

RIGHT TO LIFE: A COMPARATIVE ANALYSIS OF THE ISLAMIC LAW AND INTERNATIONAL HUMAN RIGHTS LAW

Sana Talpur^{*1}, Rehana Anjum², Paras Zafar³

^{*1}LL.M Scholar, Institute of Law, University of Sindh, Jamshoro

²Assistant Professor, Institute of Law, University of Sindh, Jamshoro

³LL.M Scholar, Geneva Academy of International Humanitarian Law and Human Rights, Geneva Switzerland

^{*1}sanatalpur533@gmail.com, ²rehana.anjum@usindh.edu.pk, ³zafarparas0@gmail.com

Corresponding Author: *

Sana Talpur

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ABSTRACT

The right to life is one of the foundational principles of law. It is well-established both in Islamic law and International Human rights law. The supremacy of the right to life and the prohibition of the arbitrary deprivations of life remains uncontested throughout the world. Thus it is of universal recognition. Moreover, according to Islamic law and International Human rights law, the notion of the right to life is not only limited to physical harm or injuries rather it encompasses a wide variety of rights such as the right to health, clean water, food, and virtually everything that is essential for livelihood. Glorious Holy Qur'an and international Islamic law treaties and conventions preserves "right to life" of every human being. Similarly, there are several international treaties, conventions, declarations, and regional instruments that safeguard this right of every person. Apart from this, Islamic law and IHRL, both impose a binding obligation on the states and all persons in the authoritative positions to safeguard this right and ensure its implementation. While employing doctrinal research methodology this paper has analyzed the right to life from the perspectives of Islamic law and international laws and has explored its wider scope and application in the light of Holy Qur'an, Sunnah, and interpretations rendered by the International and National Courts and Tribunals. Moreover, limitations of the notion of the "right to life" specifically the controversies concerning Capital punishments or the death penalty, Euthanasia, Abortion, Extra-judicial Killings have been analyzed from the perspectives of Islamic law as well as IHRL.

Keywords: Right to life, International human rights law, Islamic law, capital punishment, Euthanasia.

INTRODUCTION

Almighty Allah has highly sanctified the human life. As explicitly stated in the Glorious Holy Qur'an that "Life of every human is to be honored and revered." Islam has made the right of every human to be inviolable. For it is believed that to intervene in the life of any individual is tantamount to stepping into the territory of Almighty Allah's jurisdiction.

Right to life is one of the foundational and cardinal principles of the human rights recognized by all the legal systems throughout

world. This very fundamental right has been accorded to all individuals by the Islamic law and various international treaties and conventions including regional instruments. It protects from arbitrary deprivations of life by the state authorities, or consequently due to their omission. Therefore, it is not only limited to human existence rather it has a wider scope. International human rights law (IHRL) provides protection to the "right to life" of all individuals except when he/she is found guilty of an offence

and only in those circumstances this right may be taken away in due course of law and justice. In the same vein, Islamic law confers this right on the whole mankind regardless of their gender, age, religion, etc., without any discrimination. Under Islamic law and IHRL, the notion of right to life is believed to cover virtually all spheres of the life.

Despite of universal recognition of this right by both regimes i.e, Islam and IHRL, the understanding of the “right to life” varies under Islamic law and IHRL. Therefore, this paper at the very outset *firstly*, analyzes the notion of right to life from perspective of Islamic law and IHRL. *Secondly*, the scope and wider applicability of the right to life has been dealt in depth, *followed by* the binding obligations imposed on the states and the persons in the authoritative positions to uphold, safeguard and protect the right to life of all individuals within their territories. *Finally*, the major controversies concerning the Death penalty, Euthanasia, Abortion and Extra-judicial killings have been comparatively examined from the lens of Islamic law as well as IHRL.

RIGHT TO LIFE: ISLAMIC APPROACH

In Islam the notion of right to life originates from Holy Qur’an and Sunnah of the Holy Prophet Muhammad (PBUH). Reference may be made to the following verse of Holy Qur’an that states that, “Life of every human is to be honored and revered.” Thus, Islam has made the right of every human to be inviolable. Islam considers the life of human beings as the most sacred that needs to be safeguarded and protected in all times. Therefore, Islam regards and considers the soul of every person to be most sacred one and no one is entitled to temper with the same except as provided by the law. In Glorious Qur’an, killing or taking life of one individual has been equated to a killing of the entire mankind. Reference in this regard may be made to following verse which reads as, “Whosoever kills a human being (without any reason like) manslaughter or corruption on earth, it is as though he had killed all mankind...”

Likewise, there is also a Hadith of Holy Prophet (PBUH) that states, “Truly, your blood, honour, and your wealth are unlawful to one another.”

It is the firm belief of Muslims that the Almighty Allah alone is the Life-giver to an individual and only He is empowered to take back the same. But

life will be resurrected on the Yawmad-din, as mentioned in the Holy Qur’an that “Indeed, you will surely die, and on the Day of Judgment you will be resurrected.” Inalienability of the right to life finds support in the Holy Qur’an as well wherein it has been mentioned that “Allah has forbidden to take individuals life which Allah has made sacred in exception to the due process of Shar’iah”.

Importance and worth of the life of a human being has been emphasized in the Holy Qur’an in following words, “whoever put to unjust death any other individual, be deemed to be put to death of all human beings. Whoever saves a single life shall be adjudged to save all mankind.” It emphasizes the respect for this right and also imposes a binding duty to preserve, protect and safeguard this right. Moreover, Holy Qur’an recounts the story of two sons of Adam (A.S) wherein one brother attempted to kill another but other one did not commit this sin out of the fear of Almighty Allah. This again highlights the importance of the “right to life.”

In accordance with principles laid down in Islam, International human rights have been recognized to serve as general guidance to the member states. For instance, “right to life” has been envisaged under the Cairo Declaration on Human Rights in Islam, 1990 (CDHRI).

Furthermore, Under Islamic law, “right to life” has also been enshrined in the Universal Islamic Declaration of Human Rights, 1981, (UIDHR) wherein deceased person’s body too is made inviolable. Thus, the right to life is highly prioritized in Islamic law and international Islamic conventions as mentioned hereinbefore. Therefore, every citizen, society, and the authorities of state are obliged to protect it from being violated.

RIGHT TO LIFE: INTERNATIONAL HUMAN RIGHTS LAW PERSPECTIVE

The right to life is the essential right inherent to all humans under international law. Under international law, it is considered to be an inalienable right and imperative norm i.e., Jus Cogens, which means those norms of which no derogation or infringement is permitted even in extreme emergency situations. This right is codified in various international treaties, conventions and declarations. Such as “Charter of United Nations of 1945, Universal Declaration of Human Rights, 1948 (UDHR), International

Covenant on civil and political Rights, 1966 (ICCPR), International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR).” Apart from this, it is also recognized in various other instruments such as *American Convention on Human rights (1978)*, and *African Charter on Human and People’s Rights (1986)*, that applies to Africa’s respective regions and also in *European Convention on Protection of Human rights and Fundamental Freedoms (1953)*. Human rights are categorized into Political, social, civil, cultural, and Economic rights.

It is the essence of the amusement of all other rights. The ICCPR also calls attention to the right to life while emphasizing that it may only be deprived in a lawful manner and in due course.

The European convention on Human Rights, 1950, provides that in absence of this right, life is incomplete because it is the foundation to the enjoyment of other rights. This convention condemns the punishment of capital punishment or its execution. Thus, this right applies in the wider sense and thereby also includes the protection against the environmental hazards. The Human rights act of the United Kingdom of Great Britain ensures the safeguarding of this right and prohibits its infringement. However, certain exceptions have also been recognized to it. Queensland’s Act of the Human Rights and 1981’s Charter of Africa on Humans and People’s Right, prohibits arbitrary deprivation of the life.

INTERPRETATION AND SCOPE OF “RIGHT TO LIFE”:

“Right to life” is very basic principle of human existence. Term ‘life’ is believed to encompass vast and wide variety of rights. Islam also recognizes that scope of right to life is not only limited to physical body. It has been mentioned in the Holy Qur’an in following words, “Whoever does righteousness, whether male or female, while he is a believer - We will surely cause him to live a good life, and We will surely give them their reward [in the Hereafter] according to the best of what they used to do.”

The interpretation of the word “life” has invariably extended and expanded the scope of it and now right to life virtually covers all the aspects of the life.

Under Islamic law, right to basic necessities is considered to be the part and parcel of the right to life. This finds support in following hadith, “The son of Adam (A.S.) has no rights except for four things i.e. a house in which to live; clothes by which to cover his ‘satar’; a piece of bread / roti and water.” Thus, even Islam recognizes the right to life to be wide enough to cover almost all necessities.

The expression “Right to life” has been interpreted by various International Courts and Tribunals including national courts of several states in its wider sense. In case of *Tërshana vs. Albania*, European court of the human rights (ECtHR) has held, Article 2 applies even in those circumstances and situations where an individual is victim of any activity or conduct on the part of state authorities or private individuals, which is inherently of the nature causing real or imminent risk to the life. Moreover, right to safe and clean atmosphere and environment has also been construed to be a part and essential facet of this right. This finds support by the various international as well as national laws. For instance, Supreme Court of Pakistan in *Shehla Zia’s* case has ruled that, citizens must be protected from the hazardous and deteriorating effects of the electromagnetic waves which may be caused owing to the installations of the factories or grid stations in the residential areas as it affects their right to health. Similarly “right to life” has been construed to being wide enough to also include the right to a functioning sewerage system and clean water. It has rightly been held that, “right to life includes the right to a safe and functioning sewerage system” Moreover, Protection of the workers health and their access to safe and workable environment and conditions of the work has also been held to be an essential feature or attribute of the right to life. Furthermore, the reputation of a person has also been construed to be a facet of the right to life. This has been affirmed by the Indian Supreme court in the case of *State of Maharashtra vs. Public Concern for Governance Trust*, wherein it has been held that, any act affecting the reputation of a person directly affects his right to life since it is a facet of it. Moreover, right to life has been a center of controversy when the right to life of a suspected terrorist is in the question. Therefore, Pakistan’s Supreme Court has strike down various

provisions of the Anti-Terrorism Act, 1997 while noting that power conferred upon law enforcement authorities to open fire on a terrorist suspect was in clear contravention of the right to life of an individual. Moreover, in *Navtej Singh Johar's* case, it has been ruled that, this right also covers the right to carry out and conduct all those activities and functions which constitutes the expression of a person's self. Therefore, it has been widely recognized that, "right to life" includes right to acquire necessary resources such as, water, food, shelter, etc. Apart from all this, it has been considered to be wide enough to include the right to a peaceful sleep. India's apex court ruled that, "*Right to sleep is also one of the crucial right and falls within ambit of one's right to life.*" Finally, a safe and clean environmental atmosphere free from pollution is also believed to be an extension of right to life of an individual. Thus, both Islamic law and IHRL recognize the wider sense and applicability of right to life extending to virtually all aspects of life.

INCUMBENT DUTIES AND OBLIGATIONS ON STATES TO SAFEGUARD CITIZEN'S "RIGHT TO LIFE":

Under Islamic law and IHRL, a duty is incumbent upon all the states to protect and safeguard the right to life of all individuals. The state is not only duty bound to abstain from deliberate violation of the right to life but also obliged to take adequate measures to preserve this right. Therefore, state should protect the right to life and investigate and prosecute the individuals responsible for the violation of the right within their territories. Almost all the aforementioned Charters, Declarations, Conventions and international instruments impose this duty upon the states. For instance, the European Convention provides, state is duty-bound to protect this right by virtue of Procedural measures to conduct the requisite inquiries and investigation into the alleged violations or breaches. Reference in this regard may be made to the *Renolde's* case wherein ECtHR held that state's failure in taking adequate measures for protecting prisoner's life was in contravention of the duty imposed by convention's Article 2. Furthermore, in *Budayeva vs. Russia*, the same court namely

ECtHR ruled that the applicants were deprived of their life due to negligence on part of state authorities since it failed to remove the mudslides which resulted into the deaths of many individuals. Thus, all states are obliged to take adequate measures so as to preserve and protect individual's life.

INSTANCES OF VIOLATION OF "RIGHT TO LIFE": Controversies Regarding Death Penalty, Euthanasia, Abortion, And Extra-Judicial Killings Under Both Regimes

After analyzing notion of Right to life from perspectives of Islamic law and IHRL, given below is a comparative analysis of the various instances that have remained the subject of controversy in both regimes. Specifically, the notion of capital punishment or death penalty, euthanasia, Abortion, and Extra-judicial Killings have been discussed from the lens of Islamic law and IHRL.

1. Capital punishment or Death Penalty: i) Under Islamic Law:

Holy Qur'an prohibits the deprivation of the life of all the individuals except in due course of Shar'iah. Therefore, Shar'iah law does not impose a prohibition on the death penalty as it permits capital punishment for heinous crimes committed. Holy Quran authorizes the execution of the death penalty and regards its non-administration as a breach of duty. Shari'ah prescribes the death penalty and therefore, it is accepted as a principle in the Islamic law. The main reason underlying this permission of the death penalty in Islamic law has been mentioned under the followed verse of the Holy Qur'an. "*If anyone kills a person – unless it is for murder or for spreading mischief in the land – it would be as if he killed all people. And if anyone saves a life, it would be as if he saved the life of all people.*"

Therefore, Islamic law considers killing as a crime except in accordance with Shari'ah and justice. Therefore, only courts are authorized to implement the death penalty. Thus, whenever a state or court of law metes out Capital punishment or death penalty it acts in the name of Almighty Allah. Islamic law has laid down certain principles for the imposition of the various punishments. However, the procedure of execution of the capital punishment varies in the Muslim Countries for instance, public

hanging, firing squad, stoning, and beheading. Islamic law categorizes various types of crimes on the basis of their respective punishments such as Qisas and Tazir. Punishment of Qisas has been mentioned under the Glorious Qur'an in these words, "*Almighty Allah has commanded His believers that punishment for the crime committed shall retaliate or in other words, life for life, eye for an eye, nose for a nose, ear for ear, and a tooth for a tooth, and for all wounds, like for like.*" However, victim's guardians are entitled to extend pardon to the offender as prescribed in the Holy Qur'an. The Arab Charter on the Human Rights also envisages that the "right to life" of any one shall not be deprived except as provided and in accordance with the Shar'iah. However, certain persons such as Minor and the pregnant women fall within the exception as no punishment can be executed against a minor until he/she attains the age of 18 years and in case of Pregnant women until they give birth to their child. Therefore, imposition of death penalty in accordance with law and justice is accepted in Islamic law as a principle.

ii) Under International Laws:

Although no rule of the International law imposes a prohibition on death penalty. However, international community considers it as a breach and violation of basic human rights, norms, and principles of IHRL. This could be indicated by the fact that General Assembly of the United Nations (UNGA) has on numerous instances emphasized for the abolishing the death penalty clauses in the national laws of states. The death penalty is considered to be in the breach and infringement of the prohibition against the inhumane, cruel, and degrading treatment. The matter of death penalty or capital punishment has been addressed under ICCPR, wherein it has been affirmed that arbitrary deprivation of life is prohibited. However, death penalty can be imposed judicially or more appropriately in accordance with the law. Customary International law does not abolish or restrict capital punishment. Thus, international law neither imposes a blanket restriction on the death penalty nor does encourages it. However, the International community or more appropriately approximately 70% of states in the world consider it as a violation of right to life. According to Aljazeera, 108 states have currently

abolished the capital punishment or death penalty for all crimes. This indicates international community is inclined towards eradication of the death penalty. Protocol to ICCPR and protocols to the European Convention on Human rights were adopted for the sole purpose of putting an end to the legalized deaths or abolition of the death penalty. Moreover, United nations General Assembly has also passed various resolution for sole purpose of the moratorium of capital punishment in the 2007,2008,2010, 2012, 2014, 2016, and 2018. Furthermore, UN General Secretary António Guterres has also emphasized on the abolition of the death punishment for safeguarding the very fundamental "right to life" of every individual.

2. Euthanasia:

The word "Euthanasia" is made of two Greek terms "Eu" and "thanatos" which mean "a good death." It widely understood to be the mercy killing. Euthanasia refers to the practice of putting an end to life intentionally to relieve from pain and sufferings.

The notion of euthanasia and the existing controversy that whether it is prohibited or permitted in Islam and IHRL has been comparatively analyzed herein-below;

i) Under Islamic Law:

The Holy Qur'an and Sunnah condemn the acts of euthanasia and consider it as ethically wrong. Almighty Allah has forbidden to put an intentional end to the life. The prohibition on Euthanasia in Islam is based on the notion that Almighty Allah through Qur'an has directed the whole humanity to take care of their own health. Thus any intentional act resulting into the death or done deliberately to put an end to life has been forbidden. In light of this, it transpires that deliberate ending of the life or more appropriately Euthanasia is tantamount to the violation of the divine trust as it constitutes an act of rebellion against Almighty Allah's directions. Therefore, Islamic law scholars have consensus over the prohibition of the euthanasia. This opinion is based on the belief that only Allah determines the human life. However, within Islamic schools there are certain liberalists who accept passive euthanasia and argue that it is permissible in Islam.

However, majority opinion is in consonance with the Holy Qur'an.

ii) **Under International Law:**

There is no universal recognition accorded to the "right to die" in the international community. Charter of the United Nations, various treaties, and conventions only emphasize on "right to life" and do not provide for the "right to die." However currently there are seven countries that have legalized the euthanasia, these are, Spain, Belgium, Canada, Netherlands, Columbia, Luxembourg, and New Zealand. Moreover, Euthanasia has been declared to be illegal in some of the countries. In the Netherlands, although euthanasia is technically illegal however no penalty or punishment has been prescribed for the physicians who assist in this act. In the United Kingdom the practice of euthanasia is prohibited and some of the physicians who have acknowledged their assistance were charged with murder. Physician assistance is prohibited nationally in Australia, India and South Africa. Many experts have argued that the right to life may also be construed so as to include the right to end life. Moreover, Indian Supreme court in a landmark judgment has declared the passive euthanasia to be legal. Therefore, it has been accepted by the International community that Euthanasia could be made legal only virtue of law. However, this contradicts the basic principles of the Islamic law which imposes a complete prohibition on it in all circumstances.

3. **Abortion:**

i) **Under Islamic Law:**

Islam imposes a prohibition on the abortion. Because, in Arabia the long standing practice of the female infanticide that existed in pre-Islamic era has been condemned by the Qur'an in strongest terms. The Holy Qur'an forbids the homicide of the child in any instance. This could be inferred from the following verse which states that, "Do not kill a child for social purposes or being afraid of poverty".

The prohibition on abortion in the Islamic law derives by virtue of the fact that in the Holy Qur'an the formation of the unborn baby or fetus is viewed as a series of the developments or transformations that leads to the ensoulment. Therefore, Islamic law scholars have

acknowledged the person-hood of fetus, and consider it as a person possessing material as well as spiritual life. Therefore, Islam confers the right of survival on the fetus at the stage of ensoulment and is thus considered as legal entity whose right to life cannot be infringed. Therefore, many Muslim scholars have a firm belief that embryos shall also be accorded the protection and safeguard. Since, Islamic law confers right to life on the fetus at the stage of the ensoulment only thus the main controversy arises regarding the moment or exact time of the ensoulment. Islamic law scholars have a divided opinion on the moment of the ensoulment. One group of Islamic law scholars condemn and prohibit the abortion in all situations. Meanwhile, other group believes that abortion can only be conducted prior to 120th day of conception as they believe that ensoulment occurs after 120th day. Lastly third group of scholars permit the abortion but only in those cases when mother or child's health is at the sake. Islamic law also provides exceptions in those cases where women/mother's health or life is in risk or if there exists some abnormality or causes some disability in the fetus then abortion is permitted.

ii) **Under International Law:**

Contrary to Islamic approach to the abortion, IHRL recognizes that "right to life" includes freedom of autonomous body thus, permits abortion and prohibits unsafe abortion. World health organization or WHO has officially defined the phrase "unsafe abortion as, procedure or method whereby a pregnancy is terminated by person who lacks requisite experience or skills or is carried out in an environment that lacks minimal and basic medical standards." Unsafe abortion result in the death of 47000 women every year. Various states have imposed a prohibition on the abortion and declare it to be illegal. Back in September 1994, world's largest conference was convened that emphasized the imposition of the prohibition on unsafe abortions. However, various countries are of the opinion that a prohibition on the abortion constitutes an infringement of the dignity of women. Thus standing of the international community on the issue of the Abortion is entirely different from the Islamic perspective.

4. Extrajudicial Killing:

i) Under Islamic Law:

Various schools of thought and Muslim scholars have prohibited extrajudicial murder or killing in the name of religion. Back in 2012 when Kenyan police committed extra-judicial killings of 81 people. The head of the National Police Service Commission condemned the same in strongest terms. In 2021 approximately 723 civilians were killed due to torture. The report indicated that the extrajudicial killings were conducted in violation of IHRL and IHL or International Humanitarian Law. Thus, extra-judicial killings being in contravention of right to life are condemned by the Islamic law.

ii) Under International law:

International law imposes a complete prohibition and restriction on the undue and very arbitrary deprivations of life, which also includes extra-judicial killings. This prohibition on arbitrary deprivation of life including extra-judicial killings have been elevated to the status of *jus cogens* norm and therefore, it can not be derogated from even situations of the emergencies. Thus, Extra Judicial Killings have been prohibited and condemned. As considered to be gross breach of "right to life". Therefore, states are required to take measures for prevention of the extra-judicial killings.

Thus, notion of extra-judicial killings have been prohibited under Islamic law as well under IHRL and is considered to a serious violation of an individual's basic human rights specifically of "right to life."

CONCLUSION:

Thus, this right is widely recognized under Islamic law and IHRL. Islamic law and IHRL, both impose an obligation upon the states or more appropriately the persons in the authoritative positions to safeguard and protect this very fundamental right through enactments of the laws. Although Islamic law provides protection to this right however also provides that it can be deprived in compliance with the set principles of the Shar'iah. Because Islam permits imposition of the various punishments on the individuals who are responsible for the commission of the crimes.

Similarly, IHRL gives due recognition and protection to the "right to life" in its wider sense

and even holds the imposition of the stringent punishments such as Death Penalty or Capital punishment are in violation and derogations of a persons' right of dignity and life.

Islamic law recognizes the *right to the life* however it does not give any recognition to the *right to die* or Euthanasia. Contrary to this, International Laws recognize the right to die or euthanasia and do not consider it as an infringement or breach of a person's right to life. However, this is not recognized in all states given that there are still many states wherein euthanasia is prohibited, and penalties are prescribed for the commission of the same. Moreover, with respect to abortion Islamic law imposes a complete prohibition except in the circumstances when mother's life is at risk. Contrary to Islamic position, international law does not prohibit the abortion and consider it to be in consonance of the right to life of the mother. Furthermore, extra-judicial killings have been equally condemned in Islam as well as in IHRL.

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