

Procedural Islamic Criminal Justice in Terms of Human Rights: Beyond the Zero-Sum Game

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Abstract

This article discusses the main principles of criminal law substantially and procedurally under Islamic law. The essential features of Islamic criminal law are outlined and discussed.

Some scholars have argued that international human rights values should be interpreted, applied, and practiced by domestic cultural and religious ideals. Islamic criminal law is genuinely rooted in the revelations’ tests and as such is divinely based and driven, not to mention circuitously mingled with spirituality and ethics while instructing human dignity’s philosophies and life appreciation’s values. Given that the Islamic Human Rights Charter predates the Human Rights Declaration, we may not ask ourselves if Islamic law is compatible with human rights. Instead, this article asks which parts of Islamic criminal *Shari’a* (procedural) norms are similar to the Human Rights Declaration and how they are applied in each country.

As there is no way to truly know the detailed Islamic perspective on human rights, it is well established that the general norms support it. Instead of dwelling on an unwinnable debate, this article encourages moderate Muslim scholars to endeavour to prove the positive aspect that Islam does support human rights via moderate and flexible interpretation of the law.

Keywords

Criminal justice; Islamic law; human rights; *Shari’a* law; criminal procedure; religious law

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Introduction

International law, especially international criminal law and international human rights law, assures numerous fundamental principles of procedural criminal justice, such as presumption of innocence, in that the guilt of the offender must be proven beyond reasonable doubt, as emphasised within the criminal American federal common law (Model Penal Code and States' criminal laws) paradigm, the right against self-incrimination, the right to be tried without excessive and unjustified delay, the right to cross-examine witnesses, and the right to legal assistance (having a defence lawyer), among many others.¹ Liberal Muslims respond in the confirmatory to the question of whether Islam supports human rights. In this respect, such a perspective to human rights falls into the same fallacy that causes more conventional classical Muslims to reject or deny human rights.² Just as pineapples are not mentioned in the *Qura'nic* texts, human rights are also not precisely stated because neither concept existed in 7th century Arabia.³

Islamic criminal law serves as the system linked to the legal system of law and Islamic norms. *Shari'a* is the driving path precisely associated with the teachings of the *Qura'n* and *Sunnah* that cannot be contested and hence are mandatory to follow. The criminal law of mainly Muslim countries is based on modern current European criminal laws (penal codes). The Islamic criminal justice system recognises privacy rights and sanctity, names, and personal correspondences on search and seizures among many others, and thus Islamic criminal law is undeniably rooted in the revelations for ensuring dignity and appreciation of – modern – human life standards.

Islam and Islamic law cannot support or deny human rights because human divine knowledge on the issue is necessarily incomplete.⁴ Moderate Muslim scholars should make this argument and then present practical reasons and logical reasonable ideals why human rights are right for Muslim societies, as such a move will bring the discourse about human rights back to the sequential realm and away from a doctrinal debate which can never be won.⁵ Generally speaking, positive codified international law provides procedural justice on the

¹ See generally MATTHEW LIPPMAN, SEAN MCCONVILLE, & MORDECHAI YERUSHALMI, *ISLAMIC CRIMINAL LAW AND PROCEDURE: AN INTRODUCTION* (1988).

² Mashood A. Baderin and Manisuli Ssenyonjo, *International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate Publishing 2010), at 3.

³ *Id.* Thus, it does make sense to argue whether there are pineapples in paradise or whether Islam proports human rights. In this regard, Khan argued:

Images of Islam pervade the Western world. The bombings of American embassies in Kenya and Tanzania allegedly by Saudi terrorist, Osama bin Ladin and the US subsequent retaliation, the Persian Gulf War and the recent US air strikes on Iraq, are among the many recent world events involving Islam that have been profiled in the media. Other incidents, such as the *fatwa* issued on Salman Rushdie, the revival of fundamentalism in Algeria forcing all women to veil themselves, and the conflict in the Middle East between Israel and Palestine, are perpetual sources of international contention and international media coverage. It is rarely noted that many of these incidents involve the actions of radical groups that are no more representative of Islam than the actions of David Koresh, who died in the confrontation between law enforcement authorities and the Branch Davidians in Waco, Texas, are representative of Christianity. The Western media often obscures the line between common practice and extremism by being selective in the publicity given to incidents involving Muslims and Islam. The media's portrayal of Islamic law as being restrictive of individual rights, patriarchal and demeaning to women is consistently shrouded by political strategizing, inherent bias and the fear that Islam will threaten the current global power structure. The media has accordingly responded to the revival of Islam by pushing Islam to the forefront of international human rights dialogue. This has allowed the West to suppress the Islamic revivalist movement and the rise of radical Islamic fundamentalism by rallying the international human rights community, which itself is largely grounded in Western rights and values, to assert its abhorrence for the human rights violations taking place in parts of the Islamic world. Because human rights in these Islamic countries are rooted in Islamic theology but are also tempered by political and economic relations with the West, the West has used this means to assert its power in the international community, and to protect its secular, socio-democratic power structure . . .

See Isha Khan, *Islamic Human Rights and International Human Rights Standards*, 5 APPEAL. REV. CURRENT L. & L. REFORM 74 (1999).

⁴ *Id.* The exponential growth of Islam in the world has attracted the attention of the international agenda, especially in the human rights field. With a contingent of followers close to one fifth of earth's population, young Muslims have surpassed the Middle East borders, towards tradition Christian countries like the United States and Canada. This event reveals much more than a simple immigration process, triggered by social and economic issues, but the challenge of coexistence between different world views, though linked in their roots.

⁵ William E. Shepard, *Islam and Ideology: Towards A Typology*, 19 INT'L. J. OF MIDDLE EAST STUDIES (1987), at 47. Either by geopolitical disputes or by simple misconceptions and fear, the biggest challenge for the mankind has always been to translate, in peace, in promising fruitful coexistence, the different shades of the same color, seen by so many different points of view. This grief tone which features the western's media coverage, leads, of course, to noxious effects. Without a deeper understanding of the historical foundations of the Islamic law, the massive display, on global scale, of alleged violations of human rights committed in Muslim countries, only exacerbates the feeling of fear and the distance contrary to the desired integration of the nations. Hence, the urgent need to understand

basis of several norms embodied in different international legal documents. These comprise the right to be presumed innocent until proven guilty according to the law, the right against self-incrimination (the right not to be compelled to testify against yourself), the right to be tried on a fair and just basis, the right to "examine [...] the witnesses against him/her," and the right to legal assistance, including the right to "communicate freely and confidentially with their lawyer."⁶ The question becomes whether Islamic law provides similar procedural protections. In other words, whether Islamic criminal law guarantees comparable procedural defences and establishes how Islamic law provides for basic human rights as well as basic principles that may serve as guidelines in the procedural justice and the criminal policy.

As defined by common law traditions or the codification of laws, the Islamic criminal system varies from other legal methodologies based on binding judicial precedents practiced under codified (written) civil law.⁷ There is neither an apprehending of mandatory legal precedents, nor a history of law's codification in *Shari'a* law. Thus, the case law analysis is relatively like the process of *ijtihad* (analogical deduction and reasoning) in Islamic *fiqh* (law).⁸ The political, legal, and social aspects of all Muslim nations are implanted within the roots of Islamic criminal law and so, it is their ruling legal foundation. Specifically, Islamic law is an explicitly instructive paradigm of sacred legal system and one of the most identified legal perspective universally, which differs from other systems to enforce its crucial significance for rejoicing the legal phenomena accessible excessively.⁹ The creation and presence of international criminal justice institutions were endorsed earlier by Islamic justice institution during the Rome negotiations.¹⁰ In contrast, scholars precisely have argued that Islamic criminal justice system lacks a comprehensive observation to view Islamic criminal law as a non-progressive legal system or a static legal system without any robust or accurate analysis of the highly standardized legal criminal rules, bound to follow philosophies executed through divine texts.¹¹

Western jurists' commentary has focused on Islamic criminal law on fundamental concepts irrespective of any unambiguous focus of the subject. The reasoning behind such lacking is due to the lacuna in English Western literature on Islamic criminal justice system. It is debatably unfeasible for Islamic criminal law to be according to the Western legal system due to its foundations, which are based on Islamic states' doctrines.¹² These values pave the path to the enhancement of a debate between international institutions and

Islam not by a fundamentalist point of view (which always manifests the violent struggle to a *status quo* [maintenance]), but through its humanistic version, which is not antagonize with it.

⁶ See INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS, GA Res. 2200A (XXI), at 52, UN Doc. A/ 6316 (1966); 999 UNTS 171; 6 ILM 368 (December 16, 1966), at art.14(2), at <http://treaties.un.org/doc/Treaties/1976/03/19760323%2006-17%20AM/ChIV-4.pdf>. See also, BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT, GA Res. 43/173, UN Doc. A/RES/43/173 (Dec.9, 1988), which stipulates that "A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law." Also, Art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, regarding the right to a fair trial, reads simply that "[e]veryone charged with a criminal offence shall be presumed innocent until proved guilty according to law," Art.7(1)(b) of the African Charter on Human and Peoples' Rights provides that the accused will have "the right to be presumed innocent until proved guilty by a competent court or tribunal", Art.8(2) of the American Convention on Human Rights, states that "[e]very person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law," and Art. 16 of the Arab Charter on Human Rights states that "Everyone charged with a criminal offence shall be presumed innocent until proved guilty by a final judgment rendered according to law." See also ICCPR, at arts. 14(3)(g), 14(3)(c), & 14(3)(e) & ARAB CHARTER OF HUMAN RIGHTS, at art. 16(3) *League of Arab States, Arab Charter on Human Rights* [May 22, 2004, reprinted in 12 INT'L. HUM. RTS. REP. 893 (2005), entered into force Mar.15, 2008], <http://hrlibrary.umn.edu/instreet/loas2005.html>. For further discussion of the various rights afforded in the Charter, see M.Y. Mattar, *Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards*, 23 HARVARD HUMAN RIGHTS J. (2013), at 91.

⁷ Mohamed 'Arafa and Jonathan Burns, *Judicial Corporal Punishment in the United States: Lessons from Islamic Criminal Law for Curing the Ills of Mass Incarceration*, 25 INDIANA INT'L & COMP. L. REV. 3 (2015), at 385.

⁸ Mohamed Badar, *Islamic Law (Shari'a) and the Jurisdiction of the International Criminal Court*, 24 LEIDEN J. OF INT'L L. 2 (2011), at 411–433.

⁹ See generally Mohamed 'Arafa, *Islamic Criminal Law: The Divine Criminal Justice System between Lacuna and Possible Routes*, 2 J. OF FORENSIC & CRIME STU. 102 (2018). See, e.g., Anver M. Emon, *Shari'a and the Rule of Law* in SHARI'A LAW AND MODERN MUSLIM ETHICS (ed. Robert W. Hefner), Indiana Univ. Press (2016), at 37–64.

¹⁰ Tamer Moustafa and Jeffery A. Sachs, *Law and Society Review Special Issue Introduction: Islamic Law, Society, and the State*, 52 LAW & SOC'Y REV. 560 (2018).

¹¹ Mathias Rohe, *Islamic Law and Justice* in SHARIA AND JUSTICE: AN ETHICAL, LEGAL, POLITICAL, AND CROSS-CULTURAL APPROACH, 105 (2018).

¹² See generally Jan Michiel Otto, *Sharia and National Law in Muslim Countries: Tensions and Opportunities for Dutch and EU Foreign Policy* (2008).

Islamic law, as it possesses numerous aspects that are not similar to western codes even though it remains sacred. Indeed, it is a positive law and requires credible testimony, witnesses, and evidence.¹³

It should be noted that based on *maslaha* (public interest) to safeguard public order and social security, the officers might investigate the individual's properties, communications, and houses. Under Islamic evidentiary rules, *qadis* (judges) and characters' qualifications are critical and stringent upon physical evidence or trustworthy witnesses' testimony and to confirm that the culprit receives an impartial and fair trial.¹⁴ In this regard, procedural guarantees (due process) are left to the discretion of a ruler who is in charge of maintaining the society's common good and preserving public welfare as these are neither in the *Qur'an* nor the *Sunnah*, but it is yet driven by numerous Islamic standards.¹⁵ In the same vein, a leader should err in favour of *'fw* (pardon) compared to in favour of punishment if the leader errs – and as a general rule – criminal evidence must fulfil the conclusiveness prerequisite until the execution of sentence and its illustration must not be delayed as the main importance for the criminal conviction.¹⁶

Pre-trial detention mode and release on financial bail is usually not recognised in Islamic criminal justice system, and hence, Muslim scholars confirmed that there should be no custody for the defendant before the trial since an indictment of sentence is not adequate for justifying the incarceration of an accused as this contradicts the freedom of movement stated by Islamic rules.¹⁷ Based on the Islamic theory of protected interests, the right of both the defendant and the plaintiff is recognized under Islamic criminal law to illustrate evidence at trial and the sentence's execution upon conviction. This assures freedom of religion, knowledge, expression, right to self-preservation, and thought. It encourages the significance to receive the assistance of others in protecting interests.¹⁸ The evidentiary rules protect the integrity of the Islamic criminal process that confirms that punishments and criminal convictions are executed in cases of a precise detailed explicit penalty and the presentation(s) of evidence/proof are legalised under *Shari'a*, which is regarded to have an extensive extent of authenticity and direct reliability.¹⁹

Based on this brief framework, this article will attempt to answer this question. Part I will briefly investigate the concepts of human rights, justice, and *maslahaa(h)* (protected interests), which institute the basis upon which procedural protections may be addressed. Part II will cover the basic principles that provide guidelines on procedural justice, such as the principles of non-retroactivity, individual accountability, and legality, along with the explanation of the main evidentiary rules (modes of evidence) that are designed to protect the accused (defendant) by Islamic law. Finally, this article concludes that the axiomatic view of Islamic criminal human rights law is fashioned by religious theories, laws, and divine practices and that Islamic law is more than appropriate to create a comprehensive design for procedural human rights from the criminal perspective and totally compatible with the universal norms, but national statutes must meet its condescending criterions and lofty standards.

1. Justice and *Masalah* (protected interests) as the basis of Islamic procedural human rights law: compatible or not?

¹³ Badar, *supra* note 8.

¹⁴ *Id.* One should bear in mind that both male or female *qadis* must possess acknowledged wisdom, intelligence, and '*adalah*. Muslim jurists have underscored that a just judge cannot give discriminatory law or bias ruling under classical *Shari'a* law.

¹⁵ Arif A. Jamal, *Authority and Plurality in Muslim Legal Traditions: The Case of Ismaili Law*, 67 AMERICAN J. OF COMP. L. 3 (2019), at 491–514.

¹⁶ Ahmed S. Hassanein, *The Impact of Islamic Criminal Law on the Qatari Penal Code*, 32 ARAB L. QUARTERLY 1 (2018), at 60-79.

¹⁷ *Id.* The *Wali alMazalim* (complaints secretary/minster) executes this, and any recorded inhuman or cruel treatment (including beatings) or torture is prohibited by the *Qur'anic* texts as it is against the accused's dignity, especially in the pre-trial interrogation phase. Any legal *iqrar* (confessions) achieved under coercion is strictly forbidden and invalid.

¹⁸ Jamal, *supra* note 15.

¹⁹ Nur Kareelawati Binti Abdkarim, *Revisiting the Discourses of the 'Clash' for the Study of Culture in a Muslim Television Production*, 10 J. OF ARAB & MUSLIM MEDIA RESEARCH 2 (2017), at 177-197. Abdkarim ("adopts the discourses of the '*clash*' drawn from culturalist Samuel Huntington and reformist Edward Said's theses to identify the power dynamics facing the Channel" by analyzing the sociocultural environment along with the institutional context. (examining the debates of the '*clash*' that exist in the western community, and the missionary (*da'wah*) purposes and the culture created the '*clash*' between the western and Muslim cultures).

It has been argued that “the failure of the Western world to apply international human rights standards in their own territories, has weakened the legitimacy of those standards.”²⁰ However, it is certain that the struggle for dignity and freedom, the main goals of the human rights thesis, is continuous and tireless, revealing the most important trait of the rational, dialectical and (why not?) spiritual evolution of man, against all historical forms of tyranny, precisely triggered by the (no less relentless) violations of that universal and ethical quest.²¹ In this regard, that situation can be labelled as one of the Ronald Dworkin’s central idea, supported by Immanuel Kant’s thesis in which “we can only respect properly our own humanity if we respect humanity in others.”²²

In terms of the recognition of human rights under the umbrella of Islamic law, Coulson argues that Islamic law does not recognize the concept of "individual rights" or the notion of "defined liberties" of the people and "the formulation of a list of specific liberties of individual as against the state, in the manner, for instance of the United States Constitution, would in fact be entirely foreign to its whole spirit" and that "the stress [...] throughout the entire *Shari'a*, lies upon the duty of the individual to act in accordance with the divine injunctions."²³ Moreover, he argued that “the interests of the state and not those of the individual will constitute the Supreme Criterion of the law.”²⁴ The principle of individual liberty, he states, is ‘subordinate’ to that of public interest and public welfare.²⁵

However, Islamic *fiqh* (jurisprudence), including its two main textual sources, the *Qur'an* and the *Sunnah* (Mohammad’s teachings) provides for the rudimentary human rights that are known in the modern era.²⁶ Freedom of religion is not only absolute but also fully protected, as the *Qur'an* reads “there is no compulsion in religion.”²⁷ Additionally, the right to equality and dignity is obvious in the *Qur'anic* verse “O people, we created you from the same male and female, and rendered you distinct peoples and tribes, that you may recognize one another.”²⁸ The right to privacy is explicitly provided for by the *Qur'an*, whether residential

²⁰ See generally ANN ELIZABETH MAYER, *ISLAM AND HUMAN RIGHTS* (Westview Press 2013).

²¹ See JOHN L. ESPOSITO AND JOHN O. VOLL, *MAKERS OF CONTEMPORARY ISLAM* (Oxford Univ. Press 2001).

²² Khan, *supra* note 3, at 75. In this respect:

The concept of dignity has been tampered with inconsistent abuse in political rhetoric; all politicians manifest acceptance to the idea, and almost all human rights defenders give it a prominent place. But we need the idea, and the cognate idea of self-respect, if we want to give meaning to our very lives and our ambitions. We all love life and fear death: we are the only animal aware of this absurd situation. The only value that we can find to live in death’s edge, which is our impending situation, it is its “adverbial value.” We should find the value of living – the meaning of life – to live well, as we find value in love, painting, writing, singing or dive well. There is no other value or lasting senses in our lives, but they are sufficient values and meanings. In fact, it’s wonderful. Dignity and self-respect – whatever it means – are indispensable conditions to live well. We find evidence of this in the way most people want to live: head high while fighting for all other things they want. We find evidences of this in the mysterious phenomenology of shame and insult. So, we must explore the dimensions of dignity. At first, in this summary, [...] described two fundamental principles of the policy: the requirement that government treats those who it governs with equal concern and respect, as we now say, and the ethical responsibilities of whom is governed. [...] We can rescue the crucial idea of Kant’s metaphysics; we can affirm it as what we call the Kant’s principle. A person can only achieve dignity and indispensable self-respect for a successful life if he shows respect for humanity itself in all its forms. This is a model for ethics and morality unification . . .

Ronald Dworkin, *JUSTIÇA PARA OURIÇOS* [translated by Pedro Elói Duarte, Coimbra: Almedina] (2012), at 25.

²³ N.J. Coulson, *The State and the Individual in Islamic Law*, 6 INT’L. & COMP. L. QUARTERLY 1 (1957), at 50.

²⁴ *Id.*

²⁵ *Id.* The same discourse is made by Ann Mayer, who states that guarantees for individual rights were chiefly ignored in Islamic *fiqh* (jurisprudence).

²⁶ *Id.*, at 51. Coulson concludes that “The problem, therefore, which today confronts those Muslim countries whose aim is the establishment of a system of guaranteed individual liberties, is no small one. For the possibility of such a system is denied by the fundamental doctrines of the *Sharia* itself, . . .” *Id.*, at 60.

²⁷ The *Qur'an* states: “O disbelievers, I do not worship what you worship. Nor are you worshippers of what I worship. Nor will I be a worshipper of what you worship. Nor will you be worshippers of what I worship. For you is your religion, and for me is my religion.” *Qur'an* 109:1-6.

²⁸ *Qur'an* 49:13. In the same vein, Prophet Mohammad declared in the Great pilgrimage “All Muslims are brothers unto one another”, “there is no superiority of an Arab over a non-Arab except as his devotion is concerned”, and “the noblest among you is the most God fearing.” Also, he said, “truly your blood, your property, and your honor are inviolable.” See *Sahih Bukhari & Muslim*. Dworkin said “at a stage of his evolving theory, Kant said that freedom is an essential condition for dignity – in fact, this freedom is dignity – and only formulating a moral law and acting in obedience to this law can an agent find genuine freedom. Therefore, what looks like a morality of self-abnegation becomes a deeper level, a morality of self-assertion.” As always, the main human dilemma lays in how to deal with freedom, with such an inherent power, yielded by every single person, born so equal in essence, but in so different ways, for so different lives and personal ways to experience life.

privacy or communication privacy.²⁹ The right to assembly and association may be inferred from the *Qura'nic* verse “Let there be a community among you, who will invite (people) to [do] good, command what is proper and forbid what is improper” and the freedom of expression is embodied in Mohammad’s *hadith* “the best *jihad* is to speak the truth in front of an unjust king.”³⁰ The right to life is well established in the *Qur'anic* code as one of the fundamental human rights.³¹ Islam – like the other major Abrahamic religions – deals with a standard human behaviour as universal, correct, and true life’s objective, according to the unquestionable divine commandments, as Khan reported in this domain that:

“In Islam, there is only one reality, ruled by Islamic law, under which the government must rule and the faithful must live. *Shari'a*, the Arabic word for Islamic law, literally means ‘the way to follow.’ Its main purpose is to direct Muslims, in their daily lives, to live in accordance with God’s law, as it is revealed in the *Qur'an*. *Shari'a* distinguishes itself from the most of the world’s other legal systems by imposing legal and religious obligations on its adherents. [...] Islamic law derives from four main sources. It includes the *Qur'an* (literal and final word of God); the *Sunnah* (the traditions based on the life of the Prophet Mohammad which describe model behaviour); *Qiyas*, (juristic reasoning by analogy), and *ijm'a* (consensus of Muslim scholars). These sources work in conjunction with one another to create a comprehensive moral and legal ordering . . .”³²

In this domain, that tension could only be undone by a human “dignity sense,” based on both rational and argumentative approaches: something that goes a little further than religion [without disregarding it], and a little deeper into the unfinished spiritual human quest and their questions.³³ A track which does not end in the “knowledge” of God, but it leads to recognize Him in the next person (be it a person of my people, be it a completely foreign stranger). In other words, there is always something new about God in ourselves and thus, it’s possible to see Islam *per se* blooming towards the recognition of human rights.³⁴ Khan says:

“At the time of the Prophet ‘differences’ of opinion within the community were recognized as a sign of the bounty of *Allah*. [...] The fact that the international community, including Islamic nations, has already recognized the mints of the UN and its human rights monitoring mechanisms implies an obvious acceptance of universal human rights standards. Modern Islamic reformers have also attempted to legitimize contentious *Sharia* principles by advocating a contemporary and liberal interpretative approach, consistent with the moderate cultural relativist perspective . . .”³⁵

²⁹ *Id.* The *Qur'an* reads “Enter not houses other than yours until ye have asked permission and saluted those in them. If ye find no one in the house, enter it not until permission is given to you. If ye are asked to go back, go back” and “spy not on each other behind their backs.”

³⁰ *Id.*, at *Qur'an* 49:13. A tradition of ‘Umar ibn al-Khattab, related by one of the Prophet’s companions, reads:

I went out in the city with ‘Umar one night, and while we were walking, we saw the light of a lamp. We proceeded toward it, and when we reached it, we found a closed door and the sounds of revelry from inside. ‘Umar took my hand and asked me, ‘Do you know whose home this is?’ I said I did not. ‘Umar said, ‘It is the home of [so-and-so]. They are drinking. What do you think?’ I said: ‘I think we have committed a forbidden act; God said we should not spy.’ So, ‘Umar left them alone.

³¹ The *Qur'an* reads: “And whoever kills a believer intentionally, his punishment is hell; he shall abide in it, and *Allah* (God) will send His wrath on him and curse him and prepare for him a painful chastisement” and “whoever slays a soul, unless it be for manslaughter or for mischief in the land, it is as though he slew all men; and whoever keeps it alive, it is as though he kept alive all men.” *Id.*, at *Qur'an* 3:14, 4:93, & 5:32.

³² Khan, *supra* note 3, at 76. See also Dworkin, *supra* note 22, at 24-31. Khan pointed out:

While Western countries may suggest that the countries applying traditional or conservative Islamic law have no regard for human rights, the Islamic world asserts itself as a champion of the human rights provided by God, [...] It is difficult to determine whether there is a mean of reconciling the two positions as they both operate on different principles . . . Many Muslims use the concept of cultural relativism to legitimize their adherence to *Sharia* law. These Muslims believe that it is difficult, if not entirely impossible, to create universal human rights standards that will apply equally to all members of the human community. Their position generally suggests that given the diversity of cultural traditions, political structures, and levels of development in the world, it is virtually impossible to define a single distinctive and coherent human rights regime. Cultural relativists may vary in terms of the degree to which they find the universal ideal to be an impossible feat. For example, strict cultural relativists view the world in relative terms . . . *Id.*, at 79.

³³ *Id.*, at 84. As the global power-play changes to meet the challenges of the twenty-first century, the fundamental human rights of all people must not be abandoned. International human rights advocates should continue to work with Muslim governments and the Arab Middle Eastern countries should continue to put forth their own initiatives to resolve the tension between the traditional interpretation of the *Shari'a* and international human rights protocols.

³⁴ *Id.* See also WAEL HALLAQ, AN INTRODUCTION TO ISLAMIC LAW (Cambridge Univ. Press 2009), at 14-19.

³⁵ Khan, *supra* note 3. Furthermore, she argued that:

These reformers argue that the sources of *Sharia* law should be examined from a strictly historical perspective, and that much of the literal interpretation of *Qura'nic* scripture should be contextualized, and in some cases abandoned. The reformers legitimize Islamic law by selectively highlighting aspects of the *Shari'a* that were progressive and revolutionary for its time. To do this, the reformers index some of the same provisions that Western critics index as celebrating inequality. By employing a historical perspective, the reformers depict the contentious provisions as innovative *Qura'nic* concessions made

Under Islamic jurisprudence, justice counts as one of the central basis of Islamic human rights law affirmed by the *Qura'nic* texts and *Sunnah* teachings.³⁶ Accordingly, justice is a predominant value within Islam, and is certainly one of the main objectives of the Islamic legal theory.³⁷ On the other hand, in terms of the protection of human rights within the Islamic theory of the *almasslaa(h) almhami(h)* (protected interests), Muslim scholars differentiate among three sorts of interests upon which various rights and freedoms may be considered.³⁸ These are the five *maqasid* and *daruriyyat* (essentials, and necessities or objectives) of Islamic legislation.³⁹ They comprise freedom of religion, right to self-presentation, freedom of thought and expression and knowledge, right to procreation and right to property.⁴⁰ Therefore, to enable the implementation and fulfilment of these necessities, *Shari'a* provides for what Muslim jurists theorized as *hajiyat* (complementariness or conveniences) along with the third category of interest is *tahsiniiyyat* (embellishments or refinements), which refer to interests that may cause faultlessness and improvement of human conduct and its proper realization.⁴¹

It is significant, if rights are to be protected and harm is to be repaired, that the judiciary exercises its power with full independence and in separation from the executive authority, which should also be subject to accountability.⁴² Yet, some argue that the *qadi* (judge) derives its authority from the *Calipha* (leader).⁴³ In the same vein, a judge must be impartial, fair, equitable, honest to deliver unbiased justice, and may not apply

with the noble intention of protecting women in the event of marriage breakdown while Western critics counter with the suggestion that the provisions reflect unfounded gender inequity. The reformers use the example that, under pre-Islamic custom, the bride was regarded as an object to be purchased, but explain that with the advent of the *Qur'an*, the woman's status was altered so that a bride was to be considered a person whose consent must be obtained to validate the marriage contract. They also bring attention to other *Qura'nic* concessions which include improving the financial status of women in the event of divorce or widowhood through the alteration of the dowry concept. In pre-Islamic times, the dower was owed to the father, but the *Qur'an* changed things by mandating that the dower be paid to the bride. This would entitle the woman to dispose of her own property, and in turn provide herself with some independence and basic social security . . .

³⁶ God says, "Stand firmly for justice as witnesses to God", "Even if it be against yourselves, your parents or your relatives, and whether it be (against) the rich or poor, for God can best protect both. Follow not the lust (of your hearts) lest it detract you from the cause of justice", "Allow not your rancor for a people for that is closer to heeding", "And I was commanded to deal justly between you", and "Surely, *Allah* commands justice and the doing of good", "God commands justice and good-doing [...] and He forbids indecency, dishonor, and insolence", "God commands you to deliver trusts back to their owners, and when you judge among men, you should judge with justice", and "Of these we created are a people who guide by the truth, and by it act with justice." *Id.*, at *Qur'an*, at 4:135, 42:15, 5:8, 16:90, XV:92, IV:61, & VIII:180. See generally M. Khadduri, *The Islamic Conception of Justice*, JOHNS HOPKINS UNIV. PRESS (Baltimore 2001).

³⁷ See generally J. Naify, *Al-Ghazali in THE PIMLICO HISTORY OF WESTERN PHILOSOPHY*, R.H. Popkin (ed.) (1999).

³⁸ See Mohamed 'Arafa, *Islamic Policy of Environmental Conservation: 1,500 Years Old – Yet Thoroughly Modern*, 16 EUROPEAN J. L. REFORM 2 (EJLR), *Special Issue on Islamic Law* (2014), at 494 ("Social interests and public benefits are addressed according to their significance, actuality, and certainty in this regard. Islamic law classifies interests into (a) *daruriyat* (necessities), or those things indispensable to the preservation of the *al-adaruriat al-khams* (five *Shari'a* objectives of life, religion, lineage, property, and prosperity); (b) *hajiyat* (needs), meaning those things whose absence leads to actual hardship and suffering and (c) *tahsiniiyyat* (supplementary benefits), which means things that refine life and enhance ethical values.").

³⁹ *Id.* ("According to the Islamic *fiqh* rules, Muslim scholars emphasized that urgency and precedence should be given to the basic desires and needs. In the case of conflict between the less needs and supplementary benefits, lesser needs should have priority over the supplemental needs. As Islamic jurisprudence is unique in assuring the right of personal security and social order, *Al-Imam Al-Ghazali* recognized what are known today as the ("Five Essentials") and these became the neutral criteria for scholars to identify whether an idea or solution stimulates the public interest. Accordingly, Islam reassures five essential things (*makasid al-Sharia al-islamia/al-daruriat al-khams*) to all individuals and prohibits unjustified violation of them by the State. These essentials are (a) protecting religion; (b) protecting lives; (c) protecting mind; (d) protecting posterity and intellect and (e) protecting property. On the other hand, Islamic law presents the structural framework for the community by maintaining the legal relationships among persons and protecting the interest of one person from being attacked by another.").

⁴⁰ See generally M. HASHIM KAMALI, *PRINCIPLES OF ISLAMIC JURISPRUDENCE* (3rd ed, 2003), at 238.

⁴¹ Several norms are followed in Islamic jurisprudence, including that "harm shall be removed", "harm is to be repelled as far as possible", "harm is not to be removed by the like of it", "greater harm is to be avoided by a lesser harm", "repelling harm is preferred to the attainment of benefits", and "to repel public harm, private harm is to be tolerated." All in all, "God does not want to place you in a difficulty, but He wants to purify you, and to complete His favor to you, that you may be grateful", "God intends for you ease, and He does not want to make things difficult for you." Further, the rule is "no harm and no infliction of harm" or in other words, "there should be neither harming nor reciprocating harm." *Id.*, at *Qur'an*, at 5:6 & 2:185.

⁴² A. ur Rehman, M. Ibrahim, & I. Abu Bakar, *The Concept of Independence of Judiciary in Islam*, 4 INT'L. J. OF BUSINESS & SOCIAL SCIENCE (2013), at 2.

⁴³ As Abou Bakr (the first Prophet's Companion) put it in his first address after he became *Chalifa*, "I have been given authority over you, but I am not the best of you. If I do well help me and if I do ill, then put me right." And when 'Omar (the second one) attempted to reduce the amount of *mahr* (dowry), an old woman in the mosque objected by saying, "You shall not deprive us of what God gave us", he responded, "A woman is right, and Omar is wrong."

a law in contradiction to the Islamic *Shari'a* (and to its general principles).⁴⁴ Moreover, it has been argued that Islamic law does not allow a process of appeal, though this argument may be rebutted because once a judge deduce or deviates from the basic principles of *ijtihad* (interpretation), their decision amounts to an ostensible miscarriage of justice, and not only a leaving from another judicial view, and thus, it may be subject to review (judicial review notion).⁴⁵

2. What are the Islamic norms that serve as guiding legal principles for the rights of the accused in the criminal justice system?

Even though Islamic law may not provide thorough rules concerning every procedural right, it does propose general strategies, including the principles of legality, non-retroactivity, the individual accountability, along with the right to be presumed innocent until proven guilty and the right to defence.

2.1 The principle of non-retroactivity of the Criminal Codes

The accused' fundamental rights are provided in the *Qur'an*, and thus, Islamic law has comprehended the principle of non-retroactivity of penal laws as one of the most significant foundations of its criminal justice system.⁴⁶ At its core, this rule means that criminal laws have only prospective and *not* retroactive effect to protect individual security and prevent the abuse of power, so individuals cannot be accused of misconducts for acts which were permitted when committed.⁴⁷

2.2 The principle of individual criminal accountability (punishment's personality)

This rule is considered one of the most vital basics of personal security in Islam, as it means that the actor (perpetrator) himself is the only person who can be accused of a criminal act, and no one shall escape impunity irrespective of blood ties or friendship to the victim (or to the judge or ruler).⁴⁸ A person who has contributed to a forbidden act, whether as principal or accomplice (accessory), must be convicted according to the rules of criminal culpability.⁴⁹

⁴⁴ The *Qur'anic* verse is obvious in that regard, "they were entrusted the protection of *Allah's* Book and they themselves were witnesses. [...]those who do not judge by the law which *Allah* had revealed are indeed unbelievers." The constitutionality clause guarantees that laws are compatible with Islamic law. For example, Art. 3 of the Afghan Constitution reads "In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam." See M. Lau, *The Independence of the Judges Under Islamic Law: International Law and the New Afghan Constitution*, ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT [64 HEIDELBERG J. OF INT'L. L.] (2004), at 917-927. Also, Art. 2 of the Iraqi Constitution stipulates, "First: Islam is the official religion of the State and it is a fundamental source of legislation: (a) no law that contradicts the established provisions of Islam may be established; (b) no law that contradicts the principles of democracy may be established, and (c) no law that contradicts the rights and basic freedoms stipulated in this constitution may be established." See M.Y. Mattar, *Unresolved Questions in the Bill of Rights of the New Iraqi Constitution: How Will the Clash Between "Human Rights" and "Islamic Law" Be Reconciled in Future Legislative Enactments and Judicial Interpretations*, 30 FORDHAM INT'L. L. J. (2006), at 1.

⁴⁵ See M. Shapiro, *Islam and Appeal*, 68 CALIFORNIA L. REV. (1980), at 350-381. He concludes that ("In Islam a peculiar institutional combination of dual legal systems and absence of hierarchy accounts for the absence of the institution of appeal present in almost all other legal systems. The Islamic experience suggests, therefore, that concern for political control rather than justice under law is the basic motivation for the implementation of appellate institutions.").

⁴⁶ On the non-retroactivity rule, the *Qur'an* says, "Say to the unbelievers that if they desist (from unbelief), what they have done in the past would be forgiven" and "God forgives what is past: For repetition God will exact from him the penalty. For God is Exalted and Lord of Retribution." *Qur'an* 8:38 & 5:95.

⁴⁷ See Mohamed 'Arafa, *Corruption and Bribery in Islamic Law: Are Islamic Ideals Being Met in Practice?* 18 GOLDEN GATE ANN. SURV. INT'L. & COMP. L. 171 (2012), at 195 ("The only exception to this principle in Islamic jurisprudence is that a criminal law has retroactive effect if it favors the accused. For example, if the new law provides for a lesser penalty than the existing law at the time the crime was committed then in that case the less severe punishment is applicable. This is very similar to the principle of lenity in Western legal systems.").

⁴⁸ M. CHERIF BASSIOUNI, *THE ISLAMIC CRIMINAL JUSTICE SYSTEM* (1982), at 58.

⁴⁹ The *Qur'an* notes this criminal norm and says, "Everyone is accountable for his own deeds, and no soul shall bear the burden of another" and "Whoever commits a sin only makes himself liable for it [...] and whoever commits a delinquency and then throws the blame thereof upon the innocent has burdened himself with falsehood and a *flagrant* crime" and "no bearer of burdens can bear the burden of another." *Qur'an* 6:164, 4:11-12, & XVII:15.

2.3 The principle of legality of crimes and punishments

According to this notion, there shall be no offense and no punishment except by law; thus, no act may be considered an abuse of law if it has not been obviously anticipated in a penal law or any criminal legislation in force at the time the act was committed.⁵⁰ The law may punish only those acts committed after their prohibition by law; the judge may impose upon the offender only those penalties which are sanctioned by law.⁵¹

2.4 The right to be presumed innocent until proven guilty (beyond reasonable doubt)

The presumption of innocence is one of the fundamental principles in the Islamic criminal procedural law. This principle is based on the so-called *istishab* (presumption of continuity), as one of the secondary sources of Islamic law, means that the presumption in the evidence law that a state of affairs known to have existed in the past continues to exist until a change is proved.⁵²

2.5 The right to defence (due process guarantees)

One of the main principles of fair and impartial trial is the guarantee of defence in Islamic law, as it has been seen in the Prophet Mohammad's traditions that allow the defendant to be informed about the charges against them.⁵³ Caliph 'Omar (the second Prophet's companion) is reported to have advised judges by saying, "If an adversary whose eye had been blinded by another comes to you, do not rule until the other party attends. For perhaps the latter had been blinded in both eyes" and, *mere* suspicion is not sufficient to justify a warrant of arrest and detention.⁵⁴

2.6 Strict criminal evidentiary and forensic rules

⁵⁰ Bassiouni, *supra* note 48, at 160.

⁵¹ God says in that respect, "We never punish until we have a messenger", "Allah forgives whatever may have happened in the past, but whoso relapsed, Allah will take retribution from him", "Who received guidance, received it for his own benefit: who goth astray doth so to his own loss: Nor would we visit with our wrath until we had sent an apostle (to give warning)", and "Nor was thy Lord the one to destroy a population until he had sent to its center an apostle rehearsing to them our signs; nor are we going to destroy a population except when its members iniquity." See *Qur'an*, at *id.*, V:95, 17:15, & 28:59. See also 'Arafa, *supra* note 35, at 189 ("Therefore, the scope of its application differs depending on whether crimes of *Hudud*, *Qesas* and *Diyya*, or *Ta'azir* are in question. Generally speaking, *Hudud* offenses are based on the principle of legality, with precise determination of both crime and punishment and some flexibility for the judge depending upon the intent of the accused and the quality of the evidence. On the other hand, *Qesas* and *Diyya* crimes, which are left to individuals and families to punish, show their basis in the legality principle by being bound to specific procedures and appropriate penalties in the process of retribution and compensation. *Ta'azir* crimes allow a great deal of flexibility to the judge but are still implicitly tied to the general principle of legality.").

⁵² S. Tellenbach, *Fair Trial Guarantees in Criminal Proceedings under Islamic Afghan Constitutional and International Law*, 64 *ZaidRV* (2004), at 933-935. See also, e.g., art. 14(2) ICCPR, which reads: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proven guilty according to the law."

⁵³ When 'Ali was granted governorship of Yemen by the Prophet, he said to him: "O 'Ali, people will appeal to you for justice. If two adversaries come to you for arbitration, do not rule for the one, before you have similarly heard from the other. It is more proper for justice to become evident to you and for you to know what is right."

⁵⁴ Bassiouni, *supra* note 48, at 92-100. See also A. M. Awad, *The Rights of the Accused under Islamic Criminal Procedure in THE ISLAMIC CRIMINAL JUSTICE SYSTEM*, M.C. Bassiouni (ed.) (1982), at 93-107, M. H. Kamali, *The Right to haqq al-amm (Personal Safety) and the Principle of Right Legality in Islamic Sharia in CRIMINAL JUSTICE IN ISLAM*, M.A. Haleem et al. (eds.) (2003), at 83. See the ARAB CHARTER ON HUMAN RIGHTS, at art. 12, "All persons are equal before the courts and tribunals. The States parties shall guarantee the independence of the judiciary and protect magistrates against any interference, pressure, or threats. They shall also guarantee every person subject to their jurisdiction the right to seek a legal remedy before courts of all levels"; art. 13 "1. Everyone has the right to a fair trial that affords adequate guarantees before a competent, independent, and impartial court that has been constituted by law to hear any criminal charge against him or to decide on his rights or his obligations. Each State party shall guarantee to those without the requisite financial resources legal aid to enable them to defend their rights. 2. Trials shall be public, except in exceptional cases that may be warranted by the interests of justice in a society that respects human freedoms and rights"; art. 23 "Each State party to the present Charter undertakes to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity", and art. 44 "The states parties undertake to adopt, in conformity with their constitutional procedures and with the provisions of the present Charter, whatever legislative or non-legislative measures that may be necessary to give effect to the rights set forth herein."

The rules relating to evidence are penetratingly significant in a criminal proceeding. Very strict rules of proof guarantee are imposed only in cases where there is guilt's certainty, not only evidence beyond reasonable doubt.⁵⁵ Islamic criminal law entails direct evidence, as opposed to circumstantial evidence, as for example, the *Qur'an* requires four male eyewitnesses or four confessions to sustain a conviction for the crime of *zina(h)* (adultery).⁵⁶ All this for the "avoidance of *shubbha* (doubt)" will result in nullification of *hudud* (fixed) punishments, as Mohammad reported "nullify the *hudud* if there is doubt and lift the death penalty as much as you can" and "avert *hudud* punishments by suspicions or doubts and if the accused has a way out, release him."⁵⁷ Further, the Prophet Mohammad reported that "if the judge makes a mistake in amnesty it is better than a mistake in punishment" and his traditions states that "acts are not to be judged except by motives" and "actions are but by intentions and every man shall have only that which he intended" based on a rule that the proof of a clear *mens rea* (criminal intent composed of free will and knowledge of the *actus reus*) is required and mandatory.⁵⁸

al-ie' trafa wa al-igrar (confessions) are the most mutual method for launching proof in criminal cases under Islamic paradigm, provided that the admission is voluntary.⁵⁹ A confession may be withdrawn at any part of the hearing, though, until the sentence is being executed.⁶⁰ Hence, gaining a confession through illegitimate means is strictly forbidden and this standard applies even if such means would be in the public good or welfare.⁶¹ Furthermore and in accordance with the principle of repentance, a confession of a *hadd* offense may always be retracted, withdrawn, even at the time of execution.⁶² According to the *Qura'nic* provisions, temporary detention of a witness to verify their evidence as a precautionary measure is acceptable.⁶³ The classic method for proof is the testimony of an eyewitness to sustain the conviction; as for instance in the

⁵⁵ Bassiouni *supra* note 48, at 119.

⁵⁶ See Asifa Quraishi, *Her Home: An Islamic Critique of the Rape Laws of Pakistan From a Woman-Sensitive Perspective*, 18 MICHIGAN J. INT'L. L. (1997), at 287. See also, R. Aslan, *The Problem of Stoning in the Islamic Penal Code: An Argument for Reform*, 23 UCLA J. OF ISLAMIC & NEAR EASTERN L. (2003-2004), at 91. Even some Muslim scholars consider some circumstances as presumptions to establish one's guilt. For instance, The *Maliki* school of thought allows fornication to be legally established by the child's birth to a female who has never been married and who has not alleged rape and some jurists recognize the possession of stolen property as presumption of a crime of theft.

⁵⁷ See *Sahih Muslim & Bukhari*. See generally H. Esmaeili & J. Gans, *Islamic Law Across Cultural Borders: The Involvement of Western Nationals in Saudi Murder Trials*, 28 DENVER J. INT'L. POLICY (2000), at 145, 156-157; B. Wells & M. Burnett, *When Cultures Collide: An Australian Citizen's Power to Demand the Death Penalty under Islamic Law*, 22 SYDNEY L. REV. (2000), at 5.

⁵⁸ M.C. Duncan, *Playing by Their Rules: The Death Penalty and Foreigners in Saudi Arabia*, 27 J. INT'L. & COMP. L. (1998), at 231. See also Bassiouni, *supra* note 48, at 120.

⁵⁹ *Id.* 'Arafa, *supra* note 47, at 225. ("In order for a confession to be admitted as criminal evidence, six requirements must be fulfilled. All Muslim scholars require that the confessor must be of age; this implies a capacity to understand what is being admitted to and its legal consequences. The confessor must be sane, capable of self-expression, and acting on his own free will.")

⁶⁰ *Id.*, at 226. ("Any torture, pressure, or deception by the judge nullifies the confession. Moreover, the confession must be clear, explicit, and unequivocal as to the crime. The confessor must describe in detail the acts he committed in a way that leaves no doubt ("*Shubha*") as the *Sunnah* bars doubtful confessions. A confession will be invalid if made outside the court. Thus, it must take place during a legal hearing. A confession proves guilt and incurs penalties only when the judge is persuaded of it and the confession meets the [. . .] legal criteria with corroboration of the facts confessed. *Hanafis* stress that the accused must repeat the confession the same number of times as that of the required number of witnesses. In this context, Muslim scholars are in favor of confessions that implicate only the accused and not his accomplices or co-conspirators. This emerges from the principle of individual criminal responsibility set forth above. The accused may withdraw his confession at any time before or after sentencing, or during its execution. In the latter case, the judgment will be nullified if based solely on the confession.")

⁶¹ *Id.* So, excluded from evidence are confessions obtained by force or fraud, as Mohammad warned: "God shall torture on the Day of Judgment those who inflict torture on people in life." Also, the confession of the adulterer must also be repeated four times. In the famous story of *Maa'iz*, who came to the Prophet to confess adultery, the Prophet turned him away three times and then after the third time, he was punished for his crime. Further, he is also reported to have discouraged confessions and scrutinized them carefully, when he said to an adulterer: "Perhaps you kissed her, perhaps you only touched her, perhaps you only looked."

⁶² It is reported that when *Maa'iz* felt the first stone, he tried to run away but was pursued and killed. When the Prophet learned later of this, he said "Why did you not leave him. Perhaps he would have repented, and God forgiven him." For a better understanding of the taxonomy of crimes and their punishments under the principle of legality in Islamic criminal law, see 'Arafa, *supra* note 47 at, 189-195 ("*Ta'azir* offenses are not subject to the legality principle in the same manner as *Hudud* and *Qesas* crimes. All acts which infringe private or community interests of the public social order are falls into the *Ta'azir* category. Therefore, the public authorities have a duty to lay down rules penalizing all conduct detrimental to the society's interests, values, or public order.") ("The legality principle is strictly realized in this type of offense. *Hudud* [. . .] are offenses sanctioned by fixed legal penalties. *Hudud* crimes are those that bring injury and harm to the essential interests of an Islamic community. There are seven such crimes: theft, fornication, slander and defamation, brigandage, drinking wine, apostasy, and rebellion against the legitimate authority [. . .] Under the principle of legality, the judge has at least minimal discretion in the imposition of the fixed penalties.")

⁶³ God says, "If you doubt their testimony, then detain them after the prayer and let them swear by God (saying): we will not take for it a price though there be a relative nor will we hide the testimony [. . .]" *Qur'an* 5:106.

crime of adultery or fornication.⁶⁴ Also, Islamic law provides guidance for the judiciary regarding the evidentiary values.⁶⁵

In a human right's landmark case in Morocco decided by the Moroccan Appellate Court, it was argued that the marriage contract that was performed between two Moroccans in France was *batil* (invalid) because one of the witnesses to the contract was a woman, which is in violation of the Islamic law.⁶⁶ The Court disagreed, holding that:

“... testimony in Islam is not restricted to men. In fact, in Islamic [*fiqh*] jurisprudence there are matters that may not be witnessed except by women [...] as in female defects and suckling [...] and that Islam allows in a case of 'necessity' the testimony of anyone who may not meet the strict requirement of a witness so that the rights are preserved . . . what is required is that a witness should be just regardless of his or her gender . . . these principles aim at achieving justice which is now a universal concept that is based on equality and liberty and rejection of discrimination on basis of sex or race or colour [and that] "these basic tenants are established in Islamic *Shari'a*" [. . .] the presence of a woman as a witness to the marriage contract does not violate the public order in Morocco which is derived from the principles of the Islamic *Shari'a*, the internal values of Moroccan society, and the universal principles of human rights.”⁶⁷

Prescription (statute of limitations) period sets forth the maximum time period within which legal proceedings may be initiated in respect of certain events.⁶⁸ There is no statute of limitations according to Prophet Mohammad classical traditions, as he reported: “a right of a Muslim does not extinguish by lapse of time.”⁶⁹

3. So, what's wrong? The Cairo Declaration of Human Rights of 1990 and the Islamic Human Rights Catalogue

⁶⁴ The right of an individual (or their representative), to present evidence is supported by Mohammad's traditions, who advised 'Ali when he granted him the governorship of Yemen: “If two adversaries come for arbitration do not rule for the one before you have similarly heard from the other.” *Id.*, at *Sahih Muslim & Bukhari*.

⁶⁵ In adjudicating conflicts and disputes, the Prophet said “I am a human being. When you bring a dispute to me, some of you may be more eloquent in stating their case than others. I may consequently adjudicate based on what I hear. If I adjudicate in favor of some over something that belongs to his brother, let him not take it, for it would be like taking a piece of fire.” See Abou Dawoud. Also, the *Qur'an* refers to issues when the witness is a woman, there is a debate on the interpretation of that verse reads “Oh! Ye who believe! When ye deal with each other, in transactions involving future obligation in a fixed period reduce them to writing and get two witnesses out of your own men and if there are not two men, then a man and two women, such as ye choose, for witnesses so that if one of them errs the other can remind her.” *Qur'an* 2:282. See Mohammad Fadel, *Two Women, One Man: Knowledge, Power and Gender in Medieval Sunni Legal Thought*, 29 INT'L. J. OF MIDDLE EAST STUDIES (1985), at 185; K. Bauer, *Debates on Women's Status as Judges and Witnesses in Post-Formative Islamic Law*, 1 J. OF AMER. ORIENTAL SOCIETY (2010), at 130.

⁶⁶ Court of Appeal, Dec. No. 1041, *file on Appeal Ro* 494, April 18, 2007.

⁶⁷ *Id.* See generally Nathan J. Brown, *Shari'a and State in the Modern Middle East*, 29 INT'L. J. OF MIDDLE EAST STUDIES (1997). The Court stated that (“arts. 56, 57, and 61 of the *moudawana* have specified when a marriage contract becomes void and when it may be rescinded and that these cases did not include any reference to absence of witnesses to a marriage contract properly executed in accordance with the law of the country of residence.”) For a discussion of the *Moudawana*, see M. Deiana, *Improving Women's Rights in Morocco: Lights and Shadows of the New Family Code (Moudawana)*, 3 INT'L. J. OF INTERDISCIPLINARY SOCIAL SCIENCE (2009), at 11.

⁶⁸ For further details on this rule in cases of human trafficking, see M. Y. Mattar, *Combating Trafficking in Persons in Accordance with the Principles of Islamic Law*, UN OFFICE ON DRUGS AND CRIME, (New York 2009), at 104. This notion is rooted also in the Rome Statute of the International Criminal Court (“ICC”), which states that the crimes under the jurisdiction of the Court “shall not be subject to any statute of limitations” (Art. 29). On the other hand, The Convention against Transnational Organized Crime Convention requires that “Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.” See *UN General Assembly, UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME: resolution/adopted by the General Assembly, January 8, 2001, A/RES/55/25, at art. 11(para. 5)*, <http://www.refworld.org/docid/3b00f55b0.html> (last visited Sep.1, 2021).

⁶⁹ *Sahih Muslim & Bukhari*. Thus, there is always a duty to fulfil one's obligation and perform irrespective of the time a claim is made. See 'Arafa, *supra* note 47, at 223-227 & 233 (“The majority of Muslim jurists' state that prescription may apply to the penalty itself or the public action. The competent authority carries out this procedure in the light of public needs taking into account individual rights.”).

On the right to life, it is generally well-known that life is a God-given *hiba(h)* (gift) and it is guaranteed to every human being, as it is the responsibility of individuals, societies, and the state to protect this right from any transgression, and it is proscribed to take away life except for a *Shari'a* prescribed reason according to the Cairo Declaration of Human Rights.⁷⁰ In the same vein, the *Qur'an* said, "And whoever kills a believer intentionally, his punishment is hell; he shall abide in it, and *Allah* will send His wrath on him and curse him and prepare for him a painful chastisement."⁷¹ Additionally, Prophet Mohammad said that "the first thing that will be decided among people on the Day of Judgment will pertain to bloodshed."⁷²

Also, the Cairo Declaration stipulated that "it is not permitted without a legitimate reason to arrest an individual, or restrict their freedom, to exile or to punish them. It is not permitted to subject them to physical or psychological torture or to any form of humiliation, cruelty, or indignity. Nor is it permitted to subject an individual to medical or scientific experimentation without their consent or at the risk of their health or of their life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions."⁷³ In this domain, Mohammad said, "Visit the ill, feed the hungry, and release the slaves" and the *Qur'an* confirmed that rule by reciting "Fight in the way of God with those who fight with you, and do not exceed the limits, surely God does not love those who exceed the limits."⁷⁴ Likewise, the Arab Charter on the Human Rights stipulates "No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment. Each State party shall protect every individual subject to its jurisdiction from such practices and shall take effective measures to prevent them. The commission of, or participation in, such acts shall be regarded as crimes that are punishable by law and not subject to any statute of limitations. Each State party shall guarantee in its legal system redress for any victim of torture and the right to rehabilitation and compensation."⁷⁵ In terms of right to personal liberty and security, the Cairo Declaration confirmed that human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to God the Most-High.⁷⁶ Then, the Arab Charter confirmed that by saying that all forms of slavery and trafficking in human beings are banned and are punishable by law and no one shall be held in slavery and servitude under any circumstances.⁷⁷

Moreover, every man shall have the right, within the framework of *Shari'a*, to free movement and to select their place of residence whether inside or outside their country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure their protection until they reach safety, unless asylum is motivated by an act which *Shari'a* treats as a crime.⁷⁸ The *Qur'an* said: "It is He who made the Earth

⁷⁰ See CAIRO DECLARATION ON HUMAN RIGHTS IN ISLAM, August 5, 1990, *UN GAOR, World Conference on Human Rights, 4th Session, Agenda Item 5*, UN Doc. A/CONF.157/PC/62/Add.18 (1993), at art. 19(b)(c)(d)(e), <http://hrlibrary.umn.edu/instrree/cairodeclaration.html> (last retrieved Sep. 1, 2021). Arts. 24 and 25 states "All the rights and freedoms stipulated in this Declaration are subject to the Islamic *Sharia* and "The Islamic *Sharia* is the only source of reference for the explanation or clarification of any of the articles of this Declaration."

⁷¹ *Qur'an* 4:93. Also, God says, "Whoever slays a soul, unless it be for manslaughter or for mischief in the land, it is as though he slew all men; and whoever keeps it alive, it is as though he kept alive all men" and "And do not kill yourselves (nor kill one another). Surely, God is Most Merciful to you." *Qur'an* 4:29 & 5:32. These rules confirmed by the Universal Declaration of Human Rights ("UDHR") of 1948 by saying in its third article, "Everyone has the right to life, liberty, and security of person" and the Arab Charter on Human Rights by saying "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."

⁷² Also, Mohammad says, "and Every sin could be forgiven by *Allah* except the deliberate killing of a believer or when a man dies in the state of being a *kafir* (unbeliever)." *Sahih Muslim & Bukhari*. See *UN General Assembly, UNIVERSAL DECLARATION OF HUMAN RIGHTS*, [December 10, 1948], 217 A (III), at <http://www.refworld.org/docid/3ae6b3712c.html>.

⁷³ Further, the Arab Charter reads: "No one shall be subjected to medical or scientific experimentation or to the use of his organs without his free consent and full awareness of the consequences and provided that ethical, humanitarian, and professional rules are followed, and medical procedures are observed to ensure his personal safety pursuant to the relevant domestic laws in force in each State party. Trafficking in human organs is prohibited in all circumstances." See *the League of Arab States, Arab Charter on Human Rights*, [September 15, 1994], at art. 5, <http://www.refworld.org/docid/3ae6b38540.html> (last visited Sep. 1, 2021).

⁷⁴ *Qur'an* 2:190.

⁷⁵ *Id.*, at the *Arab Charter*, *supra* note 6, at art. 8(1)(2). Also, Mohammad said "Treat the prisoners in good way."

⁷⁶ *Id.*, at *Cairo Declaration*.

⁷⁷ *Id.*, at the *Arab Charter*, at arts. 10(1) & 14(1). "Everyone shall have the right to live in security for himself, his religion, his dependents, his honor and his property and "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant." Also, Mohammad said "There are three categories of people against whom I shall myself be a plaintiff on the Day of Judgment. Of these three, one is he who enslaves a free man, then sells him and eats this money."

⁷⁸ *Id.*, at *Cairo Declaration*.

submit to you, so traverse its surface and eat of its sustenance and to Him is your return.”⁷⁹ Regarding highway safety (which allows for the freedom of movement), Prophet Mohammad reported that the rights of the road are “lowering the gaze, abstaining from abuse, returning the greeting of peace, enjoining what is right, and forbidding what is wrong.”⁸⁰

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 other considerations. True faith is the guarantee for enhancing such dignity along the path to human perfection. 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.⁸¹ All individuals are equal before the law, without distinction between the ruler and the ruled (and are entitled without any discrimination).⁸² Based on the Cairo universal document, it is not permitted to arouse nationalistic or doctrinal hatred or to do anything that may be an incitement to any form of racial discrimination.⁸³ The *Qur’an* condemns that the Pharaoh “had divided his people into different classes...and he suppressed one group of them (at the cost of others).”⁸⁴

In terms of criminal procedural searches, private residence is inviolable in all cases according to the Cairo Declaration values, as it will not be entered without permission (search warrant and probable cause in Western legal terms) from its residents or in any illegitimate manner, nor shall it be demolished or confiscated and its dwellers expelled.⁸⁵ In other words, it is not permitted to spy on anybody, to place them under surveillance or to besmirch their good name and the State shall protect them from arbitrary interference.⁸⁶ The *Qur’an* affirmed that by saying “It is not piety/righteousness that you enter the houses from the back but piety/righteousness (is the quality of the one) who fears God. So, enter houses through their proper doors, and fear God that you may be successful.”⁸⁷

On the right to access ‘*adaelah* (justice), the right to resort to justice is guaranteed to everyone according to the principles of Cairo Declaration and that all folks are equal before the courts and tribunals, as states shall assure the judicial independence and protect judges, prosecutors, magistrates (district attorneys) against any interference, pressure or threats.⁸⁸ Additionally, they shall guarantee every person subject to their jurisdiction the right to seek a legal remedy before courts of all levels.⁸⁹ Further, the Cairo Charter emphasized that the defendant is innocent until their guilt is proven in a fair and impartial trial in which they shall be given all the guarantees of defence.⁹⁰ By the same token, trials, particularly criminal shall be public, except in extraordinary cases that may be warranted by the interests of justice in a society that respects human

⁷⁹ The Arab Charter said that: “Everyone lawfully within the territory of a State party shall, within that territory, have the right to freedom of movement and to freely choose his residence in any part of that territory in conformity with the laws in force.” *Id.*, at the *Arab Charter*, at art. 26(1). In the same vein, God says, “One who abandons his home for the cause of God will find many places of refuge in the vast land and one who dies, after having abandoned his home to get near to God and His Messenger, will receive his reward from God. God is All-forgiving and All-merciful.” *Qur’an* 67:15 & 4:100.

⁸⁰ *Sahih Muslim & Bukhari*. See *UDHR*, at art. 7.

⁸¹ *Id.*, at *Cairo Declaration*. In this sense, the Arab Charter said that: “Men and women are equal in respect of human dignity, rights, and obligations within the framework of the positive discrimination established in favor of women by the Islamic Shariah, other divine laws and by applicable laws and legal instruments. Accordingly, each State party pledges to take all the requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment of all the rights set out in this Charter.” *Id.*, at the *Arab Charter*, at art. 3(3).

⁸² *Id.*, at arts. 24(4), 3(1)(2). “The States parties to the present Charter shall take the requisite measures to guarantee effective equality in the enjoyment of all the rights and freedoms enshrined in the present Charter in order to ensure protection against all forms of discrimination based on any of the grounds mentioned in the preceding paragraph.”

⁸³ *Id.* See also Fadel, *supra* note 65.

⁸⁴ *Qur’an* 28:4.

⁸⁵ Leonardo Bernard, *A New Look at Human Rights through the Eyes of Islam*, 25 SINGAPORE L. REV. (2007), at 81.

⁸⁶ Mohammad said, “A Muslim’s wealth is forbidden for others to use without his permission.” *Sahih Muslim*.

⁸⁷ *Qur’an* 2:189, 49:12, & 24:27. God says also, “Do not spy on one another” and “Do not enter any houses except your own homes unless you are sure of their occupants ‘consent.” “No one shall be subjected to arbitrary or unlawful interference regarding their privacy, family, home or correspondence, nor to unlawful attacks on their honor or their reputation.” *Id.*, at the *Arab Charter*, at art. 21.

⁸⁸ *Id.*, at art. 12(1).

⁸⁹ *Id.*

⁹⁰ In this respect, the Arab Charter “Everyone has the right to a fair trial that affords adequate guarantees before a competent, independent and impartial court that has been constituted by law to hear any criminal charge against him or to decide on his rights or his obligations. Each State party shall guarantee to those without the requisite financial resources legal aid to enable them to defend their rights.” *Id.*, at art. 13(1).

freedoms, rights, and civil liberties and everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to the law in a public trial at which they have had all the guarantees necessary for their defence.⁹¹

Islamic law principles confirmed these values, in which the *Qur'an* reported that “O you who believe! Be upright for *Allah*, bearers of witness with justice, and let not hatred of a people incite you not to act equitably; act equitably, that is nearer to piety, and be careful of (your duty to) *Allah*; surely *Allah* is Aware of what you do.”⁹² Also, the Prophet Mohammad said “God, the Exalted, and Glorious, said; ‘O My slaves, I have prohibited injustice for Myself; and have made it unlawful for you, so do not be unjust to one another or oppress one another [...].’”⁹³ ‘Omar ibn el-khattab said that “In Islam, no one can be imprisoned except in pursuance of justice.”

Last but not least, on the due process guarantees within the Arab and Islamic principles, the Arab Charter on Human Rights echoed that anyone who is arrested shall be informed, at the time of arrest, in a language that they understand, of the reasons for their arrest and shall be promptly informed of any charges or criminal offenses against them, and they shall be entitled to contact their family members and consulting with their lawyers.⁹⁴ Moreover, anyone arrested or detained on a crime shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release and their release may be subject to guarantees to appear for trial.⁹⁵ Pretrial detention shall in no case be the general rule.⁹⁶ Also, anyone who has been the victim of arbitrary or unlawful arrest or detention shall be entitled to a fair and just – civil – compensation or fees and no one shall be deprived of their liberty except on such grounds and in such circumstances as are determined by law and in accordance with such procedure as is established thereby.⁹⁷ In addition, according to the Islamic values, any person who is deprived of their freedom by arrest or detention shall have the right to request a medical examination and must be informed of that right.⁹⁸ Likewise, everyone charged with a criminal offence shall be presumed innocent until proven guilty by a final verdict (irrevocable ruling) rendered according to the law and, within the course of the investigation, interrogation, and trial, he/she shall enjoy the minimum due process guarantees.⁹⁹

⁹¹ *Id.*, at art. 13(2). “No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.” *Id.*, at *UDHR*, at art. 11(1)(2).

⁹² *Qur'an* 5:8. Also, God says: “Do not let your hatred of a people incite you to aggression”, “*Allah* commands you to make over trusts to their owners and that when you judge between people you judge with justice; surely *Allah* admonishes you with what is excellent; surely *Allah* is Seeing, Hearing”, and “O you who believe! Stand out firmly for justice, as witnesses to God, even though it be against yourselves or your parents, or your kin, be the rich or poor, God is a Better Protector to both (than you). So, follow not the lusts (of your hearts), lest you may avoid justice, and if you distort your witness or refuse to give it, verily, God is Ever Well-Acquainted with what you do.” *Qur'an* 5:2, 4:58, & 4:135.

⁹³ *Sahi Muslim & Bukhari*. God says, “If two parties among the believers start to fight against each other, restore peace among them. If one party rebels against the other, fight against the rebellious one until he surrenders to the command of God. When he does so, restore peace among them with justice and equality; God loves those who maintain justice” and “God does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your homes. Verily, God loves those who deal with equity.” *Qur'an* 49:9 & 60:8.

⁹⁴ *Id.*, at the *Arab Charter*, at art. 14(3).

⁹⁵ *Id.*

⁹⁶ *Id.*, at 14(5)(6). “Anyone who is deprived of his liberty by arrest or detention shall be entitled to petition a competent court in order that it may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.”

⁹⁷ *Id.*, at 14(7)(2). “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”, “Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”, and “No one shall be subjected to arbitrary arrest, detention or exile.” *Id.*, at *UDHR*, at arts. 7, 8, & 9.

⁹⁸ *Id.*, at the *Arab Charter* at arts. 14(4) & 15.

⁹⁹ The Arab Charter highlighted these legal standards as follows:

- (a) the right to be informed promptly, in detail and in a language which he understands, of the charges against him/her;
- (b) the right to have adequate time and facilities for the preparation of their defense and to be allowed to communicate with their family;
- (c) the right to be tried in their presence before an ordinary court and to defend himself/herself in person or through a lawyer of their own choosing with whom he/she can communicate freely and confidentially;
- (d) the right to the free assistance of a lawyer who will defend him/her if he cannot defend himself/herself or if the interests of justice so require, and the right to the free assistance of an interpreter if he/she cannot understand or does not speak the language used in court;

Reconsidering the future: Conclusion and policy recommendations

Shari'a (Islamic) law norms provides for general principles of procedural criminal justice system, specifically the principle of non-retroactivity, uniform liability norm, the legality principle, and the presumption of innocence as cornerstone norm within the penal context. Islamic criminal law also maintains on strict evidentiary guidelines that are based on direct evidence and witness testimony or confession. The Cairo Declaration of Human Rights of 1990 along with the Arab Charter of 2004 refers to some of these aspects of procedural justice, as for instance "the right to resort to justice is guaranteed to everyone", "liability is in essence personal", "there shall be no crime or punishment except as provided for in the *Shari'a*", and "a defendant is innocent until their guilt is proven in a fast [fair and unbiased trial] in which he/she shall be given all the guarantees of defence."

The Cairo Declaration makes it clear that these and other rules of procedural justice are to be interpreted in accordance with Islamic law and its general rules of Islamic *fiqh* (jurisprudence). This interpretation, especially on debatable issues, should be made in the light of the general *maqasid* (objectives) of Islamic law that are based on justice, equality, and freedom. All in all, relieving the tension between any clashing worldviews, included, Islamic law and the international human rights, means, as the same in the evolving history of Judaism and Christianity, the depuration of the law through the human dignity lenses, which sees the free man as a free man, created to live in peace with their idiosyncrasies, loves, and talents. Free to finally be socially responsible for their own freedom, in a timeline which recognises, better and better, the ultimate meaning of what a beneficent and merciful God really is. As the precedent Abrahamic religions of Judaism and Christianity already did – and still do every day – Islam – as a victim – is called to face the challenges of freedom.

The contemporary liberal Islamic perspective to human rights gets bogged down in a theological debate about the "correct" Islamic stance on human rights. Because Islamic revelation occurred centuries before the expansion of the modern philosophies of human rights, there is no way to truly know the detailed Islamic perspective on human rights, though the general norms support it, just as we will never know if there are pineapples in paradise. Instead of dwelling on an unwinnable debate, moderate Muslim scholars should put their effort into proving the positive aspect that Islam does support human rights via flexible interpretation of the law. It is also far better to move the conversation back down to the temporal level of whether modern human rights make sense for Middle Eastern and Muslim cultures. Contemporary Muslims must determine the answer to that inquiry, whether human rights make sense for their societies. Islam will definitely play a role in this debate, and only when Islamic discourse moves in this direction can Muslims better understand the relationship between human rights and Islam.

Al-Imam Al-Ghazali – one of the most well-recognised Islamic scholars – assures the right of personal security in the Islamic criminal justice system and consequently, established the *alMaqased elKhams* (Five Essentials), which have become the core principle for Muslim jurists for determining whether the public interest is endorsed by a notion or a solution. Under this theory, these five significant notions guaranteed to all individuals and should not be violated by the State. It involves protecting property, lineage, intellect and posterity, religion, and lives. Additionally, Islamic criminal law reveals the structural framework for a community to preserve the legal relationships among individuals and protect not only the public interest but also the personal ones (from being attacked by another). This theory also guarantees peace and security and assure the relation between the government (State) and its citizens, and hence, the principle of legality, non-retroactivity of criminal laws, punishment personality are the most vital principles laid down in *Shari'a*. Based on *Cilafah* (viceregency) notion, and the duty paradigm in Islam, the Muslim *ummah* (community) is entrusted with the authority to implement the *Shari'a*, administer justice, and to take all necessary measures

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- (e) the right to examine or have their lawyer examine the prosecution witnesses and to defense, according to the conditions applied to the prosecution witnesses;
 - (f) the right not to be compelled to testify against himself/herself or to confess guilt;
 - (g) the right, if convicted of the crime, to file an appeal in accordance with the law before a higher tribunal, and
 - (h) the right to respect for their security of person and their privacy in all circumstances.

Id., at art. 6. In sum, Islam recognized human rights long time ago and no real conflict exists between human rights and Islam, as it stresses the concept of duties in the field of human rights. Thus, the international human rights movement can transpose many human rights methodologies from Islamic law. The Reverse Moderate Relativism (RMR) perspective calls on the move of human rights standard towards Islamic standards.

for the betterment of society, and for future generations. God has placed *amanah* (trust) in everyone and by accepting this trust, humans have accepted individual accountability towards each other and the society. Islam believes in the sacred nature of rights, accordingly, Islam considers them ‘necessities,’ and made them part of the ‘obligations’

Since the foundation of Islamic *Shari’a*, there is an individual and collective concepts of rights and duties, that are interpreted by the third generation (solidarity rights) as a shared common responsibility of both the individuals and society. These rights can be realised only through the concerted efforts of all actors on the social scene, as law – including Islamic law – can serve as a “*tool*” for social change. Islamic criminal justice system is deeply rooted in the sacred provisions of the *Qur’an* and Prophet Mohammad’s teachings for securing human freedom and dignity. Over many decades, Islamic law has developed into a complicated, highly established, and a delicate reality and such a complexity does not make it mysterious. The diversity among the Islamic schools of jurisprudential thought demonstrates numerous manifestations of the same heavenly will and are developed as diversity throughout unity. “Oriented” Islamic law has its own sources (primary and secondary) like any other legal system, which has its controlling aspects that interpret the nature of its legal texts and rulings. It uses several fundamental objectives and consistently implements the use of legal *maxims* for sustaining the structure of its legal theory. It should be noted that the moderate *Islamic* cultural relativist discourse accepts cultural differences while striving to find a group of universal norms via the interpretation of Islamic texts in the light of human rights norms.

As times goes by, the undeniable pulse of mankind’s brotherhood tends to prevail and mix the infinite colours in the ocean of life into the final and desired peaceful white. In this path, the newest branch in Abraham’s family tree will blossom, more and more, its own soft, perfumed, and white freedom flowers.