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# The Islamic-Iranian Culture and the Modern Human Rights' Paradigm: Passivity or Attraction?

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## Abstract

*One of the most essential studies in the modern world is identifying the true proportion among human rights, religion, and the local culture. Analyzing the extent to which Islam as a religion has paid attention to the issue of human natural rights is capable of revealing the mentality of those modern scholars who explain the challenge between religion and human rights from a different perspective. The researcher believes that the human rights issues which are taken into consideration under the world view and culture of the Moslem people in the Islamic countries are not following the customs and norms of the western people who are the producers of a special type of norm for human rights. Human rights, from the viewpoint of sensible Moslems, not only benefits from the pure source of the Islamic thought as the terminator of the Abrahamic religions but also is influenced by the national accepted culture and customs. The current study is conducted using a library research while its collected data is based on a survey done on a sample of Iranian youth.*

**Keywords:** Culture, human rights, modernity, passivity

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## I. Introduction

One of the important historical realities is the success of the attempts of the free people to support the primary human rights which after the termination of the World Wars led to the Universal Declaration of Human Rights. The first advantage of this action was the possibility of defending the natural rights of the oppressed people in the vast human world. Although humanity has admittedly taken a huge step in indemnification of its natural rights, much earlier, the Divine Religions, while benefiting from a valuable collection of legal advice and moral teachings, have played a significant role in the protection of the human rights. The privilege of the human rights provided by the heavenly religions is that it is based on a correct anthropology and Divine worldview which provide a reliable basis for the legal system of religions. Obviously, benefiting from this special merit, the confrontation of the religious societies with the mental products of human beings which have been brought up in another culture and nationality, would be combined with caution and discretion and they won't welcome it unless a collection of rich religious, national, and local heritage has been taken into consideration.

## II. Expressing the Major Question of the Research

The Human world has so far witnessed extreme efforts taken by the enemies of some of the Divine Religions in order to create the image of a struggle between religion and the basic and vital issues in each age. In this regard, inducing the idea of the conflict of religion with at least three issues appears to be very important: **The conflict of wisdom and religion** which has led to the elimination of superstition from religion and the weakening of instrumental wisdom. **The conflict of science and religion** which some believe has led to the secularity of religion and caused the termination of the authority of the priests and now, **the conflict of the law and religion**.

True. In the contemporary world, some are trying to induce skepticism in order to prove the exorbitant claim of the contradiction of Islam and human rights; however, those who are familiar with the transcendental teachings of Islam believe that Islam is the basis of today's human rights. In fact, far from being a European gift, human rights are Islamic thoughts which have resulted from the principle of equality and brotherhood of human beings [1].

Meanwhile, some others, with the incentive of protecting Islam, have given the enemies a false excuse by maximizing some differences between the human rights which are offered by humans and included in the content of the Declaration of Human Rights and, in fact, have hidden the sincere efforts which have been made for the indemnification of the oppressed humans and the demands of the weak and abused humans [2].

The serious threat facing the societies benefiting from a rich religious and national culture is being passive in dealing with the human rights that is mixed with the western culture and intends to impose itself on other societies. Proper confrontation with this issue that is currently posed in the world and its absorption in the powerful digestive system of the Islamic Iranian culture will have many advantages. In fact, the passivity, selflessness, and uniqueness of human rights for all societies including a variety of cultures, customs, and languages, with the presupposition of the emptiness of the religion and local culture of ethical and legal factors such as human rights, have resulted in the isolation of the local culture as well as the unsuccessfulness and indulgence in dealing with the culture that has a considerable distance from the culture of other nations. The current paper intends to explain why there is no need for the globalization of modern human rights with its specific requirements in the Iranian society and insists on the human rights that are emerging from the Shiite Islam which represents a deep anthropology and is mixed with the Iranian culture and origin.

## III. Theoretical Framework

### 3.1. The Theory of Globalization of the Modern Human Rights

Obviously, in order to be effective and to have the guarantee to be materialized, trans-regional issues which are proposed in the human discourses are in need of crossing the borders and being converted into global norms. Such universalism is the basis of every global thought and value without which the existence or lack of norms make no difference [3]. One of the global norms is the issue of human rights, especially its modern version that should be converted into a respectful and compulsory guideline to become long-lasting. In case the norm of the modern human rights is only respectable in the western countries and is treated disrespectfully in other human societies, it shall be gradually destroyed. The requirement for following such a perspective is that the modern human rights with all their factors, which are probably supported by a specific world view, are regarded as acceptable and shall reject the cultural and moral factors of the target societies. Such factors include religious, national, and local duties and commands.

### 3.2. Features of Modernity and Modern Human Rights Paradigm

The comprehensive system ruling over the behavior and the mind of the humans can create a specific type of human rights in a historical stage which is not the same in the other paradigm. The claimants of defending the human rights in the current world regard it as a modern concept which has been

formed in a specific paradigm. According to such claimants, the paradigm in which the modern human rights have been proposed is a paradigm of modernity in which a specific interpretation of the significant and fundamental concepts of the world has been made. The modern world has redefined words such as right, human being, science, morality, and so on in a new way. Modernism has been proposed in terms of concepts such as 1) Observationalism, Experimentalism, Experimentalism 2) Subjective, Analytical, and Instrumental Reasoning 3) Humanitarianism 4) Individualism 5) Free Thinking and anti-Semitism 6) anti-Traditionalism 7) Affectionism 8) Seeking Equality [4].

Obviously, with such features of modernism, uniting the two principles of universality and cultural diversity is currently one of the main challenges of human rights.

In such a pervasive and dominant system, human being, and not God, is the center of the universe and everything, even God, has to be defined on the basis of the human being! It is not a matter of human responsibility for religion but it is a matter of the extent to which religion is beneficial to human beings. Human individuality has been recognized and the criterion is individual, not the society.

The new era (Modernity), in the private domain, is formed on the basis of the modern subjective belief in subjective law. The meaning of subjective law is that no one can issue a decree or establish any rules and impose them on any human being. On the other hand, the modern philosophy has established the concept of individualism and individual domain in the realm of socialism. In the modern era, in conflict with the public domain, the subjective domain has obtained a humane and real value [5].

Some believe that the concept of human rights, from its first glimpses up to its last manifestations, has been formed in the context of a modern culture and has a basic connection with historical and social events as well as cultural and intellectual contexts of the modern era. If there were no such era as enlightenment (having faith in reason and human science), if there were no such movement as religious reform (separating religion from the world and keeping the priests away from the government), if there were no humanism (humanitarianism and human primacy), then there would be no human rights [6].

According to the aforementioned belief, there are some rights that the modern human beings, regardless of their authority, consider for themselves and this self is nothing but human being in terms of being a human being. In fact, the subject of these rights, as well as the executor, and the establisher of such rights is the human being. Therefore, the human rights refer to the rights of the humans, not the rights of the Jews, the Christians, or the Moslems. According to John Rales, behind the veil of ignorance, human beings express the least of the rights, that at any time and place, they consider as essential for themselves. That's why, in the realm of human rights, all human beings are considered as free and independent and it is a principle that nothing is going to disturb such freedom, independence, and equality. Any right that is based on the beliefs of a specific number of people despite the fact that it might be considered as public and inclusive, similar to the beliefs of the believers of different religions cannot be potentially acceptable by all human beings. As a result, it is in contradiction with the human rights [6] (ibid.).

In contrast to the aforementioned paradigm, the paradigm preceding modernity is an inclusive and universal intellectual system in which God is the center of the universe and everything is defined in terms of God. Moreover, societism and paying attention to collective structure and preserving the rights of all human beings, in contrast to the individual rights, is emphasized. In fact, the individual is significant to the extent that the society and the rights of the society are preserved in contrast to the rights of the human being and the society. Human being is at the service of the religion as well as being committed to and responsible for its teachings. The materialistic world is just a part of the long journey that the human being should take and, hereafter, there is an eternal world. The human prosperity and blissfulness, rights and commitments are all formed on the basis of all that is named as the world ahead (including the materialistic world and the hereafter) and the benefits, deprivations, rights, and commitments, and so on are specified and defined on the basis of that eternal future.

Obviously, in such a paradigm that some believe has dominated the minds of human beings before modernity, human rights have either been taken into consideration with other aspects and features or may not have been considered at all!

The difference between these two types of paradigms represents the multi-divisionary concept of human rights in proportion to two periods of tradition and modernity. That's why in the discussion of the proportion between religious human rights which belongs to the period of tradition and modern human rights which is a product of the modern world, two perspectives can be achieved:

### **3.2.1 Convergence and Compatibility**

It is not only possible but also the only way for the explanation and justification of human rights on the basis of religious teachings and principles. The societies advocating the modern human rights have actually been unsuccessful in its implementation. In fact, human rights need to be explained on the basis of the Divine perspectives.

### **3.2.2 Divergence**

Divergence refers to the existing contradiction between modern human rights and religious teachings as each one belongs to a specific world and a different paradigm. The human rights which is proposed in the modern world is a "humane" Human Rights while the human rights that is proposed by different religions is an Islamic, Christian, and Jewish human rights. While one of them disallows the violation of the right of life in no condition or circumstance, the other one regards the right of life as a right that is a significant trust bestowed upon the human beings by the Owner of the Universe that is God [7] and the Creator can control his property and His fatal laws are justifiable and reasonable for the creature [8].

### **3.3. A Critique of Modern Human Rights Paradigm**

Similar to many of the claims made by the intellectuals, the individual human rights is nothing more than a claim and by writing a set of human rights for himself, the human being cannot free himself from the realm of the human rights that has been written by the Creator of the Creation.

Neglecting the human rights that have been written by religion is showing unkindness to a collection of outstanding insights which are among the foundations of modern human rights.

The intellectuals in the context of human rights' paradigm have totally accepted modernity and have used modern concepts to reconcile tradition with modernity, instead of using the religious and traditional concepts and issues to criticize modernity which, as admitted by its true advocates, contains inner contradictions, errors and mistakes, and has been exposed to many destructive critiques by the post modernists [9]. They have also used concepts such as culture, customs, rationales, pleasures, and the spiritual goals of religion and so on in order to interpret the religious tradition in favor of modernity.

It seems that religious intellectuals, as a result of the heavy propaganda of the West, are attempting at paradigm-making to induce the paradigm of modernity and they are trying to fake a common mentality and a single paradigm for the whole world of humanity, from the West to the East of the universe; moreover, with an interpretation which is not accepted by its owner, they are endeavoring to consider the minds of the people from different communities as demanding the norms of modernity. This is the same method that is now named as universalism in sociology and its weakness has been revealed [10]. While it is acknowledged among them that modernity has only been accepted as a paradigm in Europe and North America [4] (ibid.), other American, Asian, and African communities do not accept this belief.

Even some have admitted that religious beliefs and traditions among Muslims are a strong barrier against the waves of modernity and reject the fundamental categories of modernity, and, in their opinion, with a great deal of regret, the same beliefs are a problem and a major obstacle to development in Islamic countries! [11]

Research and field studies conducted by the Westerners also indicate the adherence and insistence of the non-industrial societies on the preservation of traditional norms and the command of religious beliefs [12], which, in turn, is an evidence of the lack of a ruling-paradigm, with the theme of "modernity and modern human rights" in the world of humanity.

Western scholars have now confessed to the incorrectness of the sociologists' analyses and the predictions made by great scholars, such as Emile Durkheim and Max Weber, about the inattentiveness and negligence of human beings to religion in the so-called era of modernity. It is not clear, however, why the domestic intellectuals, despite all the evidence and signs of the negation of such a universal paradigm, insist on its existence in the context of human rights.

“Another reason why we have to be wary of this theory is that such theories are observing the real condition of other societies. For example, the origin and source of the Frankfurt postmodernism is the Western Europe. This is a world in which many of the things about which we have not even dreamed are assumed to be certain. That is, many of the seemingly abstract and universal issues are actually local”<sup>1</sup> [9].

Nowadays, the theories, intending to historicize and show the ineffectiveness of religion in the modern societies, have lost their truthfulness. Up to half of the 1960s, such a common claim that faith in religion is in the condition of a final decrease was based on a weak evidence. The advocates of this theory, instead of making an organized investigation of empirical evidence from numerous countries, mentioned the empirical evidence of a decrease in church attendance in the Western Europe and a few case studies that were compatible with that issue. Therefore, it is not surprising that over the past decade, the American sociologists have arranged a continuous counter-attack against the basic assumption of the theory of getting non-religious. They indicated the continuation of the vitality of the protestants in the United States, the rebirth of the evangelicals in Latin America, the new freedom of religion in the former communist countries in Europe, reports of the resurgence of Islam in the Middle East or the evidence representing the prevalence of the religious practices and beliefs in much of Africa and Asia [13].

The action made by the Islamic Countries in the formulation of the Islamic Charter of human rights (This Charter was approved in the Summit of the Ministers of Foreign Affairs of the Islamic Conference Organization held in 14th of Muharram 1411 lunar Hijra, corresponding to 5th of August 1990, and 15th of Mordad 1385 [the 5th month of the Persian calendar] held in Cairo. In 2004, it was revised by the representatives of the Islamic countries, which, in turn, is an obvious reason of the lack of the sovereignty of “the Modern Human Rights Paradigm,” at least in the Moslem societies. The Islamic Charter of Human Rights, which was approved by all Islamic countries and supported by a massive population of more than one billion people, that is, 18 percent of the world's population in 1980 that is estimated to reach up to 31 percent by 2025, distorts and questions the formulation of any paradigm of the Human Rights in the Universal scale.

It is worth mentioning that today, more than the issue of the uniformization of laws and rights, which is regarded as the central and critical issue of globalization, “legal-binding” is spoken of which means linking the legal institutions from one legal system to another. However, paying attention to culture and native norms also has a significant contribution in this issue.

It must be acknowledged that the transformation, innovation, and any alterations in the legal principles of a country must be made according to the norms of that society and in accordance with the social behaviors and ideology of the people. Therefore, when legal-binding is being done, it is not possible to introduce a concept specifically in the context of the legal system without considering the special conditions of the society, because each legal system reflects the unique properties of the beliefs and behaviors of the people of that society [14].

Even field research in our country also implies this claim and testifies to the degree of resistance in accepting the aforementioned paradigm [15].

<sup>1</sup>Sadri, 2010: 47

## IV. Research Methodology and Findings

In a field study of 34521 people who were randomly selected from 28 cities in 28 provinces of the country, whose results could be generalized to 14-30-year-olds in Iran, we found how the claimed paradigm was missing in our country. We now refer to the answer to the three questions related to the topic of “the youth and their viewpoints regarding the Western culture.”

### Question 1: Is human rights truly respected in Western countries?

Full Agreement	Partial Agreement	Partial Disagreement	Full Disagreement	Total Agreements	Total Disagreements	Total
15.50%	24.90%	37.60%	21.90%	40.40%	59.60%	13485

### Question 2: Is the Western Culture imposing itself on other cultures?

Full Agreement	Partial Agreement	Partial Disagreement	Full Disagreement	Total Agreements	Total Disagreements	Total
29.60%	46.80%	18.40%	5.20%	76.40%	23.60%	13488

### Question 3: Do we have to resist the Western Culture?

Full Agreement	Partial Agreement	Partial Disagreement	Full Disagreement	Total Agreements	Total Disagreements	Total
46.20%	39.10%	10.60%	4.10%	85.30%	14.70%	13429

It is observed that nearly 60% of the respondents believe that Western human rights are not respected in Western countries themselves, and more than 76% of the respondents believe that the West seeks to impose its culture on other territories, and there are more than 85 percent who support the opinion of showing resistance and disobedience to the imposed Western Culture, in which one of its components is modern human rights that indicates there is a strong indigenous paradigm influenced by the religious and national culture in the context of human rights among the young well-educated Iranian free-thinkers. Moreover, it shows the extent to which the Westerners are unsuccessful in inducing a modern human rights paradigm even in the West.

There seems to be no way but to resist the globalization process of modern human rights and this is the way that is emphasized by those who are familiar with the Western culture:

“While I propose the prohibition of the use of the language of human rights, I invite the Muslims to resist the claims made by the Western world regarding the universality of human rights; important scholars have failed in gathering significant and serious analyses in their proof and confirmation”<sup>2</sup> [16].

### 4.1. Incompatibility of Some Features of Modern Human Rights with the Iranian Culture

#### 4.1.1. The Characteristics of Humanism

The original Iranian culture is evidence that Iranians, along with all the demands and rights that they have always assumed for themselves, have also insisted on protecting the rights and demands of their God and Creator as well and have not disregarded them, either. It is enough to look at the oldest document of human rights, that is, the Cyrus Charter, which is acknowledged by the scholars as the first document and charter of human rights. Then, we find out how Cyrus, after conquering Babylonia, has taken all the steps required to protect and preserve the social and citizenship rights of the people under his rule in an attempt at satisfying the gods.

<sup>2</sup>Lenzhausen, 2010:149

Every day I praised him (Marduk, the great god of Babylon). Undisturbed, my countless army moved among the cities of Babylon. I did not allow anyone to terrify the land of Sumer and Akkad. I considered the needs of Babylon and all of their temples and tried to improve their situation ... Murduk, the great god, is pleased with my deeds.... On the request of Murduk, I have returned the Babylonians to peace and security, to their deserved condition<sup>3</sup> [17].

This feature of the Cyrus the Iranian king who has been referring to the rights of human beings along with considering the Divine laws has always been present as a lasting thought in the minds of the kind-hearted people of Iran, and by acknowledging the deserved status of human beings in the universe, he has never ignored the origin of this Creature who is the God of the universe and has never believed in extreme humanism.

#### 4.1.2 The Personality Trait

The culture of the people of Iran, influenced by the religious teachings, has shown a particular interest in communal interests, and has always regarded them as prior to the interests of the individual. This moral attribute is obviously seen in some of the behaviors of the Iranians. For example, the traditional and unequal charity organizations such as the endowment organizations, many of whose documents have remained up to now, actually reject the theory of historical individualism of Iranians without having a true documentary [18].

Yes, most Iranians, when someone is in need of help, without considering their own interests and its compensation by the person in need of assistance, hurry to assist and regard the expediency of others as prior to that of their own. This is in contrast to some business-minded cultures that offer assistance to another person only in case the return of the compensation is guaranteed.

Undoubtedly, most people in the American community only help those who are likely to return to their assistance in the future (based on an equal footing), according to some experiences, the subjects will help those from whom they have already received assistance [19].

This general culture of the Iranian community which is influenced by the inspirational teachings of Islam shows itself completely in issues such as the murderer's retribution. Besides respecting the murderer's right to life and the thrills of the individualistic sense that endeavors to support the murderer's life unconditionally, the collective interest is taken into consideration. Since the collective life is based on the execution of Quisas (life emerges from retribution), such a general culture has agreed to it and endorses the principle of compensation while respecting the approach of the preservation of the victim's blood and the life of the society.

#### 4. 1.3 Anti-Semitic Feature

As mentioned before, one of the characteristics of modernity is anti -Semitism and this makes the modern man, without having an in-depth analysis of the extent of the correctness of traditional doctrines, deny and reject them and organize his manners just in contrast to the orientation of customs and native traditions.

It must be admitted that Iranian culture is also incompatible with this feature of modernity since according to anthropologists, the reason of the sustenance of the Iranian culture lies in its attention to its traditions, myths, and ancient customs. Thus, it has not been caught up in the whirlpool of the globalization of the modern culture and has maintained itself.

The mystery of the survival of Iran and Iranian identity lies in the rituals, myths, and symbols that over the history have created the bonds of the nation's solidarity with the Iranian people and its historical continuity [20].

Today, human rights experts have properly realized that the globalization of modern human rights, despite the diversity of cultures, is an extremely difficult task, and that they should not ignore the extreme viewpoints of some of its readings.

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<sup>3</sup>Azad, 1990:55

Globalization, including the globalization of rights, and, consequently, that of human rights is only possible in three ways: the unification of separate and numerous legal systems with identical rules and content, the uniformization which refers to separate and numerous legal systems having the same rules and content, and the harmonization that refers to different legal systems with different but harmonious rules around common principles. The first two approaches are hegemonic, leading to an extreme universality, sovereignty and imposition of the values and legal systems of the powerful nations on other nations apparently under the label of human rights. In the third approach, human rights have a hard core and a periphery. The rights that are at a rigorous core are few but, in nature, are such that the existence of other rights actually depends on them. These rights include the acceptance of the right to life, the prohibition of enslavement, the prohibition of torture, freedom of beliefs, religion and speech. The cultural ratio is essentially expressible and an exception in the peripheral rights, not in the core rights [21].

It seems that even in the third version of globalization, the concept of modern human rights will be confronted with the resistance of religious communities because some of the rights in the hard core of human rights, such as the right to life and the right to freedom of expression, in issues such as the right of the murderer to commit deliberate murder and the right of the wrongdoers who deprive other citizens from their psychological and mental well-being (mohareb) and the right to freedom of expression of the propagators of distorted and misleading ideas and theories who will not benefit from the right to life and the right to freedom.

#### **4.2. Evidence of inactivity by some intellectuals in relation to modern human rights**

Some intellectuals who, on the one hand, were interested in proving the efficiency of religion in the contemporary world, and on the other hand, felt tangled between some of the teachings of Islamic punishments and beliefs of modern human beings, decided to eliminate this issue from the religious viewpoint which they believed belonged to the traditional world and brought religion closer to modernity. Other intellectuals opted for a selective approach.

“On the one hand, religious intellectuals, in contrast to the secular intellectuals, believed in relativity, which means while accepting the necessity of revising and rebuilding the common religious traditions, they do not reject all these traditions but have a selective attitude”<sup>4</sup> [11].

The offered solutions have all resulted in attempts at excluding religion from belonging to the traditional world and adjusting it to the modern world. All practices have one thing in common, namely that they regard the religious rules as unique, belonging to the past and the historical world, and to reconcile religion with the modern world and its requirements, instead of rejecting and denying the existence of a system and paradigm of domination for which there are no reasons, have made modifications in the religious doctrines, and have assumed it with various expressions belonging to the past so that the religion would be in need of washing away from many of its claims and commands just to survive and meet the needs of modern human beings.

#### **4.3 Choices of Religious Intellectuals**

Disregard for the foundation and origin of religious rights and duties related to the vast Divine Wisdom has worried some religious intellectuals in relation to the Islamic punishments so that based on various justifications, they have limited Islamic legal rules only to the time of early Islam, and, thus, they have prevented the reaction that such Divine laws may show to the principles of liberalism and have made such a reaction comprehensible and justified in the modernity paradigm. The supporters of this intellectual trend believe that the intellectual trend has moved into an epistemic break-down between tradition and modernity. By seriously considering and kindly observing the

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<sup>4</sup>Yazdi, *ibid.*, P.72

epistemic products of the discourses of both tradition and modernity, this trend looks for the relevance, proportion, similarity, and difference among their anthropological, ontological, and epistemological foundations [22].

The passivity resulting from modern human rights and the attempts for its globalization have led a variety of religious intellectuals to seek the reformation of Islamic punishments, to provide solutions to solve the contradiction of such punitive sentences of Islam with modern human rights. Religious scholars, despite the use of diverse interpretations, all follow the same line of thinking and the spirit of historicity dominates their evidence and confirmations.

#### **4.4 Historical critique**

The solutions that have been offered with the intention of eliminating the gap between tradition and modernity can be categorized into some titles. Some can be considered in the context of the effect, some can be the cause, and the others can be taken as the cause of all causes and some can be raised as the internal religious capacity to eliminate the breakdown between tradition and modernity.

The transcendence of the majority of the religious teachings, paying attention to the negation and the affirmation of all the subjects, the ratification nature of all the social laws of Islam is assumed by the intellectuals to be due to the fact that in Islam the current custom and culture are taken into consideration (the cause of these cases is custom and culture) and the reason for paying attention to culture and custom is that Islam is a historical religion. So the cause of all causes of all the solutions is comprised of historicity. In other words, religions have affiliations due to their locality. In every historical religion, much of what is in the area of the rules and teachings is due to the fact that the particular religion has appeared in a specific geographical location and in a particular cultural situation, and it has been intertwined with its historicity since the written legacy of the religions, itself, manifests the context of their emergence. Therefore, every historical religion is both enclosed in time (historical) and limited to location (locality). Since religion is a temporal and spatial phenomenon, then all its teachings belong only to the time at which its teachings have been expressed! The solution is to pull Islam out of its history and its limitation, and remove that which is related to the locality of religion and make it lean and mild in favor of modernity and force it to abandon all its social orders. What it says and wants should be what humans decide on in any era, and it will not say anything nor will it do anything regardless of the findings and the views of the human beings. This is precisely the project of secularization or the secularization that has already occurred in the Christian world. "The famous sociologist, Peter Burger, defines "secularization" as the process by which the sectors of the society and the culture are released from the domination of religious institutions and symbols, and it means increasing the production of people who look at the world and their own lives without resorting to religious interpretations"<sup>5</sup> [23].

"The process of consistently pushing religion out of its presumed positions in the West continued to the extent that it could gradually transform the post-institutional religion into an institutional religion, and transform the same institutional religion to an individual religion, and would decline it from an individual religion to a non-theocratic, non-theological individual religion, without any external manifestation in contemplation and behavior -the declining of the religion"<sup>6</sup> [24, P. 78].

Since all religious teachings have been achieved through written tradition, including the Qur'an and the Sunnah, and the valuable legacy of the Islamic faith has thus been passed on to the future generations, some believe that the way has been paved for the hermeneutic interpretation and the historicism of Negri Gadamer imposes itself on this written legacy. In such a situation, the intellectual will find the chance to claim that all religious teachings, whether in the form of the Qur'an or in the form of the Sunnah of the Prophet, are a written collection whose understanding, at present, requires

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<sup>5</sup>Beckford, 2009:111

<sup>6</sup>Shojaee Zand, 2004:78

a kind of interaction among the text and the content and the reader, and also the understanding of the cultural difference of the current culture and period and the date of the issuance of the written documents will all be seen together in the same hermeneutic.

We are now faced with this problem: how can we understand the depth of the Divine purpose in the holy books, given that we are confronted with different interpretative levels in this regard... The text has several layers of meaning, both historical and spiritual... The purpose of such hermeneutics is overcoming the cultural gap in order to retrieve the main meaning of the Divine Speech. The reader should be promoted to the level of the text that has now become nonsensical and unfamiliar to him [25].

The philosophical historicism (Historicism is based on and benefits from Gadamer's philosophical hermeneutic circle [26]. The notion of the hermeneutic circle, as Schleiermacher, Dilthey, Heidegger, Gadamer and others have analyzed in various forms, indicates an interaction between the interpreter and the text in which the interpreter, based on his first impressions of the text, adds issues to it so that they, themselves, on the basis of the text, will be given a new shape. According to Gadamer, the text should break the spell of the presuppositions of the interpreter and its subject should lead to the revision of his initial understanding [27].

According to this view, there is no fixed and trans-historical knowledge and all knowledge is historical. As mentioned by Franz Rosenzweig in the "Star of Redemption," "The nature of the inspiration necessarily changes, just to be included within the context of human understanding at the moment of its revelation, not in the future generations"<sup>7</sup> [9].

With the transition from philosophical and rational sciences, an era-based perspective that, by nature, would not tolerate any fixed knowledge and would categorize theorizing and intellectual creativity on the basis of the knowledge elements of its context and era, and evaluates all ideas as conditional and provisional, would be regarded as a major challenge facing the religious thought.

Due to its relativism and self-violation, such a viewpoint is false since in case there is no constant knowledge, the very claim of historicity and relativity of knowledge would be exposed to relativity and led to its own negation. In case there are no trans-historical knowledge and all knowledge is historical, a question can be raised regarding why the religious thinkers have not taken this issue into consideration and instead have mentioned that their commands are post-historical. Indeed, how can we easily ignore what the messenger of Allah (peace be upon him) has said in his Ghadir sermon and consider the social commands of Islam as historic and crosswise [...] While in his last words when he was only a few steps away from death, Prophet Mohammad (peace be upon him) said "Oh, people! I would not turn away, nor would I change whatever I have allowed or disallowed you to use. You had also better keep this in mind and recommend and mention it to other people and never change or convert what God has allowed or disallowed to be used"<sup>8</sup> [28].

#### **4.5 Methodological Alternative Approach of Intellectuals' Solutions**

Among the remedies mentioned, the subject of "purposes of Sharia" has been used as an inter-religious capacity to help in solving the problem of separation [29] because it is only with this subject that religion can move over time and recommend commands for all periods and times without any reduction in its dignity and status. However, the main issue is that having access to the real objectives of Sharia is something very difficult and professional and it cannot be proposed as a general solution that is used as a compromise by the unawares and non-professionals. It is better to propose the Jurisprudential Ijtihad which is acceptable by the Shi'a as a solution in place of the other solutions which resulted from the belief in the obstruction of the usage of Ijtihad in the Sunni jurisprudence.

That is why Ijtihad has been regarded as the discoverer of the purposes of the Sharia and even the divisions of its sections have been arranged on the same basis. By accident, on the basis of the same purposes, conclusions have been made which are quite the opposite of the results obtained

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<sup>7</sup>Sadri, *ibid.*, P.49

<sup>8</sup>Tabrasi, 1983, Vol. 1, P.65

by those who are opposing the usage of this approach. For example, while relying on the Sharia purposes, some scholars have indicated that the punishment of death is unjustified for the murderer [30], it is exactly due to supporting one of the sharia purposes that the sentence of death punishment has been regarded as necessary in the case of the intentional murder. The great jurist, Siveri says:

“And the Shiite scholars and intellectuals have divided the religious rulings into the following categories: the purpose of these rulings is either heavenly and it is called worshipping or it is worldly; in that case, it has two further subdivisions: either it is not in need of a word or phrase or sentence which in that case it is called a ruling or it is in need of a word or phrase or sentence which in that case, it is either two-sided and is called aloqudor it is one-sided and it is called aliquat. The religious rulings can also be divided in another way; it can either be said that the religious rulings have been proposed to preserve five pillars, namely religion, self, money, relationships, and wisdom. In fact, such purposes need to be explained in any shariat. Of course, the rulings related to worshipping are also divided by religion which is itself protected by Jihad and its attributes and the religion also preserves the self by alqisas which actually preserves life and whatever that is related to it”<sup>9</sup> [31]

The principle of the Shiite Ijtihad and paying attention to the secondary laws as well as rules such as no loss, emergency and [...] are Convincing solutions to achieve the rights and duties of a worshipper at any time or period, not only in the so-called period of tradition or during the so-called tradition, but also in the period of modernity and post-modernity and other periods following it. In the meantime, the uncertain paths, which depend on assumption and delusion, speculations and tastes, are sometimes based on the effect of lusts, passions, and imagination shall not be taken into consideration.

According to the "common expediency", the "governmental commands and the provincial ruling" and the "convergence of some punishments to tazir (that is, punishable under the Islamic law)" and getting out of the state of the religious law, and so on are jurisprudential solutions solving the issues related to human rights, that are derived from the depths of the religion and are close the path to eclecticism.

## V. Conclusion

The current attention to human natural rights that along with the rights of other creatures has always been emphasized by Islam is a highly respectable and praise-worthy issue. However, considering the difference between culture and essential norms that is acceptable among various human communities, its confiscation in favor of the paradigm of modernity and striving for its paradigmation is an unsuccessful attempt which has been nourished by religion and specific nationality. The resistance of the world nations to the vast range of the human rights mentioned by modernity is a sign of the unsuccessfulness of the universalism of the modern human rights. The rich Iranian culture which has always been fed by natural religious teachings is not compatible with the essential features of modernity that are the bases of modern human rights. Moreover, relying on the local culture and genuine religious resources and convincing methods of Ijtihad that have been introduced in the rich Shiite jurisprudence is an appropriate solution to preserve the authenticity of the Divine norms of natural human rights, on the one hand, and to respect human findings in the area of natural human rights, on the other hand. This is the same method which has been emphasized by the great architect of the Islamic revolution and the two factors of time and place are essential criteria that play a significant role in analyzing the jurisprudential and expressing the Ijtihadi views.

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<sup>9</sup>Siveri, 1980:7

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