

Human Rights in Islamic Law

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Summary

Human rights in Islamic law is a subject that is emphasized a lot today. There are many different opinions on this subject. This article focuses on the definition of human rights in Islamic law, its history, types and comparison with today's human rights. In particular, the Farewell Sermon, which can be called the first declaration of human rights in history, has been discussed.

Keywords: Islamic law, human rights, Farewell Sermon, fiqh, Islamic law

Introduction

Human rights have been one of the most debated and increasingly significant topics of the last century, and this importance continues into the new century. It is possible to discuss human rights wherever there are human beings. Therefore, every subject can be related to human rights in some way and can be encompassed within the concept of human rights.

A. Concept of Human Rights and Freedoms

Rights are defined as benefits recognized by the law. Freedom, in Western law, is the ability to do things that do not harm others. In Islamic law, freedom is the ability to do things that do not harm oneself or others, as a person does not truly own their own body. The material and spiritual existence of a person is given to them as a trust by Allah. Therefore, committing suicide or harming one's own bodily integrity in any way is forbidden (haram) in Islam.

Although the concepts of rights and freedoms are often used interchangeably and share similar meanings, there are significant differences between them. For example, freedom is an inherent

value given by Allah from birth, while rights are the freedoms recognized by the legal system. Thus, the freedoms granted in the laws of states are considered as rights.

In Islam, the concept of human rights is closely linked with the principles of equality and justice. In the recognition of human rights, Muslims and non-Muslims, rich and poor, rulers and subjects are all equal. The principle of equality is the basis for preserving life, property, honor, intellect, and religion among people. In an Islamic country, everyone's lives, property, honor, religion, and intellect are protected. The principle of justice is applied with consideration to competence and suitability. When assigning people to tasks, justice is considered, and responsibilities are given to those who are deserving. The Qur'an commands that trusts should be given to those who are competent, meaning that public officials should be appointed based on justice. (Sura an-Nisa, 38) Similarly, the principle of justice is applied when rewarding people for their labor, and everyone is given their due compensation.

The concepts of rights and freedoms are also connected with the notion of duty. What is considered a right and freedom for us often becomes a duty for others. For example, the rights of a child are duties for parents; the rights of a wife are duties for her husband, and the rights of citizens are duties for the state. For this reason, the famous "raiyat" (subjects) hadith focuses on duties and responsibilities rather than rights.

"All of you are shepherds, and each one is responsible for their flock. The man is the shepherd of his family and is responsible for them. The woman is the shepherd of her household and is responsible for them. The ruler is also a shepherd, and he is responsible for his subjects." (Buhari, Friday Prayer 11, Borrowing and Loaning 20, Judgment 17, 19, Wills 9, Marriage 81, 90, Legal Judgments 1; Muslim, Administration of Trusts 20)

B. History of Human Rights in the West

The concepts of human rights and the rule of law emerged within Western legal systems. Europeans struggled for centuries to move from slavery to the level of human rights we have today. The slogan of the 1789 French Revolution, "liberty, equality, and justice," demonstrates how Western individuals have fought for human rights at all costs.

The development of human rights in the West has been quite challenging. While various declarations on human rights have been accepted in Western countries such as France, England, Germany, and the United States, oppressive regimes that came to power at different times did not hesitate to violate rights and freedoms. The most significant problem the West faced in terms of human rights was accepting rights and freedoms that oppressive regimes could not abolish. Laws prepared by dictators like Hitler, Mussolini, Lenin, and Stalin severely undermined fundamental rights and freedoms. Consequently, the principle of the rule of law was embraced in Germany, and it was emphasized that laws should adhere to principles of equality, justice, and human rights. According to the rule of law, the existence, immutability, and inviolability of fundamental legal principles such as equality, justice, and human rights are essential. Regardless of the ruling government, these principles must be followed.

The Western journey of human rights has different views on the source of fundamental legal principles such as equality, justice, and the rule of law. Some philosophers attempted to ground the source of law on vague concepts like a social contract, but establishing a legal system that would sustain society on such an imaginary foundation proved to be impossible. Materialistic views such as positivism and Marxism do not acknowledge the existence of unchangeable, fixed fundamental legal principles and argue that law is determined by social and economic conditions. The theory that approaches the Islamic concept of law is the natural law theory.

According to the natural law theory, there are immutable and ideal legal rules that every human being strives to attain. Representatives of the natural law theory, like Burlamaqui, argue that the concept of natural law refers to general rules established by Allah for all humans, and people will discover these laws through their intellects. The struggle between the prevailing materialistic aspect and the weak spiritual aspect of Western philosophy does not allow law to be bound by immutable and ideal rules.

C. Universal Declaration of Human Rights

The first human rights document in European history is the Magna Carta dated 1215. With this document, power-sharing took place among Pope III. Innocent, King John, and the barons in England, and some basic rights were granted to ordinary people. Centuries later, in 1774, the independence struggle of the American colonies against England resulted in success, and the Virginia Declaration of Rights was declared in 1776. Subsequently, influenced by the American independence struggle, the French Revolution of 1789 took place, and the Declaration of the Rights of Man and of the Citizen was proclaimed in France.

In 1948, the Universal Declaration of Human Rights by the United Nations was adopted to prevent the repetition of human rights violations that occurred in the last century. Until the Second World War, the acceptance of human rights in Western countries remained limited to within each state's borders. States viewed human rights as their internal affairs and considered them as favors granted to their citizens. The rise to power of regimes that posed a danger to humanity, such as Nazism and Fascism in European countries, the deaths of millions of people during World War II, and the genocide committed against certain nations, such as Jews and Gypsies, made it necessary to consider human rights as a global issue. Therefore, after World War II, the United Nations, established in response, adopted the Universal Declaration of Human Rights in 1948. This declaration contains the human rights and freedoms accepted in almost every country today. It consists of thirty articles that include fundamental rights and freedoms. Turkey ratified the Declaration of Human Rights on April 6, 1949.

D.Human Rights in Islam

The emergence of concepts such as human rights and the rule of law in Islamic countries differs from Western countries. Human rights and the rule of law did not arise as a result of a struggle process in Islamic countries as they did in the West. The principles of liberty, equality, and justice, which are at the core of human rights, have been present as immutable rules in religious texts since the inception of Islam. However, in the West, immutable rules regarding human rights were accepted only with the emergence of constitutions in the 19th century.

In Islam, the fundamental principles and regulations of law have been fixed by the Qur'an and the Sunnah, leaving no room for debate. Any shortcomings in practice were mere deviations from Islamic law rather than deliberate violations of it.

The source of human rights in Islam is divine. Allah created human beings as representatives with the right to intervene in existence and to act justly on earth: "And [mention, O Muhammad], when your Lord said to the angels, 'Indeed, I will make upon the earth a successive authority (a vicegerent, a representative, a caliph).'" (Surah Al-Baqarah, 2:30) To fulfill this duty as Allah's representative on earth, human beings were taught the names of things (knowledge) so they could be equipped with what they needed. Human rights and freedoms are included in these attributes.

The divine origin of human rights means that they cannot be eliminated or changed by human beings. Regardless of the ruling government or the legal system implemented, humans will continue to possess these inherent rights and freedoms. The failure of states or individuals to apply these rights and freedoms does not negate their existence.

The expression of human rights found in the Qur'an and the Sunnah may vary depending on the level of civilization reached by humans. For instance, while Allah created humans as free beings, in the past, people were subjected to slavery. Even Islamic states accepted slavery as a norm of their time, including the Islamic state. However, in modern times, it has become widely understood that slavery is incompatible with human nature, and countries have abolished laws related to slavery.

E.Farewell Sermon (Veda Hutbesi)

The first text related to human rights in world history is the Farewell Sermon. Prophet Muhammad delivered the Farewell Sermon to around a hundred thousand people in Mecca in the year 632 AD. On the other hand, the first human rights document proclaimed in Europe is the Magna Carta, dated 1215 AD. There is a 593-year gap between the Farewell Sermon and the Magna Carta. The Universal Declaration of Human Rights by the United Nations was proclaimed in 1948, 1316 years after the Farewell Sermon.

Human Rights in Islamic Law

In the Farewell Sermon, rights and freedoms that encompass individuals, families, societies, and all of humanity are expressed. The right to life, the right to property, and the right to the protection of family are clearly stated in the Farewell Sermon: “O People! Your lives, your property, and your honor are as sacred as this sacred day, in this sacred month, in this sacred city (referring to Mecca).”

During the Age of Ignorance (Cahiliyyah), women and children were the most vulnerable groups and experienced the most suffering. During that era, women were considered mere objects of entertainment without any value. The pagans used to bury their female infants alive because they considered them a source of shame. In the Farewell Sermon, the rights and freedoms of women, as well as the responsibilities of both women and men, are beautifully regulated:

“O People! I recommend you to be good to women, for they are captives with you; you have no other power over them but that, except if they commit an open illegal sexual intercourse. If they do, then God allows you to displace them in beds and to beat them, but not severely. But if they return to obedience, seek not against them means (of annoyance). You have rights over your women and your women have rights over you. Their rights over you are that you provide food and clothing for them in good faith. As for your rights over them, Allah’s permission to live with them and kindness. You have your rights even as they have their rights over you. Their right is that you should treat them well in the matter of food and clothing.”

The Farewell Sermon encompasses a universal human rights document, addressing all of humanity. According to Islam, all people are equal regardless of religion, language, race, color, or gender. Asserting superiority based on religion, language, race, color, or gender is completely contrary to Islam:

“O People! Your Lord is one and your father (Adam) is one. You are all from Adam, and Adam was created from dust. The Arabs have no superiority over the non-Arabs, nor do the non-Arabs have any superiority over the Arabs. The white has no superiority over the black, nor does the black have any superiority over the white, except in piety. Verily, the noblest among you is the one who is the most pious.”

F.Comparison of Farewell Sermon with the Universal Declaration of Human Rights

Both texts are related to human rights, but they differ in their sources. The Farewell Sermon comes from a divine source and was delivered by Prophet Muhammad, peace be upon him. On the other hand, the Universal Declaration of Human Rights is a human-made document on human rights. After World War II, the United Nations prepared the Universal Declaration of Human Rights by bringing together past experiences and knowledge on human rights.

The rights mentioned in the Farewell Sermon are both legal and religious in nature. In Islamic law, these rights are not only legal rules but also religious rules. Therefore, violating a human right in Islam is both a crime and a sin. For example, inflicting torture on a woman is considered both a crime and a sin. In Western law, human rights violations may be considered crimes, but they are not sins.

In Islam, human rights have been universal from the beginning. In the Farewell Sermon, Prophet Muhammad addresses all people by saying "O People!" Many verses and hadiths start with "O People!" and encompass all of humanity. In the West, human rights emerged within the boundaries of individual countries, but with the Universal Declaration of Human Rights, they became global in scope.

The development of human rights in the Islamic world and Western countries has also been different. In the Islamic world, human rights were established through verses and hadiths during the time of Prophet Muhammad, peace be upon him. The human rights accepted worldwide today were established by Islam fourteen centuries ago. Muslims' task has been to apply the human rights mentioned in the verses and hadiths according to the level of civilization of their time. In the West, however, human rights reached their current state through much more challenging periods.

An important difference between the Farewell Sermon and the Universal Declaration of Human Rights is in their implementation. In the Islamic world, there have been challenges in implementing human rights rather than recognizing them because human rights were accepted with verses and hadiths from the inception of Islam, without the need to proclaim them again through declarations. However, the application of these rights in the Islamic world has not been as problematic as in Western countries. Human beings are bound by the conditions of their time, so Muslims have also used their discretion to conform to the cultural norms of their time. For example, while Islam brought a governance style similar to democracy, during the Umayyad period, a monarchical system was adopted, following the example of other world countries. While there have been some challenges in other rights and freedoms in the Islamic world, they have not been as severe as the crises experienced by Western countries.

In the West, both the acceptance and implementation of human rights have faced challenges. The West lacked fundamental texts like the verses and hadiths present in the Islamic world. In Western countries, people had to struggle to obtain even their most basic rights, such as the right to life and freedom of religion and conscience. It took eight centuries from the Magna Carta of 1215 to reach the current level of human rights in the West.

While justice is emphasized in the Islamic world, the widespread use of the term "human rights" is interesting in the West. This is due to the challenges in implementing human rights in the Islamic world, not in accepting them. Therefore, in Islamic countries, citizens have demanded not human rights but the just implementation of the already existing human rights. For this reason, Islamic scholars wrote political treatises, admonitions, and treatises on justice to guide rulers towards just governance. In the West, on the other hand, people demanded rights and freedoms because of the challenges in accepting them.

The emergence and development of human rights in the Islamic world and the West have been entirely different, but a new era began with European countries directly or indirectly colonizing Islamic countries. From the 19th century onwards, the Western understanding of human rights began to dominate in the Islamic world.

G. Classification of Human Rights

Islamic law aims to protect the following five fundamental aspects: religion, life, intellect, lineage, and property. According to these objectives, we can classify human rights in Islam as follows:

1. Religious Rights and Freedoms

Religions have historically been the source and guardian of human rights and freedoms throughout human history. However, when religions lost their original characteristics and began to deteriorate, they could limit and abolish rights and freedoms. In Islam, as long as it adheres to the fundamental sources such as the Quran and Hadith, it preserves human rights and freedoms.

Islam grants freedom of belief and worship to both Muslims and non-Muslims. Verses such as "There is no compulsion in religion" (Surah al-Baqarah, 256) and "To you, your religion, and to me, mine" (Surah al-Kafirun, 6) and similar hadiths emphasize that there is no compulsion in accepting Islam. Due to this freedom of belief and worship, non-Muslims have been able to live and practice their beliefs in Islamic countries from the early years of Islam to the present day.

According to Islam, while there is no compulsion in accepting a religion, leaving it after acceptance is prohibited. Apostasy, which means leaving the religion, is considered a crime, and the punishment is death. The reason for this is not to restrict religious and conscience freedoms but to protect the Islamic religion, which forms the basis of the state and social order. Since Islam is the fundamental structure on which the state and society rely, apostasy is prohibited to preserve public order. However, in terms of private life, the principle of privacy is valued, and no one is forced to practice their religion.

(Note: The translation provided here is a literal translation of the text. It's important to note that some aspects of the content may be sensitive and require careful consideration of cultural and contextual implications.)

2. Right to Life and Freedoms

After religious beliefs and freedoms, the second most important category of human rights in Islam is the right to life and freedoms. Among these, the most crucial one is the right to life. The right to life is emphasized as one of the most significant rights to be protected in Islamic scriptures, where killing a human being is described as a grave sin and crime. According to Islamic law, the punishment for intentionally killing a person is retribution, i.e., the death penalty:

"O you who have believed, prescribed for you is legal retribution for those murdered." (Surah al-Baqarah, 176); "Do not kill the soul which Allah has made sacred except by right." (Surah al-Isra, 33)

Another aspect of the right to life and freedoms is the preservation of bodily integrity. Just as killing someone is prohibited, causing harm to their bodily integrity is also forbidden:

"We ordained for them a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and retaliation for wounds." (Surah al-Maida, 45)

Islam also regulates wars, where the most violations of rights occur due to the absence of laws and rules during wartime. To prevent such violations, rules and regulations have been set within the framework of the law of war. Accordingly, during wars or non-wartime situations, genocide cannot be committed, and those who flee or are wounded should not be killed. Women, children, religious scholars, and laborers who are not actively involved in the war should not be harmed. Animals and plants should not be damaged. (Konan, 260)

3. Freedom of Thought and Expression

The third element protected by religion and law is intellect. Religion and law address rational human beings. The mentally impaired, senile, children, those asleep, and intoxicated individuals are not considered legally responsible. From this perspective, freedom of thought and expression are fundamental rights based on religion and law.

A significant aspect of freedom of thought and expression is the duty of enjoining what is right and forbidding what is wrong. When a Muslim encounters something wrong, they should prevent it with their hands, tongue, or at least hate it in their heart: "If any one of you sees something evil, let him rectify it with his hand; and if he is unable to do so, then with his tongue; and if he is unable to do even that, then with his heart, and that is the weakest of faith." (Muslim, Faith, 78)

"You are the best nation produced for mankind. You enjoin what is right and forbid what is wrong."

The duty of enjoining what is right and forbidding what is wrong can also be referred to as the right of legitimate opposition. The right of legitimate opposition allows individuals to criticize the actions of people, society, and the government within the framework of the law. The right of legitimate opposition is crucial for the improvement of individuals, society, and the state. If channels for legitimate opposition are blocked in a society or state, people may resort to illegal and unlawful means to express themselves. One of the reasons why people might want to express themselves through illegal means is the restriction or elimination of the right of legitimate opposition.

In the early days of Islam, the duty of enjoining what is right and forbidding what is wrong was faithfully carried out, but with the transformation of the caliphate into a sultanate since the Umayyads, this duty has become significantly compromised. People became afraid of rulers and could not exercise their right of criticism and opposition. However, enjoining what is right and forbidding what is wrong is not only a right but also a duty, a religious obligation for Muslims. The verse "Let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong. And those will be the successful" (Surah Al-i Imran, 104) enjoins this duty as an obligation for Muslims.

4. Family Rights and Freedoms

According to Islamic law, everyone has the right to establish a family, get married, and have children. Individuals constitute the foundation of families, and families form the basis of society. Physically and spiritually healthy individuals, healthy families, and healthy families, in turn, create healthy societies.

"Marry those among you who are single, and the righteous among your male slaves and female slaves. If they should be poor, Allah will enrich them from His bounty." (Surah al-Nur, 32); "Women are your garments, and you are their garments." (Surah al-Baqara, 187) ; "Young people, those of you who can support a family should get married. Marriage protects the eyes and private parts (from sin). Those who can't get married should fast, as fasting reduces sexual desire." (Buhari, Nikah 3; Savm 10; Müslim, Nikah 1.) ; "Marriage is part of my way, and whoever shuns my way is not one of us. Get married, for I will boast of your great numbers before the other nations."(İbn Mace, Nikah 1.)

Children's rights constitute a significant part of family rights. According to Islamic law, a child is born with legal capacity, reaches the age of discretion at seven, and becomes fully competent with puberty. A newborn child has basic rights such as being given a good name, the sacrifice of an 'aqiqa animal, proper care, good education, and protection of their property if they have any. Until they reach puberty, children are protected by these rights, and when they reach adolescence, they gain full legal capacity and can conduct any legal action on their own.

Women's rights are also part of family rights and freedoms. Islam regards women as equal to men in status but makes certain different arrangements due to their distinct characteristics. Essentially, women have the same religious, legal, human, political, and commercial rights and freedoms as men. However, some differences exist in rights and freedoms due to specific characteristics that men and women possess. The ability of a man to marry more than one woman and requiring two female witnesses for one male witness are examples of such differences. Another reason for allowing polygamy is to protect and care for women and children left vulnerable during times of frequent wars. Additionally, in societies where one marriage suffices, both men and women are more prone to engage in illegitimate activities such as adultery, which disrupts family and societal order. Therefore, the option of polygamous marriage is considered more suitable to keep individuals within the bounds of legitimacy.

Despite Islam introducing advanced women's rights, significant limitations arising from traditions have persisted throughout Islamic history. These limitations stemming from traditions have often been wrongly attributed to the requirements of Islam. In contrast, Islam recognizes and grants rights and freedoms according to the situation of women and men. To apply the rights granted by Islam to women, these limitations stemming from traditions need to be eliminated.

One of the rights related to the family is the right to privacy and the inviolability of the domicile. Islam prioritizes the secrecy of individuals' private lives and prohibits the investigation of private matters. Unless an individual's private life harms others or society, the state cannot interfere. "O you who have believed, avoid much [negative] assumption. Indeed, some assumption is sin. And

do not spy or backbite each other." (Surah al-Hujurat, 12) ; "O you who have believed, do not enter houses other than your own houses until you ascertain welcome and greet their inhabitants. That is best for you; perhaps you will be reminded. And if you do not find anyone therein, do not enter them until permission has been given you. And if it is said to you, 'Go back,' then go back; it is purer for you." (Surah al-Nur, 27-29)

5.Economic Rights and Freedoms

One of the most important economic rights is the right to property. Islam recognizes and protects the right to property. According to this, everyone has the right to use their property as they wish. However, if the right to property interferes with someone else's rights, its use is limited. While exercising the right to property, one cannot harm the properties of neighbors. For example, a person cannot use their property in a way that weakens or causes the collapse of a neighboring building.

The right to property can also be limited by the state for the public interest. Some buildings and lands can be expropriated for public interest reasons. Besides neighborly law, the right to property can also be restricted due to preemption and easement rights.

Another economic right is the right to work. Islam has provided the opportunity for everyone to work in legitimate ways according to their skills and abilities. No one can interfere with the income earned through one's own labor. The freedom of initiative and enterprise is granted to everyone. Although private enterprise is the main principle, measures to ensure social justice should also be taken. Everyone has the right to engage in any kind of work and trade within the bounds of legitimacy. The state prepares all kinds of facilities to increase private enterprise, ensure social justice, and secure the freedom to work. For this purpose, the state ensures the security of roads and compensates for the losses of robbed merchants and citizens. Thus, the state ensures that citizens can fully exercise their right to work and freedom. (Ekinci, 203)

Conclusion

Human rights in Islamic law are discussed in detail in verses and hadiths. It is possible to examine these rights according to the current human rights classification. The farewell sermon is an important text in the history of human rights. Human rights are regulated in detail in verses, hadiths and especially in the Farewell Sermon. Fundamental rights and freedoms are also given an important place in Islamic law. Religious rights, familial rights, social rights, economic rights and intellectual rights are emphasized in Islamic law.

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