

COMPARATIVE STUDY OF CIVIL RIGHTS IN THE CONTEXT OF ISLAMIC LAW AND WESTERN CIVIL LAW AND PUBLIC PROTECTION POLICIES

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Abstract

The primary objective of this research article is to undertake a comparative analysis of civil rights, specifically within the contexts of Islamic law and Western civil law. The examination of civil rights holds immense importance in relation to safeguarding and advancing individual rights and privileges within a legal framework. This study aims to examine the fundamental principles, underlying foundations, and practical implementation of civil rights within Islamic law and Western civil law. The objective is to identify and elucidate the similarities, distinctions, and potential convergence points between these two legal systems. It is crucial to acknowledge that this analysis provides a comprehensive perspective, while also acknowledging the presence of divergences and intricacies inherent in both Islamic jurisprudence and Western civil legal frameworks. Furthermore, the concept of civil rights and its interpretation has the potential to undergo a transformation as communities and legal systems advance.

Keywords: Civil rights, Islamic law, Western law, Civil law, Comparison

INTRODUCTION

The notion of civil rights occupies a pivotal position in the evolution of fair and impartial societies, as it guarantees the safeguarding and implementation of essential freedoms for individuals (Nawaz, Shabbir, Shaheen, & Koser, 2021). Islamic law, or Shariah law as it is commonly referred to, represents an all-encompassing legal framework that finds its origins in the Quran, Hadith (the recorded statements and acts of the esteemed Prophet Muhammad), and the meticulous interpretations of esteemed legal scholars (Razavi Jarrah, Mokhtarpour, & Zare, 2023). In contradistinction, it is worth noting that Western civil law finds its origins in venerable legal traditions, namely customary law, common law, emperor's decrees, Roman law, and statutes promulgated by legislative bodies, known as senate statutes (Quigley, 1989). The purpose of this essay is to compare and contrast the protections of civil liberties under Islamic law and Western civil law. The safeguarding and upholding of people's autonomy and liberties within the framework of law make the study of civil rights of the utmost importance. This research aims to shed insight on the parallels, distinctions, and possibilities of convergence between Islamic law and Western civil law by comparing and contrasting their respective piles, tenets, and implementation of civil rights.

Objectives of the Study

1. To analyze the concepts of civil rights within the framework of Islamic and Western civil law.
2. To conduct a comparative analysis of the fundamental principles and origins of civil rights as delineated in Islamic law and Western civil law.
3. To examine the implementation and understanding of civil rights in specific domains, such as freedom of expression, equality, and privacy, within various legal frameworks.
4. Analysis of potential points of convergence and divergence between Islamic law and Western civil law in relation to civil rights.



METHODOLOGY

The present research article utilizes a methodology of comparative legal analysis, incorporating primary and secondary sources from both Islamic law and Western civil law. Primary sources encompass a range of authoritative materials, such as Holy Scriptures that is Quran and Sunnah along with Hadith, legal opinions, and rulings, which hold significance in both Islamic jurisprudence and Western civil law jurisdictions. Secondary sources refer to academic articles, books, and pertinent legal literature that analyze civil rights within legal frameworks.

Elucidation

The comparative analysis of civil rights within the framework of Islamic law and Western civil law necessitates a comprehensive examination of the underlying principles, sources, and implementation of civil rights within each respective legal system. It is imperative to acknowledge that there exists considerable diversity within the realms of Islamic law and Western civil law, wherein discrepancies in interpretation and implementation are observed across various nations and localities (El Khalfi, Zukri, & Victoria, 2019). However, it is important to provide a comprehensive examination of several crucial factors to be considered in this comparative analysis.

1. Legal Foundations of law

The underpinnings of law are the genesis or basis from which legal principles and regulations are derived. These sources serve as the foundation for establishing the legal framework of any state. Islamic Law, also referred to as Sharia, is a legal system that draws its principles from various sources. The primary sources that inform the Islamic tradition encompass the Quran, revered as the sacred scripture of Islam, and the Hadith, a compilation of the Prophet Muhammad's (PBUH) declarations and deeds (Basit et al., 2022). Additionally, the scholarly consensus (ijma) and rational deduction (qiyas) serve as supplementary sources of guidance for Muslims. Comparatively, Western civil law systems rely on legislation, statutes, codes, and judicial decisions as their foundation. The primary sources of law in Western countries may differ, but they commonly include constitutions, statutes, and case law (Watkin, 2017).

2. Doctrine of Civil Rights

The notion of human rights pertains to the foundational entitlements and liberties that are innately possessed by every individual, irrespective of their nationality, ethnicity, gender, or any other distinguishing attribute. In comparison to other legal systems, Islamic law places a strong emphasis on the notion of dignity for humans and the preservation of basic human liberties regardless of gender, cast, creed, or profession. The rights mentioned are based on Islamic guidelines and are regarded as inherent to all individuals. The key principles encompassed in this statement are equal treatment, fairness, and the protection of life, beliefs, intellect, honor, and property (Rahman, Iqbal, & Soufi, 2020). Western civil law systems, in comparison to other legal systems, are often grounded in the fundamental principles of freedoms and rights enjoyed by individuals. The aforementioned rights are frequently safeguarded through constitutional provisions, exemplified by the Universal Declaration of Human Rights and diverse international conventions on human rights. They include protections for people's personal safety, freedom of expression, and participation in the political process (Siems, 2022).

3. The Mandate of Civil Rights

The mandate of civil rights refers to the extent and range of rights and protections afforded to individuals within a society, particularly in relation to their fundamental liberties. Islamic jurisprudence acknowledges various civil liberties, encompassing fundamental entitlements such as the preservation of life, personal security, privacy, ownership, marital rights, divorce, as well as the freedom to practice religion and express oneself. Nevertheless, the extent and understanding of these rights may differ among various interpretations of Islamic law, resulting in varying degrees of strictness in their implementation across different countries (Putra & Ahyani, 2022). In Western civil law systems, a comprehensive array of civil rights is typically afforded, encompassing freedoms such as speech, religion, assembly, and association, alongside rights pertaining to privacy, property, due process, and equal treatment under the law. Constitutional provisions frequently serve as safeguards

for these rights, and their reinforcement is commonly achieved through legislative measures (Kurki, 2019).

4. Safeguards and Enforceability in the Law

In nations where Islamic law is formally acknowledged, the safeguarding of civil rights is typically ensured through legal systems that are grounded in Islamic principles. The responsibility of interpreting and upholding these rights may lie with judicial bodies, which may exhibit variations in practises and methods of execution across different countries (An Na'im, 2019). The legal systems of Western civilizations afford safeguards for civil rights by means of constitutional provisions, statutory enactments, and the presence of an autonomous judiciary. Individuals have the option to pursue legal remedies and seek enforcement of their rights through various avenues, including courts, government agencies, and human rights commissions (Mackaay, 2021).

5. Relationship to the Religious Legal System

Islamic legal systems are characterized by the influence of religious factors on civil rights, particularly in domains such as family law and individual social standing. The consideration of Islamic moral values and teachings may be taken into account in the determination and execution of civil rights (Yilmaz, 2019). The primary objective of Western civil law systems is to uphold a distinct demarcation between matters of religion and the legal framework. The legal framework that governs civil rights typically operates on secular principles, with limited integration of religious considerations (Apple & Deyling, 1995).

The notion of Civil Rights in Islamic Law

The Islamic faith places considerable importance on civil rights, highlighting principles such as justice, equality, and the inherent worth of all individuals. The Quran contains a multitude of verses that underscore the significance of treating individuals equitably and with esteem, regardless of their racial background, gender, or societal standing. An example of such a verse can be found in Surah Al-Hujurat (49:13), where it is stated, "Human beings, we created you all from a male and a female and made you into nations and tribes so that you may know one another." Undoubtedly, the individuals who are deemed most honorable in the eyes of Allah are those who exhibit the highest level of righteousness. This verse underscores the notion that genuine honor is rooted in piety rather than in one's ancestry or societal standing, thereby advocating for the concept of egalitarianism among all individuals. Moreover, the teachings of the Prophet Muhammad (peace be upon him) were effectively demonstrated through his verbal expressions and behavioral conduct. In his final sermon, the speaker asserted that the entirety of humanity can trace its origins back to the progenitors Adam and Eve. There is no inherent superiority of an Arab individual over a non-Arab individual, and vice versa. Similarly, there is no inherent superiority of a white individual over a black individual, and vice versa. The only basis for superiority lies in one's level of piety and good deeds. This Hadith underscores the notion that the sole differentiating element among individuals lies in their degree of righteousness and behavior, thereby emphasizing the principle of equality and rejecting any form of discrimination rooted in superficial attributes. Hence, the Islamic faith upholds civil rights through its emphasis on principles such as equality, justice, and respect for all individuals, as outlined in the Quran and demonstrated by the Prophet Muhammad (peace be upon him) (Hamid & Mokhtar, 2019).

The Notion of Civil Rights in western Law

The development and formation of civil rights have been influenced by a range of legal systems over the course of history, encompassing customary law, common law, decrees issued by emperors, Roman law, and legislation enacted by senates. Within the framework of customary law, civil rights frequently find their foundations in established traditions and practises that have endured over time within a specific community. The common law system, which is widely observed in nations such as England and its former territories, places significant emphasis on safeguarding individual rights, encompassing fundamental liberties such as freedom of expression, religion, and assembly. The decrees issued by the emperor, which are characteristic of autocratic regimes, bestowed or limited civil rights based on the ruler's discretion. The legal system of ancient Rome, characterised by its emphasis on codification, played a pivotal role in shaping numerous legal systems and acknowledging fundamental rights, including the right to own property and the right to a just trial. The legislative

measures enacted by the Senate in ancient Rome were instrumental in upholding civil liberties, promoting legal equality, and safeguarding the rights of the citizens. Civil rights have played a significant role within diverse legal systems, serving as a crucial component in the continuous pursuit of justice, equality, and the protection of individual liberties (Stein, 1991).

RESULTS

The research concludes that civil liberties are important for preserving human dignity and creating just communities under both Islamic and Western civil regulations. However, there are significant distinctions in their theoretical underpinnings, legal authority, and practice of law. Unlike Western civil law, which is generally based on statutes and judicial precedents, Islamic law gets its principles from religious writings and interpretations. Furthermore, due to cultural, religious, and historical differences, many civil rights, such as liberty of expression and gender equality, may be interpreted and implemented differently in these legal systems.

CONCLUSION

This scholarly examination of civil rights within the framework of Islamic law and Western civil law illuminates the commonalities, distinctions, and possible points of convergence that exist between these two legal systems. This emphasizes the necessity of developing a sophisticated comprehension and engaging in constructive discourse in order to overcome disparities and cultivate a shared appreciation for the fundamental tenets of civil rights. Through the acknowledgment of common principles and the examination of avenues for discourse, policymakers, legal professionals, and academics possess the ability to actively contribute to the advancement of legal frameworks that safeguard civil liberties while simultaneously honoring the varied cultural and religious backgrounds present within society. It is crucial to acknowledge that the aforementioned analysis provides a general perspective while acknowledging the existence of variations and intricacies inherent in both Islamic law and Western civil law systems. Furthermore, the concept of civil rights and its interpretation has the potential to undergo a transformation as societies and legal systems advance.

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