Universality and Relativism in Islam and Human Rights:
Analytical Critique of Religious Intellectuals

Taha Mousavi Mirkalaei & Savalan Mohammadzadeh

Department of Public Law and International Law, Faculty of Judicial Law, University of Judicial Sciences and Administrative Services, Tehran, Iran.

A R T I C L E   I N F O

A B S T R A C T

The present article includes a comparative study of the Islamic and Western approaches to human rights, and the general orientation of this review concentrates on the Universality and Relativism of human rights. The Western approach claims the universality of these rights and believes they are ultra-spot and timeless, despite the diversity of cultures, ethnicity and religions. Thus, it supposes its innovative human rights are extensible elsewhere in the world. The Islamic approach, emphasizing Human Nature as a common unity of all humans, also believes in universal ultra-spot and timeless human rights. However, it essentially and fundamentally disagrees with the western approach. Meanwhile, religious intellectualism accepts the universality of western human rights despite relying on the philosophical foundations of relativism. The present article analyses the existing duality in the positions of intellectualism due to the current dialectic between Islam and western human rights law.

Introduction

Western[1] Human Rights Law is the consequence of a social-political movement that emerged in the 17th century and followed political circumstances after the Renaissance. Although this movement had a great target, as its origin was public fillings and demands, it could not be separated from regional and western

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[1] In the present article it is western human rights law and its manifestations in international human rights law which is criticized vis-a-vis Islam, not human rights as a whole. This is because the author believes that Islam as a comprehensive school of thought contains a set of rules about human rights having different bases and foundations compared with western human rights law. This article discusses these differences partially.

emotions. Even after creation and development, it could not reconsider its regional rational foundations. The most central features of this movement, including the sacred concepts of freedom and equality, have been amongst the most important notions of this movement, despite the lapse of three centuries. However, these concepts did not revise or redefined during this long period. Even serious criticism of post-modernism could not change these central thoughts; because post-modernism did not speak more than criticism and uncertainty. This school of thought constructed a collection of contradictions upon plurality without presenting a new definition or a novel solution for the existing

theoretical problems. Thus, the western doctrine of human rights, emphasizing the universality of these rights and without required tolerance versus opposing views became an instrument in the hands of politicians.

On the other hand, Islam as an efficient school of thought, has led a social-political movement and has developed successful struggles in recent history without any similar competitors. Faith and religious struggles in the current era can be considered an evolution of national and anti-colonial struggles. In the process of the aforementioned evolution and as a result of bad faith from some national leaders, many people have paid attention to the role of religion and belief in policymaking. In this context, presenting Islam's dynamic and attractive face has caused an Islamic awakening. On the other hand, Islam has always faced imposed political and social crises as a school of thought with a universal human rights approach. This fact has encouraged Islamic states to adopt a position in the human rights area, which is the tendency to cultural relativism. Therefore, despite the Islamic approach supporting the universality of human rights, the practice of Islamic states follows the relativism of human rights. In the confrontation between the approach and practice, the essential question is whether human rights rules and Islamic rules, which both attempt to protect humanity and its welfare and advocate the universality of human rights, are compatible(?) Is there any interaction between them? If there is no compatibility and interaction and if there is no solution other than selecting one of these two legal systems, which of them can be preferable?

One of the Islamic religious approaches, called Religious Intellectualism, faced with such questions, did not tolerate the criticism of religious provisions; but, instead of answering in accordance with Islamic foundations, resorted to some aspects of Human Rights doctrine, such as universality and hybridized them with the philosophical foundations of relativism and pluralism, insofar as rejecting unique *Shari'a*, intermix pluralism and relativism on one hand and religion on the other hand. The result of mentioned hybridization is that religious intellectuals have found some solutions for the present contradiction between Islam and Human Rights law. The present article analyzes this attitude, emphasizing the concepts of universality and relativism in two schools of thought, i.e. Islam and Human Rights law.

Materials and Methods

1. Islam and Human Rights: The Foundation of Confrontation

Either of Islam and Human Rights law is an idea based on special epistemic, philosophical, and anthropological tenets. Therefore, any confrontation between Islam and Human Rights law is influenced by ideological controversies. This important issue leads to the beginning of the article to a brief overview of these two schools of thought. Religious intellectuals typically do not consider this issue in their evaluation of Islam and Human Rights law.

In the philosophical literature, a school of thought is a collection of epistemology, worldview (cosmology), and ideology. Worldview is a kind of removal, interpretation and analysis that someone has about existence, the world, mankind (human), society, and history. On the other hand, ideology is a collection of practical obligations (what should be done) and non-obligations (what should not be done) and consists of a series of rules for life. In accordance with these definitions, ideology is practical knowledge, and worldview is a theoretical one. (Motahari, 2000, pp 73-74) In other words, theoretical knowledge (worldview) is the interpretation of life so that it exists, and practical knowledge (ideology) is finding the policy of life so that it should be. Any kind of practical knowledge is based on theoretical knowledge. Therefore, the plurality of ideologies has a real origin in disputes of worldviews, and correspondingly, the difference between worldviews is due to the diversity of epistemologies. (Motahari, 1980, pp 66-68)

In accordance with Mark E. Koltko-Rivera, "A worldview is a way of describing the universe and the life within it, both in terms of what is and what ought to be. A given worldview is a set of beliefs that includes limiting statements and assumptions regarding what exists and what does not exist. A worldview defines what can be known or done in the world and how it can be known and done". (Penn & Malik,2010, p 666) In this definition of worldview, the concept of ideology is considered and included.

In other words, the distinction between these two concepts is ignored, while the ideology is based on worldview.

The worldview or cosmology and hence, the school of thought has three kinds, which arise from three sources, i.e. science, philosophy, and religion. The first kind of worldview is the scientific worldview, which is based on hypothesis and test. This kind is partial cognition and not total cognition. According to the scientific point of view, the faces of the world change every day; because this viewpoint is not based on self-evident principles of wisdom and may lead to "I do not know". As a result, the scientific worldview is not a reliable foundation for epistemology and belief. The second kind of worldview is the philosophical worldview, which does not have the accuracy of the scientific worldview, although because of reliance on self-evident principles of wisdom, it has a dogmatic and real attitude. Unlike the scientific worldview, the philosophical worldview does not have any limitations to pursuing causes and effects. The third kind is the religious worldview, which is not alongside the philosophical worldview. In this respect, it should be noted that if any general comment about existence, world, and mankind (human) is considered as a philosophical worldview, the religious worldview also would be a form of philosophical worldview; but if we take into account the origin of epistemology, the religious cosmology would be different from the philosophical one. (Motahari, 1980, p 68)

Accordingly, the Islamic worldview is both a religious and a philosophical worldview. However, the Human Rights worldview is only a philosophical worldview, although, in some issues, it has the characteristics of scientific worldviews. For this reason, the Islamic viewpoint, as well as the western viewpoint about human rights law, is different. In other words, the present disagreement between Islam and Human Rights law is a disagreement between two ideologies.

The reality that human rights law is a kind of ideology has some advocates in human rights doctrine. It is suggested by Kabasakal Arat that a full-fledged ideology would have at least four components: Diagnosis (what is wrong); Prognosis (what ought to be or the goals); Rationale (justification of the need for change and the proposed

change; i.e. how the accomplishment of goals is thought to bring about a better and more desirable state of affairs); and Strategy (how to transform the society). (Kabasakal Arat, 2008, p 908) She correctly pointed out that human rights have some express or implied references to many ideologies. Analyzers have typically considered these references as human rights attitudes of Marxism, Liberalism, etc. It seems that the international community has achieved a historical phase after the Second World War era, which authorizes an independent and different human rights ideology, although the intellectual contribution of previous ideologies in shaping that ideology is undeniable.

The textual sources of this Human Rights Ideology are many documents issued with the purpose of devising states' obligations. However, three documents—the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR)—commonly referred to as the International Bill of Rights (IBR), constitute the foundation. The International Bill of Rights is not based on any particular philosophy; however, it offers a Human Rights ideology, not only because it has been a mobilizing force but also because the preambles and provisions of these documents embody the essential components of ideologies outlined above. They start with the assessment that human beings have been subject to repression, indignity, and discrimination, and such practices are wrong (diagnosis). They demand respect and dignity for all human beings, without discrimination, and hold states accountable for their conduct toward their inhabitants and responsible for the protection of human rights within their borders and beyond (prognosis). The change is viewed as gradual and possible through international cooperation as well as the monitoring of states and individuals (partial Strategy). Human freedom and equality in dignity are considered valuable rights not only for their own sake but also for supporting and achieving brotherhood and peace (rationale). The first line of the Preamble of the Universal Declaration of Human Rights affirms this assertion. (Kabasakal Arat, 2008, pp 913-914)

As a result, internationally recognized human rights law is a kind of ideology and is based on a kind of

worldview. Thus, it may be criticized by other schools of thought, and it does not have intrinsic priority over them. One of the most fundamental differences between human rights ideology and Islamic ideology is that the human rights worldview only correspondent with individualism and does not accept socialism. However, the Islamic worldview recognizes individuals as equal to society. Society has power beyond individuals' power, but this does not mean that individuals are compelled. (Motahari,1980, pp 56-57)

In Human Rights law, with an emphasis on individualism, the human re-acquired his dignity, honour, and respect as targeted. (Motahari,2000, pp 12-14) Accordingly, the internationally recognized human rights law has been created in accordance with individualism and based on western ideological structure. It largely has roots in western culture and opinion. However, western states seek to extend western created ideology to other regions of the world and adopt the universality of human rights law. This reality has induced non-western states, including the Islamic states, to pursue the relativism of human rights law and to consider international human rights law in contradiction with their own cultural and intellectual values. Thus, each of the universality and relativism of human rights is based on a special epistemic hypothesis and on a kind of epistemology, cosmology, and ideology.

1.1. Universality and Relativism of Human Rights in Comparision with Islam and Human Rights

The universality of human rights law is based on the appreciation that human rights must be similar anywhere in the world and under any culture because of their unique nature. The foundation of universality, whether in natural law or in religions and also in current international law, has been human dignity. On the other hand, the relativism of human rights is based on the appreciation that reality is relative and depends on time and place. The present fact in the current world, which represents different religions, cultures, and ethnicity, has absorbed relativism and induced cultural relativism of human rights. Generally, the tendency to relativism in the post-modern world arises from the fact that philosophical

mentality in this era did not tolerate a single axis and preferred multiplicity upon unification.[2]

The idea of human rights consists of two parts: the premise or claim that every human being is sacred (inviolable); and the further claim that because every human being is sacred, certain things ought not to be done to any human being and certain other things ought to be done for every human being. The relativism of human rights challenges both of these parts. One fundamental challenge addresses the first part of this idea and contests the claim that every human being is sacred. As after the death of God in Nietzsche Doctrine and after metaphysics has collapsed in Hagerman's doctrine, the sacredness of human beings cannot be predicated plausibly. According to another fundamental challenge, which addresses the second part of the idea, whether every human being is sacred, there is nothing to be done for any human being. In that sense, no such right—no such "ought" or "ought not"—is truly universal. (Perry,1997, p 462) In other words, there is no absolute value in the relativism approach, and the values are subject to circumstances and special places or times.

The dominant appreciation of the universality of human rights explains absolutism. It means that human rights do not allocate to a particular culture, society, country, or period of time and, therefore, are not constrained. According to this theory, it is not true that universal standards of human rights belong to a special culture. These standards are the legal translation of moral values in the light of which all human cultures can grow. The assertion that these norms allocate to a special culture is disrespectful to other cultures on the one hand and is granting double credit and honour to that special culture on the other hand. (Ghari Sayed Fatemi, 2009, p 171) According to this interpretation, there are human rights at a

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[2] In premodern universalism the principles of reason were thought to be rooted in a holistic ontology bringing together men, nature, and the entire cosmos. In modern philosophy, on the contrary, universalism has been located in the mental processes of subjectivity which are common to all individuals. Regardless of these differences, postmodernism has frontally challenged the very assumption of a universal reason. Postmodern thinkers claim that the belief in the existence of principles which every human should accept for the very and evident fact of their rationality, allegedly embedded in the human mind as well, is simply an illusion (Dellavalle,2010, p. 773)

global scale which are valid and binding for all states. Therefore, universality means global applicability and validity. (Donnelly, 2007, p 282)

However, cultural relativism is essentially an anthropological and sociological concept which has been propounded without the necessary attention to philosophical and moral relativism. According to this theory, cultures, which represent a widespread and different collection of priorities, moral principles and evaluations by human rights principles, are not self-evident and acceptable at any time and place. (Shestack, 1998, p 232) This attitude implies that the values are proportional to the society in which the individual has trained, and thus, they allocate to special time and place. Therefore, there is no universal definition of human rights, and every state entitles to present a special interpretation of human rights norms, taking into account its own cultural characteristics. (Javid, 2007, p 81) As a result, cultural, religious and ethnic requirements are variables which have a central role in the determination of human rights.

There are two widespread attitudes which have the potential to render any futile attempt to reconcile human rights standards with religious traditions. The first attitude rejects human rights as an alien concept that is basically hostile to one's own traditional culture. The second attitude uncritically embraces human rights as an exclusive achievement of one's own culture. Interestingly, both attitudes have occurred in the west, for instance, in the Christian churches. (Bielefeldt, 1997, p 601) Despite universal human rights attitudes and norms, some elements, such as the dispersion of human beings in different regions and also the appearance of different and even contradicting nations, cultures, religions, and civilizations, provide the tendency to reject an understanding of these universal rights as a common human ideal. (Hashemi,2005, p 161-162) Hence, because of the codification of human rights instruments without the active participation of developing states and Islamic states, and as a result of centralizing its discourse in the west, there has been a kind of contradiction between some articles of these instruments and the value systems of these states. This issue became a great obstacle to the development and enforcement of international human rights law and activated Islamic states to the

codification of the Islamic declaration of human rights. (Mirmousavi & Haghighat, 2009, p 89)

Generally, the appearance and emersion of relativism in human rights literature arising from rich schools of thought and approaches indicate that the western approach to human rights is not the sole approach in this respect.

The Islamic approach to human rights is one of the different approaches, which according to the Islamic worldview, considers a universal approach. The invitation of Islam, since its beginning, has not been allocated to a special nation or race. There are some verses in the holy Quran which have been revealed in Mecca (during the early prophetic mission), but they have universal aspects. For instance, 81(27) states: "It is nothing but a reminder to all creation,"; or 34(28) says: "We have sent you solely as a bringer of good tidings and a warner to all mankind; …" or 7(158) states: "Say: O people! Surely I am the apostle of Allah to you all …". The ratification of Islamic provisions has not been separated from the philosophical cosmology of Islam. Belief in that cosmology leads to the possibility of enacting constant, permanent, and universal provisions. In order to achieve such provisions, some features have been considered in their enactment. One of these features is that the Islamic provisions are not based on the formation of life, which depends on the promotion of human knowledge but are related to the content and purpose of life, and the best way must be passed by humans to achieve that purpose.

1.2. The Difference in Human Rights Provisions between Islamic Law and International Human Rights Law

Human rights issues and principles in the Islamic worldview are distinguished from other provisions for two reasons: First, many human rights provisions are rooted in philosophy, and thus, they are beyond "oughts" and relate to "beings". In other words, "human rights is philosophy, not law. It should be acknowledged by philosophers, not ratified by the representatives of nations". (Motahari,2002, pp 125-126) Second, human rights provisions are among the priority rules, which are referred to as "Principles" in Law and the Islamic Jurisprudence are named "Juristic Rules". The ratification and signature of human rights do not mean that its provisions are

among positive laws and rise from the social contract. (Amid Zanjani,2009, p 44) "Enactment and ratification cannot change the substance of justice and human rights; Natural law cannot be confirmed or rejected by ratifying positive law". (Motahari,2002, pp 124-127) However, the situation is different in the Human Rights worldview: In this attitude, human rights do not take their validity from reality or nature, but human rights originate from the social contract and are based on voluntarism. In other words, the content of human rights is determined by human agreement in society. It necessitates that every society can lay down special human rights according to voluntary and human agreements. This attitude finally leads to relativism; however, it is interesting that the Human Rights worldview adopts the universal approach to human rights. It is also interesting that according to the western approach, what has been created as human rights in Western societies according to agreement and contract, must be considered valid for other societies, too.

Moreover, it should be noted that in the Islamic worldview, some issues, which are acknowledged in the international list of human rights, are not among rights but are among duties and obligations. Moreover, there are some rights in the mentioned list that are neither considered rights nor duties but are among the philosophical realities. (Amid Zanjani,2009, p 53) The best instances of these rights are freedom, equality, human dignity, and the right to life. These instances are not rights as a privilege that is alienable or disclaimable. (Jafari,2009, p 238) In other words, "the right is a title awarded to acts, such as thought, expression, function, etc.; but freedom, equality, and their analogy are prior and antecedent to the right". (Motahari,2007, pp 78-79) However, in the Human Rights worldview, realities and truths, such as liberty and human dignity, are inexistency, which are created by virtue of the voluntary agreement, not as facts which are discovered.

The other feature of the Islamic worldview is the fact that Islam has two kinds of connection with human rights: The direct connection between Islam and human rights is that Islam has a series of human rights provisions about the right to life, human dignity, freedom together with responsibility, right to education and training, right to equality before the law, etc.; The indirect connection between Islam and human rights is through morality. Islam recommends

human trusteeship, chastity, justice, elimination of murder, insult, etc. These recommendations indirectly reinforce the first series of (human rights) provisions. Nevertheless, in the Human Rights worldview, there is no indirect connection between morality and human rights, and mainly human rights is a rule-based entity.

2. Theoretical foundations of religious Intellectualism for adjudications between Islam and human rights

In the recent century there is an evident ideological movement in Islamic states, which is called "religious intellectualism" and focuses on presenting new interpretations of Islam. This movement has some characteristics: First, scholars of this movement do not necessarily observe expertise in commenting on religious issues. However, if they consider their expertise, they will comment on all aspects of religion while they are capable only in one aspect; Second, correlation and coordination with social movements, whether being affected by these movements or affecting them. This position sometimes transforms the movement into a social-political one, and thus, it can be supported by the masses. However, for a long time, this feature may separate the movement from its origin and form an ideological movement, which requires reliance on expert opinion; Third, the mixture of religious and non-religious concepts in a way that ignores the partition between religious and non-religious schools of thought and sometimes hybridizes the elements of western thought with Islam. This leads to a type of hybridization in the ideological foundations of the movement. Generally, religious intellectuals try to challenge the Islamic rules and provisions to demonstrate the priority of international human rights provisions over them, relying upon the below two assumptions.

2-1. Limitations of human rationality in the *Ijtihad* process

As mentioned before, in the Human Rights attitude, human voluntary has a special position. There is no doubt that human reason is an essential element of human voluntary and thus, there is no limitation for human rationality in the west. Accordingly, in religious intellectuals' viewpoint "the most important

epistemological, theological, and anthropological foundations of historical Islam are the limits of human rationality, which the consequence of such a principle is the exclusive knowledge of justice and injustice in religion's expressions. The second principle is based on the reason for restriction as well as the inability to legislate for life. However, it should be noted that the power of wisdom today is as much that can be an indication for revising in religious order". (Kadivar,2008, pp 120-121) According to this attitude "*Sharia* is not the whole of Islam, but rather the early Muslim's understanding of the sources of Islam". (Arzt,1990,p218) Religious intellectuals insist on the ability of evaluator human reason and rationality in assessment of interests and corruption and justice criteria. (Rahimi Nejad,2008, p 51)

In order to criticize the religious intellectuals' viewpoint, it is necessary to mention a brief history of Islamic jurisprudential factions. *Adlyeh* and *Ashaereh* were two Islamic factions which were in conflict with each other. *Adlyeh* believed that God's command was the follower of goodness and obscenity or the real right and wrong. *Ashaereh* denied rational goodness and obscenity and believed that goodness and obscenity were the followers of God's command. This contradiction has an important practical effect, which is the intervention of reason and science in the elicitation of Islamic rules and provisions. According to the first attitude, the reason must be recognized as a guideline in cases where it can realize right and wrong. However, according to the second attitude, the reason never is considered as a guideline and Islamic rules as well as provisions do not have a spirit, but the form and evidence of the rules and provisions have originality. Thus, *Adlyeh* scholars have determined four sources for religion: The Book (*Quran*), tradition (*Sunnat*), consensus (*Ijmaa*), and reason (*Aghl*). However, other factions, including *Asshaereh* have not considered reason (*Aghl*) as a source of religion and believe that pure obedience is governing. (Motahari, 2002, p 51) In this respect, the martyred philosopher, Mortaza Motahari, states:

"Denying the justice principle prevented the Islamic social philosophy from being based on rationality. Consequently, some jurisprudence (*Fiqh*) appeared which were not proportionate with other principles of Islam and were without social philosophy. If the freedom of thought remained, the priority of others over *Adlyeh* was not happening, and *Shi'a* was not in disaster by *Akhbaryoun*[3]. Now, jurisprudence has a codified social philosophy based on it and does not have some of the present conflicts. The social justice principle, which has been frequently emphasized in the holy *Quran*, has been neglected in jurisprudence, and a principle or a general rule has not been inferred from this principle. This position has caused the depression of social thought in the jurisprudence". (Motahari, 2002, p 97)

It means that the reason must have a more serious role in the Islamic legislation structure. Furthermore, according to *Adlyeh* attitude, in which *Shi'a* is the follower of this faction, Islam has a series of principles and foundations and legislates its rules on that base. Thus, the *Shi'a* viewpoint never accepts the limitation of human reason, and in this attitude—since religion's statements stipulated in the Book and tradition are general and limited, and the forms of actions and new events are infinite and unlimited—there is no way unless reasoning and commenting in order to obtain rules and their details. Therefore, the meaning of *Ijtihad* (elicitation) is to obtain religious rule from religious statements or texts through reasoning". Sadr,1970, pp 200-201). Despite the fundamental role of reasoning in *Ijtihad*, in *Shi'a* jurisprudence, innovation vote (deduction, justice survey, orbital interests, and personally vote)[4] is not valid because, firstly, there is no uncanonized rule in Islam, and secondly, this kind of innovation has high errors in the deduction of religious rules and provisions. (Motahari, 2003, pp 151-152) Thus, in the analysis of *Shi'a* scholars, it is difficult to accept that "the credibility of rational rules is not due to their obviousness or naturality, but is owing to an indication to religious rule". (Katoozyan,2001, pp 50-54) The existence of a series of legal principles and foundations leads to the independence of rational rules from religious rules, since the credibility of

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[3] Some *Ash'arites* and *Ahle Hadith* say that only the Prophet and his companions and followers were able to understand the *Qur'an* and *Akhbaryun* also know it for the Prophet and the Imams. However, most commentators believe that understanding the contents of the *Qur'an* is possible for others too.

[4] "Justice Survey" means finding the closest meaning to right and justice without considering similar cases. "Orbital Interest" means giving priority to one interest versus the other one. "Personal Vote" means although there is a religious text about the issue, but the lawer has the power to withdraw from the text because of some observations.

religious rules itself will be inferred from those principles and foundations (i.e. justice and natural law).

This issue in which religious intellectuals believe that the power of today's reason is as much that can intervene in religious references is not more than the innovation vote that is popular among *Sunni* scholars. This attitude leads to the acceptation of the ratification (*Tasvib*) [5] theory, which contains the relativity of reality and *Ijtihad*, and it has no acceptability in *Shi'a* jurisprudence. The intervention of rationality in inferring of rules does not allocate to *Shi'a* and some *Sunni* factions has gravitated to *Adlyeh* attitude and confirmed the role of reason. *Shafei* and *Hanafi* are factions that emphasize the role of reason.

Therefore, reason from an Islamic point of view distinguishes from reason in the Modern and Post-Modern world. Post-Modernism propounds relativism and Hermeneutics in the critique of modern rationality and, according to its famous narrations, which have been accepted by everyone, are questioned. Post-Modern relativism and skepticism lead to accepting pluralism and the equality of everybody and everything; tolerance of opinions and views causes plurality, and thus, finding extremity and perfectionism would be impossible. (Javid, 2007, p 79) This viewpoint has never been compatible with Islamic philosophy and is opposite to Islamic principles, such as the impossibility of communication of contradictories. The existence of legal principles and foundations (justice and natural law) as a base for Islamic rules and provisions leads to a legal system based on universality, which is not totally and essentially compatible with relativism; although impermanence and relativity are acceptable in its subsidiaries, such as what is under the power of Islamic government or also in raised issues. In such cases, the needs of time are considered.

2-2- Relativity of religious rule according to the needs of the time

In the above, we referred to two general approaches in human rights scope—universality and relativism—and it was found that the Human Rights worldview has a great tendency to universality. In other words, the relativism of human rights has not been accepted by the western approach and has been risen by developing and non-western states and scholars. However, religious intellectuals, in spite of the tendency to that approach and the preference for international human rights foundations over Islamic rules, resort to relativism in their argumentation against Islamic foundations. Obviously, this is a contradiction which has remained unresolved between scholars of religious Intellectualism.

According to religious intellectuals, one of the epistemological and theological foundations for historical Islam is the possibility of codifying permanent and unchangeable rules. Religious intellectuals, in spite of loyalty to the eternal message of divine revelation, believe that in historical Islam, this divine message has been mixed by costumes of the revelation era. In this viewpoint, relying upon the needs of time and place means that religious rule is temporary. On this basis, *ijtihad* means the distinction of rules, which is according to the needs of the time and place of the revelation era from permanent and constant rules. (Kadivar, 2008, p 129) According to this approach, the practice of some Islamic states in respect of changing their national laws for compatibility with international human rights is a desirable practice and concordant with modernization and updating traditional Islamic rules, which is necessary to be followed by other Islamic states. (Arzt,1980, p 230)

There is misleading in the argumentation of religious intellectuals about the impossibility of agreement between Islam and the needs of the time, both in Islam and in the needs of the time sphere. In the Islamic sphere, it is not mentioned to the flexibility of its rules besides their immortality, and in the needs of the time sphere, it is assumed that time has a feature which wears out everything, even the world's truths and facts; whereas what changes in the time is material and its compositions. [6] Moreover, it is not true that every truth and rule in the world is changeable as this issue itself as a rule or truth would be changeable and, thus, would lose its universality

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[5] Followers of *Tasvib* theory (*Mosavebeh*) believed that in the process of *Ijtihad*, whatever being discovered by inferring person (*Mojtahed*) is the religious rule and is necessarily acceptable. There was also another theory named *Takhta'eh* according to which inferring person's findings may be in accordance with religious rule or contrary to it.

[6] Supra Note 20, at Pp. 12-15.

and totality. This idea is one of the suppositions which violate themselves. Therefore, in order to have some general rules governing the changes in the world, it is necessary to be at least one permanent and unchangeable rule, which is the change principle. The existence of such a permanent rule shows that codifying permanent rules beyond time and place is possible.

What is limited to time is the out-of-mind reality, not the correspondence of noetic concept with that reality. The reality and fact, which are narrated by noetic concept, may be temporary or permanent. The particular material facts in the out-of-mind world are temporary since the material and its components are changing permanently. However, there is a kind of permanent, continued, and eternal realities and facts in nature, such as the movement reality, according to which the material is moving, and this movement is continuous and permanent. Thus, the question is if the realities or truths, which means the accordance of noetic concept without of mind reality (either permanent or temporary), are considered temporary or permanent. This accordance can not be temporary since even if the noetic concept demonstrates a variable fact and corresponds to a special time, the conformity of that noetic concept with reality would be permanent and not specific to a special time. For example, if we say "Aristotle had been one of Plato's students at the fourth century B.C.", we point to a variable part of nature but this reality corresponds to the fact permanently. In other words, it will be true in all times that "Aristotle had been one of Plato's students at the fourth century B.C.". Therefore, a noetic concept either has not been true at all, or if it is true and corresponds to a fact, its correspondence will be true permanently. (Motahari,2005, pp 144-145)

The issue that everything is variable is different from the issue of the rules variability. Indeed, any face in the world will not remain, but the rule governing to variation of a face is unchangeable. Islam and *Quran* are such as these rules; they illustrate realities and truths; they are not like faces or bodies which will be worn out.[7] Islam is the way and line, not habitation and halting place; it is not acceptable that if habitations are changed, the way must change, too. There are two essential elements in every regular movement: change of positions, which takes place

continually, and the stability of the way and line. According to the viewpoint of martyred professor Morteza Motahari:

"Variation of life form is not a good reason for changing life spirit. If anything, even the spirit and meaning of life change, and the world does not have a permanent form, there will be no connection between the past and the future, and no rule would exist in the world. In addition to nature, which is the variable part of the world, it has a constant part that is the conservator of the variable part". (Motahari,2004, pp 35-36)

Based on the stability of life path and spirit, the essential and fundamental human rights are not the product of necessities, special social requirements, and circumstances of time and place since these rules—such as the right to life and freedom of thought—are based on natural rights and are considered constant, inseparable and intrinsic. Humans enjoy these rights because of their humanity and human dignity. Such rights are not rooted in legislation or voluntary of governments. (Montazeri,2004, p 15)

Altogether, religious intellectuals using a special interpretation of time requirements and emphasizing the role of rationality, assert that all rules, which are incompatible with Human Rights law, must be changed by that law and, in this respect, recognize no limitation. The issue is that if it continues, it will present an interpretation of Islam which has a different form and substance, a doubtfully acceptable interpretation.

Conclusion

Religious Intellectualism in human rights scope does not have an independent and impartial substance. It relies upon the intellectual word and without a basic and anthropological consideration, believes in the priority of international human rights law upon Islamic law. It is obvious that the preference of international human rights law to Islamic law requires not only to replace the Islamic rules with international human rights law but also the withdrawal of the Islamic worldview, natural law, the Islamic concept of justice, and substantial movement in Islamic philosophy, and teleology of creation. Thus, apart from the word religion, nothing remains from religion according to the interpretation of

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[7] Supra Note 20, at Pp. 123-127.

religious intellectuals unless those parts of religion correspond to the relation of humans and God. According to this point of view, there are neither relations between humans on the base of religious teachings nor relations between humans and the nature of the universe and not even relations between humans and himself/herself. The concept of human rights, according to religious intellectuals, is without the real felicity of humans since it does not consider the evolutionary nature of humans. It is necessary for religious intellectuals to prefer an interpretation of the human concept, to find a human position in the universe, to illustrate natural relation between creatures or components of nature, and then, to comment on law and consider human rights and not criticize Islam without taking positions about the western interpretation of human.

Considering this reality is necessary for religious intellectuals to know that Islam is a collection or a religious system including philosophy, theology, Gnosticism (theosophy), sociology, politics, jurisprudence, and law. Commenting on this collection requires surrounding the collection and systematic structure. Any conclusion in this system requires observing the reflection of every rule on other ones. It is not reasonable that some inexpert groups or even some specialists only in one part of the system construe the rules relying on that part apart from the whole system.

Another theoretical weakness of religious intellectuals is their concentration on disagreements and contradictions between Islam and human rights and, thus, neglecting some unities and interactions between these two legal systems. Some of the agreed points of the two systems include attention to human, human dignity, and human respect, although the interpretations of these concepts have fundamental differences and the differences are so serious that one can say agreed points have been created by chance since there is neither a joint foundation for the agreed points nor any joint conclusion of them is agreed. However, they can show formal interaction.

In such a circumstance, in which there is not more than a formal interaction between Islam and Human Rights, discussing the universality or relativism of human rights would have a special position. By investigating Islamic texts, we can find phrases such as "Oh all the people" or "Godly nature (*Fetratollah*)", which are expressed repeatedly in the holy *Quran* and other Islamic texts. Accordingly, Islam, like other provisions of this religion, must be considered universal provisions. However, the stand of Islamic states, which is arising from international political expediencies and is the outcome of the fact that they did not have an effective role in the codification of international human rights law, has followed a different path. Indeed, in order to prevent the imposition of rules against Islamic norms, these states have no choice but being coordinate with the relativism of human rights relying on the value of cultures and ethnicities in the codification of human rights norms. However, the purpose of the relativism of human rights in the viewpoint of Islamic states is the relativity of rights, which have been partially mixed with the western culture and history of thought and have lost the potential of universality because of being inspired by features of a special culture. There is no obstacle that some parts of international human rights law, which have not been inspired by the western culture and are based on human nature (*Fetrat*), are accepted as universal principles and rules and have become a base for international cooperation.

CONFLICT OF INTEREST

The author (s) declares that there is no conflict of interest regarding the publication of this manuscript. In addition, the ethical issues, including plagiarism, informed consent, misconduct, data fabrication and/or falsification, double publication and/or submission, and redundancy, have been completely observed by the authors.

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