The Concept of Freedom (*Hurriyya*) and Natural Rights in Classical Islamic Jurisprudence

Dr Hakan Coruh
Charles Sturt University
In Islamic jurisprudence, universal human rights concept is developed.

Classical Islamic jurisprudence accepted the right of the inviolability of human beings, and it is accepted by all religions.

They called axiomatic rights (daruriyyat), fundamental principles (usul), and universal rights (kulliyyat).

These rules constitute the common ground between Islamic and non-Islamic legal systems.

Universal aspects of Islamic legal tradition provide the same rights to all human beings.

Human beings should have freedom and legal personality, and human rights are a prerequisite for freedom of religion.

Universal human rights and freedom of religion are prerequisites to achieve the purpose and meaning of creation.
The concept of freedom (*hurriyyah*)

The concept of freedom (*hurriyyah*) refers to a natural position from birth in comparison with the slavery in classical Islamic Juristic literature.

- This concept is used more in akhlaq, tasawwuf and philosophical literature, meaning freedom and abstaining from carnal and worldly desires, not being dominated by vices.
- E.g. Freedom (*hurriyyah*) in Avicenna’s *As-Siyasah al-Madaniyya*. In Ibn Miskawayhm, it is considered a sub-virtue under the virtues of chastity (*‘iffat*).
- Being free from everything except for God is the ultimate aim of Islamic ethics.
- In classical Islamic jurisprudence, freedom (*hurriyyah*) refers to a natural position from birth and opposite of slavery.
- Moreover, freedom is sought for the capacity of receiving rights (*ahliyyah al-wujūb* and the capacity of executing rights (*ahliyyah al-adā’*).
- Also, freedom is considered as one of the conditions for some religious rituals and juristic responsibilities such as Friday prayer and almsgiving.
The concept of freedom (hurriyyah) in Fiqh

- But, it looks that it is not a separation of society into classes. But, providing responsibilities according to social structure and its restriction for some people.
- It looks the concept of freedom is used in a narrow scope in the classical fiqhi literature.
- But, haq, maqasid and maslahat are major concepts that used to indicate basic human rights and freedoms in the Islamic law.
- Haq and hurriyyah are very connected to each other.
- Huquq Allah (Rights of Allah) and Huquq al-Ibad (Rights of Servants) are significant usul concepts from Islamic legal tradition and more works should be done.
Inherent Human Rights in Jurist Dabusi Case Study

- "The Rights of God Cannot be Fulfilled without Human Rights"
- Jurist Dabusi (d. 1039) is one of the first who theorised on the universality of human rights.
- "A human being (adami) is created only and only with this covenant (with God) and the right to personality (dhimmah); it is impossible to think that he may be created otherwise. A human being is created only and only with a capability to be accorded with legal/public rights (huquq al-shar'). It is impossible to think that he may be created otherwise. Likewise, a human being is created free and with his rights; it cannot be thought that he may be created otherwise. The reason why these honoring gifts and legal personality are given to human beings is because he/she is responsible to fulfill the rights of God." (Taqwim al-Adillah)
- Freedom and legal personality as fundamental rights.
- For him, basic human rights are born rights, which emanate from God.
Inherent Human Rights

- A distinct way of grounding universal human rights.
- Dabusi states that basic universal human rights are given to human beings so that they can fulfill the rights of God.
- Dabusi connects the capacity of receiving rights (ahliyyah al-wujūb) with ismah (right to inviolability), hurriyyah (freedom), malikiyyah (property). So, in order to fulfill rights, our responsibilities and duties, human beings must have these three from birth.
- Human’s nature needs to have freedom and freedom of choice from birth to carry our duties.
- In Dabusi’s view, the capacity of receiving rights (ahliyyah al-wujūb) is a ground and reason for human’s freedom.
- So, he underlines that human rights are a prerequisite for freedom of religion.
Inherent Human Rights

- Human beings have a capacity to take religious/legal responsibilities from birth by force.
- So, human’s natural rights, *ismah* (right to inviolability), *hurriyyah* (freedom), *malikiyah* (property) are not their choices as well. They have these from birth by force.
- Human beings should have freedom and legal personality so that they can fulfill their duties, God’s rights on them.
Muslim Jurist Sarakhsi (d. 1090): “God granted the right to inviolability, freedom and property.” (Usul)

“Upon creating human beings, God bestowed upon them intelligence and the capability to carry responsibilities and rights. This was to make them ready for duties and rights determined by God. Then He granted them the right to inviolability, freedom and property to let them continue their lives so that they can perform the duties they should shouldered. Then these rights to carry responsibility and enjoy rights, freedom and property exist with a human being when he is born…This is how proper personhood is given to him when he is born for God charge him with the rights and duties when he is born. (Usul)
English philosopher John Locke (d. 1704), father of liberalism, says:

All individuals are equal in the sense that they are born with certain inalienable natural rights. That is, rights are God-given and can never be taken or even given away. Among these fundamental natural rights are “life, liberty, and property.”

Locke argues that individuals should be free to make choices about how to conduct their own lives as long as they do not interfere with the liberty of others.

Ismail Kurun: “Theological Origins of Liberalism”
Islamic legal tradition includes very interesting fascinating examples like the following: Sahnun (d. 854) is considered the major transmitter of Maliki fiqh through the Mudavvana.

Proportionality, and the roots of a rudimentary form of child protective services, in early Maliki legal reasoning:

I [Sahhnun] said: "[What about] a woman who has been divorced by her Muslim husband and she is Christian or Jewish and she has minor children, who has a greater right of custody over the children? He [Ibn al-Qasim] said: Her right is greater and she is like the Muslim woman in regards to her children (hiya kal Muslima fi waladihā)."

Sahnnun replied: "She pours them wine (khamr) and feeds them the swine[!] Why did he [Malik] have her occupy the rank of the Muslim woman?"

He [Ibn al-Qasim] said: The [children] were under her care before her husband divorced her and she could have fed them swine [and poured them] wine had she so wished. But if she wishes to do this she should be prevented, without taking the children from her. If there is reason to suspect that she will do so despite such an order, in that case then she is entrusted to the supervision of a group of Muslims [who will be responsible] to make sure that she does not."
“Rulership is sustained with unbelief but not with injustice.”

(al-Mawardi and al-Ghazali)

“A land in which the rights of God are violated is preferred over a land in which humans are violated in their rights”

(Alish Abd-Allah al-Maliki)
Qur’an 2:256 declares “there is no compulsion in religion” and serves as sine qua non of Islamic teaching regarding freedom of religion. Various other similar verses about freedom of religion are found in the Qur’an as well.

For example, “And had your Lord willed, those on earth would have believed – all of them entirely. Then, [O Muhammad], would you compel the people in order that they become believers? And it is not for a soul to believe except by permission of God, and He will place defilement upon those who will not use reason” (Qur’an 10:99–100)
Traditional Islamic sources and legal tradition developed a long list of human rights. They all revolved around 3 fundamental rights:

- **The Right of Inviolability** (haqq al-ismah), every life is sacred.
- **The Right of Freedom** (haqq al-hurriyya)
- **The Right of Property** (haqq al-malikiyyah), the right of property.

More studies should be done on the Concept of Divine and human rights (Huquq Allah – Huquq al-Ibad) in classical sources.

Modern human rights declarations are the result of centuries of global theological and philosophical thought, not and simply a western project.

A result of human reason and nature pursuing human welfare.
Products of sound reason support revealed knowledge as the mainstream Islamic scholarship underlines.

Islam does not look at anything as black and white. It investigates which aspects are compatible with its values and which ones are not.

- As a historical example, besides Qur’anic teaching and historical examples of the Prophet, Islamic moral ethics adopted Greek philosophy and ethics due to their universal scientific nature.
- Muslim philosophers also accepted Greek philosophy as *hikmah* (wisdom) because, like Qur’an, philosophy was studying on nature, human and existence, considered as signs of God.
- *Al-qadim as-salih wa’l-jadid an-nafi’.*