



## INVESTIGATING THE THEORETICAL FOUNDATIONS OF HUMAN RIGHTS IN ISLAMIC THOUGHT

With a Brief Overview of International Law's Perspective

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### ABSTRACT

The present article seeks to investigate the theoretical foundations of human rights in Islamic thought. It would briefly overview the foundations of human rights in international law as well. By reflecting on the epistemological, cosmological and anthropological foundations of human rights in Islamic thought we can reach a realistic view relating to human being and his/her identity thereby justify human rights. Divine rights include two collections of rights: statutory rights that are recognized for human beings in the Book and Sunnah and those rights that are originated from Fitrah and nature. From an Islamic point of view, there is no contrast between Divine rights and those originated from Fitrah. Using reason and the revelation, legal school of Islam is one of the most reliable and reasonable sources for clarifying Fitrah and natural rights. Basing human rights on dignity is logical when correlation between human being and dignity is referred to correlation between humanity and dignity. That being the case, potentiality of humanity leads to potentiality of dignity and the actuality of the former results in the actuality of the latter. All of the results of secular human rights are not necessarily in contradiction with Islamic views and there are cases in which, despite difference in foundations, similar results can be seen. Accordingly, most of the articles of UHRD can be confirmed by Muslims.

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## Introduction

Human rights are considered to be the most significant development in international legal sphere in 20<sup>th</sup> century. Human rights were brought into international law by the UN in its Charter in 1945. In paragraph 3 of Article 1 of this Charter, the promotion and encouragement of human rights and fundamental freedoms was included as one of the purposes of the Organization. Furthermore, promoting universal respect for, and observance of, human rights and fundamental freedoms is linked, *inter alia*, to stability and well-being in Articles 55 and 56. Therefore, it was after WWII that human rights became an international issue.<sup>1</sup> That being the case, it is safe to say that we are living in the age of rights in which all aspects of human beings' life are interpreted through and affected by the human rights discourse. It appears that this discourse is the prevalent one of the present time in such a way that the wrongfulness of something is often characterized as a human rights breach rather than an immoral act.<sup>2</sup>

Lacking consensus on the nature and justification of human rights is the only consensus regarding these rights.<sup>3</sup> Approaches toward human rights are based on specific understandings about the universe and human being. Accordingly, disagreements with respect to human rights and its boundaries can be attributed to disagreement as to legal foundations and principles. If we summarize the foundations into epistemological, cosmological and anthropological, then the different point of views in these three axes have caused disagreement in the foundations the reflection of which can be seen in the legal system. The positivistic and secular epistemology is grounded in empiricism, sensualism and rationalism and, as a consequence, rejects many of the religious teachings. While, in Islam the reason and Sunnah are the bases for knowledge at the same time and they together can help the human being in his/her true knowledge. These differences in the understanding of the universe and human being were existed and exist in different schools and, as a result, have their own consequences.

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1. Sara Joseph and Joanna Kyriakakis, 'The United Nations and Human Rights', in Sara Joseph and Adam McBeth (eds.), *Research Handbook on International Human Rights Law*, (Edward Elgar Publishing 2010), 1.

2. See Romuald R. Haule, 'Some Reflections on the Foundation of Human Rights – Are Human Rights an Alternative to Moral Values?', (2006), 10 *Max Plank Yearbook of United Nations Law*, 368-369.

3. Vittorio Bufacchi, 'Theoretical Foundations of Human Rights', (2018), 66 *Political Studies*, 601.



As Freeman remarked in 1994, human rights concept has both practical and theoretical problems.<sup>1</sup> Undoubtedly, the debate about the relationship between Islam and human rights in the Islamic world is diverse and has been going on for some time. This debate is not only theoretically connected to the universalization of human rights in general, but is particularly related to the practical realization of human rights in the Islamic world. This is rooted in the obvious role played by Islam in the social, cultural, political and legal affairs of most of the Muslim-majority States and societies.<sup>2</sup> Among other things, the theoretical foundations of human rights in Islamic thought are of great significance for deep understanding of this relationship.<sup>3</sup> Accordingly, the objective of the present article is to study the theoretical foundations of human rights in Islamic thought. In doing so, first and foremost, we briefly overview the theoretical foundations of human rights in international law (1). Afterward, epistemological (2), cosmological (3) and anthropological (4) foundations of human rights under Islamic legal thought would be discussed respectively. It appears that all of the results of secular human rights are not necessarily in contradiction with Islamic views and there are cases in which, despite difference in foundations, similar results can be seen. It is due to this fact that, most of the articles of UHRD can be confirmed by Muslims.

## 1. Foundations of Human Rights in International Law: A Brief Overview

Human rights are difficult to define, notwithstanding that the term is used extensively and frequently. Generally human rights are considered to those fundamental and inalienable rights which are essential for a decent life as a human being.<sup>4</sup> Surely, this view that all individuals have rights because of being human predates 1948. For instance, it can be traced back to the American Declaration of Independence (1776) and the French Declaration of the Rights of Man and the Citizen (1789). Under the guise of “natural rights”, this idea can be found in the influential works of the 17th and 18th centuries by Grotius, Pufendorf, Locke, and Kant.<sup>5</sup> In fact, recent research has argued that this idea of natural rights arose in early medieval thought or much earlier. However, it is worth mentioning that there is much debate about whether modern human rights are identical to, or at least modernized and secularized forms of natural rights.<sup>6</sup>

Putting emphasis on the significance of nature and foundations of human rights in their introduction to the book of which they are the editors, Ernst and Heilinger state that clarification of concept and justification of human rights are the two key challenges in human rights philosophy. According to them, in addition to politicians, NGO activists, international lawyers,

1. Michael Freeman, ‘The Philosophical Foundations of Human Rights’, (1994), 16 *Human Rights Quarterly*, 491.

2. Mashood A Baderin, ‘Islam and the Realization of Human Rights in the Muslim World’, in Joseph and McBeth (eds.) (no 1), 440-441.

3. It is worth mentioning that the majority of human rights theorists are skeptical about the strictly religious notions of human rights. It is due to the fact that they feel more like a lawyer or a philosopher than a theologian in theoretical issues. They also try to avoid references to religious texts and limit themselves to legal documents that even may not be of a secular basis. See Jordan Kiper, ‘Do Human Rights Have Religious Foundations’, (2012), 7 *Religion and Human Rights*, 109.

4. Rebecca M. M. Wallace, *International Law*, (fifth edition, Sweet and Maxwell 2005), 225.

5. Hugo Grotius, *The Rights of War and Peace*, (1625); Samuel Pufendorf, *On the Law of Nature and of Nations*, (1672); John Locke, *Two Treatises of Government* (1689); Immanuel Kant, *The Metaphysics of Morals* (1797).

6. Quoted from Rowan Cruft, S. Matthew Liao and Massimo Renzo, ‘The Philosophical Foundations of Human Rights: An Overview’, in Rowan Cruft, S. Matthew Liao and Massimo Renzo, *Philosophical Foundations of Human Rights*, (Oxford University Press 2015), 1-2.



political and moral philosophers etc., human rights are significant for individuals who defend their own rights and the others' and try to decrease the violation of human rights in the society. Therefore, whatever is the reason behind the interest in human rights, knowing their nature and normative force should be of fundamental importance for those concerned with human rights.<sup>1</sup>

According to Marks, there are various theoretical discussions on the origins, scope and significance of human rights in the related disciplines. Broadly speaking, using the term "human rights" is grounded on moral reasoning (ethical discourse), socially sanctioned norms (legal/political discourse) or social mobilization (advocacy discourse). These discourse are in no way different or sequential but are all used in diverse contexts. They are interconnected i.e. the public reasoning based on ethical arguments and social mobilization based on advocacy agendas effect legal norms, processes and institutions and, as a consequence, all of them play their role in making human rights part of social reality.<sup>2</sup>

Generally speaking, inherent human dignity is considered to be the most well-known and agreed upon founding value of contemporary human rights discourse. In Oxford Encyclopedic English Dictionary, "dignity" is defined as "the state of being worthy of honor or respect". Whenever the adjective human is added to this concept, the term means that all individuals are equal and have inherent worth as the consequence of which they should be given utmost respect and care without distinction on grounds such as race, ethnicity, religion etc. It should be borne in mind that inherent human dignity is not the same as moral dignity, which is a synonymous with "honor". It is the first notion that has occupied a prominent place in bioethics-related legal instruments. The inherent dignity is the same for all and cannot be gained or lost due to its inseparability from being human. Even the worst offenders have the right not to be deprived of their dignity and to be free from inhuman or degrading treatment and punishment.<sup>3</sup>

In the international law sphere, human dignity is a fundamental principle which entails equality of respect for all individuals and human rights are those concrete norms which are required to actualize that equal respect in social life. It is important to mention that human dignity should not be regarded as a super-right. It is the main source and basis of all rights. This notion deals with the reason behind the entitlement of humans to have rights which is their intrinsic worth. Currently, inherent dignity of all people is the assumption on which human rights law is grounded. Additionally, promoting and securing respect for dignity and rights are considered to be the reason of being of the state in the contemporary political thought. It is the obligation of both international community and individual states to recognize that people do have basic rights resulting from their inherent dignity. Hence, one can argue that human dignity means justice for every human beings.<sup>4</sup>

It is stated by Lokow that human dignity has a special status in UDHR because of its key features. As the result of previous ideological and philosophical discussions and the writings of

1. Ernst Gerhard and Jan-Christoph Heilinger (eds.), *The Philosophy of Human Rights: Contemporary Controversies* (Walter de Gruyter GmbH & Co. KG 2012) VII.

2. Stephen P. Marks, *Human Rights: A Brief Introduction*, Program on Human Rights in Development, Harvard University, (2016), 1-2.

3. Quoted from Roberto Andorno, 'Human Dignity and Human Rights', in Henk A.M.J. ten Have Bert Gordijn (eds.), *Handbook of Global Bioethics*, (Springer 2014), 45.

4 Ibid 49.



distinguished thinkers, the authors of the UDHR were conscious of the notion of human dignity and some of them considered it to be the basis for human rights. However, as its rationale was largely undisputed and gradually tied to human rights over the past few years, human dignity was incorporated into the Declaration and found no definitive opponents.<sup>1</sup> As a consequence, UDHR opens with the statement that recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the basis of freedom, justice and peace in the world. ICESCR and ICCPR, which together with UDHR comprise the International Bill of Rights, go even further and announce that the inalienable rights of all human beings derive from their inherent dignity. Furthermore, the concept of human dignity plays a pivotal role in discussion on the universality and relativity of human rights as well.<sup>2</sup>

However, there is no consensus as to the intrinsic relation between human dignity and human rights and this linkage is sometimes criticized.<sup>3</sup> It is argued that without a strong consensual justification these concepts are subjected to appropriation in many ways. Human dignity, which sometimes is regarded as an empty and ambiguous concept, is usually seen as the base on which human rights should rest. This concept's openness may lead to highlighting the role it can play in promoting and protecting human rights, however, its vagueness may leave it open to particularistic appropriations and manipulations. Human dignity has acquired the status of a legal principle that serves as the footing for establishing a complex structure of needs, interests, norms, institutions, governmental initiatives, and international human rights policy. However, due to lacking a firm foundation for this legal basis, one can criticize the current human rights system for its weak validation.<sup>4</sup>

## 2. Epistemological Foundations of Human Rights in Islamic Thought

The ways to knowledge and their validity are among the important issues of epistemology. Sensual, rational and intuitive knowledge are valid and valuable in their own place and are confirmed by Holy Qurān. Albeit, intuitive knowledge has a special position in revelational teachings.<sup>5</sup> In modern time, developments of epistemological foundations led revelation and Sunnah-based knowledge to be casted on doubt and caused its validity and justification be called in to question due to radical inclination toward sensualism and rationalism. This required rationalism against religious rationality that put reason and revelation beside each other. Qurān is always recommending reasoning and contemplating as to the Creation. On the contrary, radical rationalism that corresponds to rejecting revelation, takes position and negates it through different interpretations. According to Āyah 165 of An-Nissā' (the Women) Sūrah of Qurān, reason is necessary for knowledge but not sufficient: "Messengers were as bearers of glad tidings [for the believers] as well as warners [for the disbelievers] in order that mankind should

1. Pawel Lukow, 'A Difficult Legacy: Human Dignity as the Founding Value of Human Rights', (2018), 19 Human Rights Review, 319.

2. David Kretzmer and Eckart Klein (eds.), *The Concept of Human Dignity in Human Rights Discourse* (Kluwer Law International Law 2002) V.

3. See for example Stamatina Liosi, 'Why Dignity is not the Foundation of Human Rights', (2017), 8 Public Reason, 51-64.

4. Amos Nascimento and Matthias Lutz-Bachmann (eds.), *Human Dignity: Perspectives from a Critical Theory of Human Rights* (Routledge 2018) xi.

5. Mohammad Taqī Fa'ālī, *Epistemology in Qurān* (Institute of Seminary and University 2016), 415. [In Persian]



not have argument against Allāh [concerning their lack of knowledge] after sending the Messengers; and Allāh is the Source-Wisdom Superpower”.<sup>1</sup>

This Āyah implies both the necessity of reason for the guidance of the mankind and its insufficiency and need to revelation simultaneously. In terms of reasoning and delimitation, the phrase “in order that mankind should not have argument against Allāh [concerning their lack of knowledge] after sending the Messengers” means that if the Revelation would not have existed the mankind could argue in the Dooms Day that: O my Lord! You impose duty on me without sending any Revelation and Messenger. The most delicate interpretation in this regard is incorporated in Āyahs 1 and 2 of Sūrah of Al-Bayyīnah (The Evident Proof): “Those who disbelieved among the people of the Book [i.e., the Jews, who called Ozair son of Allāh and the Christians who believed in the Trinity]; and also the pagans of Quraish could not depart from their deviated ideas until came to them the Evident Proof”; “A Messenger of Allāh who recites to them the Words of Revelation from the pure Pages”. This means that the Revelation never leaves the mankind.<sup>2</sup>

Given that reason and the revelation are two significant ways of epistemology, they should be employed for law in general and human rights law in particular. In addition, being satisfied with reason, sense and experience in contemporary human rights law would not be compatible with Islamic epistemology. “Theism is not assumed in secular human rights (the Universal Declaration of Human Rights (UDHR) and 1966 Covenants) and rights of man are considered according to humanism”.<sup>3</sup> From a human rights perspective, the most fundamental assumption is that human being can know him/herself and the Universe; as a consequence, he/she does not need the revelation and the creator of the revelation and the law should not be grounded on any metaphysical origin. Alongside such human rights perspectives that rely and put emphasis on the reason of man, some well-known modern philosophers and thinkers, reflecting on the ability of the reason, have revealed its shortcomings and vulnerabilities.

They have called humanism and rationalism into serious question. Among others, David Human was of the opinion that human beings, alike animals, are governed by instinct and feelings and Kant maintained that thought and reason are not able to understand the depth of things and the Universe. Furthermore, Freud believed that we are unaware of all layers of our existence and it is beyond and broader than our thought area and Nietzsche expressed that all of our demands, even that of our knowledge, are not to reveal any truth or reality but their ultimate goal is to provide us with power and authority.<sup>4</sup> Those who believe in Islam, through rethinking the strengths and weaknesses of the man according to Qurān, find out the anthropological

1. In addition, Āyah 134 of Tāha Sūrah reads: “if we had punished them before sending this [Holy Qurān and the Messenger] they would have said: O, our Creator! Why did You not send us a Messenger so that we would follow your Revelations before we were seized in disgrace and affliction”.

2. Abdollāh Javādi Āmolī, Thematic Interpretation of Qurān, Vol. 13 (Epistemology in Qurān) (Isra’ 2000), 198-199. [In Persian]

3. Seyed Sādeq Haqīqat, ‘Islamic Human Rights: Possibility and Impossibility’, in Collection of Papers of International Conference on Human Rights and Dialogue among Civilizations (Centre for Human Rights Studies of Mofīd University 2001), 99. [In Persian]

It should be mentioned that there is a philosophical tradition in the West that emphasizes the not fully rational nature of human beings (for example, giving importance to the role of emotions in cognition and evaluation). However, it is a minority perspective. In this regard, see: Adam Smith, *The Theory of Moral Sentiments* (CUP 2002).

4. See Hossein Kājī, ‘The Philosophical-Anthropological Foundations of Human Rights’, in Collection of Papers of International Conference on Human Rights and Dialogue among Civilizations (Centre for Human Rights Studies of Mofīd University 2001), 236-237. [In Persian]



baselessness of the contemporary human being in the field of human rights that claims his independence and originality more than before; a human being that is believed to be independent of any power and does not request assistance from any metaphysical and spiritual power. He/she is owed to no one even God and it is for this reason that in UDHR, despite its numerous privileges, there is no sign of God. It is exactly the perspective that the authors aim to criticize. UDHR does not state that “all human beings are created free”, but provides that “all human beings are born free...”. Reviewing the history of its codification makes it clear that although there were serious debates as to incorporation of God, the Nature etc. as the origin of rights, ultimately the divine origin of human being is not mentioned.<sup>1</sup>

### 3. Cosmological Foundations of Human Rights in Islamic Thought

#### 3.1. The Universe is a Truth from Him and to Him

In accordance with a monotheistic ideology, God is the pure and absolute existence and the whole Universe is originated from Him. The Universe is dependent upon Him in its existence and the world including the human being is returned to God. Accordingly, the Universe in its direction is not ended in this world, but it is an introduction to another world. It is crystal clear that this attitude toward the Universe and human being has its impacts on the legal system concerned.<sup>2</sup> A legal system which is adhering to an ideology based on a beginning and resurrection differs the one based on a mere materialistic ideology. Considering a non-material end for the Universe leads to difference in goals in these two legal systems which affects both their direction and examples and quality of rights.

#### 3.2. The Universe is Created Justly

If justice considered to be putting things in their own place, according to Islamic ideology it is believed that God has put everything in its own place and the Creation is done in best possible way. It is quoted from Prophet Muhammed that heavens and earth are established based on justice.<sup>3</sup> Legislative justice deals with fairness of laws and rules of Sharia (Islamic legal system), while creational justice addresses the fairness of creation system and the creation of the creatures from the heavens and the earth to inanimate objects, plants and human beings. Qurān considers the creation system as the best system<sup>4</sup> in such a way that a better and more beautiful creation has been impossible.

Believing in creational justice in the Universe causes special effects in the related legal system. For example, how we can justify and interpret the existence of certain gender differences between men and women that include different physical, mental, emotional and intellectual aspects and make the world of women distinct from that of men? If these creational differences are regarded as just, taking into account the principle on the necessity of compatibility between legislation and creation, there would be a specific legal system as to men and women. How-

1 .Behnāz Hājizādeh, ‘The History of Universal Declaration of Human Rights’, in Behnāz Hājizādeh, 10 Articles on the Universal Declaration of Human Rights, (Ayin-e-Ahmad Publication 2010), 27.

2 . See Abdalhakīm Salīmī, ‘Theoretical Principles of Human Rights in Islam’, (2012), 1 Legal Knowledge, 166-176. [In Persian]

3 . Mīrzā Habīb Allāh Hāshemī Khūyī, The Method of Ingenuity in Explaining Nahj-al- Balāghah, Vol. 18 (Maktab-al-Islāmiyah 1980), 342. [In Arabic and Persian]

4 .Sūrah As-Sajdah (The Prostration), Āyah 7: “Allāh is the One Who gives the best perfection to all that He created...”.



ever, if it is believed that women are oppressed in the creation and the creational justice is not observed therein, at least in this case, the principle on the necessity of compatibility between legislation and creation should be discarded and another solution should be considered in the legal system. One of the existing challenges in the relationship between human rights system of Islam and international human rights law is the disagreement regarding the basis for creational and legislative justice.

### 3.3. The Universe is Purposeful

There is a close link between the purposefulness of the Universe and believing in the Resurrection and other world. God is the Knower of the Universe and all aspects of human being's life and his/her potentials, abilities and needs. Therefore, He is absolutely aware of the way to human being's happiness and perfection and can lead him/her in this path. The purposefulness of the Universe indicates that any creature has an end and perfection and should move toward its perfection; moving toward perfection is instinctive in creatures other than human being, while it is conducted voluntarily by human being and God Helps him/her through sending the Messengers. This justifies two principles of Prophethood and Imamate (leadership) in Islamic worldview which both provides the human being with Sharia and religion and determines the leader and guider. Religion is comprised of teachings that includes the rights and duties of human being at the same time. Furthermore, this is purposefulness of the Universe that can be a justifying factor for many of the human rights.<sup>1</sup>

As Motahharī states, there is a linkage between human being and bounties of the Universe in the overall map of the Creation in such a way that if human being was not existed it was a different one. Qurān repeatedly reaffirms that the bounties of the Universe are created for human being. Thus, according to Qurān there is a relationship between human being and the blessing of the Creation before the man can have an activity and do something and before the conveyance of the religious orders to the people by the Messenger and these bounties are property and right of human being.<sup>2</sup> His opinion is based on certain Āyahs of Qurān such as the Āyah 13 of Sūrah Al-Jāthiyah which reads: “And Allāh has subjected for you whatever is in the heavens and on the earth...”. Looking from this perspective at the Universe, one can find out that the theatre of the Creation, per se, is the origin of a great collection of human rights. Believing in purposefulness of the Universe gives birth to the theory based on which human rights could not be justified unless being considered in a religious intellectual system that is purposeful and meaningful. In other words, as a principle, commitment to human rights that are based on the holiness and dignity of humankind, cannot be compatible with secular views.

According to some Islamic thinkers, without believing that human being is an end in him/herself and that the Universe is purposeful, the productions of the nature would be regarded as brought by the wind wealth that are fallen on the earth accidentally. Therefore, it is crystal clear that this standpoint cannot be the foundation of right to human being to the Universe because human being only is entitled to his/her own productions resulting from his/her activities. In the

1 . For a brief overview of the foundations of the theory of Wilayat al-Faqih, see Muhammad Taqī Misbāh Yazdī, *A Cursory Glance at the Theory of Wilāyat al-Faqīh* (second edition, CreateSpace Independent Publishing Platform 2014).

2 . Morteżā Motahharī, *Twenty Articles* (thirty-fifth edition, Sadrā Publication 2011), 53. [In Persian]



Divine logic, anyone who comes to this world has a right to it potentially. All human beings are the children of the Universe and, as a natural consequence, the child has rights over his/her parents.<sup>1</sup> This meaningful relationship between the Universe and human being which considers human being as the central core of the Creation and everything is subjected for him/her is the justification for the naturalness of certain rights.

If the whole Universe is subjected for human being and this right is provided for him by the Creation system, so human being is a right-holder and there is no need for any reason other than the law of nature and the system governing the Creation for proving that human being is a right-holder. For further clarification, as an example, it is worth mentioning that in accordance with Āyah 233 of Sūrah Al-Baqarah (The Cow), “And the mothers shall suckle their children two complete years”. Consequently, the child has the right to be suckled that is built upon the Creation system which amazingly has made a linkage between the need of the newborn to food and his/her mother’s ability to produce milk. The proportionality between the alimentary canal of the child and the type of the milk produced demonstrates the close and mutual link between these two phenomenon and their creation for one another. Once the milk is produced for fulfilling the needs of the child, he/she has a right to it and Qurān has confirmed this right by setting forth the duty for mothers. This can also be true for all cases in which the creation of something is aimed at fulfilling the needs of the other creatures. If the ultimate goal of creating A is to serve B, this purposefulness makes B the right-holder and A is the right-bearer.

If natural needs are taken to be the justifying factors for rights, one can list certain rights such as right to security and right to marriage as natural rights that are built upon and originated from human being’s need to security and marriage. If it is the case, what is needed to be proved is the natural need principle by proving which, any actual need makes who needs it a right-holder. As Motahharī claims, it appears that without Divine logic and the logic behind the theory that human being is end in him/herself according to which there is a willful order and if there was not the needy creature the creature who fulfil the need of the needy would not be created, justifying Fitrah and natural rights is impossible.<sup>2</sup>

#### **4. Anthropological Foundations of Human Rights in Islamic Thought**

Anthropology seems to be a basic science the product of which can response to many of human science’s issues including law. As is expressed by Goodale, “at mid-twentieth century anthropology had established itself as the preeminent source of scientific expertise on many empirical facets of culture and society, from law to kinship, from religion to morality”.<sup>3</sup> Accordingly, any question related to human being’s nature and character is relevant in and can be assessed based on anthropology and anthropological view. The inherent dignity of all human beings and their equal and non-alienable rights are emphasized in the first paragraph of the preamble of UDHR. Pursuant to art. 1 of UDHR, “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience ...”. Among others, questions such as the dignity of human being, meaning of dignity and its nature (granted or acquired),

1. Morteżā Motahharī, A Brief Study of the Foundations of Islamic Economy (Hekmat Publication 1981), 165. [In Persian]

2. Ibid, 165.

3. Mark Goodale, Surrendering to Utopia: An Anthropology of Human Rights, (Stanford University Press 2009), 18.



potentiality or actuality of dignity etc. should be investigated carefully in anthropological discussions. In this section, we will present human being from an Islamic point of view and will have a brief look at opponent viewpoints.

#### 4.1. Divine Fitrah

Human being essentially has an inclination toward God and monotheism. This can be found out from perfectionism that exists in the nature of human being. There is no human being who has no desire to be perfect. Thus, human being is God-oriented because the absolute perfection can only be found in God. This is what is called Divine Fitrah in religious texts and is the base to distinguish between human being and other creatures and has numerous cognitive effects. Since Fitrah-related affairs are fixed and permanent, they never fade away. As inclination toward God is natural, inclination toward religion that depicts the program of life designed by God and makes him/her perfect is natural too. This fact is clarified in Islamic anthropology as follows: “[O, mankind] Set the face of your heart towards the upright religion of the Divine Unity: Allāh has originally created the nature of man’s soul with full tendency and love for the Divine Unity; and nothing can change the original creation of Allāh. This monotheism is the True and Lasting Religion...”.<sup>1</sup> Without belief in the truth of the Universe and clarification of the essential status of human being, the concept of human rights would be ambiguous and in such a situation would become a mere living creature and, as a consequence, most of his/her rights would be disregarded.<sup>2</sup>

Now, Islamic anthropology can be compared with humanistic anthropology. In the latter school, not only there is no sign of Divine Fitrah, but also everything is defined according to human being’s demands and basically he/she knows no creature higher than him/herself to consider him/herself responsible and bound to. Hence, rights of human being should be examined from two perspectives: one is his/her natural aspect which is corollary and the other is his/her Fitrah aspect that is original. Being limited in nature in this assessment, the significant part of human being’s reality would be denied and if his/her reality is equally taken into account between nature and Fitrah, the corollary and original are placed in an equal footing. Because if the nature of the body is prioritized over the soul’s Fitrah, the original would be replaced by the corollary. In this situation, the reality of human being would be wiped out.<sup>3</sup> To clarify, following a humanistic anthropology leads to priority of nature of human being over his/her Fitrah and, as a consequence, his/her reality and originality would be marginalized.

However, we should bear in mind that a materialistic and natural view toward human being is not equal to natural rights which somehow the same as Fitrah law. Thus, the compatibility between Divine statutory law and natural law should not be neglected because God has set forth the law of religion in harmony with laws of Fitrah and Creation. Owing to this fact, it has been rightly pointed out that no language as eloquent as that of natural rights and no argument as sound as that natural law school can help the public and universal understanding of Islamic law and demonstrate it as a fully reasonable and evident system. Even it could be said that reveal-

1. Qurān, Sūrah Ar-Rūm (The Romans), Āyah 30.

2. Nasr Allāh Hekmat, ‘Rights of Which Human Being?’, in Collection of Papers of International Conference on Human Rights and Dialogue among Civilizations (Centre for Human Rights Studies of Mofid University 2001), 347. [In Persian]

3. See Abdollāh Javādī Āmolī, *The Philosophy of Human Rights*, (fourth edition, Isra’ 2004), 8. [In Persian]



ing the inabilities and lacunas of other legal systems supporting fundamental rights is possible through this way of analysis.<sup>1</sup>

## 4.2. Human Dignity

As was mentioned previously, one of the most significant grounds invoked for proving the right-holderness of human being is called human dignity (Kirāmah). Meticulous examination and assessment of dignity that has been paid a special attention both in religious writings and contemporary human rights instruments is a necessity. According to Mazaffari, Muslim scholars are divided into two groups about the inherent dignity. Referring to Holy Qurān, the Majority consider it as one of the basic Islamic teachings. By contrast, the minority opposes this argument and is of the opinion that “the dignity is a transcendental status that can only be obtained through sincere belief, good deeds, and piety”. This disagreement between the majority and minority groups of Muslim scholars has opened its way to Islamic human rights instruments.<sup>2</sup> Rejecting the categorization of dignity into inherent dignity and acquired dignity, in the following, we will discuss two types of dignity as the potential granted dignity and the actualized acquired dignity.

### 4.2.1. Potential Granted Dignity

From the perspective of Qurān, human being has two types of dignity: the granted dignity and the acquired dignity. Granted dignity which is termed inherent dignity in human rights literature, without any exception, belongs to all human beings regardless of their color, language, race, sex, social and political status, national origin etc. According to Qurān, human dignity is considered to a Divine blessing that is factual and existential not credential and contractual. For this reason, states cannot derogate human dignity by enacting laws. The most well-known reason for the recognition of such a dignity in Qurān and Islamic thought is the 70<sup>th</sup> Āyah of Sūrah Al-Isrā’ (The Divine Excursion and Night): “Indeed We honored the Children of Adam; provided them with means of transportation on land and sea; and also provided them lawful and pure sustenance and bestowed them priority above many of Our creatures”.

This Āyah clearly implies three points: 1) Dignity is God-given because the phrase “We honored the Children of Adam” is used in Qurān and, as a consequence, we should employ granted dignity instead of inherent dignity; 2) Use of “Children of Adam” makes it crystal clear that all human beings have been bestowed with granted dignity and it is not limited to monotheists or Muslims; and 3) Dignity granted by God to all human beings entails effects such as his/her potential priority over other creatures and restricting certain bounties and blessings to human beings. However, in Qurān we come across Āyahs according to which certain Children of Adam do not deserve dignity.<sup>3</sup> Reflecting on such Āyahs and certain narratives indicates that the God-granted dignity is merely a potential one that brings no special rights for human being unless become actual. If we consider the human being presented in UDHR as a creature that is

1. Mohammad Javād Jāvīd, *A Critique on Human Rights Philosophical Foundations*, Vol. 2: Islamic Philosophy of Human Rights, (Mokhātab Publications 2013), 2. [In Persian]

2. Mohammad Hossein Mozaffarī, ‘Human Dignity: An Islamic Perspective’, (2011), 4 Hekmat Quarterly Journal, 3.

3. An example in this regard is Āyah 179 of Sūrah Al-A’rāf (The Lofty Barrier between the Inhabitants of the Paradise and of the Hell): “Indeed We have created for the Hell, many of the Jinns and the men: They have hearts [but] they cannot understand [the Truth] with them; and they have eyes [but] they cannot see [the Truth] with them; and they have ears [but] they cannot hear [the Truth] with them. They are like cattle, no, they are more astray; they are those who are heedless of the Divine warnings”.



created based on unconscious laws of the nature and passes away after a period of aimless life, the inherent value, respect and dignity would be an illusion.<sup>1</sup>

Unfortunately, the term “human dignity” has been subjected to false perceptions and undue misuses. It is argued that the correlation between human being and dignity is the correlation between humanity and dignity. Accordingly, potentiality of humanity leads to potentiality of dignity and the former’s actuality generates the actuality of the latter. Actual rights cannot be extracted from potential humanity. Since God has given human beings the capacity of transcend from potentiality to actuality, their rights would become different. Those who seem to remain in the stage of potential human beings cannot be equal with actual ones and Divine wisdom necessitates this conclusion.<sup>2</sup> In other words, dignity is based on being human and those who commit treason and crimes and thereby lose their human identity, will lose their human dignity as well. Answering the question as to the relationship between being human and having right, some have argued that all human beings have rights due to their moral dignity. This answer has been criticized even by western thinkers and it has been said that this answer cannot resist against monsters such as Hitler and Stalin who one cannot claim to have moral dignity.<sup>3</sup>

In addition to criminals who in fact have no rights, invoking human dignity for proving the right-holderness of ordinary human beings is problematic because rights should be acquired to be justified ethically. These rights are not associated with human being automatically. This claim entails two meanings relating to characteristics of human rights. First, for having human rights, it is not enough to be merely be a human being; but, exactly vice versa, for having them they should be acquired. Second, rights do not prioritize over and justify duties but these are duties that prioritize over rights because you can have rights if you accomplish your duties. Accordingly, instead of correlation based on which one has a right and others have duties, rights and duties are symmetrical; that is to say one has both right and duty at the same time; but he/she has rights only because he/she has firstly accomplished a duty. Consequently, from this point of view, there exist no human rights i.e. those rights that the individual has only as a result of being human.<sup>4</sup>

It should be noted that rejection of basing rights on potential granted dignity does not mean to reject the rights of human being as a whole. The previous argument suggests that one cannot and should not base human rights on dignity in an absolute manner. This does not contradict with recognition of rights for human being by God according to other grounds. Thus, we should

1. Mohammad Taqī Ja’farī, *A Comparative Study of the Universal Human Rights: From The Viewpoints of Islam and the West* (Institute for Codification and Publication of Allāmeḥ Ja’farī 2006), 92-93. [In Persian]

2. Seyed Mohammadalī Ayāzī and others, ‘Islam and Human Rights: Interaction or Confrontation’ (Summer and Fall 2007), 8 Research and Seminary, 314-317. [In Persian]

3. Alan Gewirth, ‘Do any Human Rights Exist?’, in *Collection of Papers of International Conference on Human Rights and Dialogue among Civilizations*, (Centre for Human Rights Studies of Mofid University 2001), 150. [In Persian]

It is noteworthy that Alan Gewirth’s theory of human rights has made a major contribution to philosophy. Gewirth bases human rights on necessary truths instead of contingent values. This thesis is derived from the Gewirthian conception of morality. He is of the opinion that different and specific modes of action are required for different moral precepts and all moral precepts deal directly or indirectly with how people ought to act. It is the presupposition of morality that the addressees of its precepts have the ability to manage their actions following their own choices. Thus, moral people can follow these precepts or reject them. Accordingly, action has two fixed, interconnected generic characteristics namely voluntariness or freedom, and purposiveness or intentionality. As a consequence, the necessary content of all morality is provided by action and the content of action is given to it by its generic characteristics. See Alan Gewirth, *Reason and Morality* (The University of Chicago Press 1978) 25-27. For more information about his theory of human rights, see Per Bauhn (ed.), *Gewirthian Perspectives on Human Rights* (Routledge 2016).

4. Ibid, 154.



search for other grounds. This is true for other cases as well. For example, the statement “torture of human beings is forbidden” should not be linked to dignity of human being as human being because this statement can be true for animals too.

#### 4.2.2. Actualized Acquired Dignity

Form an Islamic point of view, in addition to the God-given potential dignity, there is another dignity namely the acquired dignity. This type of dignity is associated with those who endeavor to proceed in the path of their human honor and identity and are striving to draw the near the God through piety and purification of the soul. Needless to say, this type of dignity can have different degrees according to endeavor, striving and capacity of a related individual. The clearest and most related argument as regards acquired dignity can be found in Āyah 13 of Sūrah Al-Hujarāt (The Chambers) in which Allāh states: “O, mankind! Verily, we created you all from male and female [Adam and Eve] and appointed for you tribes and nations to be known to each other [by specified characteristics]. Verily, in Allāh’s Sight the most honorable of you is the most pious of you; and Allāh is the Informed Owner of Knowledge”.

Differences between the granted potential dignity and actual acquired dignity can be listed as follows: 1) The granted dignity is non-voluntary (God-given without the interference of human being) but the acquired dignity is voluntary and volitional; 2) The granted dignity includes all human beings while acquired dignity belongs to certain persons; 3) The granted dignity is a potential one which becomes actual through acquirement and, as a consequence, becomes valuable; and 4) Consistency and permanence of the granted dignity depends on the consistency and permanence of human identity. What is called the inherent dignity of human being in the UDHR, is a dignity without a Divine origin the spirit governing which is that human beings, merely due to being human beings, have rights regardless of grounds such as sex, nationality, religion, ethnicity and any other external grounds and these ground should not impede their enjoyment of human rights and hinder their self-esteem and dignity. The Assumption on which this instrument is based is that the said rights are justified and recognized according to inherent human dignity and, therefore, they are universal and perpetual and binding for all states, cultures and nations. In such a human rights system, as Sharīfī Tarāzkūhī remarks, for the reason that being human cannot be denied, removed or revoked, human rights are inalienable as well and even the cruellest persons are yet human beings.<sup>1</sup>

Such understandings about human dignity has been harshly criticized by Muslim thinkers. What is that inherent human dignity which is the origin of rights for human being and distinguishes it from horses, cows, pigeons etc.? This is the point in which a manifest paradox between the basis of UDHR on one side and the assessment of human being in the western philosophy on the other side is revealed manifest. Motahharī is surprised why such rights proclaimed in UDHR are linked to inherent dignity of human being while the westerns have moved exactly against the dignity and honor of human beings. He writes that in the western philosophy, the inherent dignity of human being is hindered and his/her status is underestimated as far as possible... It was necessary for the West to first revise its interpretation of human being.... UDHR should had been issued by the one who understands human being to be higher than a

1. Hossein Sharīfī Tarāzkūhī, *Human Rights, (Theories and Practices)* (University of Tehran Publication 2011), 73-74. [In Persian]



mechanical materialistic composition and does not consider his/her incentives and instigators to be limited to personal and sexual affairs.<sup>1</sup> Here is the place in which one cannot make a link between anthropology in western philosophies and inherent human dignity.

### 4.3. The God-Given Talents

One should take into account the God-given talents and abilities when is discussing “the origin of rights”. Looking at human being from this perspective, we understand that the existence of any talent in human being –regardless of any other fact- would be the origin of a related right. Enjoyment of human being from a power in his/her very being and nature would provide him/her with rights and the Creation system has bestowed him/her with rights at the same time the talents are granted to him/her. Thusly, natural and Fitrah-related rights are the result of the Creation system role in leading human beings toward the perfections in which their talents are laid. Any natural talent is the basis of a natural right and is considered to be a natural evidence for it.<sup>2</sup> For example, if human being has the talent to use other creatures, he/she has right over them and if he/she can learn, he/she has a right to education. Women, taking into account their special body, can become mothers and this talent and capability provides them with a right to become mothers and, as a consequence, no one can deprive them to become mothers. In the same vein, if a creature can fly, it should not be deprived of it. According to what was said, all creatures including human beings are equipped with potential capabilities that the Creation system has bestowed them. Since these abilities are in the very essence of human beings, they can be call “natural law” in this is according to this natural law that one can infer natural rights. As a general rule, it can be argued that the level of rights and advantages of human beings is as high as the level of their talents and abilities.

The answer to this question should be taken into account that whether the talents of human being create rights potentially or actually? In other words, whether the established talent automatically and without further measures makes the talented person a right-holder or the actuality of the right is dependent upon the actuality of the talent by the person concerned? It appears that the meaning of this part of Āyah 61 of Sūrah Hūd (Hūd, the Prophet) which states “... Allāh is the One Who produced you from the earth and Who let you settle down on it...” is that God is asking human being to improve the earth. Strictly speaking, mere being produced from earth does not suffice to be the right-holder and you need to act and improve the earth to make the right-holderness practical and actual. It is noteworthy that one can infer an actual right from the potential talents of human being; that is the right to planning for flourishing of talents and eliminating and precluding the obstacles in this regard. This right is one of the fundamental human rights which, unfortunately, has often been neglected.

Extraordinary physical and spiritual talents which are restricted to human being require appropriate environment to be flourished and actualized. In the absence of such an environment and the related conditions, on most occasions, the endeavors and perseverance of human beings would be fruitless. Taking into consideration this fact, the 1979 Constitution of Islamic Republic of Iran (as amended of 28 July 1989) has obliged the government of Islamic Republic of Iran

1. Motahhari (no 28), 139.

2. Morteza Motahhari, Martyr Motahhari's Collection of Works, Vol. 19 (Women Rights System in Islam) (Sadrā 1990), 148 [in Persian]



to employ all resources to realize “the creation of a favorable environment for the growth of moral virtues based on faith and piety and the struggle against all forms of vice and corruption” (Art. 3, para. 1) and “the abolition of all forms of undesirable discrimination and the provision of equitable opportunities for all, in both the material and intellectual spheres” (Art. 3, para. 1). Sadly, such a right is not recognized in UDHR. In non-Islamic schools of thought, the nature is the origin of the rights in itself, while in Islamic one the origin of rights should be found in God-given natural talents. Accordingly, both in religious and secular approaches, human rights are originated from the nature of natural rights; rights that are stemmed from natural rules in the Universe that are unchangeable and universal.<sup>1</sup>

#### **4.4. The Human Being: A Combination of Weakness and Strength**

In Islamic anthropology, the human being is introduced as what he/she is. There is no place for going to extremes toward human being in this culture and his/her weaknesses and strengths are cautioned at the same time in order to prevent him/her to be arrogant. Qurān has regarded human being as deserving the highest degrees in some cases and the worst blames in others. It seems to be necessary to review these Āyahs briefly for a better understanding of human being.

##### **4.4.1. Strength of Human Being**

Those Āyahs existing in Qurān relating to the position of human being have depicted the highest status for him/her and have considered him/her to be the symbol of God on the earth. From an Islamic point of view, the humanity of human being is not defined by his/her ability to speak, his/her physical healthy etc. the goal of God in creating human beings is that they reach perfection through their voluntary activities and they are equipped with necessary tools for achieving this goal. In this regard, it is remarked in Āyah 4, Sūrah At-Tīn of Qurān: “That indeed We created man in perfect balance [spiritual, mental and physical]. According to Qurān, human being is a combination of material nature and spiritual Fitrah. The seventh and eighth Āyahs of Sūrah As-Sajdah (The Prostration) state respectively: “Allāh is the One Who gives the best perfection to all that He created: He first created Adam from clay”; “[At the second stage] He declared the progeny of Adam be created from a small drop of a fluid of light value”. Divine Fitrah and human dignity have provided human being with such an ability to become the Divine Governor (Khalīfah) (Āyah 30, Sūrah Al-Baqarah). Human beings have conscience in their natural state and, in accordance with Qurān, this advantage is of a Divine origin and is a gift from God thereby all human being can distinguish between right and wrong: “And by the Soul and the One Who created it and gave order and perfection to it”; “And inspired to it both its wrong and its right” (Sūrah Ash-Shams (The Sun), Āyahs 7-8). Human being is independent and autonomous and can choose good or bad: “...and in order to try him We granted him the faculties of hearing and sight”; “Then We showed him the Straight Path: Whether he chooses to be grateful or be ingratitude and disbeliever” (Sūrah Al-Insān (Human Being), Āyahs 2-3). God has subjected everything in the heavens and on the earth for human being: “And Allāh has subjected for you whatever is in the heavens and on the earth...” (Sūrah Al-Jāthiyah (Bowing the Knee), Āyah 13). This is for this reason that human being has the right to enjoy all of these in a legitimate way.

1. Mohammad Javād Jāvīd, Mostafā Shafi'zādeh and Mojtabā Shafi'zādeh, ‘The Essence of Human Rights in Natural Law and Islamic Law Theories’, (2012), 1 Legal Thoughts Review, 108. [in Persian]



#### 4.4.2. Weaknesses of Human Being

Human being is such an amazing creature that can reach the highest part of the paradise or fall in the lowest part of the hell. The advantage of Islamic anthropology is the consideration of weaknesses and strengths of human being simultaneously. Qurān introduces human being as higher than heavens and the earth and even the angels on some occasions and as lower than cattle on others. Here, some of the weak point of human being would be mentioned. According to Qurān, human being is created weak (Sūrah An-Nissā' (The Women), Āyah 28). All human beings confirm the existence weakness when they face difficulties and calamities in their lives. By a pathological approach, Qurān cautions all human beings that they have been given only a little of the knowledge (Sūrah Al-Isrā', Āyah 85). Scientists face more unknowns when they proceed in their scientific researches. Now, one of the foundations of western human rights namely the scientific rationalism can be assessed from an Islamic point of view. Based on the mentioned foundation, we should believe in human being's ability to understand the Universe and him/herself, while if he/she can get rid out of this double ignorance and find out that he/she is not such able to understand all unknowns by relying merely on his/her reason, would not put him/herself in the place of God. Considering individualism as the leading philosophy of many areas including human rights as the consequence of scientific rationalism, we can well understand our wrongs and lacks.

Among other weaknesses of human beings that are mentioned in Qurān, to name a few, are cruelty (Sūrah Al-Ahzāb (The Parties), Āyah 72), becoming arrogant as soon as he/she feels free from need (Sūrah Al-Alaq (The Blood-Clot), Āyahs 6-7), being greedy, impatient, fretful, miser etc. (Sūrah Al-Ma'ārīj (The Ways of Ascent), Āyahs 19-21), being hasty and ungrateful (Sūrah Al-Isrā', Āyahs 11 & 67). To sum, it can be said that human being is a combination of reason, conscience, wills and instincts. In many cases, instead of playing role by the reason, these are wills and instincts that lead human being. Autocracy, selfishness, hedonism and lust disable the reason and conscience of human being. The reason is affected by customs, education system, economic conditions, different life styles, time and place requirements. These are such conditions that shape our reason and conscience and, as a consequence, it is possible that worst thing be familiarized.



## Conclusion

By reflecting on the epistemological, cosmological and anthropological foundations of human rights in Islamic thought we can reach a realistic view relating to human being and his/her identity thereby justify human rights. A fundamental difference between the religious viewpoint and the secular one is employing the key term Fitrah besides the nature. Using such a term implies putting emphasis on the metaphysical element in human being which, in addition to the natural element, plays a significant role in making human being as a right-holder. Being content with the materialistic nature of human being, non-religious cultures have paid attention to non-perfect part of human being in searching for the origin of rights. However, any attempt to bridging the gap between natural rights and those rights originated from Fitrah is worthy to appreciate.

Divine rights include two collections of rights: statutory rights that are recognized for human beings in the Book and Sunnah and those rights that are originated from Fitrah and nature. Contrary to what some say, in an Islamic point of view, there is no contrast between Divine rights and those originated from Fitrah. Using reason and the revelation, legal school of Islam is one of the most reliable and reasonable sources for clarifying Fitrah and natural rights. Basing human rights on dignity is logical when correlation between human being and dignity is referred to correlation between humanity and dignity. That being the case, potentiality of humanity leads to potentiality of dignity and the actuality of the former results in the actuality of the latter.

All of the results of secular human rights are not necessarily in contradiction with Islamic views and there are cases in which, despite difference in foundations, similar results can be seen. It is due to this fact that, most of the articles of UHRD can be confirmed by Muslims.



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