Investigating the Right to Life and the Death Penalty on the Basis of International Human Rights Law

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ABSTRACT

International human rights treaties are considered as one of the guarantees of human rights in the domestic sphere and so they have emerged as the collective commitment of governments in the field of international law. However, due to the religious nature of Islamic governments, such as states, these governments imposed some restrictions (reservation) to approve treaties. On the other hand, the importance of human rights, the suspension of the human rights obligations of states under the same conditions as the successor countries, in accordance with the Vienna Convention on Treaties 1969; it isn’t subject to cross-country behavior in international relations. In this article, we will examine restricting the right to suspend human rights obligations by States according to the principles of human rights, with emphasis on the right to life and associated or not associated with the death penalty.

INTRODUCTION

Human rights protection and announced that their content is minimal to maintain the dignity of the human person and of all humanity, today has been proposed as a universal legal and the legal system governing international relations (in international law) has a significant role in its development by committing governments by signing human rights treaties and international organizations active in this field [1]. Since the right to life is as important to among the human rights [2]. On the other hand, human rights treaties are different in nature from other international treaties, including treaties, trade and military cooperation their aim is the economic benefit of or strengthening their military and defense, but it provided a legal framework for the protection of the dignity of mankind [3]. As a result, conditions and rules governing the implementation of this treaty should vary according to the different types of content, in particular, the support of any limitations or negative regulation, this right can have dangerous consequences for the individuals applying the Rules it is so important to the human right to life.

One limitation of the right to life is the death penalty in some countries can be accepted and implemented so that opposed to human rights is the main reason it is possible penalties for abuse of dominance on the state and exterminate the opposition. This view has led some states to abolish the death penalty or some crimes are outside the scope of this penalty. Also, according to the theoretical justification of the right to life of human rights can also be considered an important dramatic justification for this right, and shown to be more attention to it than to any other rights.

MATERIALS AND METHOD

Foundations of Human Rights:

One of the most basic human rights, it is the natural law, as it has a long history among other basic human rights. Undoubtedly, origin theory of natural rights must be sought in view of the ancient Greek philosophers such they can be pointed to Sisyphus and Aquinas. It also can be named as John Locke and Jean Jacques Rousseau in the seventeenth and eighteenth centuries, so they would play a significant role in the evolution theory of natural rights. In general, proponents of this school of thought believe that there is a foundation and root of the rights of nature. Principles of natural law and it provide a permanent and general welfare of the people in the community.

This principle is adapted to the demands and wishes of mankind, ideally humans will transcend governments, immutable and universal, and reason dictate that every person without any intermediary [4].
Another school of thought that it can be cited as a basis for human rights, Islamic law, as it was introduced after the advent of Islam and the teachings of the Holy Quran as the idea of a comprehensive and defensible basis for human rights and human dignity. Since the two schools of the natural law and Islamic law can be seen as a justification for human rights principles, so let us stop to consider the two schools:

RESULTS AND DISCUSSION

Natural rights:

As passed, the natural law is rooted in the principles fixed and unchanging and human society in order to be in any position, would inevitably towards its consistency. Natural law is an eternal and universal law that covers all people in all times and places. The law is the result of human intellectual intuition can understand it at all times and places, and the nature of the mind and their conscience [5].

The relationship between individual and state, and the principles of natural law has always been considered as a means of resistance against the government. Each of the natural rights theorists have expressed their opposition in any way the power of the state [6] which includes three types of resistance, negative resistance, resistance offensive and defensive strength [6]. As can be seen, the bups and efficiency of natural rights theory as one of the basic principles of the government, it stipulates the rules and principles so will engulfed state government can not neglect them raped if this happens, the base can resist such a state as to prevent abuses and violations of natural principles. Freedom, justice, equality and equal are in belonging to the natural law [4].

It is said that within the concept of natural rights, can be made to human rights such as the right to life, right to equality before the law, freedom of religion and freedom of speech protections. The most obvious one is to survive, right to Life is a gift from God and it is something innate and natural as the fundamental basis of human rights violations, it is an indecent collection [6]. Right to life is the foundation of all human rights, as all rights, firm and closed, there’s no sense without him because life is a gift that God has given to man it. Hence, not only the government can not deny the right of any person or bring harm to the body and soul, but every state is obliged to respect the lives of their citizens and to the efforts to preserve and protect their lives [7].

Islamic Law:

Islam and its teachings pay special attention to the value of human life and dignity, as he appeared in numerous verses of the Quran. Islam has attached much value to human and its dignity [8], like all liberal schools, and introduced him to the caliph of God on earth; and it is the greatest virtue and dignity that God has bestowed upon mankind [7]. Support and emphasize the right to life is an incomparable place in the Quran so that it is believed that killing a person unjustly is like killing all mankind and human life is like saving all of humanity.

It seems, have a look at the Qur’an -oriented and dignity and sanctity of human existence and dignity of his spirit, moreover, the justification for the punishment of anyone who would attempt to kill others retribution until it is fully equal human right to life is guaranteed, because the killer loses his life for the lives of others as a punishment (death) [9]. Based on such a basis can be justified responsibility of the government and its various agencies in the three fields of legislative, executive and judicial, and can be considered as a limitation of any exercise of sovereignty by the authorities to make the right to life of illegitimate people. Also, the laws of any country that has an Islamic basis, they have reiterated this principle and take action to ensure the maximum protection of the right to life of the population, “Especially that Islam, as a public authority is a trustee, and the rulers and those in positions of authority as a trustee so you must be diligent in maintaining it and act as a trustee obligations and their duties properly” [10]. Internationally, it can be noted that the declarations of the Council of Europe summit in Kuwait so the first one was issued in 1980 by the Islamic Council of Europe, which has its center in London the latter was issued on 9 to 14 December 1980 in Kuwait and was accepted by the participants and released at the conference entitled "Conference Recommendations of Kuwait".

In the Islamic Declaration - World Council of Europe, the right to life is the divine law is the only law that legitimizes the government. Power and legitimacy of any state is not to enforce the divine law, so unless the principles of the Quran and Sunnah of the Prophet (pbuh) will come. Government responsible for justice in all areas of life and should act to strengthen the unity, dignity and national growth and excellence [11]. Also, according to the Kuwait Summit Declaration regulation was underlined in criminal law so it is an offense for any kind of torture, abductions and disappearances by government officials and the people to be prosecuted and punished [11].

Right to Life and the Death Penalty:

In the previous section we talked about the importance of the right to life as a fundamental human right. Here it is an attempt to review the right to attend or not attend the death penalty. This issue is addressed in the review, is the death penalty, the right to life is an absolute limit or not? To answer these questions, we will be according to the principles outlined earlier and check the laws in some states. It seems that if we want the right to life based on the principles of immutable natural law, as it is believed that the legal concepts such as freedom
and equality, it must be said, no one has the right to violate another life, liberty and the principle of equality of all people, their natural rights.

On the other hand, on this basis, if a person or group or social power wants to violate these rights, justice and equity dictate that the same behavior that they have committed against others. In other words, they are denying the same right of others to rape and abuse of a dominant power, as they are denied the protection and security of community justice. However, in addition to full compliance with the principles of natural law, the laws of the state in all human societies that it is possible to reduce them to a minimum and abuses the other hand, does not provide the possibility to prevent abuse of the rules of natural law, natural rights abuses. For example, if a country has accepted the death penalty should be enacted laws that have broad implications and generalizable to other illegal acts.

Indeed, they are minor criminal offenses punishable by death, he limited and legislation that imposed a reasonable and non-generalizable, and even the narrow interpretation of the generalization. In this context it can be noted that the Swiss federal constitution states in Article 65 that, "Political crimes is not subject to the death sentence". Federal constitution also prohibits the death penalty in Article 102 [9]. In the United States of America, have been fluctuations death penalty issue of compliance with the constitution. United States Supreme Court in 1972 declared a death sentence against the constitution. Also, the vote of the Court, the Georgia law, recognized as contrary to the federal constitution, the decree was issued on the basis thereof [12]. For the first time, five of the justices who formed the majority of the time, the issue of "brutal execution" of disproportionate punishment has raised as his decision and by referring to the "Eighth Amendment" constitution which prohibits "cruel and unusual" to have attempted to declare a verdict contrary to the law of Georgia and the United States constitution [12].

However, the Supreme Court in 1976 concerning «Gregg vs Georgia» foreseen in the new law, the death penalty is in compliance with Georgia's constitution. Georgia's new death penalty law was subject to strict conditions: On the one hand, the death penalty is contingent upon the existence of aggravating circumstances and no mitigating factors; on the other hand, the sentence was carried out on the various guarantees within the procedure [12]. Review is consistent with the natural rights to life, largely due to the high position of Islamic law based on the content mentioned before, although it is considered in Islamic law for certain crimes such as adultery, sodomy and capital punishment (death). Also, the broad concepts such as war and corruption on earth in the field of criminal law, general practice has led to some of the objections to Islamic law as the basis for the modern concept of human rights, at least in its modern specific legislation such as the Penal Code and Criminal Code offenses such as armed forces so it seems, according to the legislation on the basis of this objection is somewhat plausible that and revision of ijtihad to interpret the narrow and broad concepts necessary to create staffs of war and corruption on earth like the weight of it.

However, it seems important to note that Islam has the right to life is a broad concept, if for example, to ban abortion even before the spirit of inspiration and the Islamic Republic of Iran in Article 487 of the penal code of the old money is designated for abortion and the amendment of paragraph 5 of this article requires that there is no difference between girls and boys (albeit at a stage where the embryo has been found yet in the Spirit). Of course abortion is a crime in the Criminal Code of the West. For example, Section 290 of the Criminal Code of Australia (West Australia) requires that "When a woman is in a situation that soon your baby will be born, any action to prevent child being born alive is a crime and is punishable by life imprisonment" [13]. Of course, today Qatv Australia has faced great opposition and even some that claim to strand.

Restricting and suspending human rights obligations of States:

Nowadays, due to the expansion of international legal system in the world, governments act to the conclusion of multilateral treaties and comprehensive long-term goals and commitment to their implementation. Cultural and economic development as well as their purpose is to protect the human rights of all people. One of these responsibilities is related to the human rights obligations, as governments have announced their support for human rights through the signing of treaties. Unlike other economic and cultural conventions, treaties to protect human rights and non-economic aspects and can not be held to apply to vary the nature of the interaction behavior. Based on the principle of reciprocal behavior is the contracting government of another state, it acts committed in violation or breach of contract, government will have the right to mutual interaction on a case by case basis. On the other hand, based on the theory of natural rights supporters, eternal principles of human rights has come to pass in time and space, and beyond human will and ultra-legislator and therefore do not contribute to lawmakers in their formulation.

Legislature can not enact them and can not fix. Under this approach, the role of international treaties in relation to international human rights standards is nothing more than the discovery and announcement [14]. Appears, except that human rights treaties as the 1969 Vienna Convention human rights treaties on the issue of termination or suspension of treaties, bilateral or multilateral nature and is not transactional support. According to Article 60 of the Convention, the Treaty of mutual reciprocity given permission by one of the members, and therefore, it can terminate or suspend your contractual obligations against the offending party. But according to
paragraph 5 of this Article, this action: "With the support of the relevant provisions of which are set out in the
treaties of humanitarian and human features, special regulations shall not apply to any retaliation or revenge
treaties and prohibit those that support it" [14]. Also, according to Islamic law, human dignity and high position
and suspension are not allowed to shut down and there is no verse that implies the concept.

However, since there are verses that perfect obedience of the Prophet and the Imams after him in the Qur'an,
however, there are several verses that will require leaders to obey the lawful orders of the Qur'an and acts only
in the context of human dignity. Also, in practice, history shows that even the Prophet sacrificed many wars, so
many infidels many Muslims are killing Muslims because they are Pardoning time. Therefore, appears to be
based on natural law and Islamic law based on human dignity and right to life can not be take a close affair and
possible suspension what government commitment and without, however, more can be efficiently undertaken by
governments to pledge not to violate the right to life and to minimize and limit the death penalty to offenses such
as murder.

Conclusions:

According to human rights principles studied in this paper, it seems appropriate to protect the natural rights
of human rights because the perspective is that it contains an unchanging, eternal concepts such as justice,
freedom and equality basis so that they can limit the authority of states to exercise free power and violate the
rules of eternal existence. Also, based on natural law, the government’s commitment to human rights treaties can
not be suspended, as according to the specific nature of their with the justification that an international
consensus can not and should not ignore the rules of natural law, or they are raped. Moreover, respect for human
dignity and equality with each other, raises legal concepts essential for basic rights such as the right to life of all
human beings and governments have an obligation arising from the inherent dignity and equality of human
rights and natural rights-based and to minimize the negative punishments such as the death of a very limited life
of crime.

On the other hand, according to Islam, honoring the character and dignity has been highlighted in various
ways in addition to the general belief in the principles of natural law and a high degree of humanity and respect
for the right to life has a valuable place, although there are some broad concepts can be seen as a disadvantage in
this view. But this does not mean that it finds justification for extending the death penalty on the basis of Islam,
but as previously mentioned, is the ruling authority is legitimate only within Islam, so that aspect.

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