessed 12, 06, 2012).

⁴ The Commission consisted of eighteen members coming from eight countries. It was chaired by Mrs Eleanor Roosevelt, the widow of President Franklin Roosevelt of the United States and included other leading non-American figures including China’s Peng Chung.Chang, Frenchmen Rene Cassin, Canada’s John Humphrey, Alexandre Bogomolov of USSR, Charles Dukes of the United Kingdom, William Hodgson of Australia, Hernan Santa Cruz of Chile, and Charles Malik of Lebanon. See Bailey, *Ibid.*

⁵ *Ibid.*

To human rights theorists, the declaration was inspirational⁶ in the sense that it purported to “set a standard of rights for all people everywhere - whether male or female, black or white, communist or capitalist, victor or vanquished, rich or poor, for members of a majority or a minority in the community.” This was underlined in its preamble which stated: "recognition of the inherent dignity and ... equal and inalienable rights of all members of the human family "⁷; and through that recognition it envisaged to provide "the foundation of freedom, justice and peace in the world."⁸

To give effect to these objectives, it consisted of thirty articles, the salient among which includes: inborn human dignity, equality, brotherhood and nationality⁹; equality before the law and protection against any form of discrimination¹⁰; possessing the right to life, liberty security¹¹ and adequate standard of living¹²; Freedom from torture and degrading treatment¹³; freedom of opinion and expression; and freedom of thought, conscience, and religion¹⁴; Freedom from arbitrary arrest¹⁵; rights to privacy¹⁶; the right to necessary food, clothing, housing and medical care, and the right to social security¹⁷; civil, political, economic and social measures to fully realize human rights.¹⁸

To give force to these provisions, UDHR has been supplemented by a number of other legal documents, such as International Covenant on

⁶ This is the majority position and the correct statement of the law as UDHR is neither a treaty nor a convention. However, some schools regard it as a legally binding document, to Soviet Union it is *ultra virus* of state sovereignty by virtue of article 2(7) of the UN Charter; others regard it as persuasive if it accords with national legislation. See al-Hageel, *Human Rights in Islam*, p. 82.

⁷ Ibid.

⁸ Ibid.

⁹ Article 1.

¹⁰ Article 7.

¹¹ Article 3.

¹² Article 27.

¹³ Article 5.

¹⁴ Article 18.

¹⁵ Article 9.

¹⁶ Article 12.

¹⁷ Article 22.

¹⁸ Article 28.

Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, ratified in 1966, both of which came into effect in 1976.¹⁹ The reason is that the status of UDHR as a document of rights is contentious. Its advocates regard it as a piece of customary international law by virtue of its continued advocacy by international lawyers and negation by states being accused of human rights violations while others disagree.²⁰ However, UDHR, for all practical purposes, is treated as a statute which purports to be of legislative effect on account of other backing legal documents.

UDHR from the Non-Western Viewpoint

Irrespective of the objectivity claims about the content and messages contained in the UDHR, its western genealogy from the very outset has foiled attempts at its wholesale imposition on non-western societies. This can be gleaned from misgivings that non-western members expressed both during its drafting stage as well as when it was being deliberated for adoption at the General Assembly in 1948. For instance, observing the western texture and substance of the declaration, Peng Chung Chang, the Chinese member of the commission, reacted by saying: "... the draft should reflect more than the Western ideas" and for that matter the secretariat must take time "to study the fundamentals of Confucianism".²¹ Its credibility from Islamic perspective also became questionable when some Muslim countries²² disputed some of its provisions during the deliberation at the General Assembly on the fateful day of its birth. Pakistan and Saudi delegates raised several objections relating to some of its provisions, such as the one on conversion from Islam²³

¹⁹ Peter Bailey, *THE CREATION OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS*, accessed 12/06/2012 from <http://www.universalrights.net/main/creation.htm>. Other supplementary documents include United Nation Convention of the Elimination of All Forms of Discrimination Against Women, 1979;

²⁰ Ibid.

²¹ The Universal Declaration of Human Rights, accessed 12,06,2012, from <http://www.un.org/en/documents/udhr/history.shtml>.

²² Here we are concerned with Muslim reactions and hence we do not detail communist blocks' objections to the effect.

²³ Article 18.

and freedom of marriage.²⁴ Paradoxically, only the Saudi delegate abstained from voting when it was finally being adopted.²⁵ This stance by Saudi set the stage for future debate on its harmonization with Islam which still rages in our time both at the institutional and academic levels.

At the official level, Muslims, by and large, adopted a critical attitude towards UDHR. For instance, *Iranian representative to the United Nations, Said Rajaie-Khorassani*,²⁶ articulated the position of his country regarding the Universal Declaration of Human Rights, by saying that the UDHR was "a secular understanding of the Judeo-Christian tradition", which could not be implemented by Muslims without trespassing the Islamic law.²⁷

It has also been challenged at the academic plane. For instance, al-Attas refutes the universalization of UDHR by extending its mandates to Muslim countries by arguing that Muslims were neither represented in its drafting stage nor were capable of debating it during deliberation and adoption in the General assembly. The inclusion of an Arab in the commission, Lebanese Malik, was also unhelpful as he *was not only a committed Christian but had antithetical views about Islam* and was responsible for inserting in UDHR the contradictory provisions to Islam, such as freedom to change religion. Secondly, the pre-oil era weak Arab world not only were unable to object to the overwhelming dictates of big

²⁴ Article 16.

²⁵ Al-Hageel, *Human Rights in Islam*, p.85-86. See also Clinton Bennett, *Muslim and Modernity* (London: Continuum, 2005), p. 63.

²⁶ Ali Salman, *Human Rights and Islam: Some Points of Convergence and Divergence*, accessed, 12/06,2012, from <http://www.renaissance.com.pk/octvipo2y1.html>. Tun Mahathir, the then Prime Minister of Malaysia, also has said that "Human Rights are a tool for perpetuating Western historical domination in a new form. The West bulldozes the world within their end of history gospel, trumpeting the holy trinity of free market, free enterprise and human rights." See Chandra Muzaffar, *Rights, Religion and Reform* (London and New York: RoutledgeCurzon, 2002), p. 60.

²⁷ Salam, *Ibid*. Its other contrasting features vis-à-vis UDHR are: subjecting all rights and freedom to Islamic law; no freedom of expression contrary to Shari'ah; equality between men and women only in respect of dignity etc. See Cairo Declaration of Human Rights in Islam (English text).accessed 13/06/2012, from <http://europenews.dk/en/node/3847>; Bennett, *ibid*, p. 68.

powers but also had no intellectual vigor to debate the content of the declaration.²⁸

By applying Gadamer formula of dialogue, Irene Oh also supports this stand by stressing that for a dialogue to yield a free consensus the participants must be equally capable of debating the matter in question, hence what happened in the case of UDHR was that "... those fledgling nations during the debate on UDHR lost to more powerful nations and their allies."²⁹ Hence, the power imbalance drastically affected the emergence of a real consensus on the declaration in question.³⁰

Summarizing the genealogy of the UDHR, al-Attas states that it is essentially a Western construct mainly because it is not only rooted in the ancient idea of higher principle as upheld by natural law of Greek but also it has evolved from France Declaration of rights of men, Magna Charta, Christian Theology and American Constitution and Bill of Rights. Accordingly, Muslims have two options: subordinate their own view of human rights to UDHR or chart out their own formalized version of human rights. In the latter option, however, lies the danger of avoiding the language and terminologies employed by UDHR which if applied "dissembles the building block of Islamic worldview."³¹

It is in this context; therefore, that Islamic Council of Europe also has drafted a counter declaration of human rights, called 'Universal Islamic Declaration of Human Rights' 1981. Its spectacular divergence with UDHR is that it begins by affirming that all the human rights are deeply rooted in the belief in God and are sourced in God. It is criticized as canonized human rights notion based on Islamic teaching as was conceived by Mawdūdī.³²

²⁸ Syed M. Naquib al-Attas, "Human Rights and Human Duties" in *The Crisis of Islamic Civilization*, Ali A. Allawi(ed.), (New Haven and London: Yale University Press, 2009), pp187-189.

²⁹ Irene Oh, *The Rights of God: Islam, Human Rights, and Comparative Ethics* (Washington: Georgetown University Press, 2007), pp.14-16.

³⁰ Ibid.

³¹ al-Attas, "Human Rights and Human Duties", p.192.

³² Ali Salman, *Human Rights and Islam: Some Points of Convergence and Divergence*, accessed, 12/06,2012, from <http://www.renaissance.com.pk/octvipo2y1.html>. For the full document, see, Universal Islamic Declaration of Human Rights, accessed 13/06,2012 from <http://www.alhewar.com/ISLAMDECL.html>.

Similarly, Fifty Muslim countries under the aegis of the Organization of the Islamic Conference passed *the Cairo Declaration on Human Rights in Islam* (CDHRI) in 1990. Its marked contrasts with UDHR are its restriction on freedom of religion and the position of women in Islam i.e., prohibits apostasy and freedom to marriage in the case of Muslim women.³³

In view of the above, an important question is: since the Muslim states have ratified UDHR, can it be harmonized with Islam? The answer is controversial. There are supporters and opponents. For the purpose of this paper, we briefly delineate this aspect of the issue.

The Opponents' Arguments

The thrust of the argument in this trend³⁴ is that in the Islamic view, we cannot have a scheme of human rights parallel or similar to those listed under UDHR mainly because of the unique Islamic worldview of men. Khumaini called the UDHR as “a collection of corrupt rules by Zionist to destroy all true religions.”³⁵ In delineating this position, Kasule, a representative protagonist of this approach, faulted Muslim claim of the existence of such a notion by maintaining that human rights embedded in UDHR cannot be understood in isolation from their underlying philosophical and theoretical assumptions regarding man, his purpose in life, the sources of his rights, cultural environment and social conditions in which they thrived. Otherwise appending each and every provision of rights under UDHR with Islamic texts, as done by Muslim human rights supporters, not only distorts Islamic view of man and his mission but also leads to some fundamental contradictions. To him, this is a folly that the conformist camp, the mainstream, at the aca-

³³ CDHRI, article 1. Its other contrasting features vis-à-vis UDHR are: subjecting all rights and freedom to Islamic law; no freedom of expression contrary to Shari'ah; equality between men and women only in respect of dignity etc. See *Cairo Declaration of Human Rights in Islam* (English text).accessed 13/06/2012, from <http://europenews.dk/en/node/3847>; Bennett, *ibid*, p. 68

³⁴ This trend is also labeled as defensive which regards human rights as an expression of Christian values and alien to Islam. See Beilefeldt, p. 237.

³⁵ Ali Khamene'i call the as “a collection of mumbo-jumbo by disciples of Satan.” See Kasule, p. 29.

demic and institutional levels, advertently or inadvertently thus far have committed.³⁶ To him, such a stand is objectionable on the epistemological grounds. First, the most characteristic feature of UDHR is that it is profoundly embedded in pre-modern secular notion of humanism in which “the central concern is man and not God” as conceived not by revelation but by reason. Man as such has inherent dignity “not because of its divine origin but because of rational possibility of his earthly existence”.³⁷ For instance, Donnelly said: “... any rights one has simply because he is human... human rights are not given by God...they have nothing to do either with God or religion.”³⁸ Locke said: “men by nature are free, independent and equal and are subject to no power without consent.”³⁹ Therefore, man in this sense is a product of evolution,⁴⁰ a biological entity with no place for God in man’s creation in the world. David Humes regards man as “a creature dominated by sentiment, emotion, passion and appetite.”⁴¹ To Maurice Cranston, “man in the state of nature is a stupid - an unimaginative animal. It is only by coming into a political society that he becomes an intelligent being- a man.”⁴² This stand is in stark contrast with the Islamic view of man as a rational, spiritual, dignified creature in whose scheme of life, God stands supreme as he unlike other living beings is superbly spiritual so much so that his biological aspect is secondary as far his mission as a *khalifah* and ‘*abd* of God on the planet earth is concerned.

Second, in the Western worldview, the philosophical assumption pertaining to human purpose in life is the promotion of happiness and absence of pain which is temporal and mundane. Such a philosophy is described as detestable understanding of happiness by al-Miskawiyah

³⁶ Umar Ahmad Kasule, *Contemporary Muslims and Human Rights Discourse: A Critical Assessment*(Kuala Lumpur: IIUM Press, 2009), pp. ix-xi.

³⁷ Ibid, p. 42.

³⁸ Kasule, p. 90.

³⁹ Ibid.p.2.

⁴⁰ Although contested by the theory of Intelligent Design, the predominant Western view about human creation is the Theory of Evolution, as propounded by Darwin. To him, “animals started evolving from others into new ones, so in process apes became men”. See Ibid,p. 61.

⁴¹ Ibid,p. 64.

⁴² Ibid, p. 70.

and is contrary to the Islamic notion of *sa'ādah* which transcends transient human sensualist tendencies in favor of lofty moral and spiritual ideals in life.⁴³

Third, the origin of modern human rights goes back to the advent of European Enlightenment which “as an intellectual movement began in France and fast spread in Europe and spillover to America”.⁴⁴ This marked the demise of natural right theory and the detachment of divine authority from its philosophy. This new political discourse championed the cause of human freedom, liberty and equality from the authority of Church and divine rights of the king. Its immediate effect of stressing these ‘three rights’ were the triumph of revolutions in France 1789 and in Russia 1917 and the end of monarchical regimes and their church legitimizers in other parts of Europe. Antagonism to church in the West gave rise to the doctrine of “freedom of religious conscience by which one can absolutely become religious or remain irreligious or become an atheist.”⁴⁵ Its topmost agenda was to free man from the oppressive authority of state as well as that of the church. Hence, to Kasule, the rights enshrined in UDHR, by genus, are statements of human freedom from the authority of religion, thus suitable for secular environment only. What Thomas Paine states, bears testimony to this: “... the right of men , which came to be known as human rights, also had as part of their agenda the idea to prevent religion from unleashing its cruelty and misery on the human race let alone interfering with the personal freedom of individuals.”⁴⁶ Proudhon also said: “... the declaration does not get the principle of justice from God but from man.”⁴⁷ This negates the Islamic principle of God as the Bestower of all rights.

Fourth, in terms of source, these rights are based on reason as propounded by western humanist ideology. For instance, Donnelley said: “... the particular list of rights we take as authoritative today reflects a

⁴³ Ibid, pp.71-75.

⁴⁴ Ibid., p. 79.

⁴⁵ Ibid., p. 80.

⁴⁶ Ibid., p. 81. See also Weeramantry, p.121; Bassam Tibi, “Islamic Law, Human Rights, Universal Morality and International Relations,” in *Islam and Globalization*, vol. 3, p. 89.

⁴⁷ Ibid., p. 82.

contingent response to historically specific conditions...the result of human choice about what ought to be and not that of some extraterrestrial or at least unworldly command.”⁴⁸ This, to Kasule is such a claim of man’s self-sufficiency (*tughyan/ istighna*) which has no place in the Islamic view of rights and even denounced by people of other faith. For instance, McClelland described this attitude as “...banishing of God from His own creation.”⁴⁹

Fifth, the term right in human rights discourse denotes the idea of entitlement to a claim irrespective of its rightness. Dworkin says: “When entitlement and wrongness combined, the former should prevail.”⁵⁰ Accordingly, transcendentally forbidden acts of indecency, such as lesbianism, same sex marriage, sex change are legitimate rights under UDHR as long as they do not harm any other community members.⁵¹ Yet these rights are classified as standard measures of highest order, thus overriding any other authority which clashes with them. To Vincent, “They are the machine for widening and deepening the legitimacy of Western conception of a good society.”⁵² This will only be realized, to Fukuyama, “... when moral values will cease being emphasized because morality violates democratic principle of tolerance by making a distinction between good and bad.”⁵³ Commenting on rights listed under UDHR, Taylor also maintains that in spite of its linguistic ambiguity, these rights should be understood in the context of western conception of not only of men but also of values (morals).⁵⁴

Sixth, the ultimate purpose of these rights is to protect individuals

⁴⁸ Ibid., p. 91.

⁴⁹ Ibid., p. 92.

⁵⁰ Kasule, p. 96.

⁵¹ Ibid., p. 94-99. However, the hard core among LGBT is also not happy with UDHR. For instance, Bafana says that article 2 of the UDHR which prohibits discrimination on ground of gender is silent about sexual orientation of the lesbians, gays, bisexuals and transgender. See Bafana, *A Critique of the Universal Declaration of Human Rights*, accessed 12,06,2012, from <http://waxingapocalyptic.com/2010/06/24/a-critique-of-the-universal-declaration-of-human-rights-2/>.

⁵² Ibid., p.103.

⁵³ Ibid., p.105.

⁵⁴ Ibid., p.107.

against the oppressive power of state or other authorities, such as religious or customary institutions. Or according to S. Lukes, they aim at "... protecting individuals against what society may consider advantageous to it."⁵⁵ In the Islamic view, the state ceases to be legitimate if it oppresses its citizen, thus this western medieval mentality as the *raison d`tre* of human rights cannot hold true in an Islamic society where the role of state is merely 'supervisory'.⁵⁶

Seventh, these rights have the effect of abstracting individual from community even if it means severing family ties as by definition, these "rights accrue to human beings simply because they are humans, i.e. individualistic. 'Even apparently group rights like that of refugees are not communal rights but that of individuals, finding themselves in such conditions. Once they are taken as collective, to John Aumphry, their status as human rights become disputable on account of not being held by individuals.'⁵⁷ To Donnelley, community rights, such as solidarity are not human rights as individual has inalienable rights separate from society and state, and in the event of a clash between his/her right and social goals or interests, the former prevails.⁵⁸ The explicit implication of this postulate is that family has no jurisdiction to exert any amount of influence on its individual members.⁵⁹ If judged from the Islamic perspective, it repudiates the keynote principle of solidarity which aims at fostering a cohesive community and its overriding standard of foregoing individual interest to protect the communal concerns.

Eight, it reverses the reciprocity between rights and duties. Human rights to them are about liberty to do things or forbear from them. They are different from legal rights which are in the nature of obligations.⁶⁰ Thus, legal duties are negative restrictions on individual liberty. This negates the Islamic dialectical relationship between

⁵⁵ Ibid., p.115.

⁵⁶ Ibid., pp.116-120.

⁵⁷ Ibid., p.122.

⁵⁸ Ibid., p.126.

⁵⁹ *ibid.*

⁶⁰ Hobbes held so. See *Ibid.*, p.129.

rights and duties where one's fulfillment of a duty becomes a right to another member within the framework of *'ubūdiyyah* and *khilāfah*.⁶¹

Ninth, these rights always change with the changes in circumstances, thus unpredictable and in a constant state of flux. Donnelley made this very explicit: "...human right was the result of long process of socio-political changes. Our list of authoritatively recognized human rights may change in response to change in our understanding of human dignity and the emergence of new threats and social learning concerning the institutional practices and values necessary to realize that dignity."⁶² To Thomas Kuhn, pursuant to evolution theory, when old paradigms are questioned as insufficient, the need for a paradigm shift always arises and culminates in the consolidation of new paradigms as new frameworks for theories and points of views on phenomenon. To put it simply, in the western paradigm, men as biological entities are not "static creatures, but their tastes and desires change in a constant and unpredictable manner,"⁶³ thus the inference is that the scheme of rights must keep pace with such oscillating demands of men. That is why John Rawls pointed that "... it is responses to changes in what people want which marks our free institutions from repressive ones."⁶⁴ Concluding from this, Kasule maintains that it is on account of changing notion of human right, *since its institutional proclamation*, that the human rights theorists talk about generations of human rights.⁶⁵ Conversely, the age old fundamental concepts of rights in Islamic view (*thawābit*) continue to be essential and meaningful for Muslims with which they identify regardless of changing human notions about them.

Lastly, he takes the issue with Muslim advocates of human rights and refutes them by saying that they erred in concluding that since UDHR contains certain rights which are also emphasized by Islam, thus

⁶¹ Ibid., p.130-134. See also Fakhruddin Malik, Islamic Concept of Human Rights, in *Islamic Concept of Human Rights*, S.M. Haider(ed.), (Lahore: The Book House, 1978), p. 50.

⁶² Ibid., p.136.

⁶³ Ibid., p.137.

⁶⁴ Ibid., p.138.

⁶⁵ Ibid., p.139.

it is in harmony with Islam. The reason is that these rights cannot be assimilated with Islam without understanding their underlying secularist philosophies. These similarities are *accidental* and not *real* except on certain universally accepted values and principles, such as helping the people in distress. He also argues that they also applied faulty analogy when they concluded that modern human rights as propounded by the West was long ago addressed by the jurists in their discourse on the right of servants (*ḥaqq al-‘ibād*) vis-à-vis right of God (*ḥaqq Allah*). This equation is mistaken for four reasons: (i) they are not self-evident but conferred by God; (ii) they are not inalienable as they are to be upheld/enjoyed within the bound of the Sharī‘ah; (iii) they are not exclusively human rights but irretrievably connected to God from the point of view of *‘ibādah* (as maintained by al-Shāṭibī); and (iv) they are duty-based rights and not intrinsic and natural. Joining him, Nasr maintains that: “It is a result of fulfilling these obligations we gain certain rights and freedoms which are again outlined by the Divine Law. Those who do not fulfill these obligations have no legitimate rights; any claims of freedom they make upon the environment or society is illegitimate and a usurpation of what does not belong to them, in the same way as those persons who refuse to recognize their theomorphic nature and act accordingly are only “accidentally” human and are usurping the human state which by definition implies centrality and divine vicegerency.”⁶⁶

The supporters` position

The supporters include vast majority of the thinkers but with divergent approaches for harmonization. Some adopt the traditional Islamic framework as a point of departure for harmonization and others pursue liberal approach as their methodology. The first trend is dubbed as conformist and the second as liberal.

⁶⁶ Hussein Nasr, *The Concept of Reality and Freedom in Islam and Civilization*, in *Life and Thought* 1:18(1981), p. 21.

The conformist viewpoint

This trend represents those who enthusiastically conceptualized a theory of Islamic human rights by claiming its Islamic genus parallel to International human rights. They refuted the Western exclusive claim by maintaining that Islam had addressed these rights in the seventh century. One of the chief advocates of this trend was Zafrullah Khan, a former foreign minister of Pakistan who held that “Religion must travel far beyond the Declaration [UDHR] both in its objectives and in its methods. It is concerned with the totality of life; both here and hereafter . . . Thus in spirit the Declaration and Islam are in accord.” But being aware of the secular political culture underlying it, he warned that in the event of a conflict between Islam and human rights then “the Islamic provision must continue to have priority.”⁶⁷

Joining him, Mawdūdī, based on his methodology of severing the philosophical assumption from the pragmatic use of western concepts—such as rejecting democracy as a philosophy but accepting it as a mode of governance, held: “... human rights are actually and truly Islamic. People in the West are in the habit of attributing everything beneficial to themselves.”⁶⁸ To him, Islam had addressed human rights even 500 years before the Magna Charter of Britain with its distinct characteristic of imbuing a compelling force deep inside its adherents’ conscience to abide by them. In contrast to Islamic declaration of human rights, the rights under UDHR are “expressions of pious hope being trampled with impunity with the UN being a helpless spectator.”⁶⁹ However, he acknowledges that the notion of human rights in Islam in terms of origin is distinct from liberal secular version due to centrality of the primacy of God both as the conferrer and the regulator.

⁶⁷ Zafrullah Khan, *Islam and Human Rights*, p. 23.

⁶⁸ Heiner Beilefeldt, Muslim voices in the human rights debate, in *Islam and Globalization*, Shahram Akbarzadeh (ed.), (London and New York: Routledge, 2006), vol. 4, p. 239; Kasule, pp. 204.

⁶⁹ Abul A’lā Mawdūdī, “Human Rights in the West and Islam” in *Human Rights in Islamic Law*, Tahir Mahmood(ed.)(New Delhi, 1983), pp. 2-3. See also Bennett, *Muslim and Modernity*, p. 66.

This position is also supported by some scholars from outside the Islamic faith. For instance, Weeramantry maintained that the very fact that “individual dignity ranks high in Islamic law, the concept of human rights can be accommodated within this framework.”⁷⁰ This coupled with other principles of human rights gathered from Islamic law literature yield sufficient principles (protection of sorts) which we today call human rights. The noted among them are: protection of human life and dignity; accountability of rulers towards the citizens; inviolability of human life, honor and property; mandatoriness of justice and kindness; humane treatment of prisoners of war; tolerance of other communities etc.⁷¹ Nevertheless, he noted that the Islamic notion of human rights rests on a totally different foundations: first, in the West human rights were earned through secular struggle and revolution while in the Islam they are conferred by divine texts; second, the western view is right-centered unlike to Islamic notions of rights which emphasizes duties. However, to him, both traditions pursue the same objectives but via different routes.⁷²

The liberal views

Liberal trend in a nutshell claims that, contrary to premature Islamization attempts by the conformists, there are actual irreconcilable tension between existing normative framework of the Sharī‘ah and modern international human rights. Therefore, in order to harmonize the Sharī‘ah with the latter, the former has to be carefully re-examined if we desire to achieve “genuine mediation” between the two.⁷³ For instance, al-Ashmawi, maintains that any attempt at reconciling classical Sharī‘ah with modern human rights will not remove the tension between the two. The reason is that classical interpretation is a historical accretion to the original Sharī‘ah as was implemented by the Prophet (s.a.w.). Therefore,

⁷⁰ C.G. Weeramantry, *Islamic Jurisprudence: An International Perspective* (Kuala Lumpur: The Other Press, 2001), p. 114. See also C.G. Weeramantry, *Islam and Human Rights*, in *Human Rights in Islamic Law*, Tahir Mahmood(ed.)(New Delhi, 1983), pp.13-23.

⁷¹ See also Abdul Ali, *Insight into Islamic Humanism* (New Delhi: MD Publications Pvt. Ltd., 2007), pp.182-184.

⁷² *Ibid*, pp.114-121.

⁷³ Beilefeldt, p. 24; Kasule, p.13.

the Sharī‘ah needs to be emancipated from this body of historical baggage so that its original meaning in the sense of a path could be restored. Because the Sharī‘ah in essence “consisted mainly of general religious and ethical principles, solidarity among the community, responsibility between the genders and tolerance towards minorities.”⁷⁴ Accordingly, it is the legal corpus as detailed by medieval jurists which causes head on collision between Islam and human rights.

Concurring with him, Ṭālibī, held that frontal clash between human rights and Islam can only be overturned by critical reform of the traditional Islamic law. For instance, full religious liberty as intended by UDHR is not possible through traditional concept of limited tolerance towards non-Muslim minorities. Likewise, Islamic corporal punishments cannot be harmonized with human rights unless we distinguish between the Qur`anic principles for them and their historical application in conditions which then prevailed, the former being eternal and the latter contingent. Their underlying principles were to establish justice and equality which if upheld in different ways, their Qur`anic intention will be fulfilled.⁷⁵ On a final note, he expresses the hope that “the idea of human dignity requires a political commitment on the part of Muslims to the idea of human rights in solidarity with different people of religious beliefs and philosophical convictions.”⁷⁶

Joining him, Ṭībī also claims that a scheme of right based on unreformed pre-modern Sharī‘ah only produces a code of rights for Muslims in the sense of duties.⁷⁷

More radical position is adopted by al-Na‘īm who not only calls for radical overhaul of the Sharī‘ah but also for the critical scrutiny of the two types of Qur`anic revelations, namely, Makkī and Madanī. To him, only the Makkī revelations represent the eternal principles of Islam, whereas Madanī revelations represent “the particular needs of the first community and cannot be forthrightly applied to modern circumstances.” He argues that the reform must operate at the level of Madanī verses to

⁷⁴ Ibid., p. 241. See also Ṭībī, pp. 89-90.

⁷⁵ Ibid., p. 243.

⁷⁶ Ibid., p.243.

⁷⁷ Ṭībī, p.98. See also Bennett, *Muslim and Modernity*, pp.70-71.

extract their normative rules and then read them with theological principles of the Makkī verses; and that the position of Islam can thus harmonize with articles 1, 2, 3, and 16 of UDHR on women and non-Muslims.⁷⁸

On human rights, al-Na‘īm maintains that: “When Sharī‘ah was formulated, there was no concept of human rights.” To him, human rights can be reconciled with Sharī‘ah through what he calls “the concept of evolution of the law” i.e., conflicting Sharī‘ah rules should be repealed or revealed in favor of modern notion of human rights.⁷⁹

Al-Na‘īm’s project somewhat follows the same line of thinking which calls for culturally pluralist approach to international human rights. For instance, Walker insists that the imposition of universal doctrines like human rights must be “by opening in the culture itself not by external imposition on it.” But this requires cultural rethinking and reinterpretation of the culture in question.⁸⁰ Richard contends that “Enlightenment virtue is not prescriptive for non-western people but it is their culture which inspires human rights provided it is liberated.”⁸¹

Criticism and Counter Criticisms

Kasule lashes out at the conformist model, both in the form of individual advocacy and institutional responses, by saying that the contemporary Muslim advocates of the human rights have “mimicked and faithfully imitated” the rights listed in UDHR and even have used various terms employed in it by adding to it the Islamic adjectives. To him, this breed is nothing but “sycophancy and academic apologetics” as they forget to bear in mind that the scheme of human rights anchored in secularist worldview is grounded on an entirely different agenda from what Islam and its world view stand for.⁸²

⁷⁸ Beilefeldt, p. 242; Kasule, pp.14-15.

⁷⁹ Bennett, *Muslim and Modernity*, pp.73-74.

⁸⁰ Richard Falk, “Cultural Foundation for the International Protection of Human Rights,” in *Human Rights in Cross-Cultural Perspectives*, Abdullahi Ahmed al-Na‘īm (ed.), (Philadelphia: University Pennsylvania Press, 1991), p. 49.

⁸¹ *Ibid.*, p.54.

⁸² Kasule, pp.1-2.

He proves Zafrullah Khan, for instance, to be both apologetic and inconsistent. Apologetic in the sense, that in order to prove his tall assertion that UDHR is actually in line with Islam, he tries to conceal some of the established Islamic truth. For instance, in order to prove that flogging of the unmarried fornicator is in harmony with article 5 of the UDHR i.e. not inhumane, proposes that in a society where man's un-chastity approach is part of his virility, or even in the case of women it is not frowned upon any longer, flogging will cease to apply.⁸³ He moved on to offer similar apology in the case of amputation of hand for theft by maintaining that if we go by the rationale of cutting of the hand, it means "circumscribing thieves' capacity or activity or prohibiting their free movement," which imprisonment effectively serve in our time.⁸⁴ Similarly, he embarked upon the textual debate on punishment for apostasy by ignoring the argument from the sunnah in order to make a case for religious freedom based on Islam (consonant with article 18 &19 of the UDHR). Among others, he contended that since apostasy is not punishable in this world, the Qur'anic prohibition will be waived in favor of religious freedom.⁸⁵ But his declaration that in the event of a conflict between Islamic provisions and UDHR provisions, the former prevails demonstrate complete inconsistency in his basic view that Islamic teachings and UDHR are in harmony with each other.⁸⁶

At the institutional attempts by Muslims in the form of two declarations, al-Attas maintains that for instance, Cairo declaration, perhaps as the more representative version, is inadequate on two grounds. First, it uses modern concepts garbed in the language of Shari'ah, thus, obscuring the fundamental premise of the concept of rights and duties in Islam. In the Islamic view with the exception of few rights, such as that of parents, the rest are "attached to a nexus of obligations, responsibilities and duties, hence not done in accordance with Islam's own spiritual metaphysical framework. Second, unlike the UDHR, the Islamic declaration has no

⁸³ Ibid., p.190.

⁸⁴ Ibid., p.191.

⁸⁵ Ibid., pp.197-199.

⁸⁶ Ibid., p. 202.

mechanism to effectively monitor its compliance in the Islamic world in which human rights abuses are rampant.⁸⁷

Kasule is of the view that conformists' approach does not convince the secular human rights theorists hence Muslim attempts to respond in this way will run the risk of questioning the permanence of Islamic views on rights.⁸⁸ He maintains that the claim of universality of the declaration cannot be sustained in Islam because to say so is tantamount to regarding "all humanity as a homogenous whole in all details", thus negating the creation of diverse nations which God has determined in the Qur'an.⁸⁹ He further argues that the formulators of the two declarations, being aware of the contrasting issues between UDHR and Islam, have deliberately used vague language. For instance, Cairo Declaration when delineating on human equal dignity⁹⁰ does not define it, nor does it mention the religious affiliation as an element in its formulation of freedom of marriage⁹¹. Islamic Universal Declaration, when addressing freedom of religious belief, plays down the issue of voluntary conversion from Islam to other religions by emphasizing only the prohibition of coercing people to change their faith.⁹² He vehemently declares that they are not original as both not only came into existence long after the proclamation of the UDHR but also use similar language and style, being oblivious of their underlying philosophical assumptions and premises derived from the western paradigm hence there is no need for a Muslim declaration as Islam is already a universal religion and justice demands that each civilization must be left alone to be bound by their own set of laws to avoid oppression.⁹³

⁸⁷ al-Attas, "*Human Rights and Human Duties*", pp.193-195.

⁸⁸ Ali Salman, *Human Rights and Islam: Some Points of Convergence and Divergence*, accessed, 12/06,2012, from <http://www.renaissance.com.pk/octvipo2y1.html>.

⁸⁹ The Qur'an, Al-Mā'idah: 48. See Kadule, p.186.

⁹⁰ Article 1.

⁹¹ Article 5. See also Beilefeldt, pp. 239-240.

⁹² Article 10. For similar criticism, see also Ṭībī, pp. 95-96.

⁹³ Kasule, p.185. This is particularly so when Daniel Price through his survey of human rights in 32 Muslim majority and 32 non-Muslim majority countries concluded that "despite doctrinal and theoretical differences between islam and the West, Islamic countries still uphold roughly same standard of human rights as other developing

Non-Muslim exclusivists also denounce Muslims' borrowing of the idea of human rights by claiming its Islamic origin at the conceptual level. For instance, Mayer says that such an attempt is "an unsuitable matrix – a fabrication of Islamic pedigree and a benign fiction." To her, human rights and all that they entail are a modern western cultural achievement.⁹⁴

Ann E. Mayer criticizes the conformist model as not favorable to the substance of human rights. He says: "Those Islamic authors who are at pains to establish specific Islamic human rights scheme are reluctant to state openly that following Islamic criteria entail departure from the norms of international law."⁹⁵

However, Weeramantry lashed out at hard line position adopted by exclusionary camp like Donnelly, by dubbing his approach as "a narrow concept reflecting his cultural bias."⁹⁶

Kasule attacks the liberal model as secularizing which dismisses the classical position as pre-modern and obsolete, thus in need of radical reform if it needs to be at par with modern cultural views of humans and their rights. To him, the two models are incapable of offering "a coherent Islamic alternatives" as they are bound either by western coined terminology of the human rights or its methodological and doctrinal assumptions.⁹⁷

Taking on the rejectionists, Salman contends that "references to God, Nature and even human nature were deleted from the drafts of the 1948 UDHR shortly before its adoption."⁹⁸ He also refutes the claim of individualistic nature of the UDHR by maintaining that it preconditions individual freedom to public health, public order etc. For instance,

worlds." See Daniel Price, "Islam and Human Rights: A Case of Deceptive First Appearance," in *Islam and Globalization*, vol.3, pp. 286-290.

⁹⁴ Kasule, p.3.

⁹⁵ Faisal Kutty, p.95.

⁹⁶ Weeramantry, p.120.

⁹⁷ Kasule, pp.8-9.

⁹⁸ Ali Salman, Human Rights and Islam: Some Points of Convergence and Divergence, accessed, 12/06,2012, from <http://www.renaissance.com.pk/octvipo2y1.html>.

ICCPR while guaranteeing freedom of expression subjects it to respecting the right of others and maintaining security and public order.⁹⁹

Beilefeldt also argues that “unlike the widespread confusion” human rights are not devoid of a social dimension. He further argues that religious liberty has no meaning outside a religious community which by extension implies worshipping in group and organizing religious community, posing a challenge to certain “authoritarian practices within the communities such as child marriages, persecution of religious dissenters and social ostracism of political dissidents.”¹⁰⁰

It seems the rejectionist approach in a wider context not only reinforces the charges of anti-human rights which some hawkish western thinkers like Samuel Huntington make against Islam, i.e. *Islamic civilization is inherently opposed to human rights*¹⁰¹, but also inadvertently approves oppressive policies in some Muslim countries which are governed by despotic regimes and not accountable systems of governments.

The Proposed Frameworks for Harmonization

From the forgoing discussion, a number of frameworks either as alternatives to the very notion of western pedigree of human rights, or as paradigms for harmonization between the two systems, can be identified:

1- Human dignity irrespective of its philosophical and political connotations as propounded by supporters of harmonization like Beilefeldt: Human rights are political and legal statements and not the way of life to replace religions and cultures but it can draw on the latter to yield an overlapping consensus among people of various cultures about their validity within the frame of human dignity.¹⁰² However, its adequacy as a globally unifying frame of reference has been doubted in view of different understanding of human dignity by people of different faith and ideologies. Donnelly made this explicit when he stated that “human rights are

⁹⁹ Ibid., and article 19 (2)(3).

¹⁰⁰ Ibid., p. 229.

¹⁰¹ Mayer, p. 308.

¹⁰² Beilefeldt, pp. 226-232.

quite foreign to the approaches of other systems to human dignity.”¹⁰³ Questioning its tenability, Howard also contends that human dignity signifies the inner moral worth of a human being and his proper place as understood by a particular culture and not inherently acquired by birth. As such, it stratifies individuals by according dignity to some and denying it to others. Thus, it cannot yield a set of human rights standard as envisioned by modern human rights.¹⁰⁴

2- General emancipatory/liberating principles of the Qur’an as the liberal camp proposes: The main handicap of this proposal is twofold. First, it represents a minority view of the fringe group at the periphery with no position to influence public opinion in the Muslim world. Second, it is resisted and dismissed as secularizing and heretical by the mainstream Muslim scholars.

3- Principle of justice as the sublime value which subsumes human rights as proposed by Brohi¹⁰⁵ and as an alternative to western notion of human rights by Kasule: To Brohi, this would prevent universalization of western defined set of rights and has the potential of guaranteeing co-existence and peaceful living among people of different civilizations. Nevertheless, the efficacy of this proposition is also questioned. For instance, Howard disputes the concept of justice as another viable frame of reference because it implies rules appropriate to social behavior and rules of fairness which depends on people’s social status in a particular society. For instance, non-citizens and women are subject to different standards of justice in some cultures.¹⁰⁶

4- Traditional Islamic law as propounded by Muslim human rights advocates at the formal terrain as well as by way of academic discourse: However, in view of the cultural baggage of the classical *fiqh*, its viability without constructive authentic renewal cannot be trusted as it will be

¹⁰³ Weeramantry, p.119.

¹⁰⁴ Rhoda E. Howard, Dignity, Community and Human Rights, in *Human Rights in Cross-Cultural Perspectives*, Abdullahi Ahmed al-Na’im(ed.), (Philadelphia: University Pennsylvania Press, 1991), pp. 82-83.

¹⁰⁵ A. K. Brohi, “Nature of Islamic Law and the Concept of Human Rights,” in *Human Rights in Islam, Report of a Seminar on Human Rights* (Kuwait: Kuwait University, 1982), p. 43.

¹⁰⁶ *Ibid.*, p. 85.

incapable of addressing hard questions surrounding human rights within the paradigm of *taqlīd*.

5- Creating a common code of morality of human rights to synchronize the divergent world views on human rights: Ṭībī propose that this is necessary especially in the context of the globalized and culturally fragmented world to avoid the “clash of civilizations” as anticipated by Samuel Huntington.¹⁰⁷ The logic for this solution is threefold: (1) the abuse of International Human Rights Doctrines by western powers especially the US since Cold War era or their selective applications/hypocritical by western powers; (2) Muslims’ half-hearted commitment to UDHR in view of its Western origin and regarding it as a sinister of Western political objectives; and (3) lack of a Universal government to monitor just application of human rights standard among the comity of nations.¹⁰⁸

Being aware of the substantive philosophical tension between Islamic culture and western views on human rights, one based on revelation (theo-centric) and the other man-centric, Ṭībī, proposes a dubious course for Muslims by urging them to embrace the culture of modernity similar to their predecessors who accepted Greek logic to be able to agree on a common code of morality of human rights with the rest of the world along the path of transformation proposed by al-Na‘īm.¹⁰⁹

Conclusion

To lay exclusive claim on human rights is not only half truth but leads to orthodoxy and fundamentalism. Both secular and religious systems have contributed to the idea of human rights in their own peculiar ways and particularly religion not only precedes the secular notion but also gives meaning and efficacy to its implementation in society. To base human rights on human agency alone would be a foundationless adventure and will fail (already has failed). Exclusive secularist claims on human rights consequentially entitles Muslims to reject it as a western tools of cultural imperialism.¹¹⁰ Underlining the constructive role of religion

¹⁰⁷ Ṭībī, pp. 91-92.

¹⁰⁸ Ibid., pp.90-93.

¹⁰⁹ Ibid., pp.99-103.

¹¹⁰ Ibid, p. 32.

(Islam) the excesses and deficiency of secular notion of human rights can be remedied by Islam in three ways: (1) by adopting its communitarian content to moderate its individualistic undertone; (2) by blending it with the notion of duties to curb its exaggeration of rights; and (3) by drawing on its humanistic values to save it from sheer emphasis on materialistic outlook.¹¹¹ There is a need to seek a universal consensus on commonly agreed set of rights by which Muslims can interact with the global community while upholding onto their own non-negotiable value systems which guarantees their space.

¹¹¹ Weeramantry, "Islam and Human Rights", in Human Rights in Islamic Law, p.29.