DISCUSSION PAPER



Examining the Universality of International Human Rights from an Iranian Perspective

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Introduction

The clash between universalism and cultural relativism in international human rights came to the forefront, with the adoption of the Universal Declaration of Human Rights (UDHR) by the United Nations in 1948. The UDHR, which had universalistic pretensions, brought challenges in ensuring consistency between national law and international standards, particularly in non-western countries. Iran was one of the countries that was forced to confront the dilemma between international norms and domestic law, which clashed on certain levels, particularly after its 1979 revolutionary constitution based on Islamic law (Sharia) and democracy. This paper will focus on the question of the compatibility of modern universal human rights law with the interpretation and implementation of Sharia in Iran with the historical dimension of its political culture that can provide a better understanding of Iran's situation vis-à-vis the UDHR and other related covenants.



The first session of the Drafting Committee on International Bill of Rights, Commission on Human Rights, at Lake Success, New York, on Monday, 9 June 1947.

The Emergence of Universal Human Rights

The concept of international human rights came to the fore for the first time after the Second World War. In the middle of the 20th century, the need for a moral law based on common values shared by international states and society arose to ensure peace and security in the world.



(Basri Şahin - Anadolu Agency)

Established in 1945, the United Nations launched an 18-member committee consisting of representatives of various UN member states from Europe, Asia, the Americas, and Africa to prepare a document representing the foundations of international human rights law. After almost a year and a half of working on a draft, the committee compiled a list of internationally recognised human rights principles. The United Nations General Assembly adopted the document on December 10, 1948, under the Universal Declaration of Human Rights.

Following the UDHR, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) were adopted in 1966, forming the core of the international human rights documents. However, the UDHR remains the core element of universal human rights as it establishes the basic parameters of the meaning of human rights in contemporary international relations (Donnelly, 2013).

In the intervening years, the promulgation of the above-mentioned documents has raised questions regarding the notion of 'universal values'. Moreover, although there were representatives from different cultures and representing different beliefs among the founding members of the UDHR, "human rights did not develop in a cultural vacuum. Given that their historic breakthrough took place in North America and Western Europe, there are good reasons to assume that the genesis of the idea of human rights can, in one way or another, be linked to the religious, philosophical, and cultural sources of the Occidental tradition (Bielefeldt, 2000)." Known as the pioneer of classical liberalism, the ideas of the English Philosopher John Locke and the European natural law tradition that emphasises human reason as the pre-eminent determining factor in the constitution of the law dominate the formation of the principles underlying the UDHR. In this respect, this declaration, which was published with the claim of universality, was criticised for its almost exclusive reference to the Western tradition without considering other comprehensive doctrines. As a result, debates about the controversy over the possibility of universal human rights and objections to the UDHR as a form of cultural imposition have continued since the publication of the declaration.

Universalism vs Cultural Relativism

The notion of universalism posits that human rights are the same everywhere in both their essence and application. Thus, human rights are universal because they belong to all human beings solely under their humanity (Blumenson, 2020). On the other hand, the relativistic cultural perspective claims that the origin of human rights does not lie in western culture but is based on culturally-specific morality. Universalists reject any argument defending cultural relativism and criticise this theory for justifying human rights violations. On the other hand, cultural relativists argue that human rights cannot be evaluated by ignoring cultural differences.

In addition to the debate on the theoretic validity of universality, the practice of human rights also raises some important questions. Can universal human rights be successfully implemented despite cultural and administrative differences? Given that the UDHR strives for a pronouncement that would appeal to diverse political systems (Waltz, 2004), the differences in these political and administrative orders pose the main problem in the implementation of the UDHR. While there is universal human rights law, a world government as a central authority does not exist (Bull, 1977).

While the UDHR was still drafting, the American Anthropological Association expressed concerns about international human rights discourse and practice and their possible adverse impacts on the essential features of non-Western cultures (Afshari, 2012). These adverse effects predicted for non-western cultures are supported by expressions of representatives of some African, Asian, and Muslim countries questioning the existing concept of universality by stating international human rights are western-centred and insensitive to non-Western cultures in the United Nations Vienna Conference in 1993 (United Nations Research Guides). Since its publication, the UDHR has received many criticisms for its claim to universality. Many studies have been carried out on applying this universality in the face of cultural diversity and competing claims based on divergent comprehensive doctrines. Moreover, the wide gap between the theory and practice of the universal protection of human rights indicates that "universalism in international human rights law is not yet a fait accompli (Weeramantry, 1997)."

The dichotomy between universalism and cultural relativism in contemporary human rights discourse can be traced back to the rise of Western liberalism. The legitimacy of liberal norms in the Western political tradition has been disputed over the years by communitarians. Therefore, the discussion generated by universalism in human rights discourse can be examined through the liberal-communitarian lenses. The dichotomy centres on how they conceptualise personhood, society, moral theory and rights. From a communitarian approach, "a person's ethical principles are derived from membership to a community that constitutes the source of identity contrarily to the liberal conception where the individual, as an autonomous moral agent, is fully in charge of his or her life choices (Dionigi, 2014)."

Rawls' theory of justice describes a society with free citizens with equal and fundamental rights. He expresses the importance of equality in his theory of justice as follows: "Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override. For this reason, justice denies that the loss of freedom for some is made right by a greater good shared by others (Rawls, 1971)." According to Rawls, one of the principles of justice is that all social goods must be distributed equally. In his words, "All social values—liberty and opportunity, income and wealth, and the social bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values, is to everyone's advantage (Rawls, 1971)."

Rawls' theory of justice is criticised by Walzer, who emphasises an individual's connection with community, culture and a particular history. In his book *Spheres of Justice: A Defence of Pluralism and Equality*, he states: "Different social goods ought to be distributed for different reasons, in accordance with different procedures, by different agents; and all these differences derive from different understandings of the social goods themselves – the inevitable product of historical and cultural particularism (Walzer, 1984)" He argues that goods are culturally and socially embedded and therefore their content will depend upon particular traditions or historical background. For this, he concludes that implementing the distribution of goods should consider the particularity of different societies. Rawls, by contrast, represents his theory of justice as being universally applicable.

Why the Iranian Regime's Stance changed towards International Human Rights

Iran is one of the non-Western countries that has experienced challenges in adjusting to the obligations of adopting the declaration both in theory and practice. Iran joined the United Nations in 1945 as one of the 50 founding members during the reign of Mohammad-Reza Pahlavi (United Nations Islamic Republic of Iran), who reigned from 1941 until the 1979 Islamic Revolution. During the Shah's reign, Iran voted in favour of the UDHR, as well as the International Convention on the Eliminations of all forms of Racial Discrimination (ICERD), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (United Nations Human Rights Treaty Bodies).

Adopting these covenants without any significant reservations does not seem unexpectant considering the Western orientation of the Shah's regime. He regarded these covenants as a means of "gaining international prestige (Mozaffari, 2018)" and also as a means of "hiding the grave human rights violations inside the country (Mozaffari, 2018)". However, it should be noted that adopting these covenants unconditionally does not mean that obligations stem from the ratifications observed. According to Pollis, for many states, their acceptance is a symbolic gesture attesting to their membership in the world community, but devoid of substance (Pollis, 1998).

With the 1979 Islamic Revolution, Iran's policy towards the United Nations and international human rights developed opposite to the Western orientation in the Shah's period. Although the leader of the revolution, Ayatollah Khomeini, criticised the global order for being controlled by western powers he also rejected the universality of UDHR because for him universality was seen as an imposition used as an instrument to oppress the Iranian society (Khomeini, 1981) (Engeland, 2012). Therefore, after the revolution, Iran made the following slogan as the regime's ideology under the leadership of Khomeini: "neither west nor east, only Islam".



Iranian Human Rights Chief Mohammad-Javad Larijani attends to the United Nations Human Rights Council's Universal Periodic Review (UPR) Working Group meeting to review Iran's human-rights record at the U.N.'s European headquarters in Geneva, on October 31, 2014. (Fatih Erel - Anadolu Agency)

In this ideological backdrop, Iran decided to rely on its culture and beliefs vis-à-vis international human rights norms. In this case, Iran adopted the attitude that international human rights can only be implemented to the extent that they comply with Sharia or Islamic law. The shift in Iran's policy towards international human rights was noticed internationally when Iran's representative of the United Nations, Said Rajai Khorasani, at the Third Committee of the General Assembly in 1984, questioned universal human rights standards and demanded a change in the UDHR.

"[C]onventions, declarations, and resolutions, or decisions of international organisations which were contrary to Islam had no validity in the Islamic Republic of Iran. (...) The Universal Declaration of Human Rights, which represented a secular understanding of the Judeo-Christian tradition, could not be implemented by Muslims and did not accord with the system of values recognised by the Islamic Republic of Iran; his country would, therefore, not hesitate to violate its provisions, since it had to choose between violating the divine law of the country and violating secular conventions (UN Doc. A/C.3/39/SR.65, § 91-95)."

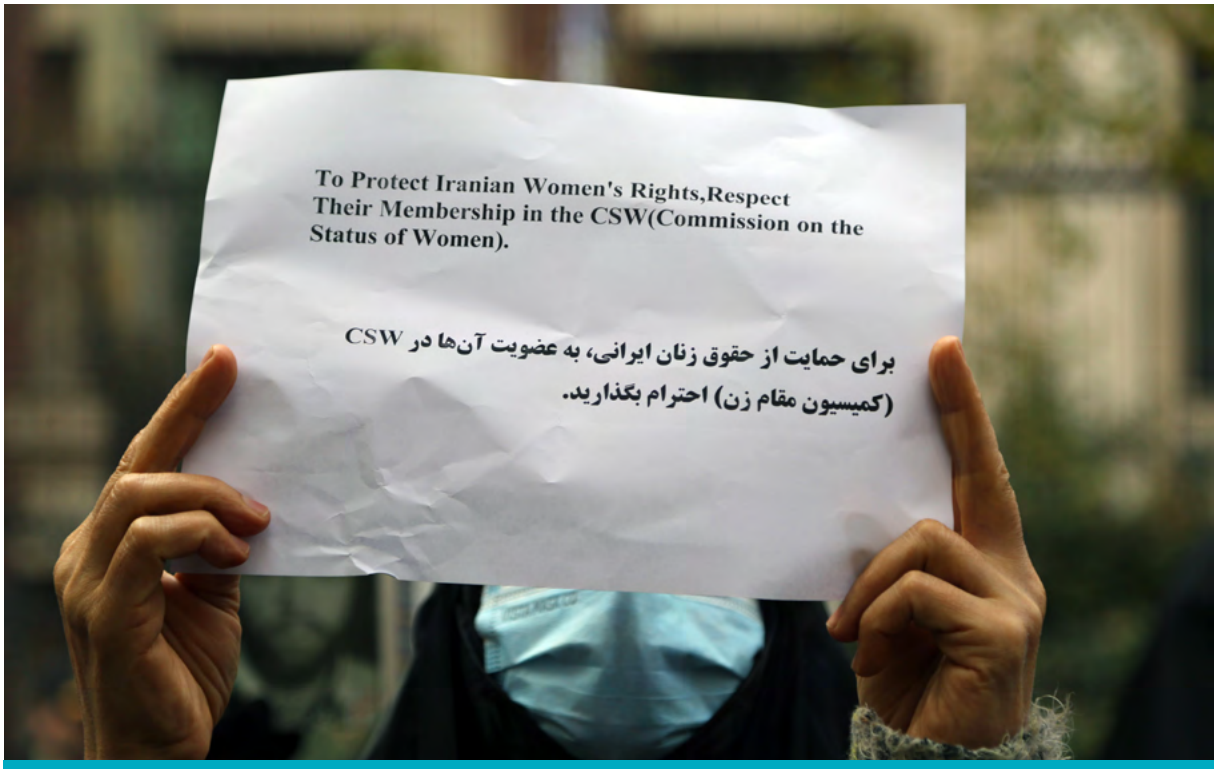
Belief in the superiority of the Sharia led the Iranian representative to question the UDHR. Moreover, when Islamic values and internationally accepted standards clash, Iran has repeatedly stated that it will follow the path commanded by its understanding of Islam. Here, the inference from the statement is that Iran considers which values it may violate. It is also the expression of the Islamic Republic of Iran, which is stuck between its national and international norms, legally escaping this deadlock. Although Iran does not seem to care about the obligations that result from signing the UDHR-related covenants, it also demands certain concepts to be revised in UDHR. However, Iran has made sweeping reservations about the treaties incompatible with the objects and purposes of the principles laid out in the texts (Barlow & Akbarzadeh, 2018). Although Iran's representatives have asked the United Nations to make specific changes to the UDHR, saying that international human rights conflict with certain Sharia provisions, the Iranian government has received severe criticism for its failure to promote and protect human rights.

Although the Iranian government distanced itself from the West and questioned international human rights standards after the Iranian revolution, it did not withdraw from the conventions adopted during the Shah's reign. However, Iran insisted that the United Nations make certain reservations in the declarations and expressed their intention to implement international human rights in accordance with the Sharia. This is important since it shows that the Islamic Republic of Iran has willingly committed itself to the provisions of and the principles contained in the ratified treaties and the international human rights law (Moinipour, 2018).

Not only did Iran not withdraw from the UDHR and related conventions following the 1979 Islamic Revolution, but it also signed on to two additional ones. One is the Convention on the Rights of the Child (CERD), ratified in 1994 during the presidency of Rafsanjani (1989-1997). According to Soltani and Ekhtiari Amiri, the Iranian government adopted a pragmatist approach to foreign policy in this period and accepted a need to adapt to the realities of international politics. This attitude may be a prelude to adopting a more compatible language with international human rights (Moinipour, 2018). The government under the presidency of Rafsanjani ratified the CERD with reservations, stating that it would only adhere when it accords with Islamic principles. Subsequently, upon ratification, the Iranian Government reserved "the right not to apply any provisions or articles of the Convention incompatible with Islamic Laws and the International legislation in effect (United Nations Treaty Collection)."

With the coming to power of the reformist Khatami after the 1997 elections, "the domestic political environment of the country experienced drastic developments and radical changes which were not congruent with previous human rights policies of Iran (Mozaffari, 2018)." Khatami's difference from previous governments stems from the effort to harmonise the existing order with international standards and more focus on international reconciliation. From Khatami's perspective, Islam and Iranian culture are compatible with international standards, and western practices of the covenants could be achieved by conciliating these practices with Iran's national culture. The Iranian reformist regime, by promoting human rights policy, initiated the process of ratifying the Convention on the Elimination of Discrimination against Women (CEDAW).

By adopting CEDAW in 1979, the United Nations called on member states to formulate policies to counteract gender discrimination. The post-revolution Iranian regime was also invited to sign the CEDAW, but it refused. However, the Iranian parliament passed the bill between 2000-2004 while the reformists were in power. However, the guardian council vetoed because it did not comply with Islamic values. The guardian council is responsible for verifying the eligibility of candidates for national elections and ratifying legislation (Begum, 2015). It has been established since the Iranian revolution in 1979, adversely affecting women's rights in Iran. Although the Iranian ambassador gave the expression that in no way were women considered sec-



Iranian women gather during a protest outside the United Nations mission headquarters as they chant slogans in support of women's rights ahead of voting to oust Iran from the UN Commission on the Status of Women on December 13, 2022, in Tehran, Iran. (Fatemeh Bahrami - Anadolu Agency)

ond-class citizens in his report in 1990 to the UN, Iran did not accept the CEDAW during that year, and according to the information given by the HRW, it was pointed out that there was discrimination against women in Iran's law and policy (Begum, 2015). And so far, CEDAW has not been accepted.

Another covenant approved after the Iranian revolution was the Convention on the Rights of Persons with Disabilities (CRPD), adopted in 2009 during the presidency of Ahmadinejad (2005-2013). Ahmadinejad criticised international human rights for being selective and instrumental in the application (Soltani & Amiri, 2010). Ahmadinejad is of the opinion that international human rights treaties are used as tools to apply pressure on countries. The covenant was also approved by reservations again in this period. It is stated that the covenant's provisions will be applied if they comply with Islamic values. While accepting the Convention, Iran declared that with regard to article 46 of the Convention, the Islamic Republic of Iran does not consider itself bound by any provisions of the Convention which may be incompatible with its applicable rules (Declarations and Reservations, 2022). Article 46 states that (1). Reservations incompatible with the object and purpose of the present Convention shall not be permitted. (2). Reservations may be withdrawn at any time (Fina & Palmisano, 2017). On March 23, 2017, in the committee on the rights of persons with disabilities, experts questioned Iranian representative Mohsen Naziri Asl that it was not clear whether any provision in the Convention conflicted with the Islamic principles and, therefore, could not be implemented. Regarding the reservation to the Convention, the delegation explained that during the evaluation process, Iran had found no contradictions between the Sharia and the provisions of the Convention.

Generally speaking, the wide gap between Iran's political attitudes toward UN treaties through time can be seen as a reflection of the dramatic changes in the nature of its political system. While these changes have caused Iran's human rights policy to appear contradictory, a deeper understanding of the structure of Iran's legal system helps resolve some of these contradictions. Iran's first shift towards the UDHR and related covenants is due to its adoption of the Sharia as the basis of its legal system, representing a maximal switch. Subsequent shifts can largely be attributed to the different approaches of governors vis-à-vis their understanding of Islamic law, reflecting conservative and liberal approaches, respectively. Moreover, Iran's shift in approach to international human rights can reflect the compelling universal nature of international rights for non-Western cultures and as a subject matter for Islamic societies.

The Concept of Rights in the Western Tradition

Following the 1979 revolution, Iranian officials questioned the principle of the universality of international human rights and demanded changes in the foundational principles of the UDHR. The reason is that it was seen that Muslims could not implement the UDHR without violating Islamic law. This fact raises the question of the compatibility between Sharia and the universal claims of international human rights. Thus, in order to discuss the compatibility between the two traditions, it is appropriate to examine the concept of rights in the western context.

John Locke (1632-1704), one of the most influential figures in the Western philosophical, legal conception of rights, in his political work, Two Treaties of Government, justifies human rights from a philosophical angle and mentions inherent and inalienable natural rights that individuals are born with. For Locke, human beings possess intrinsic and basic rights universally independent of their cultural tradition and the laws of any particular society they are part of. Moreover, these rights are God-given and are not granted by society or the government. In other words, natural rights are inherent to individuals independent of governors' entitlement. Consequently, the fundamental natural rights, which according to Locke, include the right to life, liberty, health, and property, can never be taken or given away. "Locke's ideas on human rights spread widely in Europe and the United States and significantly influenced philosophical political and legal thought" and the "formation of basic human rights in contemporary instruments of human rights (Przetacznik, 1978)."

According to Locke, the right to life is a prerequisite for the other rights that a person may have because only with this right can a person enjoy other rights. The instinct of self-preservation given to a person by God is the strongest desire that a person has, and it forms the basis of the right to life. The right to life is both a fundamental right and a duty for Locke, because everyone "is bound to preserve himself and not quit his station (life) wilfully (Locke, 2010); (Chapter 2, paragraph 6)" and "man has not liberty to destroy himself (Locke, 2010); (2,6)." Simmons expresses that in Second Treatises Locke presents four duties: a duty to preserve one's self, a duty to preserve others when not in conflict with self-preservation, a duty not to take away the life of another, and a duty not to act in a way that tends to destroy others (Simmons, 1992).

As the right to life is a natural right in Locke's conception, it is inalienable. It therefore, cannot be taken legitimately by someone else or the government. The government's primary duty is to protect the inalienable rights of governed individuals. God and nature never allow a man to abandon himself as to neglect his own preservation; since he cannot take away his own life, neither can he give another power to take it (Locke, 2010); (14-168). The Lockean right to life found its expression in Article 3 of UDHR, which states that "Everyone has the right to life, liberty and security of person (Universal Declaration of Human Rights). International Covenant on Civil and Political Rights states, "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life (International Covenant on Civil and Political Rights)."

The right to life in Locke's conception, in theory, provides convenient standards of life to everyone. It includes a right to use the natural world given by God to humans to survive. For self-preservation and survival, men can benefit from "all the fruits it naturally produces and beasts it feeds (Locke, 2010); (5,2)" that belong to humankind in common. Locke's concept of the right to life is reflected in the 25th article of the UDHR, which expresses that "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing etc." It is also related in article 11 of the ICESCR concerning "the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions."

According to Locke, property rights are also part of natural rights. As a higher species, all men have the liberty to use the lower species and 'inferior creatures', that nature produces for him and "men has given reason by God to make use of it to the best advantage of life and convenience (Locke, 2010); (5,26)". Locke states in his work Second Treaties of Government that "the earth and all that is therein is given to men for the support and comfort of their being (Locke, 2010); (5,26)." Locke's other perspective with regards to property right is that if an individual combines his labour with something that is his own, he makes it his property. If someone cultivates the land, the product of the land in return for his labour belongs to that individual. The right of property is considered in Article 17 of the UDHR,

which states that "1. Everyone has the right to own property alone as well as in association with others. 2. No one shall be arbitrarily deprived of his property."

Locke includes a broad conception of freedom in his list of natural rights. For Locke, men are born naturally free. Natural liberty for Locke is "to be free from any superior power on earth (Locke, 2010); (4,22)" and "to have only the law of nature for his rule (Locke, 2010); (4.22)." Thus, freedom entails acting according to one's own will; however, Locke underlines that this does not mean that liberty is to do as one pleases, nor does it mean freedom without limitations. Reason plays a crucial role in following natural law in Locke's understanding because natural law is revealed through reason. In Locke's understanding, natural law differs from divine law in that God directly reveals the latter through prophets, and the former can be discovered by reason alone. Men have been given reason by which he is "able to instruct him in that law he is to govern himself by and make him how far he is left to the freedom of his own will (Locke, 2010); (6,63)." The right to liberty in Locke's philosophy is found in Article 1 of the UDHR: "All human beings are born free and equal in dignity and rights." It is also reflected in Article 2 of the declaration, which states that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinions, national or social origin, property, birth or other statuses."

Equality is one of the natural rights in Locke's doctrine that "all men by nature are equal (Locke, 2010); (6,54)" and everyone is born to the same nature which provides the same advantages to all equally "without subordination or subjection (Locke, 2010); (2,4)." For this reason, for Locke there is no superiority of one person over another, and no one can be subject to other since humans are equal and independent. Article 1 of the UDHR reflects this of Locke by stating that "all human beings are born equal in dignity and rights" and Article 7 recognises that "all are equal before the law". Moreover, Article 14 of the ICCPR seems to reflect Locke's idea of equality by expressing that "all persons shall be equal before courts and tribunals."

It can be said that the fundamental rights mentioned above, which are universal and inalienable as conceived by Locke in Two Treaties of Government, contributed to the development of contemporary human rights. At the same time, the fact that it reflects the rights outlined in the UDHR and treaty bodies will, which expresses contemporary human rights, provide a philosophical and legal background in revealing the compatibility of the universal human rights law with the Sharia.

Rights in Islamic Law

According to Islamic tradition, the religious principles and the law of Islam are revealed by God to humanity through His messenger Prophet Mohammed. Commands in the Quran and the Prophetic tradition constitute the basis of the Islamic legal tradition. Unlike the Western tradition of legislation, in Sharia only divine legislator can make or alter the law. Since the law of the Islamic state is determined by the divine commands, they are immutable and infallible. Islamic law is in principle a religious obligation or a duty that man ought to obey without any attempt to change it. Because of these features of Sharia, it has often been asserted that the Islamic law is "only a system of duties-and obligations- that does not recognise the idea of rights (Siegman, 1964)." However, although Islamic law emphasises the concept of duty and obligation, "this does not seem to subsume or annihilate the concept of rights within the system (Saeed)." In Islamic discourse, the idea of rights dates back to the beginning of the history of Islam as the concept of duties and obligations through Quran, Hadith and Fiqh. In the Quran, a term for right has been used by the Arabic word *haqq* which means "truth, reality, rightness, appropriateness, worthiness, responsibility and right (Chittick, 2008)." Consequently, it can be observed that, "*shariah* exercises its function in two ways, that is, one is considered as Rights (*Huquq*), and the other as Duties or Obligations (*Wajibat*). Both terms are correlative and interdependent (Khan & Khan, 2010); (Azeez, 2012)," that "conveyed in form of either sanction, command or prohibition aimed at regulating human conduct (Kamali, 1994);(Saeed)" in the Islamic legislation.

The concept of rights in Islamic teachings is necessarily engaged with duties and obligations because "rights are not an end themselves; they are simply a means to fulfil the duties of life (Khoder, 1988)." In other words, rights in the Islamic notion are somehow bounded by duties and obligations to fulfil the divine command. Comparing this correlative nature of rights and responsibilities to the Western philosophy of human rights, Ahmed Sheed indicates that the Islamic concept of human rights is different from the West primarily in that the Western concept of human



Shiites gather to perform Eid al-Fitr prayer at the Shah Abdol'Azim Shrine in Tehran, Iran on May 03, 2022. (Fatemeh Bahrami - Anadolu Agency)

rights is unlimited and without any terms and conditions of duties whereas in Islamic philosophy rights have a reciprocal relationship to the duties (Saeed). However, the Western concept of human rights also regards duties, as exemplified by Locke, which is also reflected in Article 29 of the UDHR, which states that "Everyone has duties to the community in which alone the free and full development of his personality is possible." Furthermore, it could be said that considering any concept of right without reference to duties or responsibilities would be a logical fallacy because duties ultimately guarantee rights. Therefore, the Sharia's "emphasis on the correlation between rights and their corollary responsibilities should note foreign to those familiar with liberal discourses on rights, for any claim to a right necessarily involves an obligation on another not to violate this right (Arnold)."

In Islamic law, a right is not an end in itself, but a means to an end that the jurists have identified as *maslahah* (Saeed), referring to the Islamic legal doctrine of public interest. This means that rights in Islamic legal doctrine are not solely based on individual welfare but collective welfare as well, which is an end of the given rights. For this reason, "the well-being of the individual will consequently ensure the well-being of the community (Saeed))." It can be derived from this that rights granted by God have limitations outlined by the Sharia and that rights are binding if they do not transgress the mutual obligations of individuals. The idea of *maslahah* and reciprocal responsibilities contained in the Islamic legal tradition seems relevant to the modern concept of human rights, which limits the rights of individuals if those rights violate the rights of others.

The Sharia comprises two principal sources: the Quran and the Sunnah. Although rights from the perspective of Sharia are numerous, there are various categorisations of rights. Abu A'la Mawdudi (d.1979) categorises fundamental rights within the Sharia as follows: right to life, right to safety, respect for the chastity of women, right to basic standards of life, individual's right to freedom, right to justice and equality of human beings (Maududi). Majid Khadduri, in *Human Rights in Islam*, divides rights into two kinds: private and public. Private rights, according to Khadduri, include the right to personal safety, respect of personal

reputation, equality, brotherhood and justice. Public rights include the following: Ibadat (acts of devotion), the right to ask the state for punishment, and rights arising in certain public acts such as the jihad(holy war) (Khadduri, 1946). Baderin in his work maintains that the protection of human life and dignity, the equality of all human beings and respect for justice are central principles that are inherent in Sharia (Baderin, 2003).

Human dignity is the inherent nature of all humans from their being in the Islamic discourse. Qur'anic verses indicate that Islam acknowledges human dignity. "Indeed, We created humans in the best form. (Q.95:4)" and "Indeed, We have dignified the children of Adam, carried them on land and sea, granted them good and lawful provisions, and privileged them far above many of Our creatures (Q. 17:70)". The concept of "human dignity" found in both Sharia and Western human rights discourse that they both regard the preservation of human dignity.

The right to life and safety regards "every individual who lived in Muslim lands, whether a Muslim or not was guaranteed as a matter of right of his life and security (Khadduri, 1946)." Right to basic standards of life covers nourishment, housing, etc., that provide basic human needs. As discussed above in Locke's philosophy of rights, the right to life and basic standards of life finds acceptance in both Islamic teachings and modern understanding of human rights.

In Islam, any tendency towards discrimination against one another on the grounds of race, colour, social status, or nationhood is condemned (Nadvi, 1980); (Azeez, 2012). The Sharia guarantees the equality of all humanity regardless of distinctions based on race, colour or nationality. Prophet Mohammad emphasised the equality of human beings in his final sermon, where he is reported to have said: "There is no preference for an Arab over a non-Arab; nor for a non-Arab over an Arab; nor for a white over a black; nor for a black over a white except on the score of piety." Moreover, Q. 49:13 states, "Surely the most noble of you in the sight of Allah is the most righteous among you." From these, it can be said that in Islamic tradition, the difference between humankind in the sight of God is their degree of piety.

In the Western rights tradition, all individuals are equal because they are born with certain inalienable natural rights. Although both Islam and Western teachings include the notion of equality, the primary conflict between the two traditions regarding equality in rights is gender equality. This is because "the traditional Sharia did not include the principle of equality in rights for men and women (Bielefeldt, 2000)." Concerning the protection of the rights of genders equally, the Sharia provides opportunities to men and women not equally but equivocally. This feature of Sharia is regarded as discrimination against women from the perspective of modern thought.

As public rights, ibadat (acts of devotion) include rights of prayer, payment of alms, right to fast, and right to pilgrimage in Islamic law. According to Khadduri, these various rights of devotion are now referred to as freedom of religion (Khadduri, 1946). The Sharia allows non-Muslims to practice their religion if it does not cause confrontations. Although non-Muslims experience religious tolerance within the Islamic tradition, they also confront restrictions in their rights (such as the restriction of interreligious marriages and apostasy) within the law. These are considered to be discriminatory from the perspective of Western tradition.

Thus far, it is observed that fundamental rights of Islamic and Western traditions share common values and engage in compatibility. Heiner Bielefeld claims that "concrete conflicts- between the two teachings- centre primarily around gender equality and religious liberty (Bielefeldt, 2000)." However, from a theoretical perspective, it could be said that even though gender equality and religious liberty are outstanding features of the conflict, the rights that both traditions appear to share in common also conflict with each other in essence due to the particular nature of Sharia rights. This is because "Sharia rights affirms three basic concepts: (1) ibadat (acts of worship); (2) abid (slave) and (3) ma'bud (the worshipped, Almighty God) (Azeez, 2012)." That is to say; Sharia rights appear in the relationship between humans and the divine creator. In contrast, rights in the Western tradition are largely articulated through the relationship between citizen and state. Wael Hallaq draws attention to the inherent inconsistency between modern laws, where the law is independent of God and morality, and Islamic law, where God is the only source of law, correspondingly, where the juridical and moral interlock (Hallaq). It can be deduced from these that, theoretically speaking, Islamic rights and modern rights share both commonalities and differences, but because the essence (human reason and divine creator) that directs the rights of human beings and consequently the sense of responsibility over the rights, an individual's relationship with God or with the state are in an apparent contradiction.

The Relevance of the Sharia to the Universality of Human Rights

Universal human rights are basically based on equality before the law, regardless of religion, race, gender, colour, belief, or social and economic status. By contrast, the "Islamic schemes do not offer protection for what international law deems fundamental rights (Mayer, 2012)", such as gender equality and religious liberty. In particular, the constitution of the Islamic Republic of Iran does not recognise certain laws found in the international human rights covenants. The 1989 constitution of the Islamic Republic imposes ambiguity on the distinction between Muslims and non-Muslims, between men and women, by adding a statement such as 'if the law complies with Islamic values.'

Proponents of the revolution in Iran deny universal human rights by claiming that human rights already exist in Islam. The central challenge that the Islamic Republic presented to universal human rights lay in its assertion that religion—namely, Islam—is the supreme cultural principle, more important than any ethical construct that bases its claim to legitimacy on sources other than revelation(Afshari, 2012). A Muslim is responsible for his duties to God and must act within limits set by the Sharia. From this point of view, the UDHR does not represent Iran's cultural and Islamic values because it was created concerning Western values. Questioning the universality of human rights, the regime's ideologues offered their own version of human rights for which they claimed validity beyond time and space (Afshari, 2011). For this, Iran does not need to seek human rights elsewhere, except in Shiite Islam, because the current Islamic values and Sharia, with their sacred and unchanging structure, are capable of meeting the needs and expectations of Iranian society.

"Grand Ayatollah Javadi Amoli, a prominent conservative scholar from Qum and a Twelver Shia Marja', is an example of an Iranian intellectual who worked on the elaboration of the state version of human rights. He believes there is a difference between the Western and Islamic approaches to human rights: in Islam, rights are granted by Allah, who is the source of all laws, rights and duties, while the UDHR is secular and written by fallible human beings. This tension between God-given rights and secular rights cannot be solved; therefore, there is no common source to establish universal rights. In order to create universality and realise international solidarity, human beings would have to 'break the chains of nature' that create human beings differently (Engeland, 2012); (Amoli, 1998)." From a certain perspective, the Iranian position seems to 'reasonable' in that its ideology emphasises its own values and the historical dynamics of Iranian society have been nourished by these values until today. It is often stated that Sharia is an obstacle to the implementation of universal human rights in Muslim countries. Sharia is also seen as the reason behind human rights violations in the Muslim world. This is a significant point since it implies the difference between a theory and its practice i.e. Sharia and its implementation in various Muslim countries. Considering the practical dimension of Sharia with the human rights violations in Iran, the theoretical discussions relevant to any discussion of the compatibility of the Sharia with universal human rights standards remain in the background. This is largely because, as the Iranian case demonstrates, the discourse revolves around Iran's particular interpretation of the Sharia. From this it can be questioned if human rights violations in Iran can actually be attributed to the Sharia?

Iran's position in the discussion of the universality of human rights can be determined by considering how Iran interprets and practices the Sharia, apart from the theoretical contradiction between Sharia and universal standards. Because although the Sharia contains provisions that stand in contradiction to particular aspects of universal human rights, "the dichotomy is, in fact, between the Iranian regime's Islamic ideology and true Islamic policies and actions (Parvin & Vaziri, 1992)." In 1989, the revolutionary regime made changes to the Iranian constitution. The new constitution recognised many key human rights, including equal rights for racial and ethnic minorities, gender equality, freedom of association, freedom of expression, and freedom of the press. At first glance, these guarantees looked promising, but some stipulations and reservations counter these promises. The constitution includes phrases such as "unless the law states otherwise" and "unless they attack the principles of Islam (Benjamin, 2018)." Through these ambiguous expressions, the Iranian regime left open its domestic law to potential human rights violations. However, a closer study of Islamic legal norms and principles concerning rights shows that human rights deficits in Iran have less to do with religion than their political cultures (Danesh). It can be said that it is not the Sharia that triggers Iran's current human rights position, but the regime in power that restrict the rights according to their own interests, leaving the door open to human rights violations officially sanctioned by the country's political structure and constitution.



Commemorative ceremony for Qasem Soleimani in Tehran. (Iranian Supreme Leader Press Office - Anadolu Agency)

The contemporary debate over Islam and human rights demonstrates that, contrary to popular Western characterisations, there is no single uncontested definition of Islam and its precepts (Parvin & Vaziri, 1992). According to Article 107 of the Iranian constitution, The Supreme Leader shall assume all the powers of the *wilayat al-amr* and all the responsibilities originating therefrom. Moreover, according to Article 91, this responsibility is the domain of six clerics of the twelve-member Guardian Council, all appointed by the Supreme Leader. In Iran, the granting of rights belong to the Supreme Leader, and the last word belongs to him, which maintains the supremacy of a specific interpretation of a single branch of Islam by a single individual, the Supreme Leader or the *Vali-e Faqih*, over the rights of an entire nation (Danesh).

Abdolkarim Soroush, an Iranian thinker who criticised Iran's approach to human rights after the Iranian Islamic revolution, makes a distinction between the Sharia as a normative system of rights and responsibilities and the particular understanding of the Sharia (developed by scholars and Muslim jurists throughout the centuries of Islamic history). While the former is divinely inspired and pure, the latter is ultimately a fallible human interpretation influenced by varying social realities and other extra-religious knowledge and context (Soroush, 1996). The fact that Islam is open to human interpretation demonstrates that these interpretations are related to temporal factors because humans are fallible. Therefore, according to Soroush, interpretations of Islamic sources will never be final, sacred, and absolute. People's interpretation of the Sharia and their perception of religion have also changed with the changing world. Our understanding, in a sense, is evolving with changing conditions (cultural changes, modernisation, and technological developments enable us to understand the universe better). The fact that Iran has adopted a Shiite Sharia demonstrates that there is not a single Sharia and that the Sharia remains open to interpretation.

The Iranian regime's interpretation of the Sharia greatly impacts the country's unsatisfactory human rights situation. Soroush proposes to overcome this handicap by reconciling revelation and reason, religious obligations and human rights. In this way, new interpretations in which Islam can be integrated with human rights can be achieved. From this perspective, a new reading of the Sharia that provides an opportunity to develop a harmonious relationship with universal human rights principles is seen as a potential solution for human rights violations in Iran. Indeed, as demonstrated by reformist Muslim thinkers, a proper and contextual interpretation of Islamic injunctions can provide the foundation for a concept of Islamic human rights that closely approximates the international understanding of these rights (Hunter, 2008). Should Iran pursue the modernisation of Islam or the Islamification of modernity? It must be a small amount of both (Mokhtari, 2004). Such an approach would enable Iran to uphold the human rights situation. Furthermore, at the same time, despite the conceptual differences between Sharia and international human rights, it holds the potential to provide unity in practice. From this point of view, it can be said that the reason for Iran's human rights violations is not the Sharia itself, but the intervention of a narrowly interpreted Sharia into Iran's specific political culture.

Conclusion

At the time when the United Nations adopted UDHR, Iran was ruled by the Shah, which adopted a policy of westernisation. At that time, the Shah signed the UDHR, ICCPR, and ICESCR covenants without reservation. Following the Iranian revolution, the post-revolutionary regime pursued an opposite policy towards the United Nations and, while not withdrawing the already approved declarations and covenants, accused international human rights laws of being Western-centric, seeing them as an instrument to put pressure on Iran. The claim of universality was questioned on the ground that the provisions contained within the covenants contradicted the Sharia, prompting Iran to demand changes to the UDHR. This attitude towards the UDHR and related covenants did not last long, and it followed a more moderate policy by bringing certain reservations to the covenants. Iran's contradictory policy towards international human rights stems from the regime changes it has experienced at the domestic level. However, considering all these different attitudes, it can be said that Iran could not maintain a policy regarding human rights that protects the interests and welfare of its society, both at the domestic and international levels.

The challenge of universal human rights to Sharia has been controversial for Iran. Since human rights treaties are legally binding on members, they must provide consistency between national laws and international standards. Iran tried to escape from this dead-end by either expressing reservations to the content of the relevant covenants or calling for a change in the UN conventions themselves. Considering Iran's constitution, which has become open to violations of human rights through ambiguous phrases such as "unless the law states otherwise", it can be said that the reason for these violations is not the Sharia itself, but rather Iran's political culture and the particular interpretation and practice of the regime in power vis-à-vis both the Sharia and universal human rights covenants. Soroush believes that Iran can overcome these debates with a new interpretation of Sharia that can be integrated with international human rights. The fact that Iran has thus brought the Sharia to the agenda in the discussions of universalism and relativism is the result of a limited reading of Sharia. Because, in fact, the conflict that Iran has faced is rooted in the intervention of a narrowly-interpreted Sharia into the political regime rather than any inherent contradiction between the Sharia and universal human rights.

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