

A Conceptual Analysis of 'Rights' In the International and Islamic Human Rights Instruments

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Abstract

This paper examines the jurisdictional background and conceptual analysis of the term 'rights' in international and Islamic human rights in an attempt to explore wider understanding of rights and its concept, their convergences and divergences. Here, I examine how rights inform the international and Islamic human rights of women underpinned by the Universal Declaration of Human Rights (UDHR), the Universal Islamic Declaration of Human Rights (UIDHR) and the Cairo Declaration of Human Rights (CDHRI). The purpose of initiating this exploration is to critically review existing formulations of rights in these instruments as it has important implications when applied to human rights laws of both traditions. I contend that the jurisdiction of international and Islamic human rights shares the meaning of rights and the principles of rights underpinning the UIDHR and CDHRI are not entirely irreconcilable with the UDHR. Since I take the view that the UDHR is harmonious with the UIDHR and CDHRI pertaining to the principles of rights, my further concern is to show how they correspond. I explore the existing data of the works of leading scholars, their conceptual implications and often their reinterpretation as a method of getting the answer to the above questions.

Key words: rights, human rights, Islamic and international human rights,

1.1 Jurisdictional Background of the Term 'Rights' In the International and Islamic Legal Principles

Exploring the jurisdictional background of the term 'rights' will help to understand how human rights in the international and Islamic legal principles differ (if any) in their concept and scope. In this paper, I address the definitional analysis of rights from the Western and Islamic perspective. I argue that Western-based and Islamic-based human rights have common ideas and definition about the term 'rights'. Literally, there are huge amounts of work being done in defining the term 'rights'. In Western discourse, 'rights talk' emerged in the medieval period with the notion of natural rights (Griffin, 2001: 2-3), a by-product of the idea of natural laws. Analysis and theories of rights being dealt briefly in political philosophy by for example, Wolff (1996) and Swift (2001) whereas Freedman (1991), Jones (1994) and Freeman (2000) discussed in social science based account. Edmundson's (2004) study on rights was more historical, yet systematic and impressive as Sumner (1987) did in his introduction of rights.

In exploring the theories of legal rights, Lacey (2004) has analysed four influential attempts to construct the framework of rights. Starting from the most analytic level, Lacey demonstrated Hohfeld's appeal to rights, which are claim, liberty, immunity and power. Most human rights scholars defined rights in these four separate perspectives which might be revealed from this Hohfeld's idea. Analytically, research on rights which draw significantly on Hohfeld was done, among others by Berlin (1969), Lyons (1969 and 1970), Feinberg (1970, 1973 and 1980), Flathman (1976) and Raz (1986).

Rights as a claim are a demand to something, which can be made against someone else that has active duties¹ to do or to provide. Liberty is also part of the meaning of rights, meaning a freedom to do something, 'which is supported by other rights which is claims that other persons do not interfere with the exercise of that freedom' (Hoffman, David and John Rowe, 2003: 7).

¹ The same was named as 'perfect duties' by Hodgson, Douglas. 2003. *Individual Duty within a Human Rights Discourse*. Ashgate Publishing Ltd. p. 31

I challenge Orend's (2002: 21) idea when he commented that rights referred to liberty '*may survive and flourish only in an environment where there is no duty*'. This thought is due to the emphasis of the term '*rights*' only correlated to active duties. It is critical at this point to recognise that not only active, but also passive duties would realize the rights claimed by anyone. Here, duty bearer's responsibility is to omit interference with the exercise of the freedom of others.

As immunity, rights denote an exemption from challenge in doing something or from having a legal status altered (Jones, 1994: 24-25), such as a doctor's rights not to be sued for practicing his professional skills even though his act results in a failure of medical treatment to patient. There are duty bearers' responsibilities to ensure that the rights holder will achieve their aim of rights, by not challenging their act of doing something (passive duties). An interesting example of an actual immunity rights would be the fact that, in Malaysia, elected members of public legislatures are immune from being sued for anything they say during a debate in the legislature (Article 63 of the Federal Constitution) to encourage the maximum freedom of expression during legislative debates, in the hopes that such will ultimately forward the public good. Finally, rights also mean power to do something or to create a legal relationship which affects other people. This can be seen from an example such as a doctor's rights to decide a mercy killing, which affects the rights of the still living patient. Likewise, duty bearer holds a passive task to not to restrain other people's power to do something.

Secondly, Lacey demonstrated rights defended by H. L. A. Hart, as '*will*' or '*choice*'. According to Hart, Lacey (2004: 32) wrote, '*the essence of rights is choice or agency: a right is a specially protected choice to interfere with another's freedom*'. The third appeal to rights is developed by Neil MacCormick, which Lacey confirmed as built on Jeremy Bentham's concept of rights as '*interest conception*'. This specially protected benefit guarantees the automatic existence of rights when someone benefits from the performance of duties. The fourth view of rights defended by Ronald Dworkin, that Lacey claimed as built on the interest theory is '*rights as trumps*'. This meaning of rights, which seems to make the rights holders as winners or deciders, confers the power to force that duties must be fulfilled when claims of rights are made. That is why Lacey (2004: 33) considered this idea of rights as '*trumping background considerations*'.

Other than that, rights in many languages, including English and Arabic denotes the meaning of '*free from error*' or '*immediately*'. There were arguments that to define '*human rights*' from within the Islamic tradition would be useless since the phrase is itself a new construct of fairly recent '*Western*' origin and there is no such term as '*rights*' in the Islamic tradition, only '*duties*' (Ali, 2000: 15). This might be due to the nature of Muslims, who are believers and have duties to God and the communities and therefore avoid individual entitlements or rights (Tibi, 1993: 86-87) and due to the fact that *Quran* contains numerous references to duties, but few to rights (Donna, 1990: 205). Within the Islamic tradition, the term '*haqq*' has always existed and translated into the English term '*rights*' (Ali, 2000: 15).

Mohammad (2003) who analysed the term '*rights*' and '*duties*' in common laws and Islam has proven that the concept of rights is clearly identified by the *Quranic* verses and the Prophet traditions. Mohammad has explained that Muslim jurists have devoted independent titles to the concept of rights, such as civil obligation (Al-Sanhuri, 1954) property of a deceased individual (Al-Kabashi, 1984) and nature and restrictions of rights (Al-Durayni, 1984). According to Mohammad, Al-Durayni examined right as restricted by public good whereas Husayn and Al-Sariti (1992) detailed about the concept of rights and its difference with liberty. Uthman and Al-Sharanbasi (1986) explained the meaning of *haqq*, bearers of rights and its classification and Al-Sabuni (1979-1980), Badran (1965) and Qasim (1982) also detailed out the meaning of *haqq*, its subject matter and sources (Mohammad, 2003: 4-10).

In demonstrating wide explanation on the meaning of the term '*haqq*', Mohammad explained that the word is legally relevant if used in the sense of rights vis-à-vis a duty, property, ownership, share, an allocation and desert, an exclusive or preferred interest and justice. According to him, the texts of the traditions of the Prophet Muhammad show that the word '*haqq*' is used in different contexts including rights and other related concepts. This demonstrates that the term '*haqq*' in its literal as well as religious forms is vague, however, such ambiguity may be cleared by the context in which '*haqq*' is used. The word '*haqq*' occurs around 287 times and it is used for about 18 different meanings in the *Quran* (Mohammad, 2003: 64-65), of which most commonly used is '*certainty*', '*conformity to reality*', '*truth*' and '*justice*' (Said, 1979: 63).

Likewise, it connotes 'power' as in cases of rights of owners and guardians to use and dispose their property² and could mean immunity from certain liabilities. It also means 'appropriate' and 'suitable' and sometimes used in reference to easements such as the rights of drinking or rights of watering and rights of way. Arabs used 'haqq' for 'rights' as a 'litigation' and 'lawsuit' (Mohammad, 2003: 64). According to Mohammad, similar with the term 'rights' in English, the word 'haqq' is commonly used in different sets of meanings such as 'liberties' and 'options to do or not to do something', 'privileges to specific interests', 'incumbent and mandatory', 'authentic' and 'benefits'. Therefore, rights is also the established meaning of the term in Arabic in the sense of a 'claim right' (Ali, 2000: 15-16). This is supported by the literal, legal and juridical meaning of the term 'rights' which always stressed on responsibilities rather than entitlement (Zafrullah Khan, 1967: 13-14 and Abdillah, 2006: 2). Zafrullah pointed out an example in marriage contract in which Islam regards marriage as civil contract, imposing mutual duty and obligation of both parties, not stress on claim of rights or power (Zafrullah Khan, 1967: 39).

Here, the most interesting point might be to show that for a long time in Western jurisprudence too, there was no difference between 'rights' and 'duties' and the term 'rights' was implying 'duties. Similar with the *Quran*, Clapham (2007: 5) argued, the Bible also can be read to proclaim not only rights but also duties. The view that rights and duties are correlative used to be dominant one among philosophers (Lyons, 1970: 45 and Martin and Nickel, 1980: 165). Renteln (1990: 138) always correlated rights with duties and Austin (1995: 231) considered duties ground the rights and rights to exist only when others are bound or obliged by law to do or forbear towards or in regard of him. Orend (2002: 21) stated that rights holder and duties bearer come together even though 'rights' place rights holder as a more dominant party than duties bearer who may ordinarily exercise their rights as they see fit. Donnelly (2007: 22) stressed more critically regarding the relationship between rights and duties when he conceded that rights involved a special set of social institutions, rules or practices due to its enforceability which stand at the very foundation of political morality in this era. Without those systems which support the application of human rights protection, then it would only important on paper.

Even though Hohfeld's analysis has been used to refute the logical correlativity doctrine of rights and duties³, the correlation may always be found if the division of 'active' and 'passive' duties is understood. As Hohfeld (1946) stressed in his book '*Fundamental Legal Conceptions as Applied to Judicial Reasoning*', a right is a fair claim that remains justified even when the rights holder is not actually making a verbal claim. This abstractly demonstrates that Hohfeld stressed on duties, whether active or passive, correlated with rights. Because rights are autonomy whereas duties are responsibility, the concept of duties might serves to balance the notions of rights. Having said so, I dispute with Smart's (1989: 144) idea that 'rights over simplify power relations', that acquisition of rights may create the impression that a power difference has been resolved. Therefore, it is important to develop new formulations for feminist demands that rights must be followed with duties, otherwise speaking about women's rights would be futile and unrewarding.

Hence, in describing various classes of claims and responsibilities, the combination of Hohfeld, Hart, MacCormick and Dworkin's analysis provides a framework similar with Islamic scholars in which to place various human rights, ranging from economic, social and cultural rights, to civil and political rights as well as the more controversial third generation or group rights. It is clearly seen that in the Western jurisprudence which is the source of international human rights laws, the term 'rights' has been analysed in depth, which has resulted in a certain degree of refinement. It seems clear that rights might not be a bias concept for international acceptance of human rights idea. The international and Islamic based human rights jurisprudence have embodied similar meanings of rights and duties to protect and promote values and ideals that reaffirm the basic rights of human beings.

² This is the same as an exclusive assignment. See Mohammad, Mohammad Tahir. 2003. *Rights and Duties*. Ilmiah Publishers

³ See for example Lyons, D. 1970. 'Correlative Rights and Duties' in *Nous 4*; Feinberg, J. 1973. *Social Philosophy*. Englewood Cliffs: Prentice Hall; McCloskey, H. J. 1976. 'Rights-Some Conceptual Issues' in *Australasian Journal of Philosophy*. 54. pp. 99-115

1.2 The Udhhr, Uidhr and Cdhri: A Complementary Analysis

The Universal Declaration of Human Rights (UDHR), which was adopted by the United Nation (UN)⁴ General Assembly⁵ in 1948 aimed to advance the goal of increasing peace and security in the international regime (Renteln, 1990: 24-25). The UDHR is not a treaty but it sets out a common standard of achievement of all nations⁶. It establishes the objects of human rights and is the first international legal effort to limit the behaviour of states and press upon them duties to their citizens⁷. A number of Articles in the UDHR express vital human needs, which leave the exact margins of interpretation and its enforcement to the single states (Douzinas, 2000).

If the UDHR has covered the rights of contemporary human beings, the Universal Islamic Declaration of Human Rights (UIDHR) was presented as a response to the perceived exclusion of Muslims from the domain of human rights as propounded in the West and to argue that there is indeed a human rights tradition in Islam. The UIDHR, adopted on 19 September 1981 by the Islamic Council in Paris focused on the idea of freedom and insisted that this was a fundamental right given by God and no one could take it away from a human being (Mawdudi, 1976: 14). The UIDHR was written by representatives from various Muslim states such as Saudi Arabia, Egypt and Pakistan under the auspices of the London based Islamic Council, a private organisation affiliated with the Muslim World League (Bielefeld, 2000: 105 and Mayer, 2007). Arkoun (1994: 106) has submitted that all 23 Articles of this Declaration are based on verses of the *Quran* or on selections from official *Sunni* compilations of *Hadith*.

Nine years after the UIDHR was adopted, 56 Member States of the Organisation of Islamic Cooperation (OIC)⁸ created the Cairo Declaration of Human Rights (CDHRI) which is similar in its basis to the UIDHR (Achilihu, 2010: 86). The CDHRI adopted in Cairo in 1990, which provides an overview on the Islamic perspective on human rights and affirms the *Quran* and the Prophetic tradition as its sole source. Its purpose is to be 'general guidance for Member States [of the OIC] in the field of human rights'. Similar with the UIDHR, the CDHRI is usually seen as an Islamic response to the UDHR. The CDHRI presents a state perspective whereas the UIDHR is a non-state perspective⁹ (Mas'ud, 2007: 96).

⁴The United Nations (hereinafter UN) is an international organization whose stated aims are facilitating cooperation in international law, international security, economic development, social progress, human rights and the achieving of world peace. The UN was founded in 1945 after World War II to replace the League of Nations, to stop wars between countries and to provide a platform for dialogue. It contains multiple subsidiary organizations to carry out its missions. See Online: <http://www.un.org/en/aboutun/index.html>. Retrieved on 12/03/2012

⁵UN General Assembly was established in 1945 under the Charter of the UN. It occupies a central position as the chief deliberative, policymaking and representative organ of the UN. Comprising all 192 members of the UN, it provides a unique forum for multilateral discussion of the full spectrum of international issues covered by the Charter. It also plays a significant role in the process of standard-setting and the codification of international law. The Assembly meets in regular session intensively from September to December each year and thereafter as required. See Online: <http://www.un.org/en/ga/about/index.html>. Retrieved on 12/03/2012

⁶See detail discussion in Waltz, Susan. 2004. 'Universal Human Rights: The Contribution of Muslim States' in *Human Rights Quarterly* 26

⁷The Declaration is also analyzed in Nickel, J. 1987. *Making Sense of Human Rights*. Berkeley: University of California Press. It is reprinted there in full, along with the two subsequent covenants (the ICCPR and ICESCR) which together form the International Bill of Rights. See also Luard, Evan. 1967. 'The Origins of International Concern Over Human Rights' in Luard, Evan (ed.) *The International Protection of Human Rights*. London: Thames and Hudson; Sohn, L. B. 1968. 'A Short History of United Nations Documents on Human Rights' in the *United Nations and Human Rights* (18th Report of the Commission to Study the Organisation of Peace); Unesco. (ed.) 1973. *Human Rights; Comments and Interpretations*. Greenwood Press; Meron, T. 1986. *Human Rights Law Making in the United Nations: A Critique of Instruments and Process*. Oxford: Clarendon; Morsink, Johannes. 1999. *The Universal Declaration of Human Rights: Origin, Drafting and Intent*. Philadelphia: University of Pennsylvania Press; Douzinas, C. 2000. *The End of Human Rights: Critical Legal Thoughts at the Turn of the Century*. Oxford: Hart; Smith, Rhona K. M. 2003. *Textbook on International Human Rights*. Oxford University Press; Griffin, James. 2008. *On Human Rights*. Oxford University Press

⁸The Organisation of Islamic Cooperation (OIC) which was formerly known as the Organisation of Islamic Conference is a permanent delegation to the UN. Currently, there are 57 Islamic states members of OIC and Malaysia became member since 1969. See Online: http://www.oic-oci.org/member_states.asp. Retrieved on 25/02/2012

⁹It was mentioned earlier that the UIDHR was written by representatives from various Islamic states under the London based Islamic Council

In its 25 Articles, all rights are subject to the Islamic textual sources (Article 24). The CDHRI believes that fundamental rights and universal freedom are an integral part of the Islamic religion and every person is individually responsible and the community collectively responsible for their safeguard (Preamble). It can be seen that as the UDHR was proposed by Muslim groups who belonged to opposition political parties and organisation in Muslim countries, it is more concerned for civil and political freedom while the CDHRI is apprehensive of these freedoms.

Technically, as Mas'ud explained, it is quite difficult to compare the UDHR and the CDHRI due to their different approach. However, both documents show a basic concern for human rights from the Islamic perspective. They are not totally contradictory of each other and apparently the CDHRI is not proclaimed to denounce the UDHR or to replace it. The content found in the CDHRI is not totally new, for it has incorporated almost all essential human rights as stipulated in the UDHR even though there are however some discrepancies between the two.

Many UN Islamic member states ratified the Western based international human rights instruments even though there is evidence that they were dissatisfied with the 'Westernization' of human rights instruments. The question of whether Muslim states were impliedly opposed to international human rights has assumed a special significance in the post UN era where a considerable body of international human rights declaration has emerged. Dacey and Koproske (2008: 6) have demonstrated how the UN representative of the Islamic Republic of Iran, Said Raja'i Khorasani, rejected the universality of the UDHR in 1984 by claiming that the UDHR represented secular understanding of 'Judaean-Christian tradition', therefore, Muslim states should violate its provisions. The vast number of reservations entered by State Parties among Muslim countries due to *Shariah* constraint, (Connors, 1996: 352 and Joseph and Najmabadi, 2005: 266) might further prove their partial acceptance to the 'universalisation' of human rights¹⁰.

In this paper, however, I will argue that the international and Islamic human rights declarations reveal the same principles in justifying human rights. It is not surprising, knowing that almost all of Islamic nations are signatories to the UDHR, the International Covenants on Civil and Political Rights (ICCPR)¹¹ and the International Covenants on Economic, Social and Cultural Rights (ICESCR)¹² and contributed actively in their formulation (Dacey and Koproske, 2008: 9). Brems (2001: 289) considered that the CDHRI conforms to the 'genre of a human rights declaration' and counts this aspect as one of universality.

Interestingly, even though the UDHR was claimed as un-Islamic, Western-based (Arkoun, 1994) and lack of cultural and religious contexts of Muslim societies (Mas'ud, 2006: 3 and Dacey and Koproske, 2008: 4), Al-Awabdeh (2005), in his dissertation on the 'History and Prospects of Islamic Criminal Law with Respect to the Human Rights' contended that as a matter of fact, there is no general theory or even one definition of human rights according to the views and attitudes of the Islamic world opposed to opinions of the West. Earlier to that, Tabandeh (1970) has agreed that most of the UDHR's provisions are also inherent in Islam. It might be the reason why Islamic human rights movement presented its idea to the Human Rights Council (HRC)¹³ that the development towards Islamic human rights is merely complimentary to the UDHR, not otherwise.

¹⁰ The states are Algeria, Bangladesh, Egypt, Indonesia, Iraq, Jordan, Kuwait, Libya, Malaysia, Maldives, Morocco, Pakistan, Tunisia, Turkey and Yemen. See Online: <http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>. Retrieved on 12/03/2012

¹¹ The ICCPR was adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16th December 1966. It is a multilateral treaty adopted by the UN General Assembly on December 16, 1966, and in force from March 23, 1976. It commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights and rights to due process and a fair trial. As of September 2011, the Covenant had 72 signatories and 165 parties. See Online: <http://www2.ohchr.org/english/law/ccpr.htm>. Retrieved on 11/03/2012

¹² The ICESCR was adopted and opened for signature, ratification and accession by General Assembly Resolution 2200 A (XXI) of 16th December 1966. It is a multilateral treaty adopted by the UN General Assembly on December 16, 1966, and in force from January 3, 1976. It commits its parties to work toward the granting of economic, social, and cultural rights to individuals, including labour rights and rights to health, education, and an adequate standard of living. As of July 2011, the Covenant had 160 parties. A further six countries had signed, but not yet ratified the Covenant. See Online: <http://www2.ohchr.org/english/law/ccpr.htm>. Retrieved on 11/03/2012

¹³ Human Rights Council is the UN body charged with defending universal human rights

Mary Robinson, the then High Commissioner for Human Rights agreed that Islam is entirely consonant with the principles of fundamental human rights. In her address in the OIC Conference Symposium on 15 March 2002, she said:

'No one can deny that at its core Islam is entirely consonant with the principles of fundamental human rights, including human dignity, tolerance, solidarity and equality. Numerous passages from the Quran and sayings of the Prophet Muhammad will testify to this. No one can deny, from a historic perspective, the revolutionary force that is Islam, which bestowed rights upon women and children long before similar recognition was afforded in other civilisations. Custom and tradition have tended to limit these rights, but as more Islamic states ratify the Convention for the elimination of discrimination against women, ways forward for women are being found and women are leading the debate. And no one can deny the acceptance of the universality of human rights by Islamic states' (E/CN.4/2003/NGO/225).

Baderin (2001 and 2003), while formulating a synthesis between Islamic and international human rights laws, argued that the differences of scope and application between Islamic and international human rights do not create 'a general state of dissonance' between them especially if the concept of human rights is not established as a foreign concept to *Shariah*. Baderin did not specifically focus his analysis on the UDHR, UIDHR or CDHRI but on the ICCPR and the ICESCR, yet, his finding would be very helpful for an analysis of these Declarations concerning rights. Wherever the concept of human rights is established from, I am of the view that the scope and application do not influence the divergence of Islamic and international human rights. The most important areas of commonalities to be highlighted are on the principles and the outcomes, whether it results in fairness and justice to all people as human.

Mas'ud's (2006: 7) comparative studies of the UDHR, UIDHR and CDHRI revealed that the area of common grounds between these three Declarations is larger than that what they differ. According to Mas'ud, the UIDHR share respectively 20 themes and the CDHRI share 14 themes of rights with those mentioned in the UDHR. The conflicting themes, Mas'ud observed, were only on freedom of thought and expression, protection of life, penal laws, marriage and holding of public office. However, Mas'ud did not examine thoroughly the contrasting principles of these Declarations.

Political scholars also accept that there is some commonality between UN human rights instruments and Islamic human rights instruments. The Pakistani Ambassador at the UN Human Rights Council, for instance, has claimed that the CDHRI is a complementary to the UDHR, not an alternative (Dacey and Koproske, 2008: 16). Employing the similar principles would be completely relevant to reconcile Islamic and international human rights. Baderin alleged that '*the methods and relevant principles of Shariah can be positively employed to ensure the effective practical realization of human rights in Muslim states*' (Baderin, 2006: 1). Moderate, dynamic and constructive interpretations of Islamic textual sources as such, could enhance the international human rights in the Muslim world.

1.3 The Common Principles of Human Rights in the Udhr, Uidhr and Cdhri

The most elementary ideals and values of human rights, which are justice and dignity, are expressed in the First Article of the UDHR. The same is also being stressed in Islamic theory of human rights. As emphasised by Noor (2007: 130), Muslims generally understood that justice is a fundamental part of Islamic teachings. The entire concept and content of the UDHR, UIDHR and CDHRI is to ensure justice and fairness to all human beings, which could be the keys that locate their justification of commonality. They also in accord in spirit, human welfare, prosperity and happiness but the UDHR is more concerned to secure them at the material level, through physical means and during this life only while Islam is concerned to secure them at all levels, through every available means, both here and the hereafter (Nathan, 2009: 164). This divergence indeed does not invalidate the commonality of human rights in both traditions. Sachedina (2009: 119) offered his view that justice could be the major analytical tool that can lead to the recognition of universal morality from scriptural resources in Islam and its commanding influence over the deconstructing of discriminatory religious discourse. A perusal of the *Quran* on justice leaves no doubt that justice is integral to the basic outlook and philosophy of Islam, within or beyond the *Shariah* and that no justice without gender equality (Musawah, 2011: 21).

The UIDHR protect every person's dignity as stated in Preamble G (xiv) (b)¹⁴ and the CDHRI states the same rights in Article 1 (a)¹⁵ and Article 6 (a)¹⁶. The most transparent idea of dignity might be the one which is offered by Howard (1991: 81), that it is something that granted at birth and is the '*particular cultural understandings of the inner moral worth of the human person and his or her proper political relations with society*'. Finding dignity as the inherent quality of the sacredness of human beings, Shestack (2000: 53) claimed that some religious philosophers believed that an entire rights system can flow from this concept. Many in the human rights field cite a concept of human dignity as the ultimate justification for human rights (Finnis, 1980 and Vlastos, 1984: 41-76). For Muslims, the idea that all human beings are '*unconditionally equal*' in dignity through God's act of creation is stated in the *Quran* and is sufficient to confirm that all human beings are entitled to certain rights as part of their inviolable personhood (Sachedina, 2009: 115).

Kofi A. Annan, the Former UN Secretary General pointed out that human rights '*asserts the dignity of each and every individual human being, and the inviolability of the individual's rights*' (Kamali, 2006: 7). This characterisation of human dignity bears total harmony with the clear text of the *Quran*, and could be said to manifest also the basic Islamic outlook on the subject (Kamali, 2003). For Muslim, *Quranic* commentators have drawn the conclusion that physical and spiritual dimensions of dignity are natural rights of every human being regardless of race, colour and religion as they endowed with dignity as of the moment of birth (Kamali, 2002: 1). In numerous verses, the *Quran* speaks of dignity for human kind without distinction as to gender too (Yaacob, 1986: 77 and An-Naim, 1990). One of the manifestations of human dignity in the *Quran* is also seen in the designation of mankind as God's vicegerent in the earth, both as individuals and communities. Because of its commitment to human dignity, it is only natural to say that Islam committed to the realisation of human rights.

Even though An-Naim (2001) asserted that claiming Islam as fully consistent with human rights is problematic as many rights given in Islam are based on gender, but the idea that it makes human rights in Islam inconsistent with international standard is unacceptable. It is because the different entitlement of rights according to gender in Islam might results to equal dignity and justice. Indeed, certain rights are given specifically to women or men purposely to ensure equal dignity and justice as Islam appreciates biological differences (Sheriff, 2007: 1) and equality in Islam is similarity of treatment for those who are in the similar position and different treatment for those who are in the different position. Islam also give a particular concern to the disadvantage group, especially women and ensures that its law does not contributes to the subordination of women.

Indeed there are differences between the UDHR, UIDHR and CDHRI, yet the dissimilarities do not make them irreconcilable, except on the substantive concept of rights based on gender. I discovered from my study in this section that compared to the UDHR, UIDHR and CDHRI have used a different language and order of arrangement in enumerating human rights due to their nature (state and non-state declaration). Because UIDHR is a non-state declaration, it has more commonalities with the UDHR than CDHRI and is not restrictive as the CDHRI. For instance, UIDHR provides almost all provisions and rights protection as stated in the UDHR compared to CDHRI which is silent on freedom of peaceful assembly and association and has limited explanations on rights to justice, freedom of movement, freedom of speech and religion and rights to work. The CDHRI is also relatively restrictive on rights to life, freedom of movement, rights to own property, equal access to political participation and public service and right to freely participate in the cultural life.

Both the UIDHR and CDHRI are silent on the rights to nationality and international order. The CDHRI is further silent on freedom of peaceful assembly and association.

¹⁴Preamble G (xiv) (b) of the UIDHR stated that '*...Therefore, we, as Muslim who believe in our obligation to establish an Islamic order, wherein every effort shall be made to ensure to everyone security, dignity and liberty in terms set out and by methods approved and within the limits set by the law do hereby, as servants of Allah and as members of the universal brotherhood of Islam at the beginning of the fifteenth century of the Islamic era, affirm our commitment to uphold the following inviolable and inalienable human rights that we consider are enjoined by Islam*'

¹⁵Article 1 (a) of the CDHRI stated that '*All human beings form one family whose members are united by submission to God and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status or oilier considerations. True faith is the guarantee for enhancing such dignity along the path to human perfection*'

¹⁶Article 6 (a) of the CDHRI stated that '*Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage*'

Even though the UIDHR and CDHRI do not mention these rights, it is important to note that Islam guarantees rights to nationality and international order as well. Freedom of assembly and association is also recognised in Islam provided that it enjoins cooperation in the pursuit of righteousness. These rights must be enjoyed by taking into consideration the interest of security, public safety, public order, health and moral. Kamali (1997: 73ff) has pointed out that Islam takes an affirmative stand on rights and encourages association in pursuit of lawful objectives.

1.4 Conclusion

To summarize, it is indeed significant to say that 'rights' exists in both Islamic and international jurisdictions and its correlative concept with 'duties' has been shared. Not only has that, the Western-based and Islamic-based human rights instruments also had common ideas and definition about the term 'rights'. This harmonisation could form an international acceptance of legal implementation. As stressed by Brems (2001: 258), '*Islam can be pro human rights, but only to the extent that human rights are pro Islam.*' Nonetheless, there are still minor differences. The divergence is due to the silence of certain issues in Islamic tradition, yet is enormously debated in Western jurisprudence or otherwise. Exploring the common and contrasting principles of rights under the international and Islamic human rights declarations are vital to prove that the nature of rights is being apportioned by both traditions.

While it has been widely found in the literature that the jurisdictional background and international and Islamic human right instruments are overlap and complementary to each other, the distinguishing features which always in conflict between the UDHR and the UIDHR and CDHRI are on the theory of rights which is related to gender equality. Human rights scholars identified gender discrimination based on *Shariah* rules as a direct contradiction of Islamic human rights with international human rights (Safi, 1998: 6). Therefore, the most significant exploration to be proceeded in the rights talk is concerning rights based on gender from the international and Islamic human rights analysis.

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