Article

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Incorporation of Universal Human Rights' Norms in Public Municipal Law: An Analytical Study of Saudi Arabia, Iran, and India

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Abstract
The incorporation of universal human rights' norms in public municipal law has often been a challenge for both Islamic and secular states. Employing an analytical method this article explores the main legal challenges to the incorporation of universal human rights norms into municipal laws in three states--Saudi Arabia and Iran, the two Islamic states, and India, the secular state. It is argued that despite their differences in the larger legal framework they follow a peculiar dualistic system to incorporate the human rights norms, which results in its application challenges.

Key words: Human Rights, India, Incorporation, Iran, Islamic Law, Saudi Arabia.

Introduction

The universal human rights as enshrined in international charters often don't dovetail well with Islamic law based on interpretations by the clergymen of Iran and Saudi Arabia. Both the states claim their legal system is based on the pure 'Islamic *Shari'ah*.' On the

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other hand, it may sound that secular states such as India, directly implement human rights norms without necessitating legislative majors such as enactment by the parliament; the policy which is known as monism. But what distinguishing line could be drawn among these states?

This article examines how far the international legal norms of human rights have been able to influence the Islamic (Iranian/Saudi) municipal legal systems. How do they absorb human rights norms into their domestic law? Or how the probable conflict will be solved under the domestic mechanisms of these Islamic states? Later, the discussion on the Indian approach towards the matter of monism or dualism will be separately discussed.

The Approach of Islamic States

Since conflict between the two systems is interpreted as the conflict between international law and religion,[1] Article 10 of the Basic Law of Saudi Arabia 1992, obliges the government with a duty to maintain Islamic values, as Islam is the official religion (the Basic Law of Saudi Arabia 1992, Arts 1, 8 and 23). In a similar approach, Article 4 of the Constitution of the Islamic Republic of Iran 1989 reads as follow: 'All laws and regulations including civil, criminal, financial, economic, administrative, cultural, military, political or otherwise, shall be based on Islamic principles, this article shall apply generally on all the articles of the Constitution and other laws and regulations.'

Moreover, all laws and regulations should be approved and ratified by a council named the 'Guardian Council of the Constitution' whose function is to safeguard the rules of Islam even if they conflict with international norms (the Constitution of Iran 1989, Arts 91, 93, 94 and 96). Their essential job is to compare statutes and passed laws by Islamic assembly 'Parliament' with the unwritten laws and rules known as 'Shariah'.[2]

This matter appears to be of a very high significance because all the international instruments and documents have to receive approval from ‘the Islamic Consultative Assembly' and consequently the 'Guardian Council'.[3] Therefore, no international norms and principles, whether recognised by the civilised nations[4] or any peremptory norms (*jus cogens)* of international law can stand the Guardian Council's adverse decisions. So, one may restate the theory

of *'auto limitation'* [5] as a principle picked up from the domestic laws of Iran.

Undoubtedly, these countries observe the doctrine of *'transformation'*[6] regarding the acceptance of international rules as a state law, or to some extent a similar agenda. Today, this doctrine has a pivotal role in the legislative systems of the states around the globe. Even in countries such as the United States and the UK, municipal courts apply only that part of the international law which is transformed or incorporated into the municipal law.[7] According to Charles Ghequiere Fenwick, "At the present day, acts of the British Parliament and acts of the United States Congress unquestionably take priority over international law."[8]

In the same way the Gulf States also practically regard this relation as entirely separate legal systems (dualism), which operates on different levels. They hold that international law can be applied by municipal courts only when it has been approved and confirmed by the Islamic procedures which have been articulated in the constitutional system. The Basic Law of Saudi reads that not only may international law be approved, but also it may be amended by a 'Royal decree'.[9] Similarly, it is expressed by Articles 77 and 125 of the Constitution of Iran, which empowers the Consultative Assembly to approve international laws. These constitutions do not tolerate any excuse to resort directly to the international norms. Therefore, in the most seldom cases, a judicial precedent could be found invoking international laws by the judges or parties of a lawsuit.

Certainly, the theory of 'incorporation' does not have any room in these legal systems. Since the automatic incorporation of treaties by the constitutional provisions requires their domestic enforcement without legislative actions beyond the ratification. This kind of direct incorporation, which is known as 'Monism' is circumvented by Iran and Saudi. A second method, 'specific transformation', requires legislation to give treaties domestic effect. This method which is known as 'dualism' is accepted by many countries including Iran, Saudi, and India. Of course, universally there is no decree of international law that all treaties must be implemented in domestic law; and the freedom to choose the method of implementation is also guaranteed by the International Covenant on Civil and Political Rights (ICCPR).[10]

In other words, if a treaty is created, whether multilateral or bilateral, covers new grounds or not, it needs to be approved by new legislation to give effect to the terms of the treaty. Therefore, Islamic countries might not accept the superiority of international law within their territories, which conceptually may be conceived as a priority for a foreign law over the Islamic law.

On the other hand, constitutionalism has often been matched with the religious criteria. For instance, for the first time in Iranian history, the Guardian Council is established. The council can dominantly break with the honoured doctrine of parliamentary sovereignty. The Iranian parliament without the council is meaningless; this point is expressed by the constitution in Article 93.[11]

However, it may be argued that states have a primary right to exercise their full jurisdiction, namely enacting laws and implementing sanctions over all persons and properties within their territorial boundaries. This argument is found on the concept of sovereignty, which has been defined by *Max Huber* in *the Island of Palmas* arbitration case.[12]Sovereignty means independence from the national laws of another state.[13] This is a standard that is accepted by all nations; however, in the context of international law, this concept is not as straightforward as it is regarding the national laws. In other words, "A community in order to be a state in the sense of international law, must be independent of other states. This does not mean that a state in the sense of international law must be independent of international communities."[14] Neither in the Iranian Constitution nor the Basic Law of Saudi, have any articles which accept the human rights values as much as the western human rights instruments. However, some articles,[15] to some extent incline to protect human rights by providing that it should be in accordance with Islamic *shari'ah*, which naturally is supposed to be interpreted by the religious scholars who are already appointed by the government. Nonetheless, Iran and Saudi Arabia have experienced several religious entities demanding the immediate application of *shari'ah*, as the primary legal system of the country.

This kind of attitude caused them to gain complete control of the country. By considering global pressures and the growing domestic demands regarding the civil and political rights of the nations, and out of the fear of being condemned by the global monitoring bodies

of human rights, they have initiated conferences and established instruments which with a human appearance could compete the western modules, such as the Bangkok Declaration 1993,[16] the Universal Islamic Declaration of Human Rights (UIDHR) 1981,[17] and the Cairo Declaration on Human Rights in Islam (CDHRI) 1990.[18]

Meanwhile, by signing the charter of the United Nations, both the countries have committed themselves to undertake international obligations in this regard. Therefore, they ought to observe Articles 1, 13, 55, 56, 62, 76, and the preamble of the Charter as well. It should be noted that the denial of the validity of human rights, whether right or wrong, is not only attributed to these countries; indeed, some philosophers of this era have absolutely denied human rights and its validity.[19,20]

Therefore, states subjected to international law whether voluntarily or involuntarily may limit their sovereignty.[21] Then the questions arise that how such a restriction of legal jurisdiction may run in the legal systems of Iran and Saudi in particular? Does the Islamic system of law oblige itself towards the two prominent schools of monism and dualism or does it set forth a third school or another system?

ISLAMIC LAW ADDRESSES THE INDIVIDUALS

At the first, it should be noted that the conflict between international and municipal law is definite, particularly in the context of human rights and jurisdiction. A state has a duty to protect all aliens including tourists, foreign investors, businessmen, diplomats, etc. in its territory; although, the executive officials will execute the domestic courts' orders which are passed on the basis of national laws. Therefore, the matter of confiscating properties of aliens, for instance, can be regarded as another area of conflict between international law and state law. Although, monism and dualism are two traditional attitudes to solve the matter of priority of the legal system in the relevant cases, the modern approach focuses on the *pivotal persona* which considers individuals no longer an object, and rather a subject of international law. Accordingly, this idea that individuals are the object of the law of nations is today abrogated.[22] It is suggested that similar to the states, international law attributes the rights and duties to individuals as well.

Whatever may be the case, the matter of conflict between these two legal approaches still remains. Since, both the international and national laws claim a similar jurisdiction over individuals, determining rights and duties, inside and beyond the territorial jurisdictions of states; with an accurate look at this issue, one can realize that the controversy between monism and dualism, actually turns to whether the international and the national law are two separate legal orders, or they are parts of the same order.[23]

Clearly, in the view of Islamic law, there is no legal system except what has been brought by Islam or approved by it. Therefore, a single legal system governs the relations among the men as individuals and the states, as communities of individuals. This kind of argument is the same as the argument of Hans Kelsen who believes, "There is no difference between international and national law, concerning the subjects of the obligations and rights established by the two legal orders. The subjects are in both cases individual human beings."[24]

Theoretically, it seems that Iran and Saudi Arabia should follow the monism but in adverse, *'inverted monism'* with priority to domestic laws. This approach is apparently in contradiction to Article 13 of the Draft Declaration on Rights and Duties of States 1949,[25] as well as the fundamental principles of international law which are highlighted in the advisory opinion of the ICJ, *'Applicability of the Obligation to Arbitrate'*.[26,27]

Islamic law regulates the conduct of individuals wherever or whoever s/he is, for instance, an official authority such as a diplomat has as many duties as a private person, in the view of Islamic precepts, and both are equally addressed by *Shari'ah*. Because the absolute sovereign is God, and all human beings have duties to fulfill, based on God's consent. In other words, similar to the modern approach to the subject of international law, in the view of Islamic law, individuals are subjects to the laws and this is the reason that it provides punishment for individuals and not the legal personalities.

The Islamic law as a system, including Islamic law of nations and human rights, was born in a personal in nature, without consideration of the territorial boundaries. This fact is perceived theoretically; however, in practice, the geographical limitations affected the enforcement of *Shari'ah*.[28] To philosophize the reason behind this argument, it can be pretended by the viewpoint that law

in the view of Islam is not a product of the incapable men since this kind of man-made laws are imperfect. Therefore, God through his messengers and infallible humans provides guidance and rules for all the members of the human society, irrespective of the concept of a special group or class. According to Majid Khadduri, "like all ancient laws, the law of Islam was intrinsically personal rather than territorial. For if Islam was intended for all mankind, the territorial basis of law would be irrelevant."[29]

It seems that other authors also agree with this view. They argue that *Shari'ah* 'addresses the conscience of the individual Muslims, whether in private or public and not the corporate entities of society.'[30] Although, it is believed in practice, the *Shari'ah* principles in the context of international law are replaced by European law. It other words, the scope of implementing *Shari'ah* is being limited day-by-day only to family law, inheritance, and private law such as personal law.[31]

However, Islamic administrations have to deal with legal problems arising from the interrelationship with the non-Islamic states. Therefore, these scholars conclude that the human rights laws are endowed by God to men and women with dignity on which a comprehensive human rights system can be drawn. Indeed, the matter of conflicts between domestic law and international law is entirely absurd in the Islamic legal systems; because the Islamic law of nations is not separate from the Islamic law in general. Both are based on the same sources[32] and are not distinct from one another. Therefore, the controversial conflict between municipal and international law does not arise here. The Islamic law of nations *'Siyar'*, is a chapter of the Islamic *corpus juris*, binding upon all who believe in Islam.[33]

Based on this argument, men or the believers have merely obligations or duties to obey the *shari'ah*. This logic is soundly declared by the *Quran*, that man has been created only to serve God.[34] Therefore, such human rights laws created by the international conferences or global entities would be acknowledged only if they are not contrary to the Islamic criteria. Hence, the clear concept of human rights in Islam should be illustrated by referring to the *Quran* and the practical behavior of Islamic states.

The immediate result arising from this viewpoint is that, principally the perspective of Islam on Human rights is God-centric

or God-conscious; since the *Shari'ah* itself would determine the scope of the rights, if it is taken as human rights in the modern sense, including duties towards God and towards the human beings, as defined by God.

If the foundation of argument relies on the supremacy of municipal law then the fundamental difference in the perspectives of Islam and the west goes far beyond and the matter of human rights would be apparent. Certainly, the Islamic approach is far away from the 'anthropocentric', which is the dominant view in the western hemisphere. Human rights in its western conceptual framework has continuously been challenging the perception of Islam on the same matter. As a result, Iran and Saudi take precautions in welcoming western ideas.

The Approach of Islam towards Human Rights

By no means are human rights denied in Islamic thought. For instance, if we have a very brief glance at the *Surah* (chapters) *'Balad'* and *'Noor'* in the *Quran*, we see that a whole range of social duties namely, freeing the slave or feeding the orphans are imposed on man.[35] Concerning the rights of child, *Quran* ordains, "Mother shall feed their children two full years….And the father shall be obliged to maintain and cloth them according to what shall be reasonable."[36]

On the other hand, religion may be considered as an original cause of human rights violations. Fairly as in the case of apostasy, conversion, and blasphemy,[37] indeed religion has traditionally been invoked to justify the violations of human rights.[38] However, the interpreters and religious philosophers are trying to represent an image of religion, which is compatible with basic human rights norms; although the religious texts, like all other ancient and historic texts, are open to a variety of interpretations. Therefore, contradictable interpretations may be brought on controversial subjects, such as the human rights norms. Furthermore, in the case of Islam, it is suggested that 'there is no single uncontested definition of Islam or its precepts.'[39] In this regard, the doctrine of an Iranian intellectual who had introduced the theory of 'expansion and contraction' of religious knowledge is noticeable, which has caused a lot of debates around this matter by religious scholars. According to this theory, every novel discovery or progress of knowledge will

affect our understanding of *shari'ah*, and it consequently expands on the concept of human rights.[40]

However, historical and philosophical debates continue on the question of whether Islam has a particular concept of human rights, and whether Islamic law can be consistent with the global human rights framework?[41] Although some scholars may suggest that the sources of the Islamic international law conform to the same categories defined by modern jurists and specified in the Statute of the ICJ, basically the sources of Islamic law in general and the Islamic human rights particularly as a branch of this system, are distinguished from the international law and the universal human rights law. *Quran* and the tradition of Prophet Mohammad present the basic sources of human rights in Islam. However, through the decades, some international Islamic rules have been formed by the agreements concluded between the Muslim 'Caliphs' and the non-Muslims.

Essentially, the concept of human rights in Islam demonstrates many conflicts with the western or the universal approach. In the light of its conceptual complexities, the issue of scope and extent of rights and freedoms are controversial. It seems that Muslims are currently in part divided on the question of what kinds of human rights protections are provided by Islam.

Although some Muslim states throughout the world have ratified the international human rights covenants, others still resist joining the international treaties, namely the ICCPR, the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), the United Nations Convention against Torture (CAT), and the Universal Declaration of Human Rights (UDHR).[42] Despite unstated political reasons, decisions are openly based on the ground that these human rights instruments do not acknowledge the rights, as the gift of God, and therefore violate *Quran* and certain common principles among all the jurisprudential schools *'Madhaheb'* by, for instance, asserting the right to change one's religion, equity of men and women, etc. For example, representatives of the Islamic Republic of Iran sometimes express their objection to the universal character and indivisibility of human rights, as interpreted in the Universal Declaration of Human Rights, which they consider to be a western secular concept of a Judeo-Christian origin, and

incompatible with the sacred Islamic *shari'ah*.[43] Thus it seems that some extent of pessimism towards the international human rights standards prevail among the Islamic states. The skepticism due to international law in general and human rights in particular has no short history in the world, including the Islamic countries.[44]

Predominantly, Iran and Saudi Arabia have been criticizing the UDHR[45] for its perceived failure to take into account the religious contexts of the non-western countries. In their view, the UDHR was a secular understanding of the Judaism and Christian traditions, which could not be implemented by Muslims without trespassing the Islamic laws.[46] Therefore a comprehensive response, firstly was made by the Muslim scholars to the UDHR and the UIDHR, 1981, published under the Islamic Council of Europe, and secondly the adoption of the CDHRI, 1990, issued by the member states of the Organization of the Islamic Conference (OIC). CDHRI was adopted by 45 foreign ministers of the OIC to serve as a guide for the member states on the matters of human rights. Frankly speaking, CDHRI should be regarded as the alternative to UDHR, since it underlines its bases according to *Shari'ah*.[47]

According to Article 25 of the CDHRI, Islamic law is identified as a sole source of legal opinions. The Article stipulates, "The Islamic *Shari'ah* is the only source of reference for the explanation or classification of any of the articles of this Declaration." Also, Article 22 declares, "everyone shall have the right to express his opinion freely, in such manner as would not be contrary to the principles of the *Shari'ah*."

To sum up, through the articles of CDHRI, it can be concluded that those human rights which are consistent with *Shari'ah* could be recognized only by the member states, and however may vary in the right to hold public offices, right to freedom of religion, and the right to financial independence of women in comparison to men, etc. Therefore, the key aspect on which CDHRI diverges from the UDHR is the issue of adherence to Islamic *Shari'ah*.[48] In the view of the *Quran*, which is in priority to the State law, and itself is recognized as the constitution in Saudi Arabia, 'all men have been created from a single soul.'[49] Like other ancient nations such as Hindus[50] and Babylonians, Islam has experienced practices that provide plenty of evidences, which may fall under the title of 'the law of nations.'

In the field of human rights, Islamic jurists have introduced several advanced legal concepts that have anticipated similar contemporary notions in this regard. These include the notions of the charitable,[51] trust and the trusteeship of property,[52] the notion of brotherhood,[53] and social security,[54] human dignity,[55] the dignity of labour, the presumption of innocence, the notion of universalism, fair contract,[56] commercial integrity,[57] freedom from usury,[58] women's rights,[59] privacy,[60] abuse of rights, juristic personality,[61] individual freedom, equality before the law,[62] legal representation, non-retroactivity, supremacy of the law, judicial independence, judicial impartiality,[63] and tolerance.

However, this fact cannot be denied that these civil institutions have been challenged by a variety of interpretations and implementations in contemporary Muslim societies. This is because the *Quran* has not provided a specific answer every minute detail of our socio-economic life. Rather it has laid down the broad principles in the light of which the scholars have deduced specific answers corresponding to the new situations. Therefore, to reach a definite answer about a new situation, the scholars of *Shari'ah* have a very important role to play. They have to examine every question in the light of the principles laid down by the *Quran* and *'Sunnah'*, as well as the standards mentioned by the earlier jurists which are enumerated in the books of Islamic jurisprudence; this practice is called *Ijtihad*.

It is clear, these scholars are influenced by their respective governments; therefore, we face different viewpoints. For instance, while several Islamic countries, including Indonesia and Pakistan, have largely secular constitutions and laws with only a few Islamic provisions regarding family law, a country like Turkey has an officially secular constitution. However, Iran and the rest of the Islamic countries often maintain a dual system of secular courts and religious courts in which the religious court mainly regulates marriage, inheritance, family laws, and the rules of evidence and testimony. However, concerning the implementation of Islamic penal codes, such as apostasy and adultery, the case remains the same and the capital criminal punishments are extensively applied. According to the Iranian Constitution, judgments of the courts must be substantially supported by the codified laws; in case a judge fails to find out the rules governing a relevant lawsuit, he shall render a verdict based on the other authentic Islamic sources.[64] Saudi upholds

the religious courts qualified for all aspects of civil and criminal disputes of daily matters guaranteed by a religious police whose duty is to keep social obedience.

Apart from the Gulf's attitude towards international law, the modern secular approach can be illustrated by the Indian system to extract new methods of incorporating the international norms to be invoked by domestic courts.

Indian Practice: A Motion towards the International Human Rights Norms

As mentioned in the concluding observations of the Human Rights Committee on India:

> The Committee recommends that steps be taken to incorporate fully the provisions of the Covenant in domestic law, so that individuals may invoke them directly before the courts. The Committee also recommends that consideration be given by the authorities to ratifying the Optional Protocol to the Covenant, enabling the Committee to receive individual communications relating to India.[65]

It is tried to scrutinize how far the international legal norms on human rights have been able to influence the Indian legal system. What can be the essential difference between the Indian system on one side and the Islamic legal system on the other side? Through such a comparative study one can safely realize the exact distinguishing points. Also in India, the treaties are not regarded to be self-executing. A treaty will bind domestic courts, only if the parliament has come up with legislation for the specific purpose of implementing the provisions domestically.[66] This policy has been continued even after the adoption of the *Bangalore Principles,* as the excerpt of the issues discussed at a judicial colloquium on the domestic application of international human rights norms.[67]

In other words, whether a treaty covers a novel field or is inconsistent with the existing laws, a new legislation is necessary to give effect to its terms. Therefore, unless municipal law is changed to incorporate the treaties, only municipal law may bind the court, and not the treaty itself.[68] It is suggested that only the Indian Parliament has the power to make laws concerning any of the matters enumerated in the Union Government's List;[69] including, entering into treaties and agreements with foreign countries and

implementing treaties, agreements, and conventions with foreign countries (The Constitution of India 1949, Art 253).

The power of the president also extends to 'the matters with respect to which Parliament has power to make laws, and to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement' (The Constitution of India 1949, art 73). Therefore, the Constitution has empowered Parliament to make any laws for the whole or any part of the territory of India for implementing any treaty, agreement, or convention with any other country or countries or any decision made at any international conference, association, or other bodies (The Constitution of India 1949, art 253). Parliament is supreme in the sense that it can pass legislations that are inconsistent with any treaty obligations that nevertheless bind India at the international level.[70]

The Constitution of India moreover reflects a commitment to human rights. These rights are indicated in chapters, 3 and 4.[71] It is a body of rules that establishes and regulates a government by laying down checks and balances of governmental authority. These rules are often justifiable in a court of law, and sometimes merely inspirational, but no less effective in regulating the governments, than the law *stricto sensu*. The founding drafters of the Indian constitution have considered the language of international norms in fashioning their guarantees.[72] Some of the possible constitutional provisions that affect human rights are, *inter alia*, the right to equality,[73] the right to sex freedoms,[74] cultural and educational rights,[75] the right to freedom of religion,[76] other civil and political rights available to people including, for example, the right to worship, privacy, etc. Judicial practice also considers the international standards of human rights.[77] Nevertheless, the constitution does not express any explicit provisions regulating the incorporation of international law in the Indian legal system.

However, Article 51 (c) as one of the directive principles of the state policy, stipulates that the state shall endeavour to foster respect for international law and treaty obligations in the dealings of organised people with another. Under Articles 251 and 254, the constitution is the supreme law of the land; moreover, it is “the source of all laws.”[78] The logical consequence of the superiority of the constitution is that all acts of the legislature or international law

in case of conflict with the national laws will be void,[79] and will not be binding either for the courts or the citizens.

International law has been incorporated into the Indian legal system, with the aid of a municipal statute. So it may not override the municipal laws in the event of a conflict.[80]

Of course, the nations must follow the international community, and the municipal laws must respect rules of international law, in the same way that the nations respect international opinions. The comity of nations requires that rules of international law be incorporated in the municipal systems, even without an express legislative sanction, provided they do not run into conflict with the Acts of parliament. But when they do run into such a conflict, the sovereignty and the integrity of the Republic and the supremacy of the constituted legislatures in making the laws may not be subjected to external rules, except to the extent legitimately accepted by the constituted legislatures themselves. The doctrine of incorporation also recognizes the position that the rules of international law are incorporated into national law, and considered to be a part of the national legislation, unless they conflict with an Act of the parliament. Comity of nations or whatever municipal laws, must not prevail in case of a conflict. National courts cannot claim a principle of international law contrary to the enactments of parliament. National courts will endorse international law, but not if it conflicts with the national laws. These are the organs of the national state, and not the international law; hence, must perforce apply the national law, if the international law conflicts with it.[81]

By considering various cases of the Supreme Court of India, briefly, it can be summarized that an international treaty does not automatically become a part of the Indian legal system. They have to be transformed into domestic law through legislation.[82] The Central Government has the exclusive power to implement international treaties.[83] The status of customary international law in domestic law is similar to the British common law system.[84] Accordingly, a rule of customary international law is binding in India, provided that it is not inconsistent with the law. Of course, it can be found evidences[85] upon which the Indian courts, and in particular the Supreme Court, have construed various statutes to ensure their compatibility with international law.[86] Moreover, in case of a gap, the courts may directly invoke the international norms in their

judgments; indeed, when domestic law is silent on an issue (non-liquet).[87] The rights recognized in international human rights conventions ratified by India may be applied by these courts as it has been done by the Supreme Court in the case of the *working women,* to fill the vacuum in the existing legislations.[88] However, this positive aspect of the Indian legal system by itself is not going to solve the problem of the probable conflicts, and therefore is not considered as the operation of monism theory whatsoever.

Conclusion

Islamic states give precedence to their domestic laws when it comes to implementation of the universal human rights' norms. Hence, the international norms solely are not regarded as a justification to implement any alleged rights. Only parliaments can evaluate a rule is as a domestic law. By considering the policy currently running by the Gulf countries, it can be concluded that in practice, they act upon dualism but theoretically, the monism is pretended. Such a legal stance is opposed to the modern approach to the international legal norms, which is followed by the Indian system, as an example of a secular state. India follows dualism both in practice and theory, avoiding conflicts with the international norms as far as possible, by interpreting the domestic rules in case of any probable conflicts. However, no party has a right to invoke international law before the Indian domestic courts, except in case of a gap (non-liquet) in municipal laws. Indeed, monism has no place in these legal systems, neither in India as a secular system, nor in Iran or Saudi Arabia as Islamic states.

On the other hand, the practice of the Islamic states should not be considered as a thorough implementation of the religion; since human rights comprise a body of values, rules, and customs that have been created through the decades of universal challenges. This system has not been created all of a sudden; rather ancient civilizations, such as Islam, have played a significant role in the process of these universal concepts and principles. Typically, it is possible to comprehend these values from the context of the *Quran*. Concerning some aspects of human rights, Islam has brought ideas and provided percepts, some examples of which were pointed out in this article. By referring to the verses of the *Quran*, one might safely conclude that not only is Islam not opposed to human dignity, but also it has contributed hitherto in improving the universal approach

on the promotion of human rights; although the actual policies of the Islamic governments may differ, as a result of their policies or various religious interpretations of Islamic laws. However, in the course of studying human rights, it is necessary to know that, the implementation of these norms has always been subservient to both domestic compulsions and external pressures.

Notes

1 The Basic Law claims the *Quran* itself as a constitution for the state. It states in art 26 that: 'The state protects human rights in accordance with the Islamic Shari'ah'.

2 See, Naser Ghorbannia, "The Influence of Religion on Law in the Iranian Legal System", in Mixed Legal Systems East and West, ed. Vernon Valentine Palmer, Mohamed Y. Mattar and Anna Koppel (New York: Routledge, 2016), 209-211.

3 The Constitution of Iran, 1989, Arts. 72, 77 and 96.

4 As a source of law expressed by art 38 of the Statute of the International Court of Justice (ICJ), 1945.

5 Sometimes it is referred to as an inverted monism. George Jellinek developed this doctrine; meaning that the state is the creator of law (even international law) but voluntarily adheres to it. And it may also unilaterally terminate them (international rules); see (Paton and Derham, 1972, 290 & 344).

6 According to this doctrine, unless there is a legislative enactment to transform an international norm into a municipal norm international law cannot be the law of land. This doctrine underscores the importance of the sovereign character of the state (Bledso and Boczek, 1987, 31).

7 Weston, Falk, and D'Amato, 1980, 117-118

8 Fenwick, 1965, 109.

9 The Basic Law of Saudi Arabia, 1992, art 70.

10 Article 2: 'Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant.' However, arts 14 and 50 also guarantee a right of access to courts.

11 Article 93: 'Without the guardian council the *majlis* shall have no legal validity except in case of approval of credentials of its representatives and election of six jurist members of the guardian council'.

12 *Island of Palmas (or Miangas) (Netherlands v US*) 1928 (Permanent Court of Arbitration) https://pcacases.com/web/sendAttach/714. Accessed November 16, 2020.

13 Kelsen and Tucker, 1966, 193

14 Kelsen and Tucker, 1966, 191

15 The Constitution of Iran, in art 20 and The Basic Law of Saudi in art 26 protect human rights; provided that it is in accordance with the Islamic law.

16 Verma, 2000, 482.
17 Concluded by non-governmental actors.
18 Concluded by The Organisation of the Islamic Conference (OIC).
19 Verma, 2000, 483
20 Alasdair Chalmers Maclntyre and Leo Strauss are among these philosophers.
21 Verma, 2000, 248.
22 Oppenheim and Lauterpacht, 1955, 637.
23 Harris, 1998, 6-8.
24 Kelsen and Tucker 1966, 552.
25 It states: 'Every state has the duty to carry out in good faith its obligations arising from treaties and other sources of international law and it may not involve provisions in its constitution or its laws as an excuse for failure to perform this duty'.
26 ICJ Report 1989, 12-34
27 See also art 27 of the Vienna Convention on the Law of Treaties, (VCLT), 1969.
28 Khadduri, 1966, 11.
29 Khadduri, 1966, 7.
30 Steiner, Alston, and Goodman, 2000, 390.
31 Steiner, Alston, and Goodman, 2000, 390.
32 The main sources of Islamic law can be divided into two categories. The ancient sources i.e., the *Quran*, 'Sunnah' or 'Hadith', 'Ijma', 'Qiyas', and custom. The modern sources are namely, judicial decisions, equity, justice, and public welfare; see (Sengupta and Mitra 2011, 1-8).
33 Khadduri, 1966, 6.
34 Quran, Ch. 51 v 56; It says: 'I have only created genies and men that they may serve me'.
35 See also, Ch. 24 v 22. (Quran, Ch. 90)
36 Also Ch. 4 v 2. (Quran, Ch. 2 v 233)
37 Eric Barendt has brought examples indicating the situation in the UK courts; He believes that the law of the UK discriminates in its treatment of different religious communities. See (Barendt, 2007, 168).
38 Harris, 1998, 627. The author illustrates different views from catholic and Islamic states on the issues of human rights, such as discrimination against women, abortion, and the female genital.
39 Mokhtari, 2004, 470
40 Mokhtari, 2004, 472
41 Today we face some Human Rights declarations that seem to represent the Islamic human rights ideas. For instance, see *UIDHR* Paris in September 1981. See also the *Arab Charter on Human Rights* approved by the League of Arab States in 1994.
42 For instance, it may be pointed to Iran that has not ratified CEDAW and Saudi regarding ICCPR and ICESCR.
43 See, https://www.un.org/en/sections/general/documents/index.html
44 Chimni 1993, 22
45 Despite criticising the UDHR, the Iranian government has ratified it, while the Saudi government has refused to ratify it.
46 Littman, 1999, 2-7

47 Denney, 2004, 272; See also arts 19 & 24 of the CDHRI.
48 Kazemi, 2002, 50.
49 *Quran*, ch.4 v 1; It implies that all humans are sacred and equal.
50 See, UNESCO (ed) *Human Rights: Comments and Interpretation* (1949); See also Anand, R. P. 2007. "*Development of international law and south Asia: a historical approach*". *Indian Journal of International law* 47: 535.
51 *Quran*, Ch. 30 v 39
52 *Quran*, Ch. 9 v 60
53 *Quran*, ch.49 v 10
54 *Quran*, ch.2 v 219. See also ch.2 v 177.
55 *Quran*, ch.38 v 72
56 *Quran*, ch.2 v 282
57 *Quran*, ch.5 v 1
58 *Quran*, ch.4 v 161
59 In the view of *Quran*, 'men and women are created from single being'; see ch.4 v 1.
60 *Quran*, ch.24 v 27) Also ch.49 v 12.
61 *Quran*, ch.53 v 38
62 *Quran*, ch.49 v 13
63 See ch.4 v 135; and ch.57 v 25; See also ch.42 v 15.
64 The Constitution of Iran 1989, Articles 166 and 167.
65 See, CCPR 1997.Similar considerations are made by other international monitoring bodies. See CEDAW, CAT, CRC reports of 2000-2007; < https://www.un.org/en/sections/general/documents/ >. Accessed November 16, 2020. Interestingly these statements were held after establishing the Bangalore principles was held in 1988. It seems these principles couldn't solve the problem of conflict.
66 See the Third Periodic Report of India, submitted under art 40 of the ICCPR; See para 8 of the UN Human Rights Committee Report (17 June 1996) UN Doc CCPR/C/76/Add.6; according to this report, the legal system of India requires enabling legislation or constitutional and legal amendments in cases where existing provisions of law and the Constitution are not in coordination with the obligations arising from the treaty.
67 Held in Bangalore, in February 1988. Reprinted in Commonwealth Secretariat *Developing Human Rights Jurisprudence* vol 3 (1990) 151, and the (1989) 1 *African Journal of International and Comparative Law/RADIC* (1989) 345.
68 *Jolly George Verghese & Anr v The Bank of Cochin* 1980 2 SCR 913 (Supreme Court of India). See also *Sheela Barse v Secretary, Children's Aid Society* 1987 SCC 469 (Supreme Court of India), as per Justice Bhagwati: 'India as a party to these international conventions, having ratified them, it is an obligation of the Government of India as also the State machinery to implement the same, in the proper way.'
69 Parliament (i.e. the President and the two Houses known as The 'Rajya Sabha' or 'Council of States' and The 'Lok Sabha' or 'House of the People',) may make laws for the whole or any part of the territory of India, while a state legislature may make laws for the whole or any part of that state. See the Constitution of India, 1949, arts 79 & 245.
70 As one example (note 1 above).

71 Part 4 of the Constitution of India contains a statement of 'Directive Principles of State Policy'. Unlike the statement of fundamental rights which precedes it (part 3), this statement is not directly enforceable by any court. But the Constitution provides that the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. See art 37.
72 Article 51 has shown how the Constitution of India is highly influenced, in determining the impact of human rights literature of treaties on the domestic legal system.
73 The Constitution of India, 1949, arts 14, 15 and, 16
74 See Article 19 which states: 'Grouping of these specific and significant facets of individual freedoms in a single Article reflects common importance of these freedoms for a wholesome personality'. See (Bhat, 2004, 353).
75 The Constitution of India, 1949, Arts. 29 and 30
76 See Articles. 25-28.
77 See *Chairman, Railway Board and Others v Mrs. Chandrima Das.* 2000 SC 988 (Supreme Court of India); In emphasising upon the applicability of the Universal Declaration of Human Rights and principles thereof in the domestic jurisprudence, it was held by the Supreme Court that 'Our Constitution guarantees all the fundamental human rights set out in the UDHR, 1948, to its citizens and other persons'. See also the chapter dealing with Fundamental Rights, contained in Part 3 of the Constitution.
78 *As Per Justice Chandrachud, in Olga Tellis & Others v Bombay Municipal Corporation & Others* 1985 SCC (3) 545 (Supreme Court of India).
79 Of course, international law may not be easily neglected, as stipulated by the court, in the case of *People's Union for Civil Liberties* v *Union of India* 1997 SC 1203 (Supreme Court of India), as per Justice Kuldip Singh, in the view of the court, International law today is not confined to regulating the relations between the states; International law is more than ever aimed at individuals.
80 *Gramophone Company of India Ltd* v *Birendra Bahadur Pandey and Others* 1984 SC 667 (Supreme Court of India) 671.
81 Ibid,
82 *State of Madras* v *G.G. Menon* 1954 SC 517 (Supreme Court of India) and *People's Union for Civil Liberties v Union of India* 1997 3 SC 1203 (Supreme Court of India); and for the proposition that some provisions of international treaties might be self-executing, see Justice Shah, in *Maganbhai Ishwarbhai* v *Union of India* 1969 SC 783 (Supreme Court of India); See also SK Verma & K Kusum (ed) *Fifty Years of the Supreme Court of India, Its Grasp and Reach* (2001) 632 & 807.
83 Article 253 of the Constitution provides that: 'Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body'.
84 Ibid; Article 372: 'Notwithstanding the repeal by this Constitution of the enactments referred to in art 395 but subject to the other provisions of this Constitution, all the law in force in the territory of India, immediately before the commencement of this Constitution shall continue in force therein until

altered or repealed or amended by a competent legislative or other competent authority'.

85 *S.C. Vosjala & Others* v *State of Rajasthan & Others* 1997 6 SCC 241 (Supreme Court of India): '(it is) now an accepted rule of judicial construction that regard must be had to international conventions and norms of construing domestic law when there is no inconsistency between them and there is a void in domestic law'; *Apparel Export Promotion* v *A.K. Chopra* 1999 1 SCC 759 (Supreme Court of India): 'In cases involving violation of human rights, the courts must ever remain alive to the international instruments and conventions and apply the same to a given case where there is no inconsistency between the international norms and the domestic law occupying the field'.

86 *People's Union of Civil Liberties* v *Union of India (note 86 above)*, affirming jurisprudence of Supreme Court in earlier cases concerning art 9(5) of the ICCPR that provides for a right to compensation for victims of unlawful arrest or detention. Remarkably, the Supreme Court has found art 9(5) of the ICCPR to be enforceable in India even though India has not adopted any legislation to this effect but had even entered a specific reservation to art 9(5) of the ICCPR when ratifying the Convention in 1979, stating that the Indian legal system did not recognise a right to compensation for victims of unlawful arrest or detention. See also the case of *Prem Shaker Shukla* v *Delhi Administration* 1980 SC 1535 (Supreme Court of India).

87 *Vishaka v State of Rajasthan*, 1997 6 SCC 241 (Supreme Court of India).

88 Ibid.

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