

THE PROTECTION OF HUMAN RIGHTS IN ISLAM: AS DISCOURSED IN THE WORKS OF AL-QARADAWI

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Abstract: *This paper deals with the issues of human rights as crucially discussed in the works of al-Qaradawi, such as Fatawa al-Mu'asarah, Fi Fiqh al-Dawlah fi al-Islam, Fiqh al-Jihad, Fiqh al-Awlawiyyat, Fiqh al-Aqalliyat, Fiqh al-Zakah and other major contributions by him in the field of human rights. It fundamentally discussed the principle of safeguarding human rights relating to religious freedom, freedom of expression, freedom of conscience, rights of minority, gender equality, and other crucial topics substantively discussed by him. The outcome will highlight Qaradawi's prominence as advocate of human rights and his position in this crucial issue and its contemporary relevance and significance for the ummah.*

Keywords: *Human Rights, Islam, Yusuf Al-Qaradawi, Maqasid Al-Shariah*

Abstrak: *Tulisan menyorot tentang isu-isu hak asasi seperti dibincangkan dengan kritis dalam karya penulisan al-Qaradawi, seperti Fatawa al-Mu'asarah, Fi Fiqh al-Dawlah fi al-Islam, Fiqh al-Jihad, Fiqh al-Awlawiyyat, Fiqh al-Aqalliyat, Fiqh al-Zakah dan kontribusi-nya yang lain dalam bidang hak asasi. Ia membincangkan prinsip asas dalam melindungi dan mempertahankan hak asasi yang fundamental berkait dengan kebebasan agama, kebebasan ekspresi, kebebasan naluri, hak minoriti, persamaan jantina, dan topik-topik penting yang lain yang didiskusikan secara substantif oleh Qaradawi. Hasil kajian akan menyerlahkan ketokohan Qaradawi sebagai pelopor hak asasi dan kedudukannya yang penting dan mendasar dalam isu ini dan relevansi dan signifikasinya yang krusial dengan kehidupan ummah kontemporer.*

Kata kunci: *hak asasi, Islam, Yusuf al-Qaradawi, maqasid al-sharia*

INTRODUCTION

This paper will discuss the importance contributions of Shaykh Yusuf al-Qaradawi to advocate the fundamental principle of human rights (*fiqh al-huquq*) and its understanding from Islamic law. The issues had been substantively argued by him in his various *khutbah* (sermon), and *fatwa* (juristic opinion) that advocated the moral imperative to safeguard the basic rights of freedom: "the nation is backward....it is a question of freedom. Without freedom, slaves cannot make anything. As long as our nation is driven by whips, our free men are sent to detention camps and prisons, and the ruler rules the people with a thick stick,

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and as long as judges are arrested, imprisoned and beaten, and there is no freedom of the press or the formation of parties, our nation will remain in the circle of backwardness. A nation is created by free men. Progress is made by free men. But, if we remained in the circle of bondage, the nation will not create anything worthwhile. It will always remain on the margin".¹

The development of the principle framework of justice, freedom, liberty and rights was outlined in his extensive writings on *fiqh* (Islamic jurisprudence), such as *Fiqh al Maqasid*, *Fiqh al-Nusus*, *Fiqh al-Waqi'*, *Fiqh al-Murwazanat*, *Fiqh al-Taghayyur*, *Fiqh al-Awlawiyat*, *Fiqh al-Jihad*, *Fiqh al-Thawrah*, *Fiqh al-Iqtisad al-Islami*, *Fiqh al-Dawlah*, *Fiqh al-Aqalliyat*, *Fiqh al-Wasatiyah*, and *Fiqh al-Da'wah*.

Besides al-Qaradawi, the ideal has been profoundly advocated and campaigned by many prominent scholars such as Muhammad Iqbal, Muhammad Asad, Muhammad Abduh, Sayid Abul A'la al-Mawdudi, Isma'il Raji al-Faruqi, A.A.A. Fyzee, Abu'l Kalam Azad, and Muhammad Hashim Kamali. In his illustrious work *Javad Nama (Book of Eternity)*, the poet Muhammad Iqbal articulated the need to project universal ideal of human rights for the entire humanity. In his essay "Islam as A Moral and Political Ideal" Iqbal expressed his high regard for the three ingredients of democratic values, *i.e.*, freedom, equality and choice. Inspired by the profound thought of Iqbal, Muhammad Asad in his magnum opus, *The Message of the Qur'an* described the underlying principle of fundamental right in the Qur'an "to develop one's aesthetic sensibilities and enjoy the bounties created by God", as illustrated in his explanation of Surah 7, verse 32, "By declaring that all good and beautiful things to the believers, the Qur'an condemns, by implication, all forms of life-denying asceticism, world-renunciation and self-mortification. In fact, it can be stated that the right to develop one's aesthetic sensibilities so that one can appreciate beauty in all its forms, and the right to enjoy what God has provided for the nurture of humankind, are rooted in the life-affirming vision of the Qur'an".²

In his work that analyze the principle and fundamental essence of Islamic governance, *The Principles of State and Government in Islam*, Asad crucially argued for political freedom and the indispensable struggle for independence: "This moment of free choice has now arrived for the nations of the Muslim world. After a century of struggles, hopes, errors, and disappointments, full independence from colonial rule has been won by most of the countries inhabited by Muslims. The achievement of independence has brought to the foreground the question of the fundamental principles by which they should govern themselves in order to ensure happiness and well-being for their peoples.

The ideas found resonance in the monumental work of Abul A'la al-Mawdudi, *Human Rights in Islam* that outlined the difference approaches of Islam and Western concept of human right, as he emphatically demonstrated: "When we speak of human rights in Islam we really mean that these rights have been granted by God; they have not been granted by any king or by any legislative

¹ Samuel Helfont. *Yusuf Al-Qaradawi: Islam and Modernity* (The Moshe Dayan Center for Middle Eastern and African Studies, Tel Aviv University, 2009). 13.

² Muhammad Asad. *The Message of the Qur'an* (Gibraltar: Dar al-Andalus, 1980).

assembly...the charter and the proclamations and the resolutions of the United Nations cannot be compared with the rights sanctioned by God; because the former is not applicable to anybody while the latter is applicable to every believer. They are a part and parcel of the Islamic faith. Every Muslim or administrators who claim themselves to be Muslims will have to accept, recognize and enforce them".

He also outlined the basic features of human rights, the rights of citizens in an Islamic state and rights of enemies at war such as the rights of the non-combatants, the rights of the combatants, protection of the wounded, sanctity of property, prohibition of breach of treaties, and rules about declaration of war, as determined by the shari'ah.

In his sophisticated work that described the underlying problem and historical root of clash of Islam and Zionism, *Islam and the Problem of Israel*, Prof. Ismail Raji al-Faruqi articulated the positive aspect of Islam and Jewish relation with respect to the question of security: "Certainly, the Jew has been victim of injustice in the West; and certainly, the Muslim is enjoined by God to come to his rescue, to relieve him from suffering and to help him achieve his freedom, security and peace".³

Islam stands to defend the universal right of Jews and recognized them, as "signatories of the Covenant" and as citizens "of a vigorous world-state". According to al-Faruqi, "the *Pax Islamica* was a "United Nations" fourteen centuries ago, and a far more effective and beneficial one than our contemporary world-institution." It transformed the Jews of Arabia and "conferred upon them the dignity of full membership in the new World order" and "that is exactly what Islam came to achieve with its untiring rationalism and comprehensive universalism".⁴

In his thesis that analyze the concept of freedom as projected by Muhammad Abduh entitled, "The Concept of Freedom in Muhammad 'Abduh" Hammudah 'Ali 'Abd al-'Ati, discussed its significant principle and framework as reflected by Muhammad Abduh "with a free mind and spirit": "He joined those who taught Egyptians to know their rights with respect to their rulers, rights which had been forgotten for more than twenty centuries. He affirmed those rights when tyranny was in a stage of climax and the people in a state of complete enslavement".

Muhammad Hashim Kamali, has extensively developed a series of works that analyzed the fundamental issues of human rights that has been widely acclaimed as the principle reference in the field of human rights, such as *Freedom of Expression in Islam, Citizenship and Accountability of Government: An Islamic Perspective, The Right to Education, Work and Welfare in Islam, The Right to Life, Security, Equity and Fairness in Islam, Privacy and Ownership in Islam, Freedom, Equality and Justice in Islam, Haqq-e Milkiyat dar Islam (Right of Ownership in Islam)*

³ Yuli Utami, *Yusuf al-Qaradawi's Contributions to the Contemporary Islamic Economic Thought*. M.A.' Thesis. (Kulliyah of Economics and Management Sciences: International Islamic University Malaysia, 2006), 105.

⁴ *Ibid*, 85.

and *The Dignity of Man: An Islamic Perspective*.⁵

In his article "Fundamental Rights of the Individual: An Analysis of *Haqq* (Right) in Islamic Law" he provided a comprehensive overview and substantive analysis of the term *haqq* (right) from Western and Islamic perspective and its implication in contemporary application of Islamic law. According to him "An adequate understanding of *haqq* in Islamic law requires looking into several related themes, and my attempt to do this has enabled me to identify the roots of what I regard to be a persistent misunderstanding of Islamic law on this subject...the issue is essentially that of the pattern of relations between the Lawgiver and the recipient of law, one that is inspired by the ideals of unity and integration rather than the duality of their respective interests.

Modern constitutional law and constitutionalism as such, champions the rights of the citizen when dealing with the ever-expanding power of the state. This latter factor was, on the whole, viewed as a menace to individual rights and liberties. Islamic law, on the other hand, does not proceed from a condition of conflict between the individual's respective rights and interests and those of the state, for implementing the Shari'ah satisfies the basic purpose of the state's existence, which includes the rights of the individual. In doing so, both the individual and the state obey the Shari'ah and gain the pleasure of God."

DEMOCRACY

Democracy, which essentially undertakes to protect the fundamental aspirations of people, safeguard the social order and human rights, constitutional guarantee of freedom, and embraced the fundamental rights of man and woman, was categorically defended by al-Qaradawi as crucial to safeguard fundamental liberty and human rights. He strongly approves the practice of "democracy and the electoral process, which he resembles to testimony (*shahadah*) in which the people testify to the suitability and trustworthiness of the candidates they vote for - and giving *shahadah* is a collective obligation (*fard kifa'i*) of the Muslim community."

Muhammad Hashim Kamali in his analysis of the compatibility of Islam and democracy, and the question of its menacing doctrine "that it carries western values and viewpoint," take Qaradawi's position, and his respond that "the Islamic tradition and scholarship have maintained a relatively open profile of receptivity from and contribution to other civilizations. It has taken from other traditions that which is of merit and acceptable to its own values."

Nevertheless, al-Qaradawi has also taken a critical stand of western ideal and thought, and only favored the universal element that promotes the welfare and progress of human, science and culture. In view of this, he rejected the globalization that undermine religious values and brought perils to the ummah, "In the past, we used to be wary of customs inherited from the days of Islamic

⁵ Muhammad Hashim Kamali. Democracy and Islam, Democracy and Islam - Columnist - New Straits Times <http://www.nst.com.my/opinion/columnist/democracy-and-islam-1.261970#ixzz2hs2296cy>, 2013, retrieved 2 Sept 2016.

backwardness. Now, we are wary of traditions coming in from the West. The West is trying to impose its traditions, ideology and philosophy on us on the pretext of seeking a global culture; namely, globalization.” In Al-Jazeera interviews with al-Qaradawi.

FREEDOM OF RELIGION

In *Fiqh al-Jihad, (Understanding of Jihad: A Comparative Study of its Rulings and Philosophy in Light of the Qur'an and Sunnah)* al-Qaradawi stressed on the principle of freedom and no compulsion to faith. He emphasizes that “the natural state of affairs in relations between Muslim and others is peace and cooperation in goodness. Islam abhors war and only engages in it unwillingly and as a necessity “Fighting is prescribed for you, though it is hateful to you.”

He maintained that, “under international recognition of human rights, including freedom of belief and preaching, as well as freedom to establish institutions and protect minorities,” and in contrast to “any previous era of Islam history,” where unprecedented “mosques and Muslim minorities are found everywhere”, this making our need greater for “huge armies of competent preachers, teachers, media experts, all suitably trained and able to address the world in its different languages, and using methods of this modern age, which, unfortunately, we possess less than a thousandth of what is required.” (Rashid Al-Ghannoushi, 2009) For al-Qaradawi, the urgency of this time is to prepare sophisticated and huge armies of competent professionals to wage war against western imperialism as it is critical to launch jihad in the battlefield.

Commenting on the book and the moderate approach taken by al-Qaradawi in *Fiqh al-Jihad*, *The Guardian* wrote: “Instead Qaradawi encourages a “middle way” conception of jihad: “solidarity” with the Palestinians and others on the front line, rather than violence, is an obligatory form of jihad. Financial jihad, which corresponds with the obligation of alms giving (zakat), counts as well.

And Muslims should recognise that technological change means that media and information systems are as much a part of the jihadist repertoire as are guns. Indeed, as long as Muslims are free to use media and other resources to press their case, there is no justification for using force to “open” countries for Islam”.⁶

THE RIGHTS OF MINORITY

Al-Qaradawi was the precursor to formulating the jurisprudence of Muslim minorities as crafted in his book *Fi Fiqh al-Aqalliyyat*. It formed the important milestone in the debate of rights of minorities in the West. Introduced in the 1990s, together with the writing of Shaykh Taha Jabir Al-Alwani, it “asserts that Muslim minorities, especially those residing in the West, deserve a special new

⁶ Ewan Stein. Yusuf Qaradawi's Jihad, www.theguardian.com/commentisfree/belief/2009/aug/17/islam-jihad-qaradawi, 2009, retrieved 11 Oct 2016.

legal discipline to address their unique religious needs that differ from those of Muslims residing in Islamic countries".⁷

This legal doctrine was developed "as a means of assisting Muslim minorities in the West", protecting their rights, finding solution to their problems of living and struggling as minorities in the West. It was projected based on the principle of *maslaha* (public interest) and *maqasid shariah* (objective of the shari'ah) in "support of the peaceful coexistence of Muslims and non-Muslims" in the West and to safeguard "basic rights and liberty" based on Islamic law.

CONCLUSION

From this brief discussion, we have analyzed the major contributions of al-Qaradawi to promote the fundamental principles of human rights (*huquq*) relating to religious freedom, political liberty and the idea of justice "as the middle ground that brings all together".⁸ In his works, he had articulated these fundamental aspects of human rights grounded from the ideal of the Qur'an and the tradition of the Prophet (saw).

Inspired by the democratic ideal to safeguard human rights he endeavored to advocate the principle of *maslahah* and *maqasid shari'ah* and has rightfully presented Islam in "the middle position between opposing and conflicting rigid positions." (Rachid Ghannouchi, 2009). The underlying principle of human rights, as developed in his works reflected his strong compassion for *ijtihad*, *tajdid* and median ground (*al-wasatiyyah*) that help to promote the ideal and aspiration of modern Islam in contemporary times.

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⁷ Tauseef Ahmad Parray, The Legal Methodology of "Fiqh al-Aqalliyat" and its Critics: An Analytical Study. *Journal of Muslim Minority Affairs*, 32, 1, (2012), 88-107.

⁸ Rashid Al-Ghannouchi. What is New about Al-Qaradawi's Fiqh of Jihad?, www.onislam.net/english/shariah/contemporary-issues/interviews-reviews-and-events/446694-what-is-new-about-al-qaradawis, 2009, retrieved 12 Oct, 2016.

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