

## **Iranian Religious Intellectual approach to reconcile Islam and Human Rights as declared in the Universal Declaration of Human Rights**

**Abstract:** The main purpose of this paper is to examine the way Iranian religious Intellectual approach attempts to reconcile Islam and human rights as presented in the Universal Declaration of the Human Rights. To do that, I first introduce a number of different approaches which interpret the principles of Islam. Secondly, I will focus on certain essential conflicts between historical—traditional-- Islam and the Universal Declaration. In the third step, the particular attempt of Religious Intellectual Approach to reconcile Islam with Human Rights will be examined. Eventually, it will be shown where religious intellectual thinkers part with each other--into different branches.

To introduce the given approach, some introductory remarks are required:

### **First:**

It is useful to know varied ways through which principles of Islam have been interpreted in the history of this religion; this includes at least three main approaches:

**A:** Reason-Justice-Based approach includes some theologians and philosophers who have given priority to reason and justice rather than Islamic sources such as Qur ‘an and Mohammad’s actions and words (Sunnat). Mu ‘tazelism—in Sunni sect of Islam-- and shi ‘ah version of it is the most important group who wanted to make a rational interpretation of Islam. For them, rationality and justice are two outstanding criteria to evaluate religions—their principals and laws. In point of this view, justice is a rational criterion that even God acts upon it. In addition, God’s actions and commands have rational reasons. In conflict between Islamic sources and rationality, most of the time, this group has given priority to the second and presented esoteric commentary of the sources. In other words, for these scholars, good and evil are objective, moral values of actions are intrinsic to them, and justice is essential aspect of reality. These are criteria to evaluate all religions including Islam.

**B:** Text-based approach including Ash ‘arism in Sunni, and akhbari in Shi ‘ah, is a view through which Islamic sources are the most valid criteria for justice and even rationality. In conflict between them, most of the time, this approach has given priority to the Islamic sources; Justice and moral values are evaluated according to Islamic sources. For them, reason has only an instrumentalist role to fill flaws between different parts of the sources.

**C:** Intuition-based approach is the one, which believes that mystic vision is the most effective power to understand truth. Scholars belonging to this group have shown a lot of tolerance towards different religions and beliefs<sup>1</sup>. For them, criterion for being religious

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<sup>1</sup> As a distinctive case, one can note a poem by Sa ‘di: The children of Adam are limbs of each other  
Having been created of one essence. When the calamity of time afflicts one limb The other limbs  
cannot remain at rest. If thou hast no sympathy for the troubles of others  
Thou art unworthy to be called by the name of a man

is faith and inner state of persons not beliefs or obeying Islamic Laws, sha 'riat. The people who follow this approach believe in existential unity and tend to experience this unity, especially unity of God and human. In other words, they tend to reach Gnostic Divine attraction.

Theses different approaches, especially the first two, towards principles of Islam have affected Islamic legal system differently throughout the history. However, the one which has won the day is the second one--Text-based approach; in Sunni sect of Islam, Mu 'tazelism became extinct; in Shi 'ah sect, apparently and theoretically, the first approach has remained, but in practice, one cannot find important evidence of it.

### **Second:**

Prominence of the second view has formed an interpretation of Islam called Historical or traditional Islam in which Shari 'ah – Islamic Laws — is the prominent part of this religion. Historical Islam has formed an Islamic legal system conflicting with the Universal Declaration in some serious aspects. The fundamentalist version of the historical Islam is even prone to more conflicts.

In view of the fact that the intellectual approach contradicts traditional Islamic legal system (Shari 'ah) and stricter version of it—fundamentalist approach towards Islamic law, it is required first to introduce different approaches towards Islamic legal system in contemporary Iran:

In contemporary Iran, one can observe at least four approaches towards Islamic laws, being more or less compatible with the Universal Declaration:

**A) Traditional Islamic legal system** was common prior to Islamic revolution, and, to a great degree, has been substituted by fundamentalism after the revolution. This approach to legal system conflicts with human rights in different instances mentioned in the next pages. Some features of scholars who believe in this approach are that they are not familiar with modern concept of human rights and its conflicts with the approach. In fact, they still think and live in a somewhat traditional environment not struggling with modern achievements. Thus, they are not involved to make a solution for the problems. Among them are scholars who oppose Islamic republic government in Iran; however, they do not believe in democracy either. Most of the time, in confrontation between traditional approach and modern achievements such as human rights, unlike fundamentalism, traditionalism tend to retreat, while fundamentalism uses violence to impose traditional Islamic laws.

**B) Semi modern approach** is there among some Iranian scholars wanting to make active some potential parts of traditional Islamic legal system. Through this approach, they hope to present an interpretation more acceptable, from point of

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view of human rights. Two of the most effective members of this group are Grant Ayatollah Hosein Ali Montazeri and Sanei, the two former high-level officials of Islamic republic of Iran. They and thinkers like them have made some partial improvements. For example, one of the conflicts between traditional Islamic legal system and human rights is some violent punishments in Islamic laws. This group has used one rule in Islamic legal principles called conflict (Tazahom) rule to solve the problem. According to this rule, when two Islamic duties oppose each other, and Muslims cannot do both, they should implement one which is more useful for Islam and less harmful for it. Thus, according to some Islamic thinkers, performing Islamic punishments in the modern era can humiliate Islam, so it should be stopped<sup>2</sup>. However, some religious thinkers such as Dr. Kadivar and Dr. Soroush believe this approach cannot solve the problems finally. As they believe, this approach is able only to reduce the conflicts, not solving them comprehensively<sup>3</sup>.

**C) Fundamentalist approach** is common between some scholars who are in control of Islamic Republic of Iran, especially among them who are familiar with some important features of modernity, but prefer to implement traditional Islamic legal system, even through using force to impose them on vast majority who do not accept it. From their point of view, modernity, in varied ways, contradict Islam.<sup>4</sup> As a result, they attempt to make an alternative for that. Unlike the first group who are not involved with modernity, this group struggles with it in different ways including the attempt to make Islamic social sciences and Islamic substitute for democracy as they claim. Furthermore, they have tried to write Islamic version of human rights instead of the Universal Declaration.<sup>5</sup>, <sup>6</sup> President Ahmadi Nejad is the most infamous political representative of this group.

**D) Religious intellectual approach** is common among scholars who try to present an interpretation of Islam compatible with human rights. To do so, they attempt to revive Reason-justice-based approach towards Islam explained above briefly. Besides, in order to present a spiritualist interpretation of Islam, instead of traditional and fundamentalist, this group tries to revive Islamic Gnostic sense of Islamic faith based on Islamic mysticism<sup>7</sup>. With respect to this intention, in addition to rational tradition in history of Islam, this view has used some modern philosophical achievements to make the situation more suitable, achievements such

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<sup>2</sup> For example see Ayatollah Dr. Mohaghegh Damad, Hooode Islami Tavaghof ya Ejra (Islamic Punishment: enforcement or suspension).

<sup>3</sup> For example see Mohsen Kadivar, Hoghough basher va Roshanfekrie Dini (Human Rights and Religious Intellectuality)

<sup>4</sup> In the next pages, this view to human right will be described, so here, I do not deal with it more.

<sup>5</sup> Since, in the next pages, their view to the human rights will be described in details, I do not define them here more.

<sup>6</sup> For example see Ayatollah Javadi Amoli, Falsefeye Hoghoughe Bashar (Philosophy of human Rights ), or see Ayatollah Mohammad Taghi Mesbah Yazdi , Khastagah-e Hoghough ( Origin of Law).

<sup>7</sup> For example see, Mohsen Kadivar, Az Islam-e Tarikhi ta Islam-e Manavi ( From Historical Islam to spiritual Islam), Sonnat va secularism ( Tradition and Secularism), p405-431 or see Mojtahd-e Shabestari, Hermetic, Ketab va Sonnat ( Hermeneutics, Book and Tradition), Pp. 80-84

as holist approach to epistemology by Dr. Soroush and hermeneutics by Dr. Ayattollah Mojtabeh Shabestari.<sup>8</sup>

### **Third:**

To examine the intellectual approach, I will first show some conflicts between modern human rights, especially the Universal Declaration, and fundamentalist Islam. However, since the fundamentalism is rooted in the traditional approach, and has a lot in common with it, the next part of the paper includes similar aspects of both traditional and fundamentalist approaches:

### **Traditional and Fundamentalist Approaches and their Conflicts with Human Rights:**

These conflicts can be classified into two groups: **philosophical and practical.**

#### **A) Practical conflicts( Instances of conflicts)**

As presented by some Islamic scholars, three different types of traditional Islamic laws can be distinguished: laws regarding worship (Ibadat), laws regarding social and commercial interactions among people (Mu 'amelat), and political laws (siasiat)<sup>9</sup>.

As far as ibadat is concerned there is no serious conflict with human rights since ibadat is a set of rules to regulate the relation between human beings and their God. However, Mu'amelat, laws adjusting relation between people, and Siasat show some serious conflicts with the Universal Declaration. **In fact, from point of view of traditional and fundamentalist approach, human rights are not guaranteed for human beings as human beings. In other words, rights for a human being depended on other features.** Unlike the traditional Islamic law, As far as The Universal Declaration is concerned some basic rights are guarantee for every person through out the world. In other words, these rights are essential and inalienable to human being: no body, no government, and no social arrange are allowed to violate them.

After this overall introductory, this paper is, now, located in a proper place to introduce some parts of traditional Islamic legal system conflicting human rights<sup>10</sup>:

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<sup>8</sup> Dr.Soroush was leading scholars by writing a far effective book called Ghabz va Bast-e Theoric-e Shariat( The evolution and Devolution of religious Knowledge ). Dr. Shabestari has presented his approach by writing some books and papers, notably Hermanetic, Ketab and Sunnat ( Herman tics, Book and Tradition)

<sup>9</sup> This classification is made by some scholars suh as Dr. Mojtabhd Shabestari( for example see, Mojtabeh Shabestari, Naghdi bar Ghara 'at-e Rasmi az Din—A Critique of Official Reading of Religion, p 162) ,but there are other classifications as well.

<sup>10</sup> One of the well-known sources introducing these conflicts is an interview by Kadivar called Hogheh-e Bashar and Roshanfekri-e Dini( Human Rights and Religious Intellectuality) or a more complete source is his book called Hagh al-Naas ( Rights of People).

**1) Beliefs as a source of rights:** As far as traditional Islamic legal system concerned legal equality is not guaranteed to all human beings. As a case in point, Muslims are free to advertise and prompt Islamic teachings in the society and criticize other religious beliefs, but, at the same time, non-Muslims are not allowed to advertise their beliefs in the society, or criticize Islamic beliefs. According to Islamic laws, in case people who are Judaist, Christian, and Zoroastrian<sup>11</sup> obey Islamic law in public sphere, some rights, I emphasize only some rights, will guarantee for them.

The condition for unbelievers—non-Muslim-non Ahl al-kit persons-- will be worse. To sum up, it is clear that in this legal system, basic human rights, to a great degree, depend on the kind of beliefs.

**2) Gender Inequality:** legal inequality between men and women is other conflict between traditional Islamic legal system and human rights. A typical example is Islamic laws regarding inheritance. According to this system, the proportion of a brother's is twice a sister's<sup>12, 13</sup>.

**3) Slavery system:** traditional Islamic legal system had accepted slavery system in some situations although, nowadays, this is obsolete.<sup>14</sup>

**4) Some limitation on beliefs:** according to this system, Muslims are not free to change their religion. In addition, Ahl al-kitab can only change their religions to Islam not other religion.<sup>15</sup>

**5) Islamic punishment:** according to modern common sense and human rights, some Islamic punishments such as stoning to death are violent and instances of torture.

**6) Discriminative law on leadership of society:** some Islamic scholars believe only Islamic faqihs— persons who know Islamic jurisprudence-- have rights to be the leader of government. This approach is serious in fundamentalist view which wants to manage society as ruler. This view towards government and managing society is not accepted by all traditional Islamic faqihs. Unlike a big part of traditionalist, the fundamentalist put a great emphasis upon this claim.<sup>16</sup> In addition, they believe, or perform practically, in using violence to implement this idea against people who do not accept this claim, here I mean vast majority of Iranian. The most effective scholar among this group, in contemporary Iran, is Ayattollah Mesbah

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<sup>11</sup> In Islamic culture, these three groups are called Ahl al-kitab.

<sup>12</sup> There are a lot of other cases which are not mentioned here.

<sup>13</sup> Traditional scholars supporting this view usually refer to natural position for men and women in a society. Therefore, one important critique of this is challenging this base. For example see an interview with Mojtahde Shabestari, Zanan (Women)-- a famous Iranian feminist magazine-- No 57

<sup>14</sup> Many detail can come up in this issue, but, here, the aim is not a detailed description of the situation.

<sup>15</sup> Like the others mentioned above, it is possible to introduce other cases.

<sup>16</sup> For example see, Mohammad Taghi Mesbah Yazdi- collected by Mohammad Mehdi Naderi Qomi, Negahi Gozara be Nazarih-e Velayat Faqih( A Glance on Theory Of Guardianship of Faqih)

Yazdi. Definitely, very few western citizens know him, but I think vast majority of them know political representative of this approach--president Ahmadi nejad<sup>17</sup>.

**One point is that in** confrontation between traditional approach and modern achievements such as human rights, unlike fundamentalist, traditionalism tend to retreat, while fundamentalism uses violence to impose traditional Islamic laws.

In addition to this essential conflicts on which Kadivar has insisted, one can find other instances, as a case there is some limitations regarding marriage between Muslims and non-Muslims. However, these are not and do not include very serious instances. To sum up, it seems that traditionally Islamic legal system violates articles 1, 2, 3, 4, 5, 7, 12, 15, 16, 18, 19, 20, 21, 25, 26, 29 of the Universal Declaration, more or less. **Nevertheless, one can find Islamic legal system, largely, free from ethnic and racial discriminations.**

**Humanitarian Human Rights: An interesting point** is that in point of view of humanitarian rights, the traditional Islamic legal system is more acceptable<sup>18</sup> For example, In Islamic legal system, some special rights are considered for children, civilians and women during wars. For instance, during a war, a Muslims are not allowed to kill children or women.

#### **B) Philosophical conflicts:**

Between human rights as a modern concept and traditional-fundamentalist approach, there are two obvious basic conflicts. First, in the language of modern concept of human rights there is a priority for right not for duty. On the contrary, the language of traditional-fundamentalist Islam is a duty-based one. Second and more important that the scholars of these two groups believe only God can be legislator<sup>19</sup>. Therefore, there is not any room for human to do that. These conflicts have not been noticed by traditional scholars because they, in fact, theoretically speaking, are living in a traditional style life and do not struggle with this kind of problems. On the contrary, the fundamentalist and intellectual Islamic scholars have been struggling these problems in a large extent. Although using some achievements of modernity, fundamentalism denies some basic aspects of modernity. To examine intellectual approach, it is required to introduce some other features of fundamentalism:

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<sup>17</sup> For all six parts mentioned above, more much instances of these discriminative laws can be reported. For example, see Mohsen Kadivar, Human Rights and Religious Intellectuality.

<sup>18</sup> One excellent source to know about this claim is Resaley-e Hoghough ( The Treatise on Rights) by Ayatollah Hosein Ali Montazeri. The other suitable source is a paper by Ayatollah Dr. Mohaghegh Damad called Hoghough-e Bashar doostaneh az nazar-e Islam and hoghough-e Bein al-melal-e ma 'aser (Humanitarian law form point of view of Islam and contemporary international laws).

<sup>19</sup> For example see Mesbah Yazdi, collected by Mohammad Mehdi Naderi Qomi and Mehdi Karimi Nia-, Nazarieh Hoghoughi-e Islam ( Islamic Legal Theory)

### **Some Anti-modern aspects of fundamentalism:**

1) According to it, modern sciences as secular sciences are far from Islam, so Muslims should try to make Islamic counterparts for them, specially for humanity and social sciences.

2) Humanism as a foundation of modernity is known as a blasphemous school challenging Islam. With respect to this claim, they believe any kind of legislating by human is blasphemous. From this point of view, legislating is limited to God, so only Islamic faqihs—persons who know Islamic laws-- are allowed to interpret Islamic valid and authentic sources to find proper Islamic laws for all new affairs.

3) There are only **one true** and valid interpretation of Islam. Therefore, only their own understanding of Islam is acceptable, and other's are false interpretations, which can be banned through using force. In other words, they accept a raw realism about knowledge and interpretation<sup>20</sup>.

4) **All laws presented in Qur 'an or Sunnah (The reported sayings and actions of Mohammad, and 12 Imam for Shiah) are eternal, for all societies and forever.**

5) Islam is a comprehensive school having programs for all aspects of human life.

**One important point is one can find different types of evidence in Qur 'an and Sunnah; some of them support human rights and some deny it. In case that these two different kinds contradict, fundamentalist, most of the time, consider the ones which deny modern human rights.** For example, some verses in Koran invite Muslims to fight against pagans and unbelievers. However, there are some other verses proposing tolerance between them<sup>21</sup>. Most important among them, which are compatible with human rights, are some verses which declare dignity of all human as human, not as Muslims.

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### **Intellectual Approach to reconcile Islam and human rights as presented in the Universal Declaration:**

**Some important features of intellectual approach:** Intellectual approach has some specific features: rationality is its priority to understand Islam; this approach has tried to present a special reading of Islam based on main and essential aims of the religion, so it emphasizes on mystical meaning of Islamic faith and on aims of laws, instead of the forms.

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<sup>20</sup> For example see Gholam Ali Azizi, Ta 'addod-e Ghara 'atha ( plurality of readings)

<sup>21</sup> As a historical case, I can remind that Madam Eleanor Roosevelt said that Pakistan through using such verse voted to the benefit of The Universal Declaration, although first, supposedly, it was to vote against the Universal Declaration because it had confirmed freedom of changing religion. For example see Johnson Glen, La Delaration Universlle des droits de l home, chapter 2, section 2, footnote

The aim of religious intellectual thinkers is to reconcile a reading of Islam with a reading of modernity. Intellectual approach not only accepts the Universal Declaration but also believes that accepting it is a condition to be Muslim in the modern era!<sup>22</sup> This approach admires human rights presented in the Universal Declaration since the approach believes the Universal Declaration is the most valid source for justice and ethics in the modern life we live in.

### **The way through which the approach accepts the Universal Declaration:**

**A:** Although the text-based approach has won the day in practice, all shiites, theoretically speaking, believe that basic principles of Islam are rational, and all Muslims should accept them on a rational inquiry. In fact, Iranian religious intellectual thinkers have considered this approach as revival of the former rationality of Islamic tradition<sup>23</sup>.

**B:** Unlike fundamentalism, intellectual approach has tried to verify that varied interpretations—readings-- of Islam not only is possible but also has been existing, currently and in the history of Islam<sup>24</sup>.

After presenting some premises above, I am now in a suitable position to introduce different ways used by intellectual approach to reconcile Islam and human rights. This approach includes varied branches or ways:

**First:** one of the most effective ways to present a reading of Islam which is more compatible with human rights, as presented in the Universal Declaration, is that intellectual Muslims have emphasized on a basic rule in Islamic tradition:

- 1) All Islamic laws – shari ‘at-- are ordered because of some benefits.
- 2) The benefits of social-commercial and political edicts are to be rational and verifiable in this world. In other words, these sets of laws are prescribed to make a pleasant life. For example, punishment of a thief has been prescribed to reduce theft in a society. Benefit here means peace, justice, order in society and so on.
- 3) This set of laws is only means to regulate relations—between people and between state and persons -- in society. They are only means—instruments. That is, the aims are important.
- 4) In case rationality declares that some other new laws are more suitable to satisfy aims of Shari ‘at, so Muslims should take them instead of traditionally

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<sup>22</sup> For example, see Mojtahed shabestari, Ta ‘ammolati dar ghara ‘at-e Ensani az Din( Reflections on A human reading of Religion), page 69

<sup>23</sup> For example see, Abdul Karim Soroush, Tajdid-e Tajrobeh Etezal ( Reviving the experience of the Mu ‘tazilite School) which can be found on WWW.drsoroush.com

<sup>24</sup> The most important thinker who has argued for the Idea Is Abdul Karim Soroush, see Ghbaz va Bast-e Teoric-e Shari ‘at ( The evolution and the devolution of religious knowledge). After Soroush, Mojtahed Shabestari has supported the idea through writing some papers and books, see for example Hermanetic, Ketab va Sunnat ( Hermeneutics, Book and tradition)

Islamic laws. In other words, in conflict between rationality and traditionally Islamic legal system, rationality can make Shari 'at obsolete; all the time Muslims should criticize the laws to choose laws which are more suitable to their social-economic-political situations. In other words, a set of laws is to regulate the relations in a society, so the laws cannot be prescribed without paying attention to the special conditions in a society;<sup>25</sup> They are context-sensitive.

5) Human achievements, common sense and scientific researches have shown that human rights are more effective to make a just, ethical and peaceful society, so Muslim may accept human rights as a religious, in addition to rational, duty.<sup>26</sup>

Through historical investigation, the intellectual thinkers have tried to show that laws presented in Qur 'an were useful and just at the time of Mohammad, the prophet. In other words, the laws met different needs of that time, and since the needs are different from our needs, Muslims, now, should find other suitable laws. For example, polygamy is accepted in Qur 'an. According to common sense existing now, polygamy is an unfair manner towards woman. However, one can consider that Qur 'an accepted it in an era when the number of women was much more than men among Muslims. In addition, in a patriarchal tribal society such as Arabic society at that time, women needed men to protect them against dangers. As a result, Islam accepted it as a response to a social need. Owing to the fact that in modern life there is not such situation, the law is obsolete. Other example is violence in traditionally Islamic punishment. However, one may consider that such punishments were not considered violent or unfair at the time of Mohammad. In fact, they were easier than tribal punishments, which were commonplace among tribes. Islam modified them towards justice and individuality.

**Justice** has been considered as one important aim of Shari 'at , so automatically considered in the argument above; however, because of importance of this criterion in rational-justice-based Islamic approach, this criterion has occupied a special place in thought of some intellectual thinkers. For example, Mojtahe Shabestari in different papers has argued that some laws were confirmed in Islamic sources since they were considered just at the time of Mohammad. In addition, he has shown that to understand justice we cannot refer to Islamic sources but to human achievements about justice<sup>27</sup>.

In order to enhance their positions, Intellectual thinkers have distinguished between two different parts of Qur 'an and other Islamic sources: Substantial and

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<sup>25</sup> for example, Mojtahe Shabestari insist that critique of laws presented by Islamic faqih is not a duty or right of only Islamic thinkers, but all Muslims<sup>25</sup>.

<sup>26</sup> One reading of this argument is there in Kadivar Interview, Hoghough-e Bashar va roshanfekri-e Dini( Humanrights and religious intellectuality) or see Mojtahe Shabestari, Naghdi bar Ghara 'at-e Rasmī az Din (A Critique of Official Reading of Religion), pp.161-183

<sup>27</sup> For example, see Mojtahe Shabestari, Reflections on A Human Reading of Religion, pp. 167-169

accidental parts. To make them separate, they have exploited at least two methods or strategies; using counterfactual method and historical investigation<sup>28</sup>.

For example, imagine Islam had emerged among non-Arabic people, so the language of Qur 'an would have been non-Arabic as well. As a result, Arabic is not substantial part of Islam. However, one cannot imagine Islam without Unity of God or Akharat (next World). Through this way accompanied with philosophy of law, they have shown legal laws presented in Qur 'an are not substantial part of Islam. As a result, they are not eternal and for all over the world.<sup>29</sup>

The other method to separate the two different parts is putting different Islamic parts in their historical context. Through this way, one can see that traditionally Islamic laws were considered just at the time of Mohammad. In addition, one can see that criterion for justice should be found out of Islam. The laws were accepted or declared by Islam since they were just according to the criteria of that time. In addition, they satisfied some needs belonging to that time not forever. As a result, Muslims are obliged to take laws considered just according to contemporary rationality and useful for their needs. As they have pointed out, the Universal Declaration is most valid source for justice and meets our needs.

**Second:** the traditional-fundamentalist believe that all laws presented in Qur 'an and authentic Sunnat are eternal unless we can prove they have become obsolete. In contrast, intellectual approach believes that no law of Qur 'an is usable after Mohammad unless Muslims can prove the situations are the same as Mohammad's time. They have argued that if one wants to declare a law as eternal, he should prove that the law meets an eternal need. If he is not able to find such need, he will not be allowed to declare it as eternal.<sup>30</sup>

To prove its idea, intellectual approach has used philosophy of law to show all laws are useful only in some situations. A legal system is useful only until the situation has remained alike. Since modern life is, to a large degree, different from traditional life, especially Arabic life at the time of Mohammed, the laws presented in Qur 'an is obsolete unless we can prove their situation has remained the same.

### **Third:**

Dividing Islam as substantial and accidentals has provided another way to criticize traditionally Islamic legal system. According to the idea:

- 1) Aim of a Muslim Is a transcendental and mystical growth toward God and happiness in the next world.
- 2) A Muslim as a Muslim should choose a legal system through which the aim of being Muslim will be more accessible.

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<sup>28</sup> For example, see Abdulkarim Soroush, Zati va Arazi dar Din (Substantial and accidental in religion) or see Mojtahed Shabestari, Naghdi bar Ghara 'at-e Rasmi az Din (A Critique of Official Reading of Religion), pp.267-271

<sup>29</sup> As far as I know this strategy is used only by Abdul Karim Soroush. Mojtahed Shabestari has used the second strategy more.

<sup>30</sup> For example see, Mojtahed Shabestari, Hermanetic, Ketab va Sunnat ( Hermeneutics, Book and tradition), pp.42-55

3) The religious intellectual approach has argued that in modern life in which we live these aims of Islam are more accessible through using human rights than through using traditionally Islamic legal system<sup>31</sup>. In fact, through this argument, they insist on basic principles of Islam itself—going toward God—instead of a more pleasant, peaceful or just life. As a case in point, hypocrisy is one of the most important sins in Islam. However, experimental researches have indicated that in a democracy system in which changing religion is free, hypocrisy is less than in a society in which traditionally Islamic laws govern. Therefore, in modern life a Muslim had better follow Human rights.

#### **Fourth:**

As their approach grants a priority to rationality, they have tried to criticize fundamentalist Islam and traditionally Islamic legal system according to some non-religious achievements which are considered rational—for instance some achievements regarding political philosophy or other branches of humanity. Because Islam – from point of view of reason-justice-approach should obey rationality, so this way has occupied a big room in intellectual approach. Dr Soroush, Mojtabeh shabestari and a lot of other thinkers follow this approach<sup>32</sup>.

#### **Fifth:**

In addition to these general ways, different thinkers who are belonging to this approach towards Islam have criticized traditionally Islamic legal system in detail. For example, Soroush, Mojtabeh shabestari, and Kadivar have criticized-- in a great degree-- special right of Islamic faqih to rule. Some thinkers have criticized all discriminative Islamic laws in detail.<sup>33</sup>

**An interesting point** is that this approach not only accepts the Universal Declaration but also declares that this acceptance and acting upon it is a necessary condition of being Muslim in modern life<sup>34</sup>. For example Mojtabeh Shabestari believes because religious faith is superstitious-prone, so freedom of speech helps Muslims to revive their faith<sup>35</sup>. He emphasizes some thoughts which are apparently anti-religion, thinkers such as Marx, Freud and Feuerbach. According to him, these thinkers help religious persons to clean their faith from impure aspects.

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<sup>31</sup> For example, see Mojtabeh Shabestari, Naghdi bar Ghara 'at-e Rasmi az Din (A Critique of Official Reading of Religion), pp.265-311

<sup>32</sup> For example, see Abdul karim Soroush, Akhlagh-e Khodayan (Ethics of Gods)

<sup>33</sup> For example see, Kadivar, Hagh al-nas (the rights of people), pp181- 386 or some papers by Mojtabeh Shabestari, as a case about freedom of choosing religion and freedom of speech see For example, Mojtabeh Shabestari, Naghdi bar Ghara 'at-e Rasmi az Din (A Critique of Official Reading of Religion), pp.334-339

<sup>34</sup> See for example, Mojtabeh Shabestari, Naghdi bar Ghara 'at-e Rasmi az Din (A Critique of Official Reading of Religion), pp.265-311

<sup>35</sup> for example, Mojtabeh Shabestari, Naghdi bar Ghara 'at-e Rasmi az Din (A Critique of Official Reading of Religion), pp.291-297

### **Where Religious Intellectual Approach Divides in Different Branches:**

Is only one kind of legal system acceptable from point of view of human rights—here The Universal Declaration? Are religious signs such as Hijab( Islamic clothing for women) should be free or banned in public places? Is there any room for actions such as homosexuality in Islamic societies?

These are only some samples of important and serious questions that should be debated on. As far as I know Iranian religious intellectual approach has not dealt with these kinds of questions much. They were trying to introduce the idea of human rights to Iran and Islam. However, some Iranian religious intellectuals have started to write papers on these kinds of Issues. It seems this point is a point where this approach tends to divide into different branches. For example, Akbar Ganji argues that homosexuality should be free in Islamic societies, or Arash Naraghi has written a paper to prove Muslims can accept it<sup>36</sup>! Mojtabeh Shabestari has implied that some parts of the Universal Declaration allow Muslims to make a legal system slightly different from western democracies. He mentions article 29th of the Universal Declaration to argue. He argues that maybe Muslims can make a system slightly different from their similar in western countries. However, he warns that Muslims are not allowed to put limitation on Freedom of Speech and democratic system. Limitation can only be accepted through a democratic process for some behaviors in public spheres, not for example for freedom of Speech, or political limitation.<sup>37</sup> Nevertheless, it seems he discusses this kind of limitation only for that kind of Muslims who are seriously struggling this .In other words, he himself appears to be more liberal.

Unlike Mojtabeh Shabestari, Kadivar seems more serious to put some partial limitations on social liberties in Islamic societies. He, in a similar way to Mojtabeh Shabestari, declares that some parts of The Universal Declaration should be implemented in all societies or cultures, they are inalienable and necessary all over the world forever . This includes parts such as freedom of Speech, political freedom, freedom of religion. In fact, he divides behaviors into three different types: Behaviors such as kind of dressing should be free, some behaviors such as pornographic advertisements can be banned in some societies such as Islamic societies—no need to mention that this limitation is allowed only through a democratic process, so revisable in the future.

**Here it is important to be mentioned that these restrictions does not embrace some basic liberties such as freedom of speech. Besides, these restrictions are not a matter of private life, but only a matter of public sphere. The third point is that these limitations can only be put through a democratic**

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<sup>36</sup> See, Arash Naraghi, Islam and moral status of homosexuality

<sup>37</sup> See for example, Mojtabeh Shabestari, Naghdi bar Ghara 'at-e Rasmi az Din (A Critique of Official Reading of Religion), pp.300-308

**process, so they are revisable by other political parties<sup>38</sup>. The other important point is that Kadivar himself acknowledges that this kind of debates on human rights is new in Iran; therefore, only a primitive debate has been done and religious intellectuals must explore deeper dimensions of the debates.**

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<sup>38</sup> For example, see, Kadivar, *Hoghough-e Bashar, Laitisite va Din* ( Human Rights, Laicism and religion)