

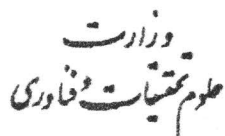
# Theoretical Foundations of Human Rights

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# RELIGION AND HUMAN DIGNITY

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## Introduction

The works of many philosophers and anthropologists of the Renaissance and thereafter are filled with the idea of human dignity, elevating human being to a high standing, by virtue of his mere humanity, and regardless of such ties as religion, race, gender, and geographical habitude.

In the gloomy years following the two devastating World Wars, the collective conscience of the mankind resorted to the idea of dignifying and respecting every human being so that human dignity finds objective materialization and conflict among different human beings be avoided. For this purpose, the Preamble to the Charter of the United Nations (adopted on 26 June 1945) regarded human being, from the theoretical point of view, as the founder of the international community, thus opening with the phrase, 'We, the people of the United Nations'. It also spoke of the faith in the fundamental human rights, in the *dignity* and worth of the human person, in the equal rights of men and women and of nations large and small.

The Universal Declaration of Human Rights (adopted on 10 December 1948), the International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) also emphasize inherent human dignity, regarding it as the cornerstone of the idea of Human Rights. Despite the apparent consensus over this principle, one can further contribute

to its consolidation by elaborating thereon, in order to reveal its foundations, aspects, and legal consequences. Establishment of man's dignified nature on solid grounds would help defy his loss of identity, closing the door against the philosophies that represent human being as an absolute subject of his social environment, as well as guarding his freedom, dignity, and personality. This would also teach the high and the mighty that they could not treat their subjects as they will.

Although some drafters of the Universal Declaration of Human Rights, including the representative of the Netherlands, wished the text of the Declaration to attribute man's inherent dignity to God,<sup>1</sup> the drafters, according to Michael Freeman, avoided such reference possibly because God had turned into a controversial concept. In this way, they adopted an anti-foundamentalist approach in line with the theory of the denial of God.<sup>2</sup> In this respect, they followed an idea founded by Montesquieu long before the drafting of human rights instruments. Without presenting substantiated evidence, he had said that religious rules and laws, however splendid, spiritual, and respected they are, should not serve as the basis for civil laws.<sup>3</sup>

The present essay studies the concept of inherent human dignity from the perspective of religious teachings. It addresses such issues as the role of religion in justifying and providing a foundation for inherent human dignity, the extent of such dignity in religious literature, and the efficiency of the principle of human dignity based on religious teachings. It also seeks to suggest theoretical solutions with a view to ensuring as much consistency as possible between the ordinances of the *shari'at* and the principle of human dignity.

In defining the position of religion with respect to human rights, raising such fundamental questions would be of more necessity. In the



same way as the moral directives in religious texts do not prevent us from developing a moral philosophy, the specific ordinances and obligations of religion on the subject of human rights would lack sufficient effectiveness if not accompanied by informed philosophical debate.

At the outset it should be pointed out that seeking to base the idea of human dignity on religious grounds would not be equal to defending all the rules contained in the present jurisprudence (*fiqh*). One may maintain that belief in the divine basis of human dignity is helpful but does not regard certain rules of the current jurisprudence as suitable for establishment of an efficient and universal legal system in the multifaceted world of today.

On the other hand, emphasis on the principle of human dignity would not necessarily amount to western-style humanism and atheism. Dignity is a crown vested in human being by his Almighty creator. The deists should not be afraid of showing this crown to others. Today's man is individualist, critic, and rights-oriented, rather than duty-oriented; he wishes to view the image represented by religion from man, regardless of one's belief, as well as the rights and status envisaged for him due to the mere fact of his humanity. In a world wherein the scope of such questions expands everyday, one cannot expect that dodging the questions or blindly disparaging humanism and unjustified emphasis on mere obedience would be of any cure or could lead humanity to the embrace of religion.

### 1. Meaning and Origin of the Principle of Human Dignity

It appears that the drafters of the Universal Declaration of Human Rights have used the term 'inherent' in 'inherent dignity' in its philosophical meaning. So far as the present writer has witnessed, the term 'inherent' in the literature of philosophy has been more

commonly used to mean 'substantive', that is, related to the substance and indispensable.<sup>4</sup> On this basis, inherent dignity would mean the respect afforded to a human being by the mere virtue of his humanity and regardless of his conscience, color, race and suchlike. It cannot be taken from him even because of his committing a crime or his heresy.

The drafters of the Universal Declaration seem to have been influenced in their application of this term, by the ideas of the renowned German philosopher, Immanuel Kant, whose philosophical system overshadowed the 19<sup>th</sup> century philosophy. "Previous practice and theory often called for proper respect for individuals according to their social rank and individual merit, but Kant influenced by Rousseau, argued that all human beings have a dignity that is independent of rank and merit. All moral agents, by virtue of their rationality and autonomy of will, are jointly 'authors' of moral law, bearers of fundamental rights, and pursuers of ends that others may not ignore."<sup>5</sup> In Kant's moral theory, one important foundation is the principle of *end*, "humanity and generally every rational nature is *an end in itself*."<sup>6</sup> Indeed "beings whose existence depends not on our will but on nature's, have nevertheless, if they are irrational beings, only a relative value of means, and are therefore called *things*; rational beings, on the contrary, are called *persons*, because their very nature points them out as ends in themselves, that is as something which must not be used merely as means, and so far therefore restricts freedom of action (and is object of respect)."<sup>7</sup> Despite the importance of the freedom of will in Kant's moral theory, the principle also is the supreme limiting condition of every man's freedom of action.<sup>8</sup> Kant sees Humanity itself as a dignity; for a human being cannot be used merely as a means by any human beings. It is just in this that his dignity (personality) consists, by which



he raises himself above all other beings in the world that are not human beings and yet can be used, and so over all things. As Kant saw it, a person is under obligation to acknowledge, in a particular way, the dignity of humanity in every other human being.<sup>9</sup> Man is an end in himself; he avails of such grandeur (or absolute inherent value) that demands the respect of every rational being in the world.<sup>10</sup>

Kant draws both legal and moral conclusions from the above principles. From legal point of view, man's human quality brings him a respect that may be demanded from others. In moral terms, man should never behave in such a way that would result in his loss of such respect. Human being has certain obligations as an individual toward himself, which are imposed by his power of reason. Therefore, his inferior aspect as an animal should not deteriorate the grandeur of his self-conscious aspect as a human being. He should not deny the inherent moral value of his personality in favor of the animal aspect of his existence.<sup>11</sup>

Adherence to this principle as the basis of a legal order cannot be considered as merely subjective, but it would bring about objective and practical consequences. A number of human rights theorists including McDougal, Laswell, and Chen have pointed out that the content of human rights consists of demands for extensive participation in all the pillar values of human rights that may be collectively termed as 'dignity'. They believe that a combination of eight values composes human dignity. These values are power, wealth, respect, well-being, skill, enlightenment, rectitude, and affection.<sup>12</sup> In other words, commitment to the principle of human dignity requires that all human beings participate equally and extensively in enjoyment of those values.<sup>13</sup>

## 2. Human Dignity in Religious Texts

The term 'inherent dignity' does not expressly occur in religious texts, but there are numerous texts that imply man's respect and dignity as a requirement of his human status. Such implications are found in various wordings both in the Bible and in the Qur'an.

For instance, the Qur'an says, 'Undoubtedly, we have dignified the children of Adam and transported them around on land and at sea. We have provided them with wholesome things and favored them especially over many of those whom We have created.'<sup>14</sup>

The above verse contains some important points that are worth mentioning:

a) In terms of speech mode, God's statement in the above verse carries extreme emphasis. This is while the state of the angels in the holy Qur'an is described in the following terms, 'They are honored servants'.<sup>15</sup>

A comparison of the literary styles of the above two verses would clearly demonstrate the different level of dignity between man and the angels.

Perhaps what necessitates this emphasis is the consideration that the idea of the angels' divinity has long been established and accepted among people; what they had ignored was their own position and dignity. Meanwhile, the above-mentioned verse somehow imports the idea that the secret of the angels' dignity lies in their absolute obedience, whereas for human beings, it is their humanity as well as their status as the sons of Adam.

b) The subjects of respect and dignity as mentioned in the verse are the human beings (the children of Adam). There is no doubt that by this it is meant the whole generation descending from Adam, not his male successors only. The use of such terminology (*Bani Adam*) instead of more direct terms such as 'man' or 'human being' may indicate that although human beings

are dignified because of their aptitudes and capacities, their dignity is partly attributed to their origin as a creature that received special attention of God, while the angels were made to worship him.

c) This quality is shared by all human beings and is not exclusive to Muslims or believers. In addition, simultaneously with dignifying man, this verse conveys a level of retribution for his disobedience of God. By implication, the verse addresses the whole humankind including the believers, the heretics, and the wrongdoers.<sup>16</sup>

d) The verse does not expressly speak of the secret of human dignity, but regardless of the privileges enumerated elsewhere for human being, the phrase after 'Undoubtedly, we dignified the children of Adam' may allude to the secret.

The phrase '...transported them around on land and at sea' demonstrates the fact of man's domination over the world. Undoubtedly, this domination is attributed to man's power of reason. Relying on this power, human being is able to dominate the nature and enjoy its benefits including clean food; in this way, he could surpass other creatures. For this reason, a number of interpreters have opined that man has been dignified through the grant of reason to him.<sup>17</sup>

e) Besides, other opinions have been quoted from interpreters to the effect that human dignity is materialized in his good physique and features, his enjoyment of speech and mind, his socialization, as well as his power to dominate other creatures.<sup>18</sup>

In fact, the gift of reason is a reflection of God's special attention to man and incarnation of God's soul in him. By virtue of this attention, man could attain an elevated perception through which he could grasp outside realities and discover their truth.

Vested with such capacity, he becomes the

trustee of a secret that had been rejected by the skies, the earth, and the mountains-with all their grandeur.<sup>19</sup>

f) Dignity may be either contractual or factual. Contractual dignity means the respect extended to someone in the form of practices commonly known as indications of reverence, regardless of whether that person is respectable in reality.

In contrast, factual dignity means that a being is placed at a higher and more evolved level of existence and then merits the respect in itself.

Dignity in the above verse is used in the second sense, that is, God has incarnated a level of being in man, which inherently demands respect and dignity.

From what was said, it becomes clear that dignity is different from 'elevation' that is later referred to in the verse. Dignity is based on fact and reality, whereas elevation is an addendum that gains sense in comparison with other creatures.

Therefore, the dignity referred to in the Qura'nic verse may in no way be construed as a symbolic or figurative concept. The verse refers to a reality with respect to the genesis, which, as later described, would bring about significant legal and normative consequences.

g) Whenever one suspects that a particular person has lost this inherent and God-given dignity, the above verse would require that such person, so long as the title of human being applies, be regarded as having maintained his dignity. Further, if we wonder whether such title can be detached from the man, its continuity should be assumed because deprivation of such inherent characteristic of human being must have a reason.

The Qura'nic verses that speak of the heretics and their acts being valueless do not definitely evidence their loss of dignity. These verses seem to address the incompatibility of the acts of non-believers with the ultimate divine purpose

of man's creation. In fact, since the purpose of creation is human evolution and perfection, those who disregard this goal are rebuked. In this line, the heretics' acts of eating and drinking are likened to the use of natural resources by animals.<sup>20</sup> In addition, the devils and the people who are devoid of insight and are therefore condemned to hell are assimilated to the beasts and even more ignorable than the beasts.<sup>21</sup>

However, the above figurative remarks cannot imply that non-believers or sinners have lost their whole dignity and human character.

We do not agree with some scholars, who by dividing human dignity into inherent dignity and value dignity are of the opinion that the loss of the latter would result in the fall of inherent dignity altogether.<sup>22</sup> And also with those who justify the loss of an inherent quality due to the loss of a value-based quality and insist that the criterion for obtaining such a dignity is the obedience of persons to Islamic government!<sup>23</sup> In my opinion, the Holy Qur'an proves an inherent dignity which in itself cannot be separated from the human beings as the feature of being inherent and essential requires. Recognizing the principle of dignity just for those who believe in Islam or Islamic government, will lead to denial of the Human Rights.

The reason for proving inherent dignity for all human beings is not limited to just the verse to which we referred.

In addition to the mentioned verse, other Islamic texts have also emphasized man's enjoyment of dignity and special value. In Islamic texts, human being is appreciated in descriptive terms. Imam Ali says, 'Man is a valuable jewel.'<sup>24</sup> On the other hand, man is urged, by normative propositions, to safeguard his dignity and honor. Again, Imam Ali says, 'Purify your soul from founts; you will gain nothing from loss of your soul.'<sup>25</sup>

According to another remark by Imam Ali,

human being and his life are so precious and respectable that every person who trades his soul for anything less valuable than paradise would have done wrong to himself.<sup>26</sup> Other celebrated reputed remarks indicate that from the moral point of view, man's attention to his dignity and value could serve as a sanction for avoidance of founts and impurities. Imam Ali says, 'One who honors his soul would despise material passions and desires.'<sup>27</sup> Honoring one's soul will also result in flourishing of human emotions, avoidance of sins, prevention of conflicts and disputes with others, turning away from mean desires, and contempt of the material world in one's eyes.<sup>28</sup>

In addition to the above texts, one should take note of the fact that in Islam, all human beings are the addressees of God. Based on the prevalent opinion among Muslim scholars, the duties of Muslims and non-Muslims are identical. The meaning of man being addressed by God is that the addressee is accepted as a person. This fact would require that the personal identity of every human being be recognized regardless of his conscience and religion.

Regardless of linguistic approach to Islamic texts, there is also no room for doubt that whatever be the content of the principle of inherent dignity, it will not be limited to just Muslims or even the believers in God. If the essence of the principle is reduced to the notion of "Autonomy", as some believe, Islamic thinking does not limit such an authority for just Muslims. According to a famous and well known rule in Islamic law all mature persons are dominant on their own affairs. It is also clear that no rules of *shariah*, restrict values like power, wealth, security, education, well-being, worship, spirituality and so on to Muslims or believers, though there are some discriminations in these fields which we will talk about them later.



### 3. Content Analysis of the Principle of Human Dignity from the Perspective of Religion

Among the categories of rights, Hohfeld refers to right-immunity.<sup>29</sup> Right in the sense of immunity would mean that the holder of such right is protected against the acts of others.<sup>30</sup> The right to dignity can be evaluated as an example of such right-immunity.

The principle of human dignity is regarded as an anthropological principle in religious literature; but it is not limited to a descriptive aspect. Rather, it contains a right vested in human being by God upon his creation. This would import that every man enjoys the right of safeguarding his personal respect and dignity while no one is permitted to violate his own or others' dignity.

This right attaches to the very personality of the individual and can be neither assigned nor withdrawn.

Enjoyment of this right would result in two fundamental normative propositions: 1) Man should not prejudice his respect and dignity; 2) No one has the right to violate others' respect and dignity.

Prior to analyzing the content of these propositions it should be noted that David Hume (1711-1776), as well as many moral philosophers following his line of thought, have asserted that there is no logical relationship between 'is' and 'ought'. Hume claimed that 'ought' conclusions do not follow logically from 'is' statements. So if you claim successfully that something ought to be done (this may be one of your values) on the basis of an argument apparently referring only to facts, it must be the case that one of your 'factual' statements involves a covert 'ought'.<sup>31</sup> There are, however, many understandings of the problem itself as well as many continuous debates and remarkable disagreements about it. Even some has argued that science itself is an evaluative

enterprise, so that the fact/value distinction is spurious.<sup>32</sup> Also, some of those who insist on the correctness of Hume's idea do not oppose the derivation of 'ought not' from knowledge of the facts and 'is' propositions. In other words, although knowledge cannot guide us to what we 'ought' to do, it is capable of showing what 'ought not' to be done. On the other hand, when some act ought not to be done, one should not seek any value therein and it cannot serve as the subject of a moral instruction. Even if the philosophical and scientific descriptions of nature cannot lead to what we must do, they teach us what we should avoid. If the compromise with nature would bear no moral learning, the conflict with nature would be morally constructive.<sup>33</sup>

Regardless of these debates, we do not allege that the Qura'nic verse on dignity includes only a descriptive 'is' proposition; thus, the assertion that 'ought' cannot be derived from 'is' would not apply. The content of the verse involves encoding of a right for human being. Since the nature of right-encoding would require imposition of a correspondent duty on others and even on the holder of the right himself, conclusion of 'ought' from 'is' incorporated in such propositions is justified.

The content of the first above mentioned proposition is that no one is morally justified in violating his own dignity. The binding force behind this moral norm, aside from man's own moral conscience, is God who has granted this dignity to human being. The qualifying adverb 'morally' is added to the proposition to demonstrate that the obligation of individuals to observe their own dignity supported by legal sanctions may occasionally cause friction with man's freedom, thus resulting in practical inconsistencies. Meanwhile, from theoretical point of view, it is seriously doubtful whether anyone except the man himself, possesses such control over his behavior.

If government were allowed to prevent- as the representative of society members- the individuals from violating their own human dignity, it would lead to intervention in the voluntary acts of individuals. In such an event, it is not the individual who makes a free choice among alternatives, but rather, someone else decides in his stead. In other words, in the event of conflict between the will and desire of the individual and the will of others, the latter would be imposed. According to religious principles, justification of such a state of affairs would need a well-founded reason, whereas the basic norm in this respect requires the denial of such domination over others.

The theories of freedom have suggested that justification of such an approach- in spite of its temptations- would eventually cost the denial of freedom and individuality.

In order to avoid such complexity, a number of moral philosophers have distinguished between the 'right' and the 'good'. The 'right' is an act emanating from the free will, while the 'good' rests on both the free will and the moral intention of the doer.<sup>34</sup> The duty of the government is to regulate individual freedoms within the framework of the 'right'. However, defining the content of freedom in a way that would not prejudice the freedom of others falls within the realm of ethics (the good).<sup>35</sup>

At any rate, whenever a human being violates his own boundaries of dignity, he is said to have committed an immoral act. On this basis, one qualification to the principle of freedom- despite its sanctity and importance- would be the preservation of human dignity. In this sense, any act or omission, which is an apparent exercise of freedom but may violate one's dignity, is considered as indecent and immoral. In other words, the principle of freedom is fettered by the principle of human dignity.

The 'ought not' in the second proposition is of

both moral and legal nature, thus it can and must be secured by a legal sanction. By 'others' it is meant both natural and legal persons, including governments. Hence, we can regard the protection of everyone's human dignity among the duties of the Islamic government.

Invasion of human dignity does not occur merely in the form of a positive moral act; omissions too, may in certain circumstances amount to violation of another person's humanity. Especially with respect to governments that are responsible for provision of certain minimum standards for their subjects, failure to perform such responsibilities would actually result in violation of human dignity.

Among the pressing questions raised on the religious interpretation of the principle of dignity is whether God who has vested such dignity in human being may reclaim it. By this we do not mean to raise a mere philosophical inquiry, but it may bring about important jurisprudential and legal consequences. If the answer is in the negative, one may logically conclude that no ordinance of religion- because it is an ordinance of God- may be in conflict with human dignity.

In the discussion of the legitimacy of capital punishment, a similar controversy has long been pending. In Islamic criminal law, it has always been argued that God may take back from man, the life granted to him. However, as regards the issue of human dignity, this question can not be so easily answered. If from philosophical point of view, dignity is regarded as an inherent or say essential quality of human being, how could it be severed from him?

The inherence of human dignity means that God has created a valuable and dignified creature, not that he has first created the man and then has granted him value and dignity. An inherent quality cannot be reasonably severed from the thing. As some have referred, 'dignity (as stipulated in the Qur'anic verse) is

a theoretical value that may also adopt practical aspects; however, one should not think that this theoretical value is a figurative concept. Dignity of human being is a reality like the dignity of angels and of the Qur'an, which are reflections of the divine dignity.<sup>36</sup>

However some Muslim thinkers, by likening the 'right to life' to the 'right of dignity' believe that, 'if a human being abused his life and dignity to violate other people's God-given life and dignity, there would be no right to life and dignity for that person; in the same way that if freedom (in what ever degree), prejudiced the life, dignity and reasonable freedom of others and were contrary to the 'reasonable life' of that person himself, there would be no right to such freedom.'<sup>37</sup>

Such understanding of the principle of dignity is not, of course, compatible with its being inherent or essential. When we accept that inherence is something essential for human being, we can not claim that one can be separated from this feature. Having regard to the inherence of human dignity, its deprivation from a human being can not be conceived. What may occur in the outside world is that someone would violate through his act or omission, his own or someone else's dignity, that is, he would not behave in line with the principle of dignity.

Human dignity is not even dependent on life. The rule of religion and conscience prohibiting certain acts against the body of the dead confirms the fact that establishment of dignity for the man is not dependent on his material life but attaches to his personality that survives after his physical death. Therefore, dignity cannot be regarded as the necessary companion to the right to life and therefore is not subject to the same rules.

Based on the above, one may draw the following conclusions: first, inherent human dignity is not deprivable; second, there is no

ground to argue against the corollaries and requirements of dignity. Even the punishment of criminals should not be regarded as severance of their human dignity.

#### **4. Services Rendered by Religion to the Principle of Human Dignity**

Having clarified the content of the principle of human dignity, we discuss the services of religion to this principle.

##### **4-1. Establishing the Idea of Human Dignity**

Religious doctrines have had an important role in establishing the idea of inherent human dignity. Even if we are of the opinion that human being is capable of understanding his dignified nature, religious teachings have pioneered in drawing man's attention to this inherent dignity by their emphasis on this principle.

In the literature of Abrahamic religions, human being is pictured as a creature so close to the face of God who is the purpose of the whole creation. According to the Old Testament God created man in his[own] image, in the image of God created he him; male and female created he them.<sup>38</sup>

In accordance with the verses of the holy Qur'an, the divine soul has been incarnated in human being<sup>39</sup> and all the creatures of the world were subjected and tamed by him.<sup>40</sup> No similar features have been reported in religious texts for other creatures.

In ancient secular laws, one cannot find conspicuous examples of emphasis on the elevated status of human being. On the contrary, the teachings of Abrahamic religions have greatly stressed man's revered position.

The divine books have opened new horizons in this respect before the human mind, proportional to the extent of human understanding and in a gradual process.



A passing glance would confirm the fact that humanist themes are far more abundant in the Qur'an than in the Old and the New Testament. In the absence of such emphasis, the reality of human dignity might have become extinct or at least not obvious.

Religious teachings, of course, do not claim that the understanding of inherent human dignity and value is a divine gift that becomes possible only for the believers or from religious texts. The human mind is capable of appreciating human dignity and respect while religion comes to the assistance of mind by means of a transparent and intelligible language, without confusing human mind. This service should not be underrated. One has to take note of the fact that the public are not all philosophers and thinkers who are able to discover these principles through rational and philosophical deductions. Statement of such principles by a divine and highly convincing source would help justify the values involved and causes people to find out their verity and to observe them. Plato has rightly pointed out that every law, which adopts a divine aspect, would conquer the hearts and the people accept it willingly.<sup>41</sup>

A writer, while stressing the services of religion to most moral principles has indicated that, 'it is true that a genuine and original morality does not need a religious justification, while a morality lacking those qualities cannot be sustained by resorting to religious beliefs; however, for the ordinary public, confirmation of moral principles by religion is of utmost importance and utility... No philosopher or scholar has ever been able to ensure the human souls of all generations of the worth and utility of moral values. Only the person, who is regarded by the people as a messenger and appointed by the sole master of the world, could establish such an absolute certainty in people.'<sup>42</sup>

Richard Rorty has, on one occasion,

expressed his disagreement with the idea that anyone who is unfamiliar with the ideas of Kant can fully accept human rights. According to him the person who has not been exposed to the teachings of Kant cannot recognize himself as a human being of equal value with others. He regards himself as belonging to a superior group.<sup>43</sup> Though, we are not of the same opinion, his quoted remark refers to a valid point; in order for the foundations of human rights to find general acceptance and publicity, rational principles and extensive thinking are required. However, one should not neglect the constructive role of religious teachings. The fact is that certain original and fundamental teachings of religion may fill the gap of philosophical thinking for the ordinary public.

#### **4-2. Substantiation of the Principle of Inherent Human Dignity**

If the idea of human dignity were not based on a solid ground, it would be easily undermined; this is why a number of philosophers have not been able to attach in their philosophical meditations on the question of what the human being is- a higher status to the man compared to other creatures. Others have been entrapped for the whole or at least a period of their lives, by misgivings. Even a thinker like Heidegger who has been said to be the most influential philosopher in continental Europe during the twentieth century begins one of his books, 'with the question that: The truth is that we do not know what the human being is; the masterpiece of creation or a great flaw and misunderstanding?'<sup>44</sup> A number of post-modern philosophers regard the idea that the human being is the masterpiece of creation as a verse written in the past and murmured by us in imitation without any necessity.<sup>45</sup> Some have even exceeded this level and have asserted, by disparaging the Preamble to the Universal Declaration of Human Rights,

that according to the prevalent contemporary social thinking, human beings neither are born equal nor form a human family. They have expressly criticized the preamble and article 1 of the Universal Declaration as being anachronistic and metaphysical. Richard Rorty has also spoken of an idea that denies the utility of rationalizing the foundations of human rights and suggests that instead of basing human rights on humanist grounds, emphasis must be put on personal sentiments. According to this approach, recognition of certain rights for immigrants or minorities for example, is not based on the idea that they are equal human beings, but rather, it is rooted in the compassion and sympathy that everyone shows to a needy person.<sup>46</sup> Obviously, such an approach may transform human rights into emotional concepts by ignoring their rational foundations leading to their eventual undermining.

In addition to highlighting the principle of human dignity, religious teachings denote its foundations. As understood from the relevant Qura'nic verse, the secret of human superiority and reverence lies in the power of reason and perception.

As already elaborated, many interpreters consider man's enjoyment of reason as the real cause of his dignity. By rational power, it is not merely meant the capacity by whose virtue human being obtains evident knowledge directly, and hidden knowledge through deduction. Rather, a general sense of the term is intended, which covers man's divine power as well.

In the philosophical and mystical literature, in addition to the element of thought, which is the movement of human mind, and speculation, which is instant access to unknown facts, the existence of divine power has also been established for a human being that can be attained by him under the attention of God.

Such power has also been referred to in the

writings of a good number of philosophers including Zenon- Aristotle's pupil-, Farabi, Avesina, and Mulla- Sadra.

A number of Islamic texts have termed this power as the power of speech (*notgh*). Although speech is among the most precious divine gifts and is also a constructive element in culture building and formation of civilizations, their intention has not been the apparent power of speaking. It was by virtue of this capability that man became God's representative on the earth. The gift of reason is a reflection of God's incarnation of his soul in human being. Man, through enjoyment of this divine capacity, attains a supreme power of perception that allows him to perceive the outside phenomena and understand their truth.

Thus, the second service of religion to the principle of human dignity is that religion has introduced it as a reasoned principle and has established rational grounds therefore. Overall, the religious literature has through various interpretations of man's natural and evolutionary reality, pictured a divine face and holiness for the human being, while simultaneously explaining his inherent value.

It should, however, be emphasized that the above explanation must not be regarded as denial of the rationality of human superiority over other creatures. The distinction between man and other animals by virtue of reason is a well-established idea. Plato counted reason as the first and the greatest gift of God to man.<sup>47</sup> And the same opinion has been presented by a number of western philosophers.

#### 4-3. Extension of the Scope of Human Dignity

In the current and contemporary human rights, dignity is, from theoretical point of view, recognized equally for all human beings. Generally, the concept of equality is excessively stressed in human rights. This applies not only to the very principle of human dignity, but with

respect to rights emanating from the inherent dignity of man, the principle of equality must be observed.

Ronald Dworkin, by drawing a distinction between two categories of human rights has opined that some rights such as the right to self-determination as well as the freedom of conscience and speech are reflections of human inherent dignity. Regarding such rights, equal treatment must be the principle guideline of the legal system. However, the nature of the second category of rights is such that they cannot be distributed equally among all persons, or such equal distribution is not necessary.<sup>48</sup>

Although the religious interpretation of the principle of human dignity will may not result in equality of all human beings, there is no doubt that the religious teachings have encouraged elimination of unjustified inequalities and discriminations and ensuring of maximum possible equality.

Study of human history would demonstrate that features like gender, race, and geographical links have always been invoked by men to make segregations within the basic unity of the humankind and to establish rankings and hierarchies among the people. Even, unfortunately, religion itself has been abused far from its original intention- to discriminate among human beings.

Since the religious teachings cast a grand view on human beings as God's servants, they have played an important role in deactivating discrimination and emphasizing the equality of all men and their humanity, thereby contributing to expansion of the scope of the principle of human dignity. Naturally, this approach of religion would be expanded through dynamic and timely jurisprudence (*Ijtihad*).

Secondly, the accepted and basic principle among jurists themselves is the principle of Equality, which requires the denial of special

privileges, unless the privilege of one man over the other is justified by substantiated and enough evidence. Hence, the legal rules involving inequality may and should be revised. Meanwhile, some discriminative practices are mostly rooted in the attitudes of the followers of religion rather than in the pure religious teachings. To my mind, these two absolute separate aspects should not be mixed. The reality is that the message of religion to the effect of everyone's enjoyment of inherent value and dignity has not been duly understood, and the followers of religions have been occasionally entrapped by various kinds of prejudices, excluding from the circle of humanity, every one except their fellow believers; while the religious literature has respected and dignified all human beings.

It is true that by approaching God and treading in his path, one may achieve high degrees of perfection and respect and attain a different kind of dignity which named by some, 'value dignity',<sup>49</sup> but, principally, any person as the addressee of rights and duties in social relation possesses respect and dignity, even regardless of his or her religion. As noted, the Qura'nic verses that despise non-Muslims and even liken some of their acts to the acts of animals, refer to the fact that they have not paved the way for human perfection; however, they are human beings too, and are therefore dignified and enjoy the rights and obligations attaching to humanity.

#### 4-4. Rendering the Principle of Human Dignity Efficient

A number of writers have counted eight criteria for efficiency of an ethical theory, they are: Clarity, Completeness, Comprehensiveness, Simplicity, Explanatory Power, Justificatory Power, Output Power, and Practicability.<sup>50</sup>

It appears that an efficient legal system must also possess such features. In addition to the above eight qualities, it seems that what we can



call it "internal sense of being bound" is also a necessary element for an efficient moral theory, including Human Rights. Many thinkers of Human Rights have referred to this important point in different words.

By internal sense of being bound, it is meant that individuals accept moral or legal norms in the depths of conscience and find him or herself bound by those norms regardless of external material sanctions.

It seems that grounding of the principle of human dignity on God would cause this principle to be more effective. On this basis, one is obliged to safeguard the gift granted to him and his fellows by God; he should act as the guardian of his own as well as other individuals, respect and dignity. Kant has made a grate and valuable efforts to correct the moral duty of men towards him or herself.<sup>51</sup> So, it is right for a man to be morally responsible before himself to protect his own dignity. But this is clear that responsibility before God is a well-known, familiar, general, and efficient concept. And in religious version of human dignity, one is responsible before God concerning his dignity in a way that is compatible with being responsible before himself at the same time.

It should be, however, emphasized that our sole intention is to make the principle of human dignity more efficient based on belief in God and the privileged creation of man by him. Otherwise, the principle of human dignity is a moral principle even in many secular ethical philosophies.

As a principle, the necessity of man's safeguarding his dignity and avoiding violation of other people's inherent dignity- although from one perspective is a duty required by human nature and conscience- can be regarded as a moral obligation categorized as a moral, rather than natural act which is often lacking in moral value.

Even according to those philosophers who believe the criterion for the moral act to be that 'the act would be directed to others', a man's quest for preventing the violation of his or her own dignity may be of value due to the identical nature of all human beings. Belief in the unity of humankind rests on the presumption that human nature--whether individual or social- is identical at every time and everywhere. The definite majority of moral theories have adopted this viewpoint.

The holy verse which says that 'anyone who kills any person without another soul being involved or for causing mischief in the land, acts as if he had killed all mankind. And anyone who spares life acts as if he had granted life to all mankind'<sup>52</sup> refers to the unity of the humankind.

The late Allameh-Jaafari has stated, 'the meaning of this verse can be depicted in a mathematical form: one= all, and all=one. The fact is that so long as this miraculous formula is not appreciated by man, no cure will be found for his sufferings. This formula indicates a supernatural, rather than natural truth. For this reason, it cannot be enacted in the form of an ordinary legal principle, but may serve as an element in the regulation of universal law and morality.<sup>53</sup> In fact, one's protection of his human dignity and honor is protection of a common substance among all human beings. In other words, the restoration of such dignity is beneficial to others or at least, serves to ward off evils from them.

## 5. Two Concerns Regarding the Derivation of Human Dignity from God

In spite of the above, there are concerns over attribution of the principle of human dignity to religious teaching; one concern being that such religious basis would render varying senses of the notion of human dignity, since regardless

of the variety of religions, there are numerous interpretations of the texts of every individual religion.

In my opinion, this concern is irrelevant, because it is not confined to the case where religion serves as the foundation of the principle of human dignity. Basing the principle of human dignity on rationality would bring about similar consequences, because rationality can also be categorized in accordance with the culture, civilization and the accepted moral principles of every nation. Furthermore, when we mean by Rationality a general confidence in the power of the human intellect, and in opposition to faith and acceptance of God's rules and orders, there are a verity of attitudes towards the case,<sup>54</sup> nearly like what we face in interpretation of religious texts. An Iranian thinker amounts for us, at least, six pretty different meaning of 'Rationality'.<sup>55</sup>

Undoubtedly, whenever the issue of human dignity is philosophically examined as an anthropological debate, certain aspects of this issue would be subject to differences, as confirmed in practice. Even the very notion of dignity, regardless of its foundation, is subject to controversy.

For instance, the human rights theorist, Gewirth, has criticized the assertion that the individuals enjoy moral rights due to their inherent dignity, arguing that the concept of dignity is an abstract concept and its meaning is subject to doubt.<sup>56</sup>

The second concern relates the practical aspect of the principle; founding the principle of human dignity on God depends on the belief in God, which is not shared by all. It is not justifiable to base human rights norms, which have to be acceptable to everyone, on grounds that are doubted or denied by some people.

One may response : 'it is true that from theoretical point of view, attributing the source of human dignity to God would seem meaningless

to an atheist person, but in practice, since the believers in God constitute the majority of world population, such attribution would lead to reinforcement of the principle, especially with regard to the fact that the divine nature of human dignity, as already noted, would not deny its rationality.

## **6. Overcoming the Incompatibility of Certain Religious Teachings with the Principle of Human Dignity**

The question that may be raised is how religion can be of service to the development of the principle of human dignity while some of religious teachings are incompatible with this principle itself. Meanwhile, religions usually make express discrimination between their followers on one hand and other people on the other. This would indicate that religion does not regard all human beings to be of equal value by virtue of their humanity.

In response to the above concern, it should be primarily noted that as far as Islam is concerned the possibility of jurisprudential revision and rethinking in the practical rules of religion that are not compatible with the principle of human dignity still exists.

On the other hand, evolution of human values is also possible. Mottahari stresses, 'Although principal human values are innate, their evolution is possible. For instance, with respect to truth, which is a human value, one may note that the primitive man sought the truth but as the time elapsed, man became more truth seeking. This applies to such other values as 'beauty', or 'aesthetic art'.<sup>57</sup>

The present writer is of the opinion that the collective understanding of humanity from human respect and dignity, like many other basic concepts of social life, is not a static understanding, but evolves with the growth of human knowledge and consciousness.

According to a writer, 'Human dignity is among the shared conceptions of religions and civilizations, that finds its specific examples in each era. This concept is similar to justice. In the same way that justice in the contemporary era cannot be limited to its recognized examples at the time of the holy Prophet, human dignity too, is not limited to the then prevailing examples.<sup>58</sup>

Naturally, if we insist that all the ordinances incorporated in religious texts be regarded as everlasting rules of religion, certain such rules will be found as conflicting with the principle of human dignity, because in such a case, the rules of religion would be static while the conception of human dignity constantly evolves. Obviously, the distance between a static fact and a dynamic conception would grow with the lapse of time.

The fact is that today's man may, due to his specific notion of human dignity, consider certain acts as invading human personality, while in the past, such acts were regarded as ordinary behavior.<sup>59</sup>

Religious teachings in general, including the Qur'an as well as the religious texts, have had such an emphasis on the principle of human dignity that one may assert that if certain practical rules are in conflict with that principle, they should be ignored.

This practice is well known even in traditional jurisprudence. For example, the rule of 'Non- hardship' (*La Haraj*) governs and takes precedence over the performance of primary rules; however, the meaning of hardship is not constant through the time. A society may regard a specific event to involve hardship, whereas another society does not have such a conception of that event. What matters is that the principle of human dignity - like scores of other rules and principles - is noted by the religious texts and jurists should take it to account seriously in their reasoning and understanding of Islamic Law. Special attention, in particular, should

be paid to the dynamic nature of the concept of human dignity. In this way, certain rules of religion would be exposed to modification so that altogether, the religious rules become more consistent with the principle of human dignity which itself, is a religious principle.

The point, which should be emphatically highlighted in this respect, is that certain religious teachings inconsistent with the principle of human dignity, are among customary principles (*Al-Ahkam Al- Emzaeeyah*) in whose formation religion has not been directly involved, but just has confirmed them due to their popularity, or has not identified their modification to be of expediency. An apparent example of this kind of rules is confirmation of slavery and the rules on treatment of slaves in Islamic texts. Once this phenomenon was generally accepted by the world society, but was later abolished by custom and by the reason. According to a *hadith*, Prophet Mohammad (PUH) himself was waiting for Gabriel to bring the elimination of slavery from God. He says Gabriel was advocating slaves constantly, so that I found out that all of them will soon be realized.<sup>60</sup> Statements like this indicate that all *shariah* rule can not be evaluated as a permanent and static rule.

Anyway, Change and development of human conception is in itself an indication of perfection and an element of civilization - building. It is true that the treatment of slaves in the past, although endorsed in certain religious texts, was alien to the philanthropist and elevated spirit of Islam, but was approved by religion as a popular and generally accepted practice of the time.

Having the above facts in mind, would it be reasonable for us to insist that the rules, which have been rejected by custom and by the thoughtful people because of evolution in human mentality, be marked as eternal and unchangeable rules of religion?

It appears that in the rules confirmed by



religion, the subject of confirmation has been the popularity and general acceptance of the act in question; that is, the divine legislator has later approved of an act already accepted in the practice of the reasonable people of the time. Whenever those people withdraw from the confirmed act, the subject of the rule would be frustrated. Thus, with a frustrated subject, there remains no rule that we may assert it to have been confirmed by religion. Religion had approved of a practice accepted by the reasonable people; now it may be assumed that such practice is no longer accepted and popular. In this event, it seems that the approval of religion is devoid of subject. Those who are acquainted with Islamic jurisprudence well know that such instances of extinct rules are no rarity.

As regards the privileges recognized in religious teachings for the followers, one must note that in the formative circumstances of religions, grant of privileges based on one's conscience were regarded as an acceptable norm.

The teachings of Abrahamic religions have not been formulated in atmosphere that all human beings or even a majority of them - are interested in a life of brotherhood with equal and reciprocal rights. But, nowadays man is interested in such a life. No doubt, religions, including Islam, have potentiality to respond to such a human need. There are certain themes that the follower may invoke to found the principles of a peaceful and just social life. The principles of 'justice' and 'benevolence' as well as the obligation to observe the pacts and contracts are among such themes.

At any rate, if human dignity is an Islamic principle and if the concepts of human respect and value are dynamic phenomena, jurisprudential thinking must be synchronized with such dynamism. Otherwise, religious teachings would appear in conflict with the principle of

human dignity as the time goes by.

One should not skip the fact that the rules of every legal system are inevitably directed to the realities and circumstances prevailing at the time that the legal system was forming. Without observing such realities, the legal rules would become abstract, conceptual and impracticable.

Admittedly, Islam is the last divine religion and has been planned for all humanity; however, this should not mean that in the enactment of divine rules, the circumstances of the time had not been taken into account.

If this point had been disregarded, religion would have neither been accepted by the people of its formative period, nor been able to respond to the requirements of the time.

Progressive jurisprudential thinking seeks to respond to the prevailing circumstance of the era by compromising the requirements of the time on one hand, and the general ideas of religion on the other.

The important duty of the contemporary Muslim jurist is to discover the appropriate rules of the time by resorting to the inner layers and the fundamental principles of religion.

The above would depict that the principle of human dignity as based on a divine source could serve as a pillar to establish a universal legal system that even regulates the social relations of the believers with others. Emphasis on the theological interpretation of the principle of dignity as explained above further strengthens this principle.

Even with a pragmatist approach, since the believers in God and the life after death compose a majority of the contemporary human society, attribution of the principle of human dignity to God would contribute to its reinforcement.

Of course, if we believe that the principle of inherent dignity provides exclusively for the dignity of just believers of a specific religion or if we regard it as a divine principle that cannot

be grasped by human reason independent of religious teachings, or rather, if we believe the human dignity to be perishable in the event of man's commitment of a sin or irreverence to God, then from the practical point of view, this principle cannot serve as a proper basis for designing a universal legal system regulating the relations of all human beings regardless of their conscience. By this impossibility, it is meant that such legal system would lack the required efficiency to govern a plural and multifaceted society.

I would like to conclude this article by citing a *hadith* from the Prophet Mohammad (PUH). The Prophet was sitting with some of his companions when the corpse of a Jew passed by in a mourning ceremony. The Prophet rose and stood in respect. One of the companions asked: "O Prophet! This was only the corpse of a Jew." The Prophet responded: "Was he not a human being?"<sup>61</sup> The importance of this *hadith* lies in the deep understanding of the Prophet, conveying that understanding by his actions and words to all mankind: that members of the human family, while differing in many ways, are to be respected at all times for the simple fact of being human. The human family, it is submitted, can certainly gain much from such an understanding.

## Notes

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8 *Ibid.*, P. 273.

9 *Ibid.*, P. 277.

10 *Ibid.*

11 *Ibid.*, P. 279; See also *The Encyclopedia of Christianity*, Edited by Frwin Fahlbusch and others, p. 603, Wm. B. Eerdmans Publishing, 2001.

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15 *Prophets*, 21: 26.

16 Mohammad Hossain Tabatabaee, *Al- Mizan fi Tafsirr- al Qur'an*, 7: 155, Esmaeelian Press, Qom.

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20 *Mohammad*, 47: 2.

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27 *Nahj- al Balaghah*, Wisdom No.449.

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32 *Ibid.*

33 Abdolkarim Soroosh, *Danesh va Arzesh* ( Science and Value), p.214, Yaran Press, Tehran, 1982.

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51 Immanuel Kant, *Op. Cit.*, p. 271. ✓

52 The Table, 5: 32.

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