

Human Rights and Islam A critical analysis of different approaches

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ABSTRACT

There have been several Islamic responses identified in the international human rights debate, for example Islam is compatible with international human rights; international human rights objective is an imperialist agenda that must be rejected; and Islam is incompatible with international human rights. All of the responses are justified on the basis of Sharia, the Islamic Law. The paper critically examines the several responses in order to ascertain that whether human rights violations can be justified on the basis of Islamic law or not?

KEYWORDS: Sharia, Islamic Law, (in) compatibility, approach

INTRODUCTION

The most rapidly growing religion of the world, Islam influences, some way or other, the way of life of more than a billion people of the world [1]; Muslims, living in different parts of the world, mainly in Asia and Africa, constitute one fourth, according to J.Rehman [2] and one fifth according to Abdullahi Ahmed [3], of the global population. Many Islamic states, while ratifying international human rights treaties, enter reservations on the basis of Shar'ia, Islamic law, while others do not; hence we see different Islamic responses to international human rights, which this paper critically analyzes.

For convenience of the reads the paper deals with two responses jointly in one part i.e. (i) International human are not compatible with Islam, and (ii) it is an imperialist agenda that should be rejected. After critically analyzing these points of views, it is argued in part one that they do not have sound footings, and should not be adopted in the discourse of international human rights and Islam to reject the former.

Part two of the paper argues that Islam, being the religion for all men and all times, is fully compatible with international human rights, which are the rights of all human being wherever and whoever they may be. This part also points out the problematic fields but again it is argued the 'problems' and 'differences' never ever means incompatibility. Paper focuses on most problematic i.e. gender equality in family life and freedom of religion, and not on all problematic issues.

After having compatibility established between Islam and international human rights and pointing out problematic issues in part two, concluding part of the essay gives some suggestion to tackle with the differences in a way that can be beneficial and acceptable to both.

(1) International human rights are incompatible with Sharia; it is an imperialist agenda and should be rejected.

The emphasize on 'Western values' in the human rights discourse and non-consideration of the contribution and understanding of other cultures results in fear of a neo-colonialism in the developing countries, including the Islamic states [1], most of which have been under the 'repressive' colonial governments of the West. Thus, they consider international human rights as an imperialist agenda that should be straight away rejected otherwise they might be colonized by the same Master and same Laws in a different disguise. This fear-based view is further strengthened by the double standard and gap between the words and deeds of some Western governments. For example, "democracy is promoted but not if it brings Islamic fundamentalists to

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power; nonproliferation is preached for Iran and Iraq but not for Israel;...human rights are an issue with China, (*Iran, Libya and Syria*) [4] but not with Saudi Arabia and(*Israel*)”¹[5].

Another reason, why Muslims condemn Western criticism of human rights situation in the Muslim world is that they see ‘sinister designs’ in such criticism. It is considered as a conspiracy to tarnish the image of Islam, Islamic culture and institutions and to establish that Western culture is inherently superior and beneficial to mankind [6]. For example, when the Cartoons presenting Prophet Muhammad as a terrorist were published in Danish newspaper in 2005, they were responded with strong and violent protests in the Islamic countries. Their republication in 2006 in a number of European countries, were considered as a deliberate provocation to spite the Muslims. Freedom of expression on one side, but some Western states played with the issue to gain their own political objectives. As the Bush administration shifted its policy from condemnation of republication of cartoons to condemnation of violent response of Muslims, it was perceived that the shift of policy, which targeted particular countries, was intended to provoke chaos and instability in Middle East [3]. This is how human rights are considered as a hypocritical imperial agenda that must be rejected.

The Islamic states should not, however, make the above points as an excuse for their poor performance in international human rights’ field. International human rights are the rights which are common to all human beings, whether in the West or in the East; it permits no derogation. To believe that such rights and freedoms belong only to the people of the West, is to commit oneself to perpetuating the belief that Islam is static and uniform system and should not be intruded by foreign ideas such as human rights and democracy [6].

As of the proponents of non-compatibility, they do not reject the rights *per se*. They seem to be disappointed and protesting against Western hegemony and thus opposing any ideology championed by the West [1]. Non compatibility approach has been adopted mainly by Muslim conservative scholars and based on their writings by Muslim governments [7]. Several arguments are put forward by them which can be summarized as: every society has its own way of life which is influenced by its history, culture, religion, etc. Concept of human rights and morality in a given society depends on those religious and cultural contexts and cannot be interpreted without paying a due regard to them. Therefore, for realization of human rights in a Muslim society, due consideration to Islamic law and culture is a pre-requisite, which is missing in international human rights instruments. It is pointed out that the words “general principles of law recognized by civilized nations” in article 238(c) of Statute of International Court of Justice, “consideration...to the representation of different forms of civilization and of the principal legal systems” in article 31(2) of International Covenant on Civil and Political Rights and similar words in other international instruments admit the need of considering, along with the Western, other cultures and legal systems as well [1]. It is also argued that: In Islam rights and duties are divine and not the product of human’s mind. International human rights are anthropocentric, in which everything revolves around human being, while Islamic scheme of rights is theocentric i.e. everything belongs to God, and man is to serve Him. In Islam rights are permanent and eternal since they are granted by God, while international human rights law is man-made and susceptible to changes so both the systems are incompatible [7].

Non-compatible approach cannot be agreed with, however. Critical analysis of this approach based on cultural/Islamic relativism shows that “it is prone to abuse and may be used to rationalize human rights violations by different regimes” [1]. For example, the blasphemy laws in Pakistan, enacted by a military dictator, General Zia Ul Haq, have been used to initiate politically motivated prosecutions, mostly against Ahmadis and Christians. One of the most notorious cases was that of Dr. Akhtar Harold Khan, a distinguished writer and sociologist, who was charged with blasphemy for writing a poem. The poem was about a simpleton who was devoured by a lion that he had raised. The poem was referring to Zia’s military coup d’état and execution of Zulfukar Ali Bhutto, an elected prime minister, to whom he owed his high military position. Dr. Akhtar was accused to slur the fourth caliph Ali, the cousin of the Prophet, who was also known as the lion of God [6].

Global acceptance of international human rights, as revealed by an increasing number of ratifying states, requires that international human rights standards should not be modified or restrained on the ground that they are not according to the wish of a particular culture or religion.

¹ Words in parenthesis and italicized are added by the present author

Since Muslim governments have “reaffirmed” their “faith in the fundamental human rights” [8] and are resolved to achieve, promote and encourage them, [9]”it is surprising” says Elizabeth Mayer, “when governmental spokesperson invoke “Islam” and “Eastern Culture” to justify their violations of human rights...” [6].

Differences of opinion among the Islamic states themselves as to what contradicts Shaira and what does not makes it difficult to denounce international human rights in the name of Islam. For example, Article 18 of Universal Declaration of Human Rights, which guarantees, inter se, right to change one’s religion was condemned by Saudi Arabia as contradictory to Islamic law and abstained from voting on it but Pakistani ambassador fully supporting it argued that “It (Koran) stated that neither faith, nor conscience which gave birth to it, could have an obligatory character. The Koran expressly said “Let he choose to believe, believe and he who choose to disbelieve, disbelieve.” Islam formally condemned not lack of faith, but hypocrisy.” [10]

Last but not the least; proponents of non-compatibility ignore that Islam is a religion for all men and all times. Quran does not regulate the relationship between man and God only, it also provides for relations between man and man (*muawalat*); true, man is servant of God but not servant of man [11]. According to Ebrahim Moosa, from the very start, Islamic teachings have been deeply concerned with the social, ethical and religious conditions of man. The deity introduced by Muhammad (PBUH) to the world was both the “Lord of the World”...and “Lord of the People.” Quran was not meant only to reveal the God; human being has been also the main theme of Quran’s revelation [12]. Whatever definition is ascribed to human rights, the ultimate purpose is the protection of human dignity; hardly there would be any civilization today which would not ascribe to it.

(2) Compatibility of Islamic Law with International Human Rights

General theme of the Islam is reformation, emancipation and equality [13]. Elizabeth Mayer says that even without studying the question of how does Islam relate to human rights issues? Her experience and work in the field of human rights have convinced her that Islam is not the cause of human rights problems endemic to the Muslim world [6].

The official position of most of the Islamic states as expressed by their ratification of UN Charter, UDHR, other human rights treaties and Charter of Organization of Islamic Conference whereby they reaffirmed “their commitment to the UN Charter and fundamental human rights and international law”, signifies that they deem international human rights as compatible with Islamic law [14]. Therefore, when the Muslim governments take the plea of Sharia for any reservation they put on human rights treaty or for violation thereof the justifications they offer must be carefully looked into to see whether there is any political motive involved? For example, General Zia, having overthrown an elected government and suspending the fundamental human rights guaranteed by the Constitution of Pakistan, took the plea of Islam to justify and consolidate his unconstitutional government. Analogizing himself with an Amir, Zia in an address said:

One of the fundamental points indicated by study of Quranic verses and hadiths of Prophet Muhammad (PBUH) is that obedience to Amir or the Head of the State becomes mandatory for his subjects irrespective of the personal dislikes that someone may harbour for him or his actions as long as the Amir abides by injunctions of God or his Prophet (PBUH). Not only I say but the legal experts and scholars also agree with me that my Government is a constitutional government which has been acting upon and in accordance with the tenets of Islam [6].

Islamic law is argued to be compatible with international human rights in many aspects; however, the differences cannot be ignored, specially, in the fields of gender equality, freedom of religion, freedom of expression and rights of the child.

On gender equality: articles 2 of UDHR, 2, 3 and 26 of ICCPR and various articles of Convention on the Elimination of All Forms Discrimination Against Women, 1979², specially article 16, all read together imply that man and women are equal in all walks of life, especially in family matters and there shall be no discrimination against them. Human Rights Committee in its comment on Article 3 of ICCPR said that “equality during marriage implies that husband and wife should participate equally in responsibility and authority within the family.”[15] And that

² Entered into force in 1981

“States parties should ensure that traditional, historical, religious and cultural attitudes are not used to justify violations of women’s rights to equality before law and equal enjoyment of all Covenant rights.”[15] These provisions and interpretations are in clear contrast to Islamic schemes of human rights.

Article 6 of OIC Cairo Declaration on Human Rights in Islam, for example, strikes equality between man and woman in human dignity and gives her civil entity and right to financial independence but “the husband is responsible for the support and welfare of the family” [16]. It seems ambiguous and less than equality in family life. Similarly article 19 of Iran’s Constitution says that “All people of Iran, whatever the ethnic group or tribe to which they belong, enjoy equal rights; and colour, race, language and the like, do not bestow any privilege.” It overlooks to ensure equality between man and woman and people of different religions. This overlooking of equality between man and woman in family life and reservations made by different Muslim states to provisions striking gender equality are claimed to be based on the Islamic law. For example, Bangladesh, while ratifying the CEDAW, put reservation to articles 2, 13(a) and 16. 1(c) and (f) saying they conflict with Sharia law.

This attitude of Muslim governments, as said earlier, is based on political motives and conservative interpretation of Quran and Sunnah, the primary sources of Sharia. However it must be borne in mind that Quran is an ethical cum religious revelation and not a legal code, in fact [17]. Only 500 out of its total 6,666 verses have a legal element, majority of which deal with worship rituals. In the strict sense only 80 verses deal with legal subject matter [18]. Why and how the verses, which are not more than six, that establish dominance of male over female, overweigh the whole text of Quran, is difficult to understand [13]. The status of women and family laws in Islam, even today, is determined by the interpretation of these verses in second and third centuries of Islamic calendar, by men who, “were heavily influenced by the socio-economic, political and indigenous tribal values of the prevailing times,” [17] and who “frequently adopted male-centric approach” [17]. For example, conservative scholars justify dominance of men, amongst other, on the ground of verse 4:34 which says that:

Men are the protectors and maintainers of women because God has given the one more (strength) than the other and because they support them from their means [18].

But the moderate scholars challenge the narrow interpretations of the verse. As Al-Hibri says that the verse has no reference to physical or mental superiority of men. She says men are *qawwamun* over women in matters where some of men are given by God more than some of women and in what men spend of their wealth over women. Men as a whole are not superior to women as a whole [quoted by S.S. Ali, 13]. Esposito also agrees that it is basically economic and financial superiority that gives male a degree of preference, but only to those men who carry out this job, and not to all men [quoted by S.S. Ali, 13]. Since in the present day world Muslim women are not, very often, lagging behind men in almost all walks of life; the concept of gender equality should, in accordance with true spirit of Quran, prevail now. As Quran says that “the believers, men and women, are *awlia*, one of another.” [19] *Awlia* can be translated as protector or guide. Similarly a liberal interpretation of verses providing for of polygamy, talaq, etc can abridge the differences between international human rights and Islamic family laws.

As for freedom of religion and apostasy; International human rights law does not allow any restriction on a person’s religious beliefs [6]. Article 18 of UDHR gives an absolute right to adopt or manifest any religion or belief and includes the right to change one’s religion. Article 18 of ICCPR says that everyone has the right to freedom of thought, conscience and religion which includes the right to adopt a religion or belief of one’s choice, and that no one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. It is pointed out that unlike UDHR, article 18 of ICCPR, does not include the right to change one’s religion. Saudi Arabia, which had failed in 1948 when UDHR was being drafted, was this time successful along with Yemen, Egypt and Afghanistan, to delete the right to change one’s religion from article 18 of ICCPR. However, HRC observed that freedom “to have or adopt” includes the freedom “to replace one’s current religion or belief with another or to adopt atheistic views...” [20].

Freedom of right to change one’s religion or to hold atheistic views has been controversial among Muslim scholars; Quranic verses have been interpreted differently. For example Quran says that: There is no compulsion in religion: truth stands out clear from the error... [21]. In another verse Quran says that whoever accepts it (Islam) does so for his own good and whoever

rejects it does so at his own loss and none may be compelled [22]. In the presence of these and other such verses advocating religion by coercion is “to temper with the process of intellection (and) constitutes threat to man’s integrity and authenticity” which is unacceptable from Islamic point of view [23]. Muslims are required to present their faith to humanity rationally through intellectual persuasion, wise argument and fair preaching [24]. However, the traditional scholars as al-Tabri say that “no compulsion” verse is meant only for the ‘people of the book’ and not for idolaters [quoted by Mashood Baderin, 1]. Ibn Hazm argues that ‘no compulsion’ verse has been abrogated by verse 9: 36 which says that “...and fight the polytheists altogether as they fight you altogether, and you know that God is with those who keep their duty to (Him) and thus according to him compulsion is allowed in religion” [quoted by Mashood Baderin, 1]. Compulsion in religion is controversial; however moderate jurists opine that Islam prohibits it [25].

Apostasy for which the traditional practice has been death penalty is also controversial among Muslim jurists and conflicting to international human rights law. Death penalty for apostasy is based on a saying of the Prophet i.e. “Anyone who changes his religion, kill him” [26]. Traditional scholars like Maudidi and Hamidullah are of the view that since Islamic state is based on religion hence apostasy constitutes politico-religious rebellion [27] that is why it is penalized with death punishment. However, this saying has been identified as solitary and weak in its transmission so it lacks the authority to become a source of law. Pakistan’s representative to UN, when article 18 of UDHR was being drafted, opposing the objections of some Muslim countries, argued that “the Moslem [sic] religion was a missionary religion: it strove to persuade men to change their faith and alter their way of living....but it recognized the same right of conversion for other religion as for itself” [28]. Neither in Quran is there any punishment for apostasy in this life, nor Prophet sentenced anyone with death penalty for apostasy but some of his companions consider it a sin for which there is ta’azir punishment, to be regulated by the state [29].

Conclusion

International human rights’ too much reliance on Western legal systems and philosophies and overlooking other systems and cultures, accompanied by double standards of some Western countries makes them doubtful among the non-Western people, especially Muslims; hence they reject it all together. While other Muslims do not reject the rights *per se* but consider them incompatible with Sharia. This approach is mainly followed by conservative jurists and Muslim governments. Therefore, whenever they put reservation to human rights treaties or are criticized for violation thereof, they take the plea that this is inconsistent with Islamic law.

Moderate scholars, argue that since Islam is dynamic religion meant for all men and all times and who interpret Quranic verses and hadiths according to the needs of present time and not in 1400 years old Arabian fashion, consider international human rights compatible with Islam. They admit the existence of problems and differences in some fields but differences do not mean incompatibility. They believe that difference can be evolved. Evolving a universally accepted concept of human is difficult but not impossible; it needs a “sincere and justificatory cross cultural evaluation of human dignity with a view to evolving international moral values which no repressive regime may find easy to circumvent in the business of State governance” [1]. According to M. Baderin this common understanding can be evolved by getting international human rights law engaged in dialogue with Islamic law. The “adoption of ‘margin of appreciation’ by international human rights law and *maqasid al-Sharia* (overall objective of Sharia) and *maslaha* (welfare) by Muslim states in their interpretation and application of Islamic law” can harmonize the differences between the two systems [1].

An-Na’im suggests a drastic reform of Sharia to resolve its differences with international human rights law. He says that Quranic verses and hadiths which are inconsistent with universal human rights should be explained in historical context, while those which are supportive of human rights should be cited as the basis of legally applicable principles and rules of Islamic law today [30]. He also suggests setting aside the Madani verses and implementation of the Meccan. However, it is controversial as abrogating a Quranic verse is solely the right of God [7].

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