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Enforcement of International Human Rights Law in the Muslim World: A Conundrum of Paradoxes

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Abstract

International human rights law is considered as the foundation of human rights available universally to every human being both at international level, and national level via the states' constitutions. However, the legacy of Islamic rights is rich in comparison to UN sponsored human rights. The compatibility between the two—Islamic and international human rights law—often faces paradoxes while implementing the rights in Islamic states. Shariah law, which is frequently viewed as being in opposition to international legal norms, is enforced by several Islamic regimes. The legitimacy and legacy of Islamic human rights are sometimes questioned in light of this perceived conflict. But when properly comprehended, Islamic teachings provide a thorough framework aimed at eradicating discrimination on all fronts. In order to demonstrate the rich history of Islamic rights and their conformity with international human rights law, this study utilizes a qualitative method. Islamic ideology, it is argued, is a comprehensive system that cannot be properly comprehended or applied in its component parts.

Keywords: International Human Rights Law, Islamic Rights, UN Sponsored Human Rights, Shariah Law, History.



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Introduction

The response of the Muslim world to the International Human Rights Law (IHRL) has been heavily influenced by Shariah. The effects can be seen to be imprinted on their constitutions as well as common laws, be they civil, criminal, or administrative. For instance, Saudi Arabia (the guardians of the two holiest sites of the religion of Islam) is not party to many of the Human Rights treaties including the International Covenant on Civil and Political Rights, 1966 (ICCPR) and the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR). It had abstained from voting for the adoption of the Universal Declaration of Human Rights (UDHR) back in 1948 and the reason was its being inconsistent with Shariah. It stated that the declaration has western cultural underpinnings and was 'at variance with patterns of Eastern states' cultures and that the provisions of the UDHR are clearly at odds with Shariah (Kelsay, 1988). It particularly raised objection to Article 18 (right to freedom of thought, conscience and religion including right to change his religion or belief) stated that Quran prevents a believer to change his religion (Laponce, 1962) and that the right as incorporated in the UDHR would be offensive to Muslims and inviting to missionary activities in the Arabian Peninsula (Voinea, 1948).

Other Islamic states like Lebanon and Pakistan did not agree with that and voted for the Declaration. There are many states from the Muslim world who are party to most of the core UN Human Rights Treaties; yet many who are not. Those who are party have resorted to reservations and declarations thereby adhering to only those parts of treaties which are not inconsistent with their national legal frameworks based on Sharia.

The study at hand, therefore, considers these simmering issues which have kept many Muslim states from becoming assimilated with the international community and to figure out whether the two systems are compatible with one another or not. This will include a study of the basic sources of Islamic law which are the Quran and the Sunnah and that what status do these primary sources of Islam accord to the human beings. The study will encompass the interpretive ideas of the traditional and present-day liberal schools of thought to understand this enigma.

Literature Review

Peoples from across different civilizations have made their contributions for the cause of human rights through their speech and writings. The research at hand, however, has emphasized to consider multiple sources and diverse perspectives ranging from the religious texts to the commentaries made thereupon by the expert exegetes. Treatises written against or in support from a broad spectrum of authors. The UN databases on core international human rights treaties; its jurisprudence developed by the respective human rights committees mandated to oversee the promotion and protection of these norms across the globe.

Specifically, it has benefitted significantly from the primary sources of Islam. Besides, the opinions of experts from across the spectrum in this regard have thus contributed to the analysis of the way how interpretation has evolved and reshaped the understanding of human rights guarantees both from the liberal and traditional schools of thoughts.

Abdullah Saeed, in several of his works, for instance, 'Reading the Qur'an in the Twenty-First Century: A Contextualist Approach (2013)', 'Islamic Thought: An Introduction (2006)', 'Interpreting the Qur'an: Towards a Contemporary Approach (2005)' and 'Human Rights and Islam: An Introduction to Key Debates Between Islamic Law and International Human Rights Law (2018)', has challenged the orthodox approach towards studying the primary sources of Islam. He insists on interpreting the basic texts of the religion in light of the modern contextual realities of

the world. Abdullahi Ahmed An-Naim calls for a secular state in Islamic world. His writings such as 'Islam and the Secular State: Negotiating the Future of Shari'a (2008)', 'Islam and the secular state (2007)', 'Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law (1990)', and 'Human Rights in Cross-cultural Perspectives: A Quest for Consensus (1992)', have also challenged the phenomenon of classic construction towards religion and human rights. Majid Khadduri, Tahir Haddad, Nasr Abu Zayd and others in their respective writings have also challenged orthodox concepts and methodologies for the understanding of human rights from the perspective of religion.

On the other end, contemporary traditional scholars like Syed Abul Ala Maududi, Dr. Mahmood Ahmed Ghazi, Dr. Yusuf Al Qaradawi in their respective writings such as 'Peace, Integration and Human Rights', 'Islam and Freedom of Human Will', 'Parents' Rights in Islam: Social and Scientific Perspective', 'Islam: Modern Fatwas on Issues of Women and the Family', 'Towards a Sound Awakening', 'Non-Muslims in the Islamic society' and 'Contemporary fatawa: current issues in Islamic fiqh'; 'Tafheem ul Quran (Six Volumes Commentary on the Quran', 'Human Rights in Islam', and 'The Islamic Law and Constitution', have strongly refuted the discourse and interpretive style adopted or made by the liberal scholars in this regard, rather they insist on the orthodox way of understanding the texts of the primary sources of religion for the purposes of inter-alia human rights and fundamental freedoms.

Materials and Methods

A qualitative doctrinal legal research method is used in this study. Both primary and secondary materials are employed in this library-based research. The material was gathered from books, scholarly articles, reliable sources, Hadith, and the Qur'an to investigate the hard and special areas concerning the enforcement of international human rights in practicing Islamic countries.

The Concept of Law and Life in Islam

Present normative framework of IHRL has its foundations in secularism which believes in the principle of separation of Church and the state. This essentially means that religion has had nothing to do with the affairs of the state. Religion is a private matter and as such must not interfere with the business of the state (Losonczy & Herck, 2017; Tomaszewska & Hämäläinen, 2017; Ardıç, 2012).

Islam does not agree with the limited space and place this ideology offers it in the society. Islam seems to reserve and encapsulate each aspect of life (Hamidullah, 2007) and regulates it in accordance with the divine will i.e., according to the injunctions of the Quran and the Sunnah which are the two most fundamental and primary sources of Islam.

Muslims generally believe that Islam provides solution to all aspects of their problems either through directly revealed i.e., the Quran and the Sunnah or via secondary sources such as Ijma (consensus of legal opinion), Qiyas (Analogy), Maslahah Mursalah (Extended Analogy), Istishab (Presumption of continuity), Istihsan (Juristic Preference) etc (Nyazee, 1998). Hence, a good Muslim is expected to follow the commandments of these sources accordingly. These commands may carry a Hukm (rule) of obligation requiring the subjects (Muslims) to do certain acts or an injunction prohibiting the subjects from doing certain acts. Some of the verses from the Quran and the Sunnah are being given below to understand the nature and philosophy of religion and how it affects modern concept of law and human rights.

For instance, the Quran states that:

”وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْكَافِرُونَ

(Quran, 5:44)

”And whoever does not judge by what Allah has revealed - then it is those who are the disbelievers” (Saheeh International)

This is an explicit and categorical verse requiring of the believers to judge according to the law of God i.e. the Quran and the Sunnah.

Immediately in the next verse the Quran states:

وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ ۚ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ كَفَّارَةٌ لَّهُ ۚ وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الظَّالِمُونَ

”And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution. But whoever gives [up his right as] charity, it is an expiation for him. And whoever does not judge by what Allah has revealed - then it is those who are the wrongdoers [i.e., the unjust]” (Saheeh International)

The Quran again states in verse 47 of the same Surah that:

”وَلْيَحْكُمُ أَهْلُ الْإِنجِيلِ بِمَا أَنزَلَ اللَّهُ فِيهِ ۚ وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنزَلَ اللَّهُ فَأُولَٰئِكَ هُمُ الْفَاسِقُونَ

”And let the People of the Gospel judge by what Allah has revealed therein. And whoever does not judge by what Allah has revealed - then it is those who are the defiantly disobedient” (Saheeh International)

All these verses above allude to the fact that the believers are required to conform to whatever their Lord requires of them. In case of disobedience there are serious repercussions as mentioned hereinabove. This is basically the prime reason that Islamic States have resorted to reservations and declarations over the International Human Rights treaties. Because there are provisions inside the basic sources of Islam which do not match with the human rights framework of the UN. To put it candidly, following International Human Rights Law in its entirety will place them in the categories of *wrong doers, transgressors, disobedient and even disbelievers*.

Quran states that:

”وَإِنْ تُطِيعُوا أَكْثَرَ مَنْ فِي الْأَرْضِ خَلَوْا عَنْ سَبِيلِ اللَّهِ ۚ إِنْ يَتَّبِعُونَ إِلَّا الظَّنَّ وَإِنْ هُمْ إِلَّا يَخْرُصُونَ

(Quran, 6:116)

”And if you obey most of those upon the earth, they will mislead you from the way of Allah. They follow not except assumption, and they are not but misjudging.” (Saheeh International)

The current modern international law believes in democracy. Democracy is one of the most fundamental principles of the UN. The UN proclaims that it 'supports democracy by promoting human rights' (Democracy, 2015). It appears that democracy or the rule of majority as a concept is not in line with Islam. In Islam, the rule making prerogative rests with Allah. The Quran states:

مَا تَعْبُدُونَ مِنْ دُونِهِ إِلَّا أَسْمَاءٌ سَمَّيْتُمُوهَا أَنْتُمْ وَءَابَاؤُكُمْ مِمَّا أَنْزَلَ اللَّهُ بِهَا مِنْ سُلْطَانٍ ۚ إِنَّ الْخُكْمَ لِلَّهِ ۚ أَمَرَ أَلَّا تَعْبُدُوا إِلَّا إِيَّاهُ ۚ ذَلِكَ الدِّينُ الْقَيِّمُ وَلَكِنَّ أَكْثَرَ النَّاسِ لَا يَعْلَمُونَ

(Quran, 12:40)

“You worship not besides Him except [mere] names you have named them, you and your fathers, for which Allah has sent down no evidence. Legislation is not but for Allah. He has commanded that you worship not except Him. That is the correct religion, but most of the people do not know.” (Saheeh International)

So even the majority or bulk of people cannot make Halal (Permissible) which has been declared *Haram* (Impermissible) by Allah.

The Quran states:

”وَمَا كَانَ لِمُؤْمِنٍ وَلَا مُؤْمِنَةٍ إِذَا قَضَىٰ اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ ۗ وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَقَدْ ضَلَّ ضَلَالًا مُبِينًا

(Quran, 33:36)

“It is not for a believing man or a believing woman, when Allah and His Messenger have decided a matter, that they should [thereafter] have any choice about their affair. And whoever disobeys Allah and His Messenger has certainly strayed into clear error.” (Saheeh International)

Mere cursory reading of the verses highlighted above makes it clear that Islam does not tolerate unfettered human say in law making. It does not allow even large numbers of people to decide against the injunctions of divine law. These are some of the main features of Islam from its basic sources which the traditional scholars refer to while challenging the legislative authority of the international forums like the UN. They find it difficult to relate to the UN and the secular philosophy under which it operates.

Modern liberal scholars therefore find it hard to interpret Islam to relate it with the norms and rules of international human rights law. Although they have devised several interpretive techniques and tried to justify the notion that Islam is somehow compatible with UN sponsored human rights.

Hard Areas

Before discussing how the modern liberal scholars have tried to bridge the gap between Islam and International Human Rights Law, it would be appropriate to highlight some of the hard areas which are considered not to be in consonance or in line with the human rights framework of the UN thus need revision or removal. The list is by no means exhaustive and refers only to certain key discordant areas between Islam and the IHRL.

1.1. Rights of Child

The Convention on the Rights of Child, 1989 defines a child to be a human being under the age of 18 years whereas Islamic jurisprudence does not measure the childhood of a humans with age. It relates it with certain conditions since certain consequences are linked with these conditions. Therefore, we see that a person can contract or enter a marriage when he or she attains puberty which is linked with ejaculation in males and menstruation in females (Nyazee, 1998). They may contract a marriage even though they are under 18 years of age and considered minor in the eyes of law.

Another conflict also arises for the children born out of wedlock. In Islam, such Children do not inherit from their father (Aminu, 2015). So is the case of adoptive child who also cannot inherit.

1.2. Freedom of Religion

Common Articles 18 to UDHR and ICCPR grant individuals freedom of religion. UDHR states in Article 18 that ‘Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief...’. This change of religion is an area of discord between Islam and the UN. Islam strictly prohibits any form of compulsion or force to convert a person to Muslim faith, but it does not allow a Muslim to denounce his faith. Apostasy is one of the serious crimes in Islamic Law attracting capital punishment (Hamid, 2011).

1.3. Rights of Women

Rights of women is also an area where there are conflicts between Islam and International Human Rights Law (Fegier, 2016), for instance, the concept of Qawwamah (men being in charge of women), men having a degree higher than women, polygyny, inheritance, divorce, inter-faith marriage etc., are areas where this difference may be observed well.

Thus, the Quran states:

الرَّجَالُ قَوَّامُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ ۚ فَالصَّالِحَاتُ قَانِتَاتٌ ۖ حَافِظَاتٌ لِّلْغَيْبِ بِمَا حَفِظَ اللَّهُ ۚ وَالَّتِي تَخَافُونَ نُشُوزَهُنَّ فَعِظُوهُنَّ وَأَهْجُرُوهُنَّ فِي الْمَضَاجِعِ وَاصْزُبُوهُنَّ ۚ فَإِنْ أَطَعْنَكُمْ فَلَا تَبْغُوا عَلَيْهِنَّ سَبِيلًا ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا كَبِيرًا

(Quran, 4:34)

“Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth. So righteous women are devoutly obedient, guarding in [the husband's] absence what Allah would have them guard. But those [wives] from whom you fear arrogance - [first] advise them; [then if they persist], forsake them in bed; and [finally], strike them [lightly]. But if they obey you [once more], seek no means against them.

Indeed, Allah is ever Exalted and Grand.” (Saheeh International)

At another place, the Quran states:

وَالْمُطَلَّاتُ يَتَرَبَّصْنَ بِأَنْفُسِهِنَّ ثَلَاثَةَ قُرُوءٍ ۚ وَلَا يَحِلُّ لَهُنَّ أَنْ يَكُنَّ مِمَّا خَلَقَ اللَّهُ فِي أَرْحَامِهِنَّ إِنْ كُنَّ يُؤْمِنُ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۚ وَبُعُولَتُهُنَّ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ إِنْ أَرَادُوا إِصْلَاحًا وَلَهُنَّ مِثْلُ الَّذِي عَلَيْهِنَّ بِالْمَعْرُوفِ ۚ وَلِلرَّجَالِ عَلَيْهِنَّ دَرَجَةٌ ۚ وَاللَّهُ عَزِيزٌ حَكِيمٌ

(Quran, 2:228)

“Divorced women remain in waiting [i.e., do not remarry] for three periods, and it is not lawful for them to conceal what Allah has created in their wombs if they believe in Allah and the Last Day. And their husbands have more right to take them back in this [period] if they want reconciliation. And due to them [i.e., the wives] is similar to what is expected of them, according to what is reasonable. But the men [i.e., husbands] have a degree over them [in responsibility and authority]. And Allah is Exalted in Might and Wise.” (Saheeh International)

On polygyny the Quran states:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ مَثْنَىٰ وَثُلَاثَ وَرُبْعَ ۚ فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِشَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَٰلِكَ

أَدْنَىٰ أَلَّا تَعُولُوا

(Quran, 4:3)

“And if you fear that you will not deal justly with the orphan girls, then marry those that please you of [other] women, two or three or four. But if you fear that you will not be just, then [marry only] one or those your right hands possess [i.e., slaves]. That is more suitable that you may not incline [to injustice].” (Saheeh International)

1.4. Hadd Punishments

Punishments like stoning to death for the offence of adultery/fornication between married couples and lashes or whipping for unmarried ones. Cutting off the hands of thieves. Qisas (retribution) or capital punishment are considered against the norms of the so-called civilized world and contrary to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984.

The Quran states:

وَالسَّارِقُ وَالسَّارِقَةُ فَاقْطَعُوا أَيْدِيَهُمَا جَزَاءً بِمَا كَسَبَا نَكَالًا مِّنَ اللَّهِ وَاللَّهُ عَزِيزٌ حَكِيمٌ

(Quran, 5:38)

“[As for] the thief, the male and the female, amputate their hands in recompense for what they earned [i.e., committed] as a deterrent [punishment] from Allah. And Allah is Exalted in Might and Wise.” (Saheeh International)

Regarding the punishment of adultery, the Quran states:

الزَّانِيَةُ وَالزَّانِي فَاجْلِدُوا كُلَّ وَاحِدٍ مِّنْهُمَا مِائَةَ جَلْدَةٍ وَلَا تَأْخُذْكُمْ بِهِمَا رَأْفَةٌ فِي دِينِ اللَّهِ إِنْ كُنْتُمْ تُؤْمِنُونَ بِاللَّهِ وَالْيَوْمِ الْآخِرِ ۚ وَلَيَشْهَدَ عَذَابُهُمَا طَائِفَةٌ مِّنَ الْمُؤْمِنِينَ

(Quran, 24:2)

“The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion [i.e., law] of Allah, if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment.” (Saheeh International)

Recourse to Interpretation

Most of the liberal scholars have tried to construe and interpret the texts of the basic sources of Islam to bring them in consonance with the IHRL. The traditionalists unanimously disagree with their methodology. This is due to the reason that there is a full discipline in Islam dedicated to the way of how the sources of Islam may be interpreted. For instance, if any situation arises and needs a solution, a jurist must recourse to the Quran to find an answer on it, if he does not find an answer to the problem in the Quran, he will recourse to the Sunnah. If only he does not find the solution in either of these two sources, he will recourse to his intellect and reason in light of the Quran and the Sunnah to extract or find out the law.

The liberals however generally do not differentiate between the hierarchy and try to override the primary sources of Islam with the help of secondary sources thereby attracting excoriating criticism from traditionalists. Following is a brief mention on the tools liberal scholarship resort to while interpreting Islamic law in favor of IHRL.

2.1. Liberal Scholarship and Construction

Liberal scholars do not interpret the sources strictly or textually. Rather they emphasize on the broader and progressive approach towards understanding Islamic law. There are few points on which they seem to have common approach which they use to build their narrative for a reconciliatory stance between Islam and International Human Rights Law. For instance, they do not believe in the immutability of the basic sources of Islam. According to them, the Quran should be interpreted in favor of the present times conditions and not otherwise. They believe that although the Islamic law is of divine origin; its interpretation is a human activity (Weiss, 2006).

Abdullah Saeed states that the classic Muslim exegetes and scholars have relied on the literal and textual interpretation of the ethico-legal content of the Quran and have ignored the social and historical context in which the Quran was revealed. He stresses for the understanding of the social and historical context of the Quran and a comparison of that with the social context of present times because as he says, 'the contemporary world is vastly changed from the one our forefathers knew' (Saeed, 2006).

He questions the relevancy of the ethico-legal content of the Holy Quran for today. He says if 'all ethico-legal instructions in the Quran relevant today? or have some lost their relevance? ... what is the degree of obligation on the believer? Is the right action obligatory, recommended or simply permissible (Saeed, 2006)? He also questions the fact that divine law cannot be changed through human intervention. He asks as to who will decide which laws are changeable and which not (Saeed, 2018)?

He alleges that the classic interpretations of the Islamic Law are no longer considered viable, except by a relatively small number of Muslims. So, if Islam allowed polygamy in 7th century, the reason and social context for that must be taken into account instead of considering this rule to be fixed and having universal application (Saeed, 2005).

He refers to Muhammad Abduh, Muhammad al-Ghazali and others for their valuable contributions in the progressive interpretation of Islamic Law, however, he also admits that 'their influence on the wider Muslim population remained somewhat limited' (Saeed, 2005).

He also refers to *naskh*¹ (abrogation) to state that the doctrine has been used to change or suspend various of the rulings of Islamic law due to the change in circumstances and needs. He says that 'naskh has been given little attention by Muslim jurists and scholars [which is an] important method in dealing with changes to law in a substantial way' (Saeed, 2005).

He says *naskh* could become a strong basis for a reinterpretation of the ethico legal content of the Quran to 'keeping the objectives of the Quran alive and relevant' (Saeed, 2005). However, he

¹ 1 *naskh* literally means to cancel, abrogate, supersede, or annul. In its technical terms it refers to the abrogation of an Islamic rule by another later rule. There are established mechanisms as to how this methodology operates and what are its limits. So, Ijma, Qiyas or any other secondary sources cannot abrogate Quran or Sunnah. The Quran (2:106) states: " We do not abrogate a verse or cause it to be forgotten except that We bring forth [one] better than it or similar to it. Do you not know that Allah is over all things competent"? (Saheeh International)

admits that 'the textualist approach remains the most widely adopted by Muslim interpreters of the Quran' today (Saeed, 2008).

He also refers to various principles from Islamic Jurisprudence like *darura* (necessity), *hajja* (removal of difficulty), *hikma* (rationale and wisdom) as some principles which may be employed to 'depart from an established legal ruling in exceptional circumstances' and to address difficulties with reference to international human rights law (Saeed, 2018). While referring to the position of international agreements including human rights treaties, he states that respecting and honoring the terms of an agreement has been given great importance in Islam thereby alluding that Muslim states who are parties to international agreements and human rights treaties must honor their promises with the UN and international community (Saeed, 2018). He also maintains that most of the reservations to human rights treaties by the Islamic states fall into the *mutable* area because these notions are not fundamental beliefs like belief in one God, His Messengers, Scriptures, prayer, fasting etc., upon which the faith is based (Saeed, 2018).

Another scholar, *Abdullahi Ahmed An-Naim*, calls for a secular state in Islamic world. He emphasizes the need for the secularization of state and not society. Like Abdullah Saeed, he also considers Islamic law to be mutable and interpretation to be a human construct. He states that coercive implementation of Sharia principles promotes hypocrisy amongst Muslims which is condemned by Quran. He criticizes the traditional constructions of Sharia that support principles like 'male guardianship of women [...], sovereignty of Muslims over non-Muslims [...], and violently aggressive jihad [...]' (Naim et al., 2008).

Interestingly, while he insists for the separation of Islam from the state, he also calls for the acknowledgement of the '*public role of Islam ... on the formulation of public policy and legislation.*' He admits that the current human rights structure of the UN 'strongly reflects Western political philosophy and experience' but maintains that these norms are not entirely alien to African or Asian societies and that they should adopt them in accordance with their own contexts (Naim et al., 2007).

He is very critical of those Muslims who reject human rights because of their western connotations and asks them to also reject 'territorial states, international trade and financial institutions [as well as] economic and other relations that are premised on Western models' (Naim et al., 2007).

He calls for the suspension of all those verses of the Quran which are inconsistent with the modern human rights structure because he thinks that 'the process of selecting which verses of the Quran are applicable and which are not was always the work of Muslim jurists[...]' (Naim et al., 2007).

Despite a strong proponent of international human rights law, he states while referring to the reservations on human rights treaties by Islamic nations, that the claim of universality of these norms cannot be accepted as true if these are rejected by Muslims who form an estimated quarter of humanity today (Naim & Baderin, 2017).

There are other scholars who have also challenged the classic interpretive methodologies and concepts of Islam. *Majid Khadduri*, for instance, is of the view that the Prophet preferred the gradual methods for bringing change into society rather than opting for the abrupt revolutionary arrangements. He states that the ultimate purpose of the Prophet was clear i.e., the abolition of slavery and equal rights for women (Khadduri, 1984). *Asghar Ali Engineer* also shares the same thought with *Majid Khadduri* and states that there is a tendency of gradually uplifting of the rights of women clearly seen in the fundamental texts of the Quran. He also claims that nobody today

uses the Quran or Sunnah to justify slavery. He strongly opposes the traditional approach used by the traditional scholars for the interpretation of the basic sources of Islam (Engineer, 2008).

Tahir Haddad states that the tendency for the better and improved rights are not ends in themselves and that the Muslims should strive to comprehend and appreciate the Quranic Strategy (Zayd et al., 2006). Nasr Abu Zayd states that in the present times hudud punishments for fornication, robbery, causing social disorder etc., cannot be carried out without violating the principles of human rights and respect and integrity of human body. He emphasized that all those areas which are inconsistent with the international human rights standards need revision and reconsideration (Zayd et al., 2006).

Muhammad Abduh, another very influential Muslim scholar from Egypt considers the European social order much closer to the fundamental concepts of Islam. Commenting on his visit to France he stated that 'In France I saw Islam but no Muslims; in Cairo I see Muslims but no Islam' (Otto, 2011). He criticized the traditional methodology of interpretation and urged Muslims to recourse to the basic sources of Islam independently via *Ijtihad* (Otto, 2011). He believed that part of the law dealing with *social aspects* is alterable and must be reinterpreted for the betterment of humanity (Sookhdeo, 2006).

Another very famous and revered personality from the sub-continent, *Sir Syed Ahmed Khan*, alludes to the universality of the Quran to the exclusion of the Sunnah. He prefers the construction of the Quran by the Quran itself and states that Sunnah restricts upon the universality of the principles of the Quran by linking it with certain specific historical and social times (Asiya & Samiullah, 2020).

2.1.1. Traditional Scholarship and Construction

The way liberal scholarship dealt with the concept of human rights and Islam raises a lot of questions. For instance, whether Muslim scholars can make laws on their own? Can they abrogate a divine law or limit its scope of applicability? Whether Islamic law particularly the provisions which affect human rights are mutable or immutable? These are very serious and sensitive questions and traditional scholarships seem to have answers to them.

Traditional jurists have said almost unanimously that Muslim scholars cannot freely legislate on their own. They cannot annul or amend any law given to them by Allah or His Prophet (Peace be upon Him). They can only interpret or undertake *Ijtihad* and that too on areas which are ambiguous and requires clarification or areas which have not been dealt with explicitly under the Quran and the Sunnah (Amin, 2006). A well-known and famous Hadith is quoted to substantiate their claim in this regard. This is attributed to *Muaz ibn Jabal*.

"It is reported that when he was being sent to Yemen the Prophet (Peace be upon Him) asked him:

How will you decide a case?

He replied: I shall decide with Allah's book.

He asked: And if you do not find any guidance in Allah's book?

He replied: Then in accordance with the Sunnah of the Messenger of Allah (Peace be upon Him)

He asked: And if you do not find guidance in the Sunnah of the Messenger of Allah and in Allah's book?

He replied: Then I shall exert all my intellectual capabilities to arrive at an opinion and I shall spare no effort.

The Messenger of Allah (Peace be upon Him) then patted him on the breast and said:

'Praise be to Allah who has helped the messenger of the Messenger of Allah to understand that which pleases the Messenger of Allah.'

(Sunan Abi Dawud: 3592)

According to this narration, a scholar or jurist is bound to find the law in the Quran or Sunnah first. Since, for a rule to be valid in Islamic legal system, it must be derived from within the sources of Islamic law (Nyazee, 1996). His job is finished when he finds it. If only he does not find it, he will exert his intellectual endeavors in that direction.

As a matter of fact, the law dealing with minorities, women, punishments etc. is so clearly and explicitly available inside the basic sources that it leaves no room for interpretation or *Ijtihad*. Because *Ijtihad* or interpretation have roles to play where the law is obscure or ambiguous or where it simply does not exist, however, we find that in the above-mentioned situations the law is clear and plain. So, where the text clearly states that the share of a male is twice the share of a female, or lash or whip the ones who do adultery (unmarried) 100 lashes, there is no room for *Ijtihad* here (Nadvee, 2011; Ahmad, 2001).

Katerina Dalacoura seems to understand this point and states 'even if *ijtihad* is applied, the problem of inequality of women and non-Muslims will not be solved because some texts in the Quran and *hadith* are explicitly discriminatory' (Dalacoura, 2007). Al-Naim also sees this as a hard case he states that "given the fundamental conception and detailed rules of *shari'a*, it is clear that the objectionable aspects cannot possibly be altered through the exercise of *ijtihad* as defined in historical *shari'a* for the simple reason that *shari'a* does not permit *ijtihad* in these matters because they are governed by clear and definite texts of the Qur'an and Sunna" (Naim, 1996).

Dr Mahmood Ahmed Ghazi states that the commands addressed to human beings in the Quran are either obligatory, recommendatory, or permissible. There is no need to reopen this issue as these things have been decided. Moreover, all those injunctions which are definite and explicit are meant to be forever. There is no occasion or opportunity for any amendments inside them. If only any amendment is possible, it is from within the basic sources. These definite injunctions are there to preserve the continuity of Islamic law and way of life (Ghazi, 2005). If there happens to be an *ijtihad* which is not based on the basic sources of Islam, such an *ijtihad* is illegitimate. Such endeavors have always been rejected by Muslims in the past, today and in the future (Ghazi, 2005).

Another scholar states that Islamic law must not be confused with the *positive law making* done in the form of constitutions and statutes by the representatives of the people. Human intervention in the law making and in the interpretation of fundamental sources of Islam has very narrow space, since, Allah, the almighty, has already provided for the interpretation of Quran by the Sunnah. People may interpret the rules of Islam in thousands of different ways but none of their endeavors could be given the status or said to be the ultimate will of God (Madni, 2005).

Dr Muhammad Tahir ul Qadri in his book Human Rights in Islam states that 'Islamic law respects human rights more than any other local or international law. The more these rights are sacred and respectful the more the intensity in punishments (Qadri, 2004). He states that the International Human Rights Law prohibits inhuman or degrading punishments, but it does not define what is degrading, humiliating or inhuman (Qadri, 2004).

Other scholars from traditional school of thought have the same approach and understanding towards construing the fundamental sources of Islam i.e., interpreting the Quran or Sunnah for serving specific purposes or for establishing its compatibility with western notions of human rights without knowledge or belief is imitation of the west, which is unjust, unfair and that it could create problems. They often refer to a verse of the Quran in this regard which states:

فَوَيْلٌ لِلَّذِينَ يَكْتُمُونَ الْكِتَابَ بِأَيْدِيهِمْ ثُمَّ يَقُولُونَ هَذَا مِنْ عِنْدِ اللَّهِ لِيَشْتَرُوا بِهِ ثَمَنًا قَلِيلًا فَوَيْلٌ لَهُمْ مِمَّا كَتَبَتْ أَيْدِيهِمْ وَوَيْلٌ لَهُمْ مِمَّا
يَكْسِبُونَ

(Quran, 2:79)

"So woe to those who write the "scripture" with their own hands, then say, "This is from Allah," in order to exchange it for a small price. Woe to them for what their hands have written and woe to them for what they earn." (Saheeh International)

Commenting on the relationship of Islam with other civilizations of the world, Doctor Yusuf Al-Qaradawi, an eminent Egyptian scholar, states that despite having its own natural visible contours, Islamic civilization supports the idea of respect, mutual support, and peace with the other civilizations of the world. However, it does not support the assimilation which dims or fades away its own individual characteristics and features. It is against all the alien, civilizational and cultural attempts which overtake or strip it off its original features. He says that *Hudood* and *Qisas* punishments are part of Islamic Sharia which cannot be annulled (Qaradawi, 1997).

While commenting on the right to legislate, he says, seculars consider law making to be the right of society to make any law they deem fit. Islam should not dictate the do's and don'ts or place restrictions on this right to legislate. He criticizes that, as by doing this they try to snatch the right of Allah and give it to human beings. He says that seculars may admit that the world has been created by God, but they do not admit that to rule also belongs to Him (Qaradawi, 1997). He refers to the Quran which states:

إِنَّ رَبَّكُمُ اللَّهُ الَّذِي خَلَقَ السَّمَوَاتِ وَالْأَرْضَ فِي سِتَّةِ أَيَّامٍ ثُمَّ اسْتَوَىٰ عَلَى الْعَرْشِ يُغْشِي اللَّيْلَ النَّهَارَ يَطْلُبُهُ حَثِيثًا وَالشَّمْسُ وَالْقَمَرُ
وَالنُّجُومُ مُسَخَّرَاتٌ بِأَمْرِهِ ۗ أَلَا لَهُ الْخَلْقُ وَالْأَمْرُ ۗ تَبَارَكَ اللَّهُ رَبُّ الْعَالَمِينَ

(Quran, 7:54)

"Indeed, your Lord is Allah, who created the heavens and earth in six days and then established Himself above the Throne. He covers the night with the day, [another night] chasing it rapidly; and [He created] the sun, the moon, and the stars, subjected by His command. Unquestionably, His is the creation and the command; blessed is Allah, Lord of the worlds." (Saheeh International)

Thereby, he excoriatingly criticizes the western philosophy which allows the subjugation of divine law to human instincts and the discarding or annulment of *Sharia* (Qaradawi, 1997). He also joins the traditional group of scholars in asserting that fundamental sources of Islam are unchangeable (Qaradawi, 1997). He says that these are the enemies of Islam who are trying to sow seeds of suspicion and qualms about the nature and meanings of definite principles of Islam (Qaradawi, 1997). He reiterates that rules regarding marriage, divorce, inheritance, *Qisas* and others are established through definitive sources of Islam i.e. the Quran and the Sunnah hence unalterable. No society, vicegerent, head of state, or group of humans can alter these laws (Qaradawi, 1997).

Muhammad Amin states that the western civilization is inherently anti-religious and atheistic. Its world view is diametrically opposite to the world view of Islam. It is based on the ideas of negation to *Tauhid* (Oneness of God), *Risalah* (Prophethood), *Akhira* (Day of resurrection) and *Wahi* (Revelation) therefore we cannot Islamize the western philosophy and principles. Indeed, there is a special place of rationality and reason in Islam, but this place and position is subject to divine injunctions. Superiority remains vested in revelation. Reason or intellect is not in itself an authority in Islam and can never override the revelation (Ameen, 2006).

These are some of the areas where Islam and the IHRL are at obvious conflict. While the liberal scholarship is of the view that these norms were meant to address certain specific issues of 7th century Arabian society and are not needed anymore hence be construed in a way favorable to modern situations and needs; traditional scholars strongly refute them and assert that the implementation and enforcement of these norms are needed more than ever and that these norms cannot be bound by any reference to time or place. Traditionalists maintain that the commands of Allah as mentioned in the Quran and the Sunnah are immutable. These cannot be changed, altered, modified, annulled, or removed by any individual, group, assembly, or parliament. They allege that the western secular model of human rights has failed miserably, and the plight of human beings has only increased.

The rights under the fundamental sources of Islam are testimony to the fact that Islam treats human beings with dignity and honor and provides comprehensive framework for the regulation of their lives in accordance with the injunctions of divine law. Claiming the incompatibility of these rights from the entire international human rights edifice is not well-founded. However, the philosophies behind these rights are different. It is, therefore, we see that while those human rights based on the UN frameworks are liable to be amended or suspended in certain situations, in Islam these rights are a gift from the creator Himself therefore not liable to be suspended or taken away in situations how much grave. Therefore, in Islamic States, where the concept of human rights and indeed the of concept of life is different than how it is perceived in the West may find it hard to accept or enforce certain principles or practices in the name of human rights in their jurisdictions, however, the application and implementation of those areas of human rights which are not inconsistent with the norms of *Shariah* should not be impeded.

There is a dire need to understand the existence of different cultures, traditions and religions across the globe. These differences are rooted in the basic tenets of respective cultures, traditions, religions or civilizations and are here to stay.

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