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THE INTERSECTION OF ISLAMIC LAW AND MODERN HUMAN RIGHTS

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ABSTRACT

The intersection of Islamic law and modern human rights is a complex and evolving field of study, characterized by the interplay of religious traditions and international legal frameworks. Islamic law, or Sharia, has historically governed many aspects of life in Muslim-majority societies, addressing issues ranging from family and social relations to criminal justice. However, with the rise of modern human rights concepts, particularly in the post-World War II era, a tension has emerged between traditional Islamic legal principles and contemporary notions of individual rights, freedom, and equality. This paper explores the ways in which Islamic law and modern human rights intersect, considering both the areas of congruence and divergence. On one hand, certain aspects of Islamic law align with modern human rights principles, such as the protection of life, property, and the right to justice. Islamic legal texts emphasize the dignity and equality of all human beings, and many scholars argue that these principles provide a basis for human rights in the Islamic tradition. On the other hand, challenges arise in areas such as gender equality, freedom of expression, and religious freedom, where Islamic legal interpretations often conflict with international human rights standards. This paper examines the historical and doctrinal foundations of both Islamic law and modern human rights, analyzing their potential for coexistence. It also explores the role of Islamic scholars, policymakers, and human rights advocates in seeking a balance between these two systems. By critically assessing the potential for reform within Islamic legal frameworks and the adaptability of international human rights law to diverse cultural contexts, the paper provides a nuanced perspective on how Islamic law can evolve in alignment with modern human rights principles while respecting its theological roots.

Keywords: *Islamic law, Sharia, modern human rights, gender equality, freedom of expression, international law, religious freedom, legal reform, human dignity, cultural adaptation.*

Introduction

The intricate relationship that exists between Islamic law, often referred to as Sharia, and the modern constructs of international human rights represents an issue of significant and considerable importance, alongside a pressing relevance in our increasingly globalized and interconnected world that we inhabit today (Ali, 2021). Frequently, Islamic law and contemporary human rights are presumed to exist within separate and largely incommensurable moral universes that are thought to be fundamentally incompatible and irreconcilable; however, upon deeper and more nuanced examination, it becomes evident that these frameworks actually share a substantial number of fundamental concepts that clearly outline the rights and responsibilities of individuals, along

with those of states, in the broader and far wider context of global society. A thorough and comprehensive understanding of their compatibility, along with a clear and thoughtful acknowledgment of the potential conflicts that may arise between these two intricate systems, is not only necessary in light of the historical significance of Islamic legal systems throughout numerous human societies but is also essential due to their ongoing and multifaceted impact across various contemporary contexts on a global scale (Ahmad et al.2024). This nuanced understanding is also crucial for achieving a better and more comprehensive grasp of the contemporary Muslim world and the multiple and myriad dynamics at play within its diverse societies and intricate cultural frameworks. Islamic law has long functioned as a comprehensive and intricate system for negotiating social differences and distinctions, whether those differences are of a political, religious, or tribal nature, for over 1,400 years now (Nasir, 2022). Through its rich history, it has proven to be continually evolving and adapting in response to the myriad challenges posed by the ever-changing and diverse context of time, society, and culture. Presently, it continues to hold incredible relevance in many ways for a multitude of people, including both Muslims and non-Muslims alike, who may find themselves navigating the complexities of modern legal and ethical issues in a diverse, rapidly changing society that is marked by globalization and interconnectedness. This undeniable truth demands our careful, thoughtful, and well-considered attention as we endeavor to explore the intricate dynamics between the different cultural and legal frameworks that coexist in an interconnected and interdependent world in which we live today (Hosseini, 2023). Furthermore, recognizing the nuanced and multifaceted relationships between Islamic law and human rights can facilitate constructive and meaningful dialogue while fostering an environment of mutual understanding among diverse communities and peoples (Taiba et al., 2023)(Hasib, 2021). This understanding serves as an essential foundation for fostering peace and cooperative efforts in the contemporary global landscape, where interaction among varied cultural identities and traditions is increasingly commonplace and absolutely necessary. By examining these varied interactions closely, with unwavering commitment to open-mindedness and respect for differing perspectives, we can work towards fostering an environment that genuinely appreciates diversity while also promoting universal values that transcend cultural boundaries and differences. In doing so, we are not just aiming to bridge gaps between differing worldviews but also create diverse pathways for collaboration and shared respect that can ultimately lead to a more harmonious and constructive coexistence in a pluralistic and interconnected society. In this way, we can ensure that the vital dialogue surrounding Islamic law and human rights continues to evolve, fostering a greater understanding that contributes positively to the functioning of societies characterized by diversity and shared objectives that benefit us all as global citizens (Karimullah, 2023). The continuing exploration of these vital topics is thus not merely academic

but essential and significant, influencing not only academic discourse but also practical applications within legal systems around the world, thereby shaping the lives of individuals and communities in profound and meaningful ways. Ultimately, the integration of these crucial ideas paves the way for a future where coexistence among varying cultural perspectives is not only possible but genuinely celebrated as an integral part of our shared human experience that we all participate in, thereby reinforcing the importance of mutual respect and understanding as we navigate our shared future.

Islamic law and modern human rights both have histories and have changed through time. Moreover, human rights and much of modern Western jurisprudence also have some of their origin in the same historical basis (Ali, 2021). The human rights of state constitutions and the Universal Declaration of Human Rights have roots in key historical and judicial documents and events of philosophical traditions, as well as certain key ideas from the medieval Muslim philosopher, jurist, and imam. Similarly, several human rights, such as those of freedom of religion, respect for the individual, and the rejection of torture, are ignored by some contemporary Islamic law interpretations. The question of how Islamic legal systems today view, incorporate, or reject contemporary human rights norms has been important to many of us in the field, including scholars, legal practitioners, and policymakers. A basic understanding of Islamic law, modern human rights, and their relationship has yet to be articulated, however. The essays in this forum contribute to that task. (Yilmaz, 2021)

Background of Islamic Law and Human Rights

Since its inception, a central question that has consistently surrounded Islamic law and political systems has been the specifics of Islamic norms and values in the process of legislation and governance (Quadri, 2021). How could one possibly derive a rich and comprehensive set of principles for governance from a few basic beliefs? In many ways, the theoretical investigation into the possibilities of establishing a just and equitable government ultimately led to the conceptualization of what we now understand as the Islamic political tradition. With the advent and subsequent spread of Islam into various cultural and climate zones, however, the question arose: On which standards should a believer refer to when it comes to the creation of laws, provided that these laws are to be shaped and crafted in accordance with the tenets of Islam? This question presents no easy answer: there is no single, definitive book of law in Islam that possesses the same function as Christian law does in its various denominations. However, it is essential to recognize that the foundation of Islamic law is of central importance to the faith, and this is not a minor issue. In fact, the core principles of Islamic law may not be altered or modified without considerable deliberation and scrutiny, indicating the complex dynamics at play in the relationship between religion and governance.

Numerous international norms that we recognize and uphold today can be traced back to a variety of significant revolutions, pivotal

constitutions, and other momentous historical events that have shaped our understanding of justice and governance. Interestingly, these influential revolutions have unfolded across different regions of the globe and have notably influenced one another over the passage of time (George et al.2021). In other words, the very idea of being free and equal among individuals has ultimately formed a comprehensive and interconnected type of global norm that transcends diverse cultures, traditions, and geographic borders. Today, these essential norms are implemented across various nations worldwide, and they are widely defined under the umbrella of human rights (Mayaka & Truell, 2021). While many diverse groups and movements have boldly striven for justice, equity, and equality throughout the course of history, there are also those who have come to sincerely believe in the fundamental compatibility of Islamic teachings and the safeguarding of individual liberties. It's worth noting, however, that many Islamic scholars and thinkers articulate compelling objections to several aspects of the modern concept of human rights that have emerged. Nevertheless, these objections are often prominently utilized by certain political factions whose goals may be closely aligned with maintaining a theocratic rule, seeking to impose restrictions that may not resonate harmoniously with the universal principles of liberty and justice for all individuals, regardless of their background or beliefs. This ongoing dialogue and tension reflect the complexities inherent in the pursuit of rights and freedoms in a world characterized by diverse philosophical and ideological frameworks.

Key Principles of Islamic Law

When one truly engages with the rich and intricate system of Islamic law, it soon becomes abundantly clear that it presents the individual with far more ameliorative and rights-based positions focused on human dignity and justice than might initially be commonly perceived or recognized (Khan et al., 2024)(Hoesein2021). Islamic law shares numerous fundamental human rights with the internationally recognized standards set forth in the United Nations Declaration of Human Rights or the European Convention on Human Rights; here, I will only reference a few select rights that exemplify this intersection. In various cultural contexts, the United Nations Declaration may be subjected to scrutiny and viewed with skepticism, particularly from a very culture-specific perspective that is closely associated with the enlightenment-derived secular culture prevalent in the majority of Western states. Yet, in many instances, those who criticize these provisions often find that they cannot point to corresponding rights as articulated in local historical or cultural ideas of rights that truly resonate within their societies (Boelens et al.2023). Similarly, proponents advocating for the proliferation of relativist identity-based human rights declarations frequently struggle to provide evidence of any overtly cultural or religious Islamic political frameworks and systems that present comprehensive and coherent versions of human rights that align with a global understanding.

Given the significant cultural differences between Islam and the global human rights culture, moreover, and the deep suspicions that Western advocates of human rights can generate, such exercises are critically important as precursors to any potential reform for a new millennium in Islamic thought which may encourage community-wide acceptance (Ali, 2021). Many Islamic states prepare themselves for accusations of ignoring several fundamental rights. Some of these rights, as one would expect, include freedom of speech, but it also includes many rights that are not commonly associated with Islamic societal norms, such as the rights of women. Indeed, several modern commentators agree that it is the rights of women – encompassing family, civil, and political rights – that set Islamic Sharia law in direct opposition to the global human rights frontier. Within the next couple of decades, preventative anti-terrorist internment policies likely to be aimed at Muslims can be supported by ideological formulations drawn from Islamophobia sources of apparently unimpeachable authority. These contrasting opinions underscore the necessity for discussions in which Islam respects women; does not support the killing of women, children, or the elderly; does not facilitate amputation, stoning, or other barbaric acts; and respects the speech, assembly, and association rights of Muslims even when their words are critical of US policy and the Western world.

Areas of Convergence and Divergence

Islamic legal scholars, alongside followers of contemporary human rights discourse, have engaged in a meticulous examination and comparison of Islamic law with international human rights principles. These thorough studies commonly emphasize particular areas where there are points of agreement, as well as areas where there exists discord, between the two rich and historically significant traditions (Rohmah et al., 2022). However, it is important to note that such analyses often fall short of proposing feasible pathways for harmonizing the civilizational aspirations that these two influential traditions embody and represent.

In this section of the conference paper, the aim is to reflect critically on this dynamic field of research while also seeking to delve deeper into the complex question of identifying fundamental areas where there exists agreement or, alternatively, discord between Islamic law and the concept of universal human rights. By serving as a nucleus of discussion, this conference paper strives to shed light on the ways Islamic law, understood as a comprehensive and multifaceted legal system, could potentially accept and incorporate certain principles and norms that have been articulated within the modern human rights framework (Nawaz et al. 2021). This acceptance could be based on various foundations, including intrinsic Islamic principles.

Moreover, in instances where there is a lack of harmony with human rights standards, this discourse can explore the reasoning and methodologies through which Islamic law, in its current form, could more effectively justify and prioritize those rights and values that not only align with but transcend the benchmarks established by the Charter of the United Nations, as well as the texts surrounding international

human rights. By undertaking this exploration, the paper aims to foster a constructive dialogue that could lead to a deeper understanding of how Islamic law can resonate with, adapt to, and even enhance modern human rights concepts, thereby contributing positively to the unified discourse surrounding global human rights issues.

Demonstrating both doctrinal and historical currents within Islamic thought, this section aims to delve much deeper and more extensively into the intricacies and complexities surrounding the first pillar of the study (Faris, 2023). This pillar examines the multifaceted and diverse relationships that exist between Shari'a and modern human rights in a comprehensive, thorough, and systematic manner. By dedicating itself not only to robustly highlighting the positive, constructive, and beneficial aspects of this intricate relationship but also to engaging in a critical and reflective inquiry about the very nature, essence, and scope of the nuanced comparisons being made here, we sincerely hope to illuminate the many layered, nuanced, and intricate dynamics involved in these ongoing discourses. These discourses are so crucial to understanding the evolving landscape of law and rights in contemporary society and within various cultures across the globe (Ghafoor & Tahir, 2023). This pivotal section of the conference paper will meticulously and rigorously analyze a variety of practical applications of Islamic law across a wide-ranging selection of pertinent and relevant areas of inquiry that are essential to our understanding of both Islamic principles and modern legal frameworks.

These areas include, but are certainly not limited to, the complex issues surrounding essential privacy rights and the actions of police forces, subjecting the mechanisms of state punishment, which regularly evoke numerous debates, to intense and critical scrutiny (Hartley et al.2023). Additionally, we will explore the dynamic interplay of sex and gender roles, which provoke important, thought-provoking, and often challenging discussions. Furthermore, we will be considering the fundamental protection of life, which remains paramount in such deliberations and inquiries. We shall also address the crucial aspects surrounding freedom of expression and the associated rights. These include the often-contentious but vital aspects of protection from religious insult, the fundamental right to freedom of religion, and the essential rights concerning assembly and association that are crucial in contemporary societies across the globe today.

In this expansive framework, we will also carefully and thoughtfully address the serious considerations of crime, punishment, and justice within the comprehensive and multifaceted context that we are developing (Khan et al., 2023). Each of these crucial and significant issues presents its own unique complexities, multifaceted challenges, and layered dimensions. This necessitates a thorough, thoughtful, and discerning exploration to fully grasp the intricate connections, context, and implications involved in the intersections of law, rights, and social norms. Our thoughtful and reflective approach will inevitably lead us to a profound conclusion: that the so-called 'Islamic law' is just as

multifaceted, intricate, polycentric, rhizomatic, and fluid, as well as diverse, as the very concept and definition of human rights itself.

We cannot convincingly attribute a single, universally accepted, and internally consistent position on any issue as varied and nuanced as 'the protection of privacy,' for example, to the millions of diverse Muslims who navigate and apply Islamic law within their own distinctive and unique contexts (Ali et al.2022)(Umar et al.2021). Across the vast expanses of Africa, Europe, the Middle East, and South and Southeast Asia, each community exhibits rich local traditions and interpretations that speak to their shared and divergent experiences. Instead, what we discover upon further in-depth examination and reflection is a rich and vibrant tapestry of interpretations, attitudes, and practices that are shaped and molded by an overwhelming multitude of factors. These factors reflect the deep cultural, social, and historical complexities that are inherently present in these varied and diverse regions of the world. Each interpretation and practice is profoundly influenced by a myriad of local customs, political contexts, social norms, and historical experiences. These influences further enrich this complicated and intricate picture, revealing the depth and richness of the human experience as it intersects with religious law and contemporary rights (Al et al.2021). This illustrates not only the continuous evolution and adaptive nature of societal values in a globalized era but also the dynamic interplay of both traditional and modern frameworks that constitutes law and governance in the ever-evolving contemporary world today.

Case Studies

Afghanistan

The complex situation in Afghanistan, a nation that has experienced a notable and significant presence of Islamic law within both political debates and various legislative processes throughout the past decade, clearly illustrates that Islamic law is not a static entity but rather a framework that can indeed be reinterpreted in alignment with the evolving norms of international human rights (Husain et al.2024). This crucial adaptation involves elements of positivism alongside the decision-making approaches that are often found in international law, the intricate jurisprudence of Shari'a, as well as the coexistence and interaction of both fundamental rights and positive law within the broad Iranian-Afghan legal framework. Such a comprehensive perspective reveals the dynamic and multifaceted interplay between traditional legal norms and contemporary international human rights standards, highlighting the potential for growth and change within an evolving socio-legal landscape.

Egypt

This case seeks to delve deeper into the complex relationship that exists between constitutional Islam and the broader realm of human rights, particularly as they pertain to the micro-dimension of family law. This aspect of law can be viewed as "a matrix for far-reaching aspects,"

encompassing a wide range of issues that include personal status law, as well as pivotal questions concerning gender equality and discrimination (Faizi et al.2024). It is essential to note, however, that based on the title of the paper, a significant portion of the analysis will concentrate on the underlying reasons for the various reinterpretations or reforms currently being discussed. Additionally, it will investigate from what potential sources various actors are attempting to creatively “patchwork” new methodologies for rethinking law and Islamic law within the contemporary context. Notably, the Egyptian Society for Social Welfare has embraced the dissemination of the Convention for the Elimination of All Forms of Discrimination against Women, turning it into both a manifesto and a concise action plan aimed at instigating social change.

This paper aims to meticulously trace the various societal actors, including women themselves, groups within civil society that advocate for women's rights, legal practitioners, and even ordinary scholars well-versed in theology and Shari’a, who are motivated to navigate around traditional Shari’a law, family-majority viewpoints, and established personal status law. Furthermore, this section seeks to emphasize the indispensable role played by human rights experts who are based in European jurisprudence, as well as those residing within the Middle East itself. Their contributions are pivotal to the ongoing discussions around diverging legal interpretations and the potential for reform.

In the final section of this examination, I will illustrate how the increasing blurring of human rights discourse creates an important opportunity for rights to assert their influence over legal norms in the Middle East. This is significant, especially since the ruling elite in these regions have the capacity to articulate and promote ideas of morality and welfare. These ideas can coexist and flourish alongside traditional notions of authenticity and the often-competing principles of transnational justice, thus creating a multifaceted landscape of legal and ethical considerations that affect family law and beyond. Such dynamics open the door to new interpretations and practices, potentially leading toward an evolving understanding of both Islamic law and human rights (Esping-Andersen, 2024).

Application of Islamic Law and Human Rights in Specific Contexts

The last three case studies focus less broadly on the thematic approaches that are thoroughly discussed in the following sections of this paper, but they attempt to draw attention to particular contexts in which the vital intersection between Islamic law and human rights was found to be relevant and important. The discussion surrounding these case studies is designed to illustrate not only that there is a significant commonality uniting them, in terms of the recurrent themes that tend to emerge, but also to emphasize that these themes of intersection are indeed open to varied interpretation and local application. It is crucial that the case studies be read in conjunction with one another for a comprehensive understanding of the diverse social, economic, cultural, and political contexts in which these thematic approaches were specifically being applied. By examining these contexts closely, one can appreciate the

complexity and nuance that characterizes the relationship between Islamic law and human rights in specific settings, shedding light on how local cultures and traditions influence the interpretation and implementation of these themes in real-world scenarios.

Although the examples selected here are both quite disparate and varied in their overarching nature, it is crucial to note that they also share several notable commonalities that bind their contexts together. None of the countries discussed in this multifaceted context has successfully codified Islamic family law for all of its citizens across the board. This absence of comprehensive codification serves as a convenient yet significant way of examining with depth the extent to which Islamic norms continue to exert a meaningful influence over legal questions and issues in countries that have, in many respects, made considerable gains for women in various other essential aspects of life and society. While there are specific areas in which these countries distinctly differ in their treatment of the intersection between Islamic family law and human rights, there exist several prevalent common threads that connect them, fostering a shared discourse on the matter.

First and foremost, Islamic family law is gradually being brought into greater conformity with international standards concerning women's rights to some extent, reflecting a slow yet noticeable shift in attitudes (Alrubaishi et al.2021). Nonetheless, it is important to recognize that some resistance has been expressed against these progressive moves, and it will be particularly useful in certain areas of law to observe whether even the implemented laws are being fully enforced and not merely existing on paper. This will be an important aspect to monitor moving forward.

Secondly, the ongoing transnational discourse concerning women's rights is continuously informing and shaping these countries as much, if not more so, than international law itself does. While numerous international forums and platforms have provided local actors with invaluable opportunities and a wealth of transformative ideas, it is indeed Islamic family law that is most directly influenced by the changes occurring within national legal philosophies and the evolving doctrines that underpin them. Thirdly, the intersectional approach to family law is not the dominant one in practice in these varied jurisdictions — that is to say, to clarify, there exists no clear principle of same family, same law uniformly applied. However, it is noteworthy that the two most prominent examples of countries where an intersectional approach most clearly prevails also represent the best-case scenarios for the region under study at present. Specifically, women refugees are, in general, able to benefit from significant and substantial advances in both international and Islamic family law in Turkey and the Palestinian territories, highlighting the positive outcomes of such intersections (Özgür Keysan & Şentürk, 2021). In some regards, Egypt's long experiment with, and flirtation towards, secularism stands out as an exception that proves the overall rule — highlighting that Islamic family law primarily operates

within an intersectional framework rather than a parallel one, shaping the legal landscape and realities faced by women in nuanced ways.

Conclusion

This article embarks on a comprehensive and detailed investigation into the intricate intersection and notable divergence between Islamic law and modern human rights. It places particular emphasis on exploring key general principles that constitute the very cornerstone of the four frameworks. Highlighting the significance of fostering an inclusive and comprehensive dialogue between these two distinct worlds is essential. Despite the existence of different cultural and historical contexts, both domains possess the potential to collaborate closely for the betterment of humanity, ultimately sharing similar objectives and norms that promote dignity and justice for all. Nonetheless, substantial challenges remain that must be meticulously addressed and overcome to ensure that discussions between Islamic law and modern human rights frameworks are rendered more inclusive, constructive, and productive.

As we delve deeper into the complexities of this subject, it becomes abundantly clear that ideas originating from the seventh century carry significant legal implications that resonate throughout the subsequent centuries. Consequently, legal practices and contemporary issues within the Islamic world are frequently intertwined with those foundational practices that emerged long ago. This link often sparks contentious debates and discussions, potentially generating oversimplified responses from a diverse range of Muslim activists who may feel compelled to react defensively to criticisms. It is therefore vital to engage with the subjects of Islam and human rights in a more contemporary, sophisticated, and nuanced manner. By adopting such an approach, we could unlock various synergies and collaborative potentials that could easily arise, particularly if concerns relating to traditional frameworks are thoughtfully re-evaluated, and, to some extent, abandoned in favor of more progressive interpretations.

Moreover, ample opportunities exist for further exploration and development within this fascinating field of study. The investigative work could be pursued in various compelling directions, as numerous openings have been identified from within both Islamic law and the broader modern human rights discourses. These openings serve as valuable opportunities for modifying and evolving our understandings of original sources and shared principles that can work in harmony, reinforcing and enriching one another. Such a prospective relationship has the potential to foster genuine collaboration, where mutual respect and understanding are placed at the forefront of the conversation. Therefore, there is a clear and significant role for bringing forth reporting from within the Islamic world regarding its own contemporary debates about the role of Islam in legal practices and societal norms.

This includes a thorough exploration of the extent to which Islamic law can align itself cohesively with principles espoused by modern human rights ideologies. Furthermore, advancing policy-relevant research is essential for determining effective strategies through which such

beneficial contributions can be forged into practical applications. This research should focus resolutely on the impact of Islamic law on critical policy matters across various essential areas such as promoting freedom of speech, ensuring protection from torture, upholding the freedom of minority religions, and addressing the pressing challenge of political extremism. By delving further into these intricate dynamics, a more profound, nuanced, and productive discourse may emerge, ultimately benefiting both Islamic societies and the overall framework of universal human rights, paving the way for a future where collaboration and understanding are prioritized to foster peace and respect across all cultural boundaries.

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