

The Maqasid-Based Dimension of Protecting Economic Rights between the Maliki School of Jurisprudence and International Covenants

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Introduction: Economic human rights occupy an important position within the framework of human rights and human survival. They are closely related to human well-being and development; therefore, they have received a degree of protection at the international legislative level through the Universal Declaration of Human Rights and other international instruments, particularly the International Covenant on Economic, Social and Cultural Rights.

Considerable efforts have been made by actors in international law, including States and international and regional organizations, to consolidate and protect these rights. In reality, States are primarily responsible for safeguarding the rights of their citizens in light of international principles, since the protection of rights, the improvement of criminal justice, and economic development are among the essential functions of the modern State. The State must enable every individual to exercise his or her rights and freedoms in accordance with the laws and regulations it enacts and implements. Accordingly, this study seeks to examine the economic human rights that are subject to protection under Islamic law and international covenants.

The idea of protection in Islamic legislation is based on the existence of particular interests of the community and the individual that the Lawgiver considers worthy of protection. From a maqasid perspective, this is protection from the side of existence. Islamic legislation also establishes deterrent criminal sanctions for those who violate such interests and recognizes the importance of protecting them within the framework of criminal policy; this represents protection from the side of non-existence.

Criminalization gives the quality of unlawfulness to every conduct that undermines or harms the higher interest intended to be protected. Conversely, permissibility removes the quality of unlawfulness from conduct that realizes the interest intended to be protected.

Therefore, this research is entitled: “The Maqasid-Based Dimension of Protecting Economic Rights between the Maliki School of Jurisprudence and International Covenants.”

Statement of the Research Problem: The central problem of the paper is formulated as follows:

- Are international protection guarantees realized through the provisions relating to economic human rights?

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- Does Islamic jurisprudence in general, and Maliki jurisprudence in particular, fulfill its role in this field?

In light of the foregoing, the paper is divided into the following sections:

The first section examines the concept of economic human rights.

The second section examines classifications of economic human rights.

The third section examines the maqasid-based dimension of the protection of economic rights.

Finally, the paper presents the study's findings and recommendations.

Section One

The Concept of Economic Human Rights

First Requirement: Rights Deserving Protection

First Subsection: The Concept of a Right

First: The Definition of a Right in Arabic

The Arabic term *al-haqq* is the opposite of falsehood; it means truth and is one of the terms denoting rights. The expression “more entitled to something” is used in two senses: first, to indicate exclusive entitlement, such as saying that Zayd is more entitled to his property, meaning that no one else has a right to it; and second, as a comparative form, indicating participation with another while giving one party precedence over the other. [1–2]

Second: The Definition of a Right in Islamic Law

1. Muslim jurists have used the term “right” in several senses. It has a general meaning encompassing everything established for a person in terms of advantages or capacities, whether financial or non-financial. It is also used in relation to owned property and benefits, and to legally recognized interests whose existence is established through the recognition of the Lawgiver, such as the right of pre-emption and the right of divorce. [3]

2. Al-Qarafi, when distinguishing between the rights of God and the rights of human beings, states that the right of God consists of His commands and prohibitions. A right of God may coexist with a right of an individual, while the individual may not be entitled to waive it, such as the prohibition of usurious contracts. The right of the individual concerns his interests. Obligations are divided into: rights belonging solely to God, such as faith; rights belonging solely to the individual, such as debts; and rights in which disagreement exists as to whether the right of God or the right of the individual predominates, such as the punishment for false accusation. [4–5]

3. Al-Shatibi explains in *al-Muwafaqat* that the legal rulings are rights belonging to God in terms of the obligation to believe in them. Their basis is devotional obedience, and the Lawgiver's purpose is that the prescribed limits be observed without exceeding them or extending them by analogy. [6–7]

4. Contemporary researchers have offered several definitions. A right has been defined as “an established interest belonging exclusively to a person and recognized by Islamic law”; another definition describes it as an entitlement by which Islamic law grants authority or imposes an obligation; and another defines it as whatever is established by Islamic law for a person or against another. [8–10]

In light of the foregoing, an appropriate definition may be selected: “An entitlement established by Islamic law that entails authority or an obligation of God toward His servants, or of one person toward another.” [11] This definition is comprehensive and restrictive, covering the various uses of the concept of right in human life, including economic, commercial, political, and social fields.

Third: The Definition of a Right in Law

Defining the right as a legal concept has been the subject of extensive jurisprudential debate, giving rise to several theories.

1. The subjective theory, also called the personal or will theory, defines the right as “a power or capacity of will exercised by the right-holder within the limits of the law and under its protection.” [12]
2. The objective theory defines the right as “a legitimate interest protected by law,” by considering the subject matter of the right or the purpose it serves. [13] The word “legitimate” is not essential to the definition because the law protects only legitimate interests; unlawful interests receive no protection. Thus, some scholars summarize the definition as “an interest protected by law.” [14]
3. The mixed theory combines the foundations of the preceding theories, namely will and interest. Accordingly, the right is property or an interest protected through recognition of the holder’s capacity. Where the power of will is emphasized, the right is defined as “a power of human will recognized and protected by law, whose object is property or an interest.” [15]
4. The appropriation theory defines the right as “an advantage granted by law to a person and protected by its means, whereby the person exercises authority over property recognized as belonging to him as owner.” [16] This definition does not make the meaning of right dependent upon benefit or will. A person lacking legal capacity may possess rights despite lacking the capacity to exercise will. A right may concern the person himself, such as life, or something external, whether material, such as a house, or immaterial, such as an invention. It may be natural, such as the right to life, or established by law or agreement. [17]

Selected Definition:

In light of the foregoing, the preferred definition of a right is: “The recognition by law of a particular value belonging to a person.” [18] This definition is essentially derived from the definition of Professor Abd al-Mun’im al-Siddah, except that the present study does not agree that the existence of a particular value becomes a right solely by virtue of law. Rather, the role of law is to recognize a value already established for a person as a right, which may arise from other grounds as well.

Fourth: Comparison between the Definitions of Right in Islamic Jurisprudence and Law

A comparison between the definitions adopted by Muslim jurists and legal scholars shows that the juristic concept of a right is broader, because it encompasses the rights of God in addition to the rights of individuals. It does not require a specific beneficiary when the right belongs to God, whereas in law the right is connected to its beneficiary, whether a natural or legal person. With regard to protection, the objectives of Islamic law are broader: they seek generally to secure benefits and prevent harm, thereby providing extensive protection for rights. Purely legal protection, by contrast, is limited to what the law expressly protects, which may leave certain interests and advantages without protection where the law contains no provision concerning them. [19]

Second Subsection: Definition of Economic Human Rights

Although Muslim jurists and legal scholars have paid attention to economic human rights and international instruments have addressed them, attempts to formulate an objective and precise definition remain relatively rare. [20] Researchers concerned with human rights have followed several approaches to defining and delimiting them.

First: Economic Human Rights in Islamic Jurisprudence

The term “economic human rights” is modern, and even the expression “human rights” itself was not formulated in the early Islamic jurisprudential literature in the terminology used today. Consequently, early jurists did not define economic human rights or collect their subjects under one specific heading, despite Islamic law recognizing these rights and jurists addressing their rulings and substance according to the organization of jurisprudential subjects in each school. The absence of the terminology from classical legal texts therefore does not mean that jurists failed to address the rights themselves.

Islamic law clearly demonstrates concern for basic human needs, including food, clothing, housing, and education, in discussions of zakat, charity, maintenance, and related subjects. It also addresses the right to

property and commercial activity in the chapters on sales, leasing, reviving dead land, and related transactions. [21–23] It recognizes the rights of particular groups in discussions of grants, inheritance, breastfeeding, dowry, and similar matters, while encouraging people to work to earn their livelihood and support their families.

Modern researchers in Islamic jurisprudence have addressed economic human rights under the broader heading of human rights in Islam, or as part of economic, social, and cultural rights. Their classifications generally correspond to subjects treated by early jurists, with terminology adapted to modern human-rights discourse. These rights broadly include the right to have basic needs secured, the right to work, the right to property, the rights of economically vulnerable groups, and the right to economic development. [24]

The Cairo Declaration on Human Rights in Islam, adopted in 1990 by the Council of Foreign Ministers of the Organization of the Islamic Conference, also included a number of economic rights. Articles 6, 7, 13, 14, 15, 17, and 18 address, among other matters, responsibility for maintenance, securing basic needs, the economic rights of certain groups, the right to work, the right to own and acquire property, and the protection of property. [25]

Second: Economic Human Rights in Law

Most legal scholars discuss economic human rights together with social and cultural rights, distinguishing them from civil and political rights. This approach is reflected in the Universal Declaration of Human Rights and in the adoption of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

The Universal Declaration of Human Rights of 1948 recognizes several economic rights, including the right to property in Article 17, the right to work, and the right to an adequate standard of living in Article 25. [26–27] The International Covenant on Economic, Social and Cultural Rights of 1966 recognizes, among other rights, the right to work in Article 6, protection of the family and certain groups in Article 10, and the right to an adequate standard of living in Article 11. [28]

Some scholars have offered a substantive definition of economic rights as those rights which, unlike civil and political rights, require State intervention to ensure their enjoyment, such as the right to work, social security, education, and health. Others define them as rights aimed at satisfying individuals' economic needs according to their efforts. [29] Others consider economic rights to mean an individual's right to the elements necessary for an adequate livelihood. [30]

Third: Selected Definition of Economic Human Rights

This study proposes a comprehensive definition by incorporating the meaning of economics into the concept of human rights so as to distinguish economic rights from other categories of human rights. Economic human rights may therefore be defined as: "A set of entitlements with economic content and freedoms arising from the dignity granted by God to human beings, intended to secure a dignified life, whose principles and guarantees are established in Islamic law and international covenants, including the right to work, the right to property, and the securing of essential needs."

This definition combines the substantive approach, which identifies the meaning of human rights and freedoms of an economic nature, with the enumerative approach, which identifies the rights included under the expression "economic human rights." The term "entitlements" is used because it is broader than advantages or permissions, since some of these rights represent an urgent human need. [31]

Section Two

Classifications of Economic Human Rights

Economic human rights may be classified in Islamic law and international covenants according to different considerations, including the subject matter or nature of the right, the person or entity to whom the right is attributed, and the beneficiary. Some of these classifications are examined below.

First Requirement: Classifications of Economic Human Rights in Islamic Law

Economic human rights have several classifications according to different criteria.

First Subsection: Classification According to the Beneficiary

First: Individual Rights

These are rights that produce a particular interest for one or more individuals, such as a person's right to land, a house, or property, and the right to work. They also include rights arising from personal obligations such as maintenance, as well as rights that individuals may claim from the State, such as food, clothing, and housing. [32]

Second: Collective Rights

These are general rights that produce a public benefit for society without being assigned to a particular individual, such as public facilities. Islamic law regards the natural resources of the earth and what is in the heavens as belonging ultimately to God, while human beings are granted the right to benefit from them. The Qur'anic verses cited in the original study establish the principle that these resources are made available to human beings and that they must not be misused or exploited to cause corruption.

Third: Economic Rights of Certain Groups

These include the right to breastfeeding, food, maintenance, clothing, housing, and zakat. They are individual rights, but they become due because a person belongs to a particular group, such as older persons, children, and similar categories. [34]

Second Subsection: Economic Human Rights According to Their Subject Matter

Economic human rights may be divided according to their subject matter into four principal categories: first, the right to secure basic needs such as food, clothing, medicine, and housing; second, the right to work; third, the right to property and freedom of investment; and fourth, the right to comprehensive economic development.

Classification According to the Object to Which the Right Relates

A right, according to its object, consists of two aspects. The first concerns the human being himself and represents an entitlement or capacity inherent in every human being. It is a right granted by God and intrinsic to human nature, with a moral character that cannot be stripped from a person. Thus, it cannot be said that a person has no right to own property or no right to obtain his livelihood. The second concerns what follows from this entitlement and relates to a specific right. It may concern conduct serving an economic interest, such as work, or an object owned by a person, such as real estate or capital. Once a specific right has been established, it may be waived or transferred where no legal or religious impediment exists and where doing so does not cause harm or corruption. [35].

Classification According to Whether the Right May Be Waived

Some rights cannot be waived, such as custody, a child's right to breastfeeding, and a person's right to obtain sufficient food and clothing. Other rights may be transferred, waived, or relinquished, such as the right of pre-emption and the option to rescind. The waiver of rights is subject to four conditions: the right must not be attached to ownership of a specific object; the right must already exist when waived; it must belong exclusively to the person wishing to waive it; and the waiver must not result in an unlawful consequence. [36–37]

Classification According to the Ability to Enforce the Right Judicially

Rights under this criterion are divided into judicial rights and conscience-based or religious rights. A judicial right is one that can be established before a court and enforced by the judge. A religious or conscience-based right is genuinely established as a liability upon a person, but a judge may be unable to compel performance because of an impediment, such as inability to prove the right. Judicial judgments are based on outward

evidence and rules of proof, whereas religious obligations are based on reality and truth. This demonstrates the importance of religious conscience in compliance with Islamic rulings. [38]

Second Requirement: Classification of Economic Human Rights in International Covenants

International instruments generally classify human rights according to their content and nature. Some legal scholars also classify them according to the State's position toward the rights. One of the clearest classifications is based on the status of the beneficiary.

First Subsection: Classification According to the Subject and Nature of the Right

The first common classification divides human rights into three generations:

1. The first generation consists of traditional rights aimed at protecting individual freedom, reflected in Articles 2–21 of the Universal Declaration of Human Rights and generally described as civil and political rights.
2. The second generation consists of rights concerning the economic, social, and cultural dimensions of human life. Some are contained in Articles 22–27 of the Universal Declaration and form the substance of the International Covenant on Economic, Social and Cultural Rights. Examples include property, work, adequate housing, and education. [39]
3. The third generation consists of collective or solidarity rights, associated with Article 28 of the Universal Declaration, including the right to peace, economic development, a clean environment, and self-determination. [40]

Economic human rights can therefore be found primarily in the second generation, while the right to economic development is associated with the third generation.

A second classification divides human rights into material rights, relating to property, work, food, and housing, and moral rights, relating to human thought, belief, and opinion. [41]

A third classification distinguishes personal rights, such as freedom of movement; intellectual rights, such as freedom of opinion; and economic rights, such as ownership and trade.

A fourth classification divides human rights into political, civil, economic, social, and cultural rights. [42]

According to the State's position, rights may also be divided into negative rights, which constitute limitations on public authority in its dealings with individuals, and positive rights, which involve services provided by the State to individuals. [43]

Third: Types of Economic Human Rights

Economic human rights may be classified according to several criteria. According to their subject matter and nature, they may be divided into four categories: the right to secure basic needs such as food, clothing, and housing; the right to work; the right to property; and the right to development.

According to the status of the beneficiary, they may be divided into individual rights, including the right to work, property, and minimum basic needs; collective rights, including the right to economic development; and rights established for particular groups, reflected in the need to secure minimum basic needs such as breastfeeding and food for children and adequate food for prisoners. [44–45]

Selected Classification of Economic Human Rights

The preferred classification is according to the nature and content of the right. Five categories may be identified: securing basic human needs; protecting economically vulnerable persons; the right to work; the right to property; and the right to economic development. These categories complement one another to form a set of economic rights that satisfies human needs and secures a dignified life, provided that they are integrated with civil and political rights. The relationship between the individual and public authority is central to the question of human rights and was fundamental to the development of the field in its early stages.

SECTION THREE

The Maqasid-Based Dimension of the Protection of Economic Rights

Economic rights aim to secure a dignified life for human beings by realizing benefits and well-being. The purpose of protection rules is to secure and preserve these rights and enable every person to exercise them in the legally and religiously prescribed manner.

First Requirement: The Concept of Protecting Economic Rights and Its Relationship with Guarantees

Economic human rights constitute an integrated framework for securing human livelihood and needs and achieving well-being. They begin with essential requirements and confronting material deprivation and poverty, then extend to opportunities for employment and lawful earning and to addressing unemployment and its social and security consequences. They are completed through opportunities for investment and the right to own property and assets. Through this system, people enjoy a dignified life, their human value is affirmed, and economic development acquires continuity. Realizing the economic-rights system in practice requires guarantees intended to establish and develop it and protective rules preventing violation or aggression. [46]

First Subsection: The Concept of Guarantees of Economic Human Rights

The meaning of guarantees of economic human rights may be approached linguistically and terminologically.

1. Guarantees in language: the Arabic root of guarantee denotes surety, responsibility, inclusion, and undertaking. To guarantee something means to undertake responsibility for it and to ensure it.
2. Guarantees in legal terminology: Muslim jurists have defined guarantee in several ways, including joining the liability of the guarantor to that of the person whose obligation is guaranteed, and occupying the legal liability with what must be fulfilled in money or action. In legal terminology, guarantees are the set of rules or principles that must be observed to ensure the respect due to human rights. Such guarantees may overlap with rights themselves, because a right may simultaneously constitute a guarantee of another right.

From the linguistic and technical definitions, guarantee denotes encompassing, establishing, and undertaking the fulfillment of an obligation. Accordingly, guarantees of human rights and the requirements for their implementation may be defined as “a set of provisions and rules containing economic human rights whose legitimacy has been established and which require everyone to respect them.”

In Islamic law, the concept of guarantees corresponds to preservation from the side of existence. Al-Shatibi explains that preserving interests from the side of existence means establishing their foundations and maintaining their rules. [47]

Second: The Definition of Protection

1. Protection in language: protection derives from the root h-m-y and means defending, preventing, and keeping something away from harm. A protector is one who prevents something from being approached or harmed.
2. Protection in terminology: protection means a set of substantive and procedural rules intended to prevent unlawful acts constituting an assault on human freedom and rights. [48] This corresponds in Islamic law to preservation from the side of non-existence: preventing the disruption or destruction of an established interest.

Third: Distinction between Guarantees and Protection

There is debate concerning the distinction between guarantees of human rights and principles of their protection. The two concepts are closely related, but they may be distinguished through their substantive functions. A guarantee tends toward establishing the right, confirming its legitimacy from the outset, determining its content, and fulfilling the requirements for its exercise in accordance with what is established

by law or religious norms. Protection, by contrast, is directed toward defending an established right when it is subjected to aggression, violation, or non-compliance with the conditions and obligations associated with its guarantees.

Thus, guarantees represent the first step in recognizing the legitimacy of a right and determining its content, while protection comes afterward to defend and preserve it against infringement. In theory, the concept of protection may encompass guarantees, and protection may be expressed through guarantees. In practice, however, the distinction is useful: guarantees enable the right-holder to exercise and document the right through established means, while protection is invoked when the right has been violated and its guarantees cannot adequately secure it. Islamic jurists similarly describe guarantees as preservation from the side of existence and protection as preservation from the side of non-existence.

Second Requirement: Preservation of Economic Human Rights in Islamic Law

Islamic law safeguards human interests through an integrated system based on faith, constructive development of the earth, reform, and security. The system protects human rights because they represent interests that must be cared for. Economic rights constitute an important part of these interests. Islamic law therefore encourages their acquisition through lawful means and establishes elevated rules for their protection because they form part of the recognized interests and objectives of Islamic law.

First Subsection: The Concept of Preserving Economic Rights in Islamic Law

The preservation of economic rights in Islamic law is governed by the principle of caring for interests and preventing actual and anticipated harm. Explaining the concept of preservation makes it possible to understand the rules for safeguarding economic rights and the way Islamic law applies them.

First: Meaning of Preservation of Economic Rights

1. Preservation in language: to preserve something means to safeguard and protect it. Preservation also means preventing harm from reaching something so that it does not perish.
2. Preservation of interests in jurisprudential terminology: preservation has two dimensions. The first is preservation from the side of existence, which establishes the foundations and rules of the interest by doing what sustains and maintains it. The second is preservation from the side of non-existence, which prevents actual or anticipated disruption. Thus, preservation involves establishing the right, recognizing it, and ensuring its growth, while also preventing aggression or harm against it. This corresponds to the linguistic meaning of preservation and constitutes the substance of protection in its various forms.

Second: The Basis for Preserving Economic Rights in Islamic Law

Human life is founded on sincere faith in God because belief is the foundation upon which Islamic law is built. It calls for the constructive development of the earth through worship, bringing benefit to humanity, caring for every interest, and preventing every harm. Wealth is a fundamental component of life and one of the principal means of developing the earth in a manner conducive to worship. God is the ultimate owner of wealth and has commanded its preservation and development.

Economic human rights inherently contain financial values upon which human livelihood depends and through which a person can fulfill religious and worldly functions. For this reason, Islamic law has made preservation of wealth one of its essential objectives.

The importance of preserving wealth follows the hierarchy of the objectives of Islamic law, beginning with necessities, followed by needs, and then embellishments. Al-Ghazali explains that benefit means preserving the purpose of the Lawgiver; essentially, it consists of obtaining a benefit or preventing harm and achieving the welfare of people through their objectives. The purposes of the Lawgiver for human beings are five essential necessities: preservation of religion, life, intellect, lineage, and wealth. The prohibition and punishment of theft preserves wealth, which constitutes people's livelihood and is indispensable to them. Breastfeeding a child and obtaining clothing and food likewise belong to the necessities.

Al-Shatibi explains that ordinary practices include matters related to preservation of life and intellect, such as consuming food and drink and wearing clothing, while transactions include matters serving human interests in dealings with others. Regarding preservation from the side of non-existence and criminal acts, Islamic law prescribes measures preventing the destruction of these interests, such as retaliation, blood money, prescribed punishments, compensation for property, and amputation. [49].

It follows that preserving and protecting wealth occupies the level of necessities and represents a central dimension of economic human rights, because human survival depends on access to food and drink, while clothing and protection of the body are necessary for fulfilling religious duties.

Study Findings:

1. Economic human rights represent divinely granted advantages that accompany human creation in order to preserve human dignity and provide a means of livelihood. They begin with securing essential needs, proceed to creating employment opportunities, include the right to property, and culminate in comprehensive development.
2. Islamic law preserves every economic human right from the side of existence by recognizing it, establishing its guarantees, and developing it. It also preserves these rights from the side of non-existence by prohibiting any violation or aggression against them.
3. International covenants and Islamic law agree, in principle, in recognizing guarantees of economic rights. In practice, however, these rights are exposed to various forms of aggression and violation in different parts of the world.
4. The general idea of criminal protection in Islamic criminal legislation is that certain interests of the community and the individual are considered worthy of protection. Therefore, deterrent criminal sanctions are established for those who violate them. The legislator considers activities related to the interest intended to be protected and evaluates the importance of protecting it. Two positions may then be adopted: first, criminalization, which attributes unlawfulness to conduct that undermines or harms the higher interest intended to be protected; and second, permissibility, which removes unlawfulness from conduct that realizes the interest intended to be protected.

Recommendations:

1. It is necessary to draw upon and be guided by the principles of Islamic law in general and Maliki jurisprudence in particular, and to activate rules that preserve and protect economic rights in view of the violations and erosion to which these rights are exposed.
2. Continued international cooperation is important for confronting violations of economic human rights and for establishing a clear criminal policy for their protection.

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