

## Cultural Human Rights in the Light of the Islamic Objective of Preserving the Intellect in Comparison to the International Conventions

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### Abstract

This research deals with one of the aspects with which preservation of the intellect can be attained. It is the reason which made human beings deserve the position of 'successive authority of earth'. One of the most important features of the Islamic Shari'a is that it grants an individual his cultural rights, with which civilizations progress. There arises a need to link between the objective of preserving the intellect and the cultural rights of an individual based on international conventions. This is to clarify the vision of Islamic Shari'a in sanctioning cultural rights and uplifting nations with it. This research focuses on the relationship between the objective of preserving the intellect and cultural rights of an individual from an Islamic perspective, and then on the comparison between the Islamic perspective and international conventions with regards to cultural rights of an individual. By mentioning the similarities and differences, this helps to clarify that the Islamic Shari'a has taken good care of cultural rights, and has made rules and arrangements to guarantee the continuation of their application. The Islamic and legal perspectives are common in providing cultural rights in the best possible way, though the Islamic legislations came earlier than the man-made laws. The broadening of cultural rights' horizon in Islam stems from its firm foundations, principles and the pillars which call for disciplined openness and cultural coexistence, away from exaggeration, extremism, frailty, and backwardness..

**Keywords:** Rights, culture, Islamic objective of preserving the intellect, international conventions, cultural rights.

### حقوق الإنسان الثقافية في ضوء مقصد حفظ العقل في الشريعة الإسلامية مقارنة بالمواثيق الدولية

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### ملخص

يتناول هذا البحث جانباً من الجوانب التي يجري بها حفظ العقل الذي هو أحد الضرورات الخمس التي أمر الشارع الحكيم بالحفاظ عليها، ولا تكون الحياة في الأرض مستقرة ولا قائمة بدون حفظها، استحق به الإنسان أن يكون خليفة في الأرض، وأظهر مدى اهتمام الإسلام بالعقل وجوداً وهدماً؛ حيث جعله مناط التكليف، ومن أهم الامتيازات الشرعية للفرد منحه الحقوق الثقافية التي بها قوام الحياة ورتقي الحضارات، لذا ظهرت الحاجة إلى ربط مقصد حفظ العقل بالحقوق الثقافية لبيان الرؤية الشرعية من بناء الحقوق الثقافية والارتقاء بها، ومن هنا ركز البحث على العلاقة بين مقصد حفظ العقل والحقوق الثقافية من منظور شرعي، ومن ثم المقارنة بين المنظور الشرعي والمواثيق الدولية في مسألة الحقوق الثقافية ببيان أوجه الاشتراك والافتراق، ليتضح بعد الدراسة والتحليل أن الشريعة عنيت أشد اعتناء بالحقوق الثقافية وترتبت لذلك ترتيبات شرعية تضمن البقاء والاستمرارية في التطبيق، ويتقارب المنظور الشرعي والقانوني في إكساب الحقوق الثقافية الصورة المثلى إلا أن العناية التشريعية كانت أسبق من القوانين الوضعية، واتساع أفق الحقوق الثقافية في الإسلام ينبع من الأسس والمبادئ الراسخة والمرتكزات الداعية للانفتاح المنضبط والتعايش الثقافي بعيداً عن الغلو والتطرف.

الكلمات الدالة: الحقوق، الثقافة، مقصد حفظ العقل، المواثيق الدولية، الحقوق الثقافية..



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## Introduction

Praise be to Allah, and Blessings and Peace be upon the Messenger of Allah, his family, his companions as a whole, and whoever follow his path until the Day of Judgment.

Allah, may He be glorified and exalted, has prescribed for man what is good for him so that he may live a secure and happy life. Allah Says {And if there should come to you guidance from Me - then whoever follows My guidance will neither go astray in the world nor suffer in the Hereafter.} (Holy Qur'an 20:123-124). In following the laws of Islam lies security and guidance for this world and happiness in the Hereafter, and turning away from the laws of Allah, the Almighty, leads to a depressed life in this world and misery in the Hereafter. The Shari'a has ordered the human beings to purify his words and actions from whatever is bad, be it hidden or apparent; the Almighty says {And do not approach immoralities - what is apparent of them and what is concealed} (Holy Qur'an 20:123-124). These are general measures in Islamic law to preserve the human intellect. Being that Islam initiated these measures, the intellect has a great share from it, for the intellect was mentioned about fifty times in the Qur'an, and this is a clear indication to its importance in the implementation of Shari'a rulings. There is no wonder in Islam giving intellect this much importance, as it is the focus of assigning duties, and if it is disturbed, the duties are waived. It is by intellect that Allah honored mankind and made him different from other creatures. If a person cancels it by his own will, then he has resembled animals, or perhaps becomes worse than them. Allah says {Indeed, the worst of living creatures in the sight of Allah are the deaf and dumb who do not use reason.} (Holy Quran 8:22). The heavens, the earth and the universe has been subjected for it, it is the instrument of perception, as it differentiates between virtue and vice, and it distinguishes between good and evil, and it is the focus of assigning duties, as the Shari'a waives the duties if the intellect is lost (Al-Ghazali, 1999).

Among the most prominent things that the Islamic Sharia has meant to establish since the beginning of the legislation is granting rights to individuals in terms of his humanity, dignity, freedom and maintenance of the earth. Among these rights is what focuses on developing the intellect and investing in its capabilities, and among the means to this investment is the culture through which nations move forward. Culture makes human the most active element in attaining progress, by creating harmony between his individual behavior and communal lifestyle. There are things that will help us in fulfilling this duty, such as pondering, using the intellect to reflect about Allah's signs in his creation of universe. Intellect may also be preserved by seeking and passing on knowledge. On the other hand, Islam has forbidden using the intellect in a way contradicting to the method of God Almighty because it is an insult to the intellect.

But the intellect of a Muslim today has become trapped between two dangers: the risk of moral deviations, like soothsaying, sorcery and extremism, which morally corrupt the intellect; and the risk of alcohol and drugs and whatever follows them, which are physical corruptors. All those moral and physical deviators, apart from destroying the intellect, also leads to perishing souls, dissipation in the religion, tarnishing the honor, and wastage of money. This is contrary to the objectives of Islamic Shari'a, which aims to preserve the religion, life, intellect, offspring and money. For this sake, Islam prohibited soothsaying, sorcery and extremism; and the use of alcohol, intoxicants and drugs. Hence it is important to speak about the cultural rights of an individual from an Islamic and legal perspective.

### ***The research problem:***

1. The frequent controversy for human rights in general, and cultural rights in particular between supporters and opponents.
2. The imbalance of granting cultural rights and limiting them to one side without comprehending the other in the contemporary reality.
3. Ambiguity, considering that the concept of cultural rights is newly proposed, with a Westernized origin, despite the fact that Islam had previously granted cultural rights, and was keen to establish control and follow-up on these rights and protect them in existence and absence.

This research tries to answer the following questions:

1. What are cultural rights?
2. What are the foundations of cultural rights in light of the objectives of the Islamic Shari'a?

3. Does the Shari'a put in place measures to grant cultural rights and protect them from any aggression?
4. Do international conventions stipulate cultural rights and regulate the balance of granting them?
5. What are the characteristics of cultural rights in the Sharia and international conventions?

**Research objectives:** This research aims to:

- Explain the status of cultural rights in Islamic law in light of the Islamic objective of preserving the intellect, which is the subject of assignment.
- Spread awareness of the cultural rights of the human being guaranteed by Islam and international covenants.
- Analyze the characteristics of cultural rights in the Islamic Shari'a and international conventions.
- Highlight the justice of Sharia in granting cultural rights and the prohibition of violating it, in comparison with international conventions that restricted cultural rights in a specific direction, as will be evident in the study.

**Research methodology:** The research methodology was based on the descriptive, inductive and analytical methods.

**Research plan:** This research is organized according to its objectives, importance and problems to be as follows:

**Introduction to the research:** the importance of the research, its problems, its methodology, and the structure of the research.

**The first Section:** a conceptual approach: the concept of rights, the concept of culture, the concept of the purpose of preserving the mind.

**The second Section:** the role of the Islamic objective of preserving the intellect in the cultural rights of an individual.

**The third Section:** the cultural rights of an individual as in international conventions.

**The fourth Section:** a comparison between the characteristics of cultural rights in international conventions and Islamic Shari'a.

**Conclusion of the research:** by presenting the most prominent results and presenting the most important recommendations.

## **1. Conceptual Introduction**

Before getting deeper about cultural rights of a human being, it is necessary to introduce the definitions of concepts and terminologies used in this research.

### **1.1 Linguistic and technical meaning of Right**

#### **1.1.1 Linguistic Definition of Right**

Opposite of 'false' (Al- Fayoumi, 1987) Allah Almighty says {**And do not mix the truth with falsehood**} (Holy Quran 2:42)

#### **1.1.2 Technical Meaning of Right**

According to Jurisprudents and scholars of Islamic foundational studies, there are multiple definitions for the word 'Right', but all of those at the end return to the linguistic meaning. Right has been defines as 'A judgment corresponding to reality, which includes words, beliefs and doctrines as they contain it' (Al-Jarjani, 1989). Scholars have also defined it as 'the truth: which exists in every aspect, of whose existence there is no doubt' (Al-Bukhari, 2001).

Jurisprudents and Hadith scholars have given various definitions with slight variations to the word 'right'. Among those definitions are 'whatever is beneficial, and whoever owns it deserves it according to Islamic Shari'a (Al-Khafif, 2009, p. 10). Hence rights are benefits, and its deservingness is restricted to the approval of Shari'a. A 'right' according to Islam is a grant from Allah Almighty to his servants, and therefore it should only branch from His Divine Will.

Among the definitions is 'a specialization decided by Islamic Shari'a either as an authority or a duty (Al-Zarqa, 1968), and perhaps this definition is more accurate than the former for two reasons: firstly because the word 'specialization' is more accurate than the word benefit, as a 'right' is in-fact a relationship between two parties for sake of a benefit, while a benefit is a goodness. Secondly, the former definition is vague since it states 'whatever'.

## 1.2 The meaning of Human Rights

There are many definitions to clarify and reveal the reality of ‘human rights’.

It has been defined as “The general principles and laws which are agreed upon by religions and international laws with regards to respecting an individual in the fields of his belief, freedom and culture; and in the field of women’s and children’s rights, political issues, and freedom of thought... which are rights guaranteed by Islamic Shari’a, all religions and international laws (Al-Nujaimi, 2003).

Human rights can also be defined as ‘protection of a person’s benefits, be it a public interest like security, suppression of crimes, defense from enemies or utilisation of public properties; or in personal interest like a mother’s right in being the custodian of her children or a father’s right in guardianship of his offspring (Al-Zuhayli, n.d). Human rights has also been defined as “the sacred ordinances of Allah, The Glorified and Exalted, for He is the One who bestowed it for mankind as a bounty, and since protecting it and defending for it is an act of worship, it is not permissible for its owner to misuse it (Al-Shorbagy, 1981, p. 283).

Having said that, Human rights can be defined as “Basic standards that Allah has bestowed upon his slaves, which guarantee for them an honorable and respectable life.

## 1.3 The concept of culture from a linguistic and technical point of view:

### 1.3.1 Linguistic meaning of culture

To gain expertise or dominance (Ibn Manzur, 1290). Allah says {**so if you gain dominance over them in war, disperse by means of them**} (Holy Qur’an 8:57).

### 1.3.2 Technical meaning of culture

Culture is all what a human gains by interacting with each other, and acquiring it is a mental process that includes teaching and learning. It is cumulated from generation to generation. Culture is also defined as ‘all the actions and variants that give a society its own nature, which also includes their view on life and how to deal with it’ (Afaneh & Al-Lulu, 2004, p. 33).

Therefore, culture is a cumulative stock of the outcome of knowledge, sciences, ideas, beliefs, arts, literatures, virtues, rules, traditions, historical legacies, languages and environments which shape an individual’s thoughts and gives it societal values and so that it molds his way of life.

Based on the aforementioned we can link the concept of ‘rights’ and ‘culture’ to frame the concept ‘Cultural Rights’, which would mean ‘Specialisations that are agreed by the Islamic Shari’a, be it an authority or responsibility, relating to the outcome of knowledge, sciences, ideas, beliefs, arts, literatures, virtues, rules, traditions, historical legacies, languages and environments which shape an individual’s thoughts and gives it societal values and so that it molds his way of life’.

## 1.4 The concept of Islamic Objective of preserving the Intellect:

### 1.4.1 Linguistic meaning of Intellect

Understanding something in its true form. Intellect is also a term used for understanding, knowledge, and recognition. (Ibn Manzur, 1290, p. 220)

### 1.4.2 Technical meaning of Intellect

Intellect is a term used for different meanings, it includes the instinct, power, or device used to understand a theoretical knowledge. With it an individual can know his creator, and can ratify the prophets and follow their legislations. Intellect may be instinctive or acquired. The most important meaning of Intellect according to Imam Al-Ghazali is “what the heart achieves”, and it comes in two meanings:

**Firstly**, the device which understands knowledge, and therefore it means ‘the heart’ which is the organ (Al-Mutairi, 2004, p. 18-19). It is an instinctive tool present in an individual with which he can understand things in its real form, it may also be called instinctive Intellect, and is the perceptual energy in a human.

**Secondly**, it may mean ‘to know the reality of things’, hence intellect means the knowledge which will be present in

the heart. It is what the instinctive tool provides, and whatever the perceptual energy attains in terms of knowledge, ideas and experiences. It is sometimes addressed as the acquired Intellect. It results from the instinctive Intellect, increases with practice, and decreases with negligence (Al-Mawardi, 1987, p. 7).

This means that Intellect may sometimes refer to the knowledge available in hearts, and sometimes to the organ of heart which preserves the knowledge. This is what Imam Al-Ghazali meant when he said "Intellect may be defined in one way as some of the necessary knowledge, and in the second way it could mean the instinct which is used to study the reasons"( Al-Ghazali, 1999, p. 20).

Based on the above mentioned, it is clear that the Islamic Objective of preserving the Intellect means maintaining the Intellect from damages or diversions in thoughts, and to take consideration of the tools and formalities which help an individual in the upbringing of himself and his society, as the Intellect is the focus of assignment of responsibilities, and the honour which differentiates human beings from other creations, and with it did the mankind deserve to be the successive authority of Earth.

Preserving the mind is one of the five objectives of Sharia, which are defined as: the goals for which the Shari'a was established in order to achieve them in each of its rulings (Al-Fasi, 1992, p. 7). It can also be said that those are the evident meanings of Islamic rulings, be it a specific partial rule or a general rule of public concern, as it all joins together under one unified goal which is confirming the divinity of Allah and guaranteeing success of individuals in this world and the hereafter (Ibn Ashur, 1947, p. 50).

The Objectives of Shari'a are vital because those are a beacon for those who learn the religion, and a reference for them when they find differences in opinion. It also aids in lifting the differences between scholars of different countries, and helps in training followers to choose the right one among various opinions (Ibn Ashur, 1947, p. 3).

The objectives of Shari'a are divided into three types: necessities, needs and complements. Al-Shatibi says, "The rules of Shari'a are basically designed to preserve the objectives for individuals, and these objectives are of three types. Firstly the necessities, secondly the needs and thirdly the complements." (Al-Shatibi, 1388)

## **2. The role of Islamic of Objective of preserving the Intellect in the cultural rights of an individual.**

Allah has distinguished human beings with intellect, and made it the focus of assigning responsibilities, and the intellect is part of the soul. We can find that the Islamic Shari'a has come up with what guarantees the preservation of this great divine blessing, and assigned measures to maintain and prevent it from getting damaged. Islamic Shari'a has taken preventive and curative measures even in matters of seeking knowledge, fore-thinking, contemplating and pondering. It has legislated rules to develop, nurture and guide the intellect. Allah says {But if they had referred it back to the Messenger or to those of authority among them, then the ones who can draw correct conclusions from it would have known about it} (Holy Qur'an 4:83) and {give thought to the creation of the heavens and the earth} (Holy Qur'an 2:191) and {Then do they not reflect upon the Qur'an?} (Holy Qur'an 4:82).

Hence, this is a matter of developing intellect, preserving it and nurturing it with education, diligence, extraction, reflection and contemplation. We can see the Prophetic Saying: (If a judge gives a verdict according to the best of his knowledge and his verdict is correct (i.e. agrees with Allah and His Apostle's verdict) he will receive a double reward, and if he gives a verdict according to the best of his knowledge and his verdict is wrong, (i.e. against that of Allah and His Apostle) even then he will get a reward) (Al-Bukhari, 2001). For instance, in the prohibition of consumption of drugs and intoxicants, we can notice that the Islamic Shari'a forbids all what corrupts the mind and makes it nullified. The prohibition of alcohol is evident, and whatever is worse than alcohol, like intoxicants and what destroys the intellect and damages the brain cells take the same rule as of alcohol. Islam also prevents the mind from moral destructors like deviations in thought and imitation without reasoning. Allah says {And when it is said to them, "Follow what Allah has revealed," they say, "Rather, we will follow that which we found our fathers doing." Even though their fathers understood nothing, nor were they guided?} (Holy Qur'an 2:170).

The view of Islam on an individual's cultural right branches from a general view. From its general view about Allah,

the universe and mankind, Islam has made it obligatory for a Muslim to ponder the various creations like skies and Earth, Allah says { Indeed, in the creation of the heavens and the earth and the alternation of the night and the day are signs for those of understanding. } (Holy Qur'an 3:190), perhaps in himself too, Allah says { And in yourselves. Then will you not see? } (Holy Qur'an 51:21). This is to serve a higher purpose of realising the presence of Allah, without whom the universe wouldn't have been present. Apart from that, a person can gain knowledge on the greatness of that creator, his endless capabilities to create man and universe with perfection, and maintain them with a systematic balance. These reflections will lead the observer to worship Allah alone. He can also contemplate the creation of himself, notice how small gap he takes in this vast great universe, but nevertheless Allah has honoured him by subjecting the latter for him, and commanded him to establish it without destruction. Allah says {And cause not corruption upon the earth after its reformation. And invoke Him in fear and aspiration. } (Holy Qur'an 7:56)

Being the possessor of the Honour of being authoritative successor of Earth, human beings are strictly asked to maintain it with all his capabilities, so that he can enjoy the life according to a system that preserves his faith in Allah and guarantees his dignity, justice, equality, and freedom without discrimination between one and another. Being that realised, a Muslim will always be considered as doing an act of worship, be it a meal he enjoys, or an act of sex he desires for, as long as he doesn't go against the law of Allah. This is why Allah sent down Messengers and Revelations.

The general view of Islam on Allah, the universe and mankind obligates man to seek knowledge to know his duties and rights. The Messenger of Allah says, "**He to whom Allah intends to do good, He gives him insight into religion**" (Al-Nisaburi, n.d). We will now see some examples for those rights in the light of the Islamic Objective of preserving the Intellect:

#### **A. Right to think, reflect, and to stay away from deviations and blind imitations.**

The Islamic Shari'a has stated numerous rules to preserve the intellect, by criticising what damages the intellect and belittling those who do not utilise it in the right form. It also encourages people to ponder the creation of universe, and extract the treasures and benefits from it, which can only be done by the correct utilisation of intellect. Allah says {Then do they not look at the camels - how they are created? (17) And at the sky - how it is raised? (18) And at the mountains - how they are erected? (19) And at the earth - how it is spread out? (20)} (Holy Qur'an 88) and in another instance {Do they not look into the realm of the heavens and the earth and everything that Allah has created} (Holy Qur'an 7:185).

Islam has also urged individuals to free the intellect from blind imitations of forefathers in following unhealthy traditions which bring in no benefit. Allah has despised imitating the ancestors who were polytheists, and following the deviated doctrines they believed; for not using the intellect to prove the falsehood of their stands. Allah says {And when it is said to them, "Follow what Allah has revealed," they say, "Rather, we will follow that which we found our fathers doing." Even though their fathers understood nothing, nor were they guided?} (Holy Qur'an 2:170)

Being said that Islam preserves the Intellect from corruptions and blind imitations, it also preserves the intellect from dangers of deviations and going against what it was created for, by laying down a correct methodology for thinking and contemplating, and taking away all the barriers that may prevent it from its duties. Islam has prohibited following false assumption, illusions and superstition; and warned Muslims from subjecting the intellect to personal desires. Allah says {And none will remember except those of understanding} (Holy Qur'an 2:269). Abdessalam comments on that verse saying "those are people who saved their intellects from desires" (Abd Al-Salam, 2003, p110).

Hence, the verses that encourage people to think and contemplate are numerous, and all those are a clear call from the Lord to the mankind to utilise their intellect to know the Creator. When an individual knows his Lord, he becomes aware of the commands of Allah and follows it. The word intellect is mentioned in the Holy Qur'an thirty four times in its various linguistic forms (Al-Mohasibi, 1986, p. 116).

#### **B. Right to seek and acquire knowledge**

Islam is concerned about widening a Muslim's horizon spiritually and physically, that is in order to preserve his honour which is bestowed to him by his Lord. In the Qur'an we can notice instances where knowledge is given a higher grade. Allah says {Say, "Are those who know equal to those who do not know?"} (Holy Qur'an 39: 9), and {From among His

servants, it is only those who know, that fear Allah.) (Holy Qur'an 35:28). The Prophet Muhammad, peace and blessings be upon him, said "Seeking knowledge is a duty upon every Muslim" (Ibn Majah, n.d). The first of the hadith is Sahih and its end is Da'if (Al-Baihaqi, 1999; Al-Haythami, 1992). Therefore knowledge is the medium through which mankind can know his creator, and fulfil his responsibilities as the authoritative successor of Earth. Islam in its overall sense is a call to life, it has fraternized religion and knowledge, religion and intellect, religion and thoughts, and in general fraternized religion and life. There are many verses which point out this fact, Allah says {respond to Allah and to the Messenger when he calls you to that which gives you life.} (Holy Qur'an 8:24).

In the light of this vast concept, we can understand that a comprehensive knowledge is the base of mankind's honour, and the true honor before Allah is with piety. Allah says {Indeed, the most noble of you in the sight of Allah is the most righteous of you.} (Holy Qur'an 49:13).

### **C. Right to learn, practice, and put an end to illiteracy and ignorance.**

Since its inception, Islamic Shari'a has been working on eradicating illiteracy and ignorance before solving any other problems of life, it is for this sake that the Messenger imposed seeking knowledge on every Muslim man and woman. Allah then opened wide the horizons of skies and earth so that man can ponder it. Allah says {Say, "Observe what is in the heavens and earth."} (Holy Qur'an 10:101). It is for this sake that the Prophet assigned 'teaching ten Muslims' as the ransom for learned captives who were captivated in war. This shows the keenness of the Prophet in the field of education and how he considered it to be more valuable than money. Rather, the Prophet went on to say that the scholar and the student are partners in goodness and there is no goodness in the rest of the people. He said preferring an increase in worship: "No one can gain more than the merit of knowledge that guides its possessor to guidance and turns him away from evil, and a person's religion is not correct until his deeds are straightforward." or in another narration "until his intellect is straightened". This prophetic declaration in seeking knowledge made Muslims fall in love with education, and he inculcated in them something that became a unique example in history. This is also confirmed by Gustave Le Bon in his book 'The Civilization of the Arabs' as he said "The passion of Arab Muslims in seeking knowledge emanated from their religion itself", and he said regarding this, "the 'knowledge' that was underestimated by other beliefs was uplifted by the Muslims to a high position, and it is to them, the reality of this correct observation stems in the name of religion: people are only those who learn and those who know, the rest are mere creatures who bring in harm without any goodness" (Le Bon, 2013, p. 450-451).

Islam did not differentiate between men and women in fields of education and culture. Rather, it allowed women to obtain whatever knowledge, literature, culture, and refinement they wanted. Islam does not either differentiate between the rich and poor in their right to education.

### **D. Right to freedom of cultural dialogue and respecting peculiarities.**

Islam lays down a method of inter-cultural dialogue in what is good, Allah says {And do not argue with the People of the Scripture except in a way that is best, except for those who commit injustice among them, and say, "We believe in that which has been revealed to us and revealed to you. And our God and your God is one; and we are Muslims [in submission] to Him} (Holy Qur'an 29:46). Islam also prohibits assaulting others without a right, this would help in exchanging opinions and benefiting from the sciences, knowledge and various other aspects between all types of people. It provides opportunities for calling others to Islam, revealing its facts, informing them of its merits and virtues, all according to a clear methodology which is unambiguous. This also helps in uprooting extremism and violence, and establishing a room for mutual respect.

It is from this base that Muslims paved their way to inter-faith dialogues without having to face any religious or personal barriers, because they found in their religion what shows the importance for coexistence. The concept of peaceful dialogues between various cultures can be found in the Holy Qur'an and Prophetic Sayings. The Messenger of Allah himself had dialogues with the Jews who lived in Al Madinah at his reign. He made a covenant with them in which He agreed to safeguard their religion and wealth. Therefore, it is clear that Islam calls upon its followers to have a dialogue in a good way. There is no doubt that the dangers which surround the current world, and its need for security and peace,

necessitate the continuation of having dialogues, by highlighting the common factors, which help in reducing chances of conflicts. It is here that we find that the principles of Islam provides a framework to guarantee the success of intercultural dialogues and directs it towards desired humanitarian goals.

#### **E. Right to freedom of opinion and expression.**

Islam has sanctioned freedom of opinion and expression for and individual. In return, it has also asked its followers to adhere to chastity, honesty, and not to insult or harm the dignity of a person. We can find that the Noble Qur'an has held some people accountable as they hastened to spread rumours. Allah says {When you received it with your tongues and said with your mouths that of which you had no knowledge and thought it was insignificant while it was, in the sight of Allah, tremendous. (15) And why, when you heard it, did you not say, "It is not for us to speak of this. Exalted are You, [O Allah]; this is a great slander"? (16)} (Holy Qur'an 24). This is because the freedom may tempt some of the weak-minded, and they may misuse it to undermine others' honor. This destroys the foundations of society on one hand, and on the other it labels destruction as a common and acceptable matter as those become widely propagated.

The greatest manifestation of freedom of opinion in Islam is the 'diligence based on opinion', and channeling the utmost scientific effort for it. We can see in the Prophetic traditions when Allah's Messenger (peace and blessings be upon him) sent Mu'adh Bin Jabal (may Allah be pleased with him) to the Yemen he asked him how he would judge when the occasion arose, and he replied that he would judge in accordance with God's Book. He asked what he would do if he could not find guidance in God's Book, and he replied that he would act in accordance with God's Messenger's sunnah. He asked what he would do if he could find no guidance in God's Messenger's sunnah, and he replied that he would do his best to form an opinion and spare no pains. God's Messenger then tapped him on the breast and said, "Praise be to God who has disposed His Messenger's Messenger to something with which God's Messenger is pleased!" (Al-Shaibani, n.d; Al-Darami, 1987; Abu Dawud, 1878).

Hence Islam doesn't suppress any of the energies an individual owns, be it ideological, spiritual or physical. Nevertheless, it doesn't freely open the horizons without any guidelines or restrictions, rather, it has been constantly refining and rationalizing the guidelines to serve the benefits of mankind (Hillis, 2007). Among those purposeful rationalizations are:

- Returning the cases of disagreement between opinions to the Noble Qur'an and the Traditions of Messenger. Allah says {O you who have believed, obey Allah and obey the Messenger and those in authority among you. And if you disagree over anything, refer it to Allah and the Messenger, if you should believe in Allah and the Last Day. That is the best [way] and best in result.} (Holy Qur'an 4:59)
- The expression of opinion should not be with the intention of stirring up sedition and spreading corruption in the country, defaming others, or harming the public security of the nation. Islam has forbidden corruption in all its ways, means, and forms. Allah says {Then remember the favors of Allah and do not commit abuse on the earth, spreading corruption."} (Holy Qur'an 7:74)

If Islam allows an individual to have his own opinion, it cannot prevent him from his right to express it, or to choose the appropriate means to express it, as long as there is no violation of Islamic Shari'a. Among the most evident examples of freedom of opinion and expression in Islam is that it sanctions freedom of choosing the media, be it written, oral or visual. This is Islam's view on cultural rights of an individual, and in order to preserve the human dignity, we all have to work to preserve and utilise them (Al-Mahmasani, 1970).

### **3. Cultural Human rights in international conventions.**

International conventions state numerous cultural rights, foremost of which is The International Covenant concerning cultural, social and economic rights (Human Rights: Volume 1, UN, Page 11), as in it many articles and paragraphs related to cultural rights were mentioned, including:

**Article 1:** All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.



**Part one of Article 13:** The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

**Article 15:** The States Parties to the present Covenant recognize the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

(d) The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

**Article 18:** Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**Article 19:** Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**Article 26:**

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

(1) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27**

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

#### **4. Comparison between the characteristics of cultural rights in international conventions and Islamic Shari'a:**

The above mentioned is the analysis of cultural rights in international conventions based on the Islamic vision, considering that the Shari'a is the original and the final reference. According to it, we will explain the most prominent features of cultural rights in the international charter and compare them with that of cultural rights in Sharia as follows:

##### **4.1 Most prominent features of Cultural rights in International conventions:**

We see in the international covenants of human rights noble goals that can fulfill the requirements of the human beings in his right to live in peace and security. It is of utmost importance to protect and develop these institutions and their goals by providing them with guarantees that allow them to achieve their objectives in an effective manner. It is the fulfillment of human dreams that are included in the Holy Qur'an, and it is for this sake that it urged people to cooperate in goodness, and not to cooperate to commit aggression. Allah Says {And cooperate in righteousness and piety, but do not cooperate in sin and aggression.} (Holy Qur'an 5:2).

The Qur'an called for the unity of the human race through diversity and pluralism, Allah says {And if your Lord had willed, He could have made mankind one community; but they will not cease to differ.} (Holy Qur'an 11:118). Islam

accepts diversity and pluralism and considers it as a natural part of this life, and the goal of this diversity is to get to know people and to encourage cooperation with each other to eliminate discriminations on the basis of color, race, or gender.

We can summarize the most prominent features of cultural rights in international covenants as follows (Al-Mezan Centre, 1976):

1. Everyone has the right to education, and this right should not be denied.
2. Education aims to fully open up the human personality and sense of dignity, and to support respect for human rights and fundamental freedoms.
3. Parents in the first place have the right to choose a religious education for their children according to their beliefs.
4. That the supreme benefit alone guides those who are responsible for raising and guiding the child.
5. That all the cultural rights which are called for in international conventions are a private right and not a general obligation, and the evidence for it is the text, saying: "It is not permissible to refuse anyone's right to education". It is agreed upon in the principles of universal rights that every human being has the right to waive his own right, and as a result, his waiver of his private right does not constitute a crime because it affects only himself. This leads to a weakening of this right to education, which is a basic necessity for human life, and it weakens the force of commandments as there is no guarantee for its implementation. Especially when we have noticed that the goal of this cultural right, as stipulated in international conventions, is to: "open up the personality and the dignity of an individual". There is no reference to the types of comprehensive life sciences, or its necessity for the life of the individual and society, especially the belief in the major truth of existence of Allah, the Creator of heavens, earth and whatever within them, the Creator of man, or the necessity to submit to His teachings. Losing this belief in Allah Almighty as a fundamental goal of human cultural rights for nations wastes those rights and puts people in danger (Hillis, 2007).

#### 4.2 The most prominent features of cultural rights in Islam:

If we look closely at the legislative arrangements according to the objective of preserving the intellect for cultural rights, we can find that they are characterized by the following:

- **That the cultural rights are an obligation.** The expression of cultural rights in Islam was mentioned as a "duty" and therefore it is not permissible to waive them, as it is not just a human right as declared by international conventions, but rather an obligation associated with the humanity of an individual.
- **These obligations are participatory,** as this obligation rests at the same time on the shoulders of the individual and the group, and both of them are responsible for the implementation of this obligation; they are a general vital obligation that no one may neglect, and they are not private rights that are waived by the will of their owner.
- **Penal guarantees:** This right enjoys penal guarantees in Islam, and is not just a recommendation or literary ruling that is not guaranteed as is the case in the covenants of international organizations. The ruling authority in Islam has the right to compel the implementation of the duty and punish those who fail to implement it contrary to international conventions which considers it as a personal right. It cannot be punished if its owner waives it (Hillis, 2007).
- **International human rights give parents freedom** to choose the type of culture and education that they choose for their children according to their beliefs. This is in contrast to non-democratic systems which impose their culture and deny parents from exercising their recognized right. They rather confiscate the intellects of youth to subjugate them to believe the philosophy of ruling organization alone, and rip off the parents from their legitimate rights sanctioned in international covenants.
- **Islam has opened the horizons of Earth and sky** to conduct researches and studies in various fields of life and types of technologies. That is done to make the existence of Allah more evident for the human beings, and thus making a balance between his material and spiritual needs. This saves mankind from being lost between the material needs and not getting his spiritual nourishment.

The whole statement of cultural human rights in Islam is that these rights are imperative duties that are preserved by legislative and executive guarantees, and are not merely natural human rights. Those are commandments which states are

called upon to respect and recognize.

## **5. Conclusion (Findings and Recommendations)**

After we finished presenting the reality of Islamic Objective of preserving the Intellect from moral and material corruption, and explaining this through the cultural rights of an individual, I will highlight in this conclusion the most important findings of the research, besides summarizing the most important recommendations and proposals.

### **5.1 The Findings**

1. The Islamic Shari'a has preserved the intellect, and protected it from what corrupts it morally, and legislated rules in this sake. It prohibited illusions, sorcery, and soothsaying. It also banned black magic and considered it as a major crime, this is apart from prohibiting the sources and methodologies which morally destroy an individual's intellect with false ideologies and deviated doctrines which may lead to extremism and terrorism.

2. The deviation in thought and staying away from the objective of preserving the intellect is one of the most dangerous types of intellectual deviation, because an individual's behavior branches from it and is affected by it. That is why all countries of the world have paid attention to the problem of deviation, extremism and violence in beliefs, ideas, and behavior. This deviation occurs due to various reasons, and the most important of those are the ones related to theoretical aspects such as ignorance of Islamic Shari'a and its main objectives. Some of them are not related to individuals but rather come as a result of crises or socio-cultural problems and others. Islam is the religion of moderation, tolerance, kindness, ease and mercy.

3. Islam draws a method of good dialogue with the people of different opinions, it prevents assaulting others without a right. It is through this method that ideas, opinions and sciences can be mutually shared with each other, which can lead to acquisition of benefits. This also helps in calling people to Islam, and to show them the beauty, virtues and realities of this religion through a systematic and distinctive methodology, by constructive dialogues free from extremism and violence.

4. Islam has preserved the intellect, and protected it from what damages it physically. It made rules which guarantee the safety and functionality of the mind. Islam prohibits the intake of any material that contains anything which destroys the intellect or results in its malfunctioning, like alcohol and different types of drugs. There are severe penalties in case of violation, due to the massive problems that could be made in the society and individuals because of it.

5. The international covenants have mentioned human rights in a general way and cultural human in a specific way, though there is no unique covenant which is specifically meant for cultural human rights. These rights are characterized by diversity and plurality in explaining the most important cultural rights, but this plurality and diversity suffers a limitation as it grants an individual full rights to shape up his own culture, this may lead to opening doors to conflicts and misconducts.

6. The cultural rights in Islam are obligations which are guaranteed by rules and regulations, in contrast to the international covenants where it is considered as a natural right of an individual which should be granted and respected by the governments, without guarantees or controls.

7. All cultural rights called for in international conventions are a private right and not a general obligation, and it is agreed upon that the owner of any right may, at his own will, waive it at any point of time, and his waiver of those rights will not be considered a crime. This facility weakens this general right which is in reality a human necessity.

### **5.2 Recommendations**

We recommend that more has to should be paid to human rights at all levels and in various aspects, in order to demonstrate the fairness and tolerance of Islamic Shari'a which has established a comprehensive human rights system. We also urge those who are interested in this field of study to connect and compare between Islamic Shari'a and international laws, in order to exhibit the human rights aspect of Islamic Shari'a.

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