

# Human Trafficking and Islamic Law

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## Abstract

This article investigates the Islamic legal framework in relation to human trafficking, which is based on the sources of the Islamic Sharia and the approaches taken by the Islamic Sharia towards human trafficking. It defines the term of human trafficking in the Arabic language and under Islamic laws and focuses on the various practices and forms of human trafficking which are prohibited under both the Islamic Sharia and international human rights law. It also critically analyses the penalties for the crimes of human trafficking under the Islamic Sharia. The chapter then discusses the concept of human dignity under the Islamic Sharia and its influence on the definition of human trafficking from an Islamic perspective. The article demonstrates that Islam has not only supported a set of rights that preserve human dignity, but it has also instituted a series of punishments in civil society to prevent the abuse of these rights. Although there is no explicit text in the major sources of Islamic law prohibiting human trafficking, the chapter concludes that many customs and actions that contribute to trafficking are clearly prohibited. In addition, to strengthen the sense of human dignity, all Islamic principles have sought to grant rights to all, including the vulnerable and the weak. This implies that Islamic Sharia is in an appropriate position to complement and support the international framework for combating human trafficking.

**Keywords:** Density: Human dignity; Human Trafficking; International Law; Islamic Sharia; Forced Marriage; Mut'ah Marriage

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## 3.1 Introduction.

This article provides insight into the prohibition of human trafficking according to Islamic Sharia. This article addresses two key questions. Firstly, how is human trafficking defined in Sharia law? Secondly, what is dignity in Islam and how do concepts of dignity influence the definition of human trafficking?

Section two of the article discusses the definition of the concept of human trafficking. Section three focuses on the prohibition within Sharia of violations in forms of forced, child and temporary marriages along with the mandated punishment. Section four discusses the usefulness of the concept of human dignity in the prohibition of human trafficking under Islamic Sharia. The article ends with several conclusions, the main one being that, although there is no explicit text in the major sources of Islamic law prohibiting human trafficking, many customs and actions that contribute to human trafficking are clearly prohibited in Islam. Furthermore, all the principles of Islam have sought to grant rights to all, including the vulnerable, in an effort to deepen the sense of human dignity. This implies that Islamic Sharia is well suited to supplement and support the implementation of the framework to combat human trafficking.

## 3.2 The Concept of the Crime of Human Trafficking in Islamic Sharia

The basis of the Islamic religion, and its first sources, are the Qur'an and the Sunnah.<sup>1</sup> These two sources are written in the Arabic language, and to understand the term 'human trafficking' in Islam, therefore it is necessary to refer to the meaning of this term in Arabic.<sup>2</sup> This is in addition to defining human trafficking under Islamic Sharia.

Thus, this section is divided into two subsections. First, it deals with the meaning of the crime of human trafficking in Arabic terminology. Second, it discusses the Islamic definition of human trafficking.

### 3.2.1 The Definition of a Crime of Human Trafficking in Arabic Terminology

The term 'the crime of human trafficking' consists of three words: 'crime', 'trafficking', and 'human'.<sup>3</sup> The meaning of each word must be understood separately. To understand the general meaning of this term, its content and its limits, this section will briefly present the meaning of each word in Arabic.

#### 3.2.1.1 The Definition of a Crime in Arabic Terminology:

A crime, in Arabic terminology, is: 'a legal prohibition that Islam has enjoined with Fixed "Hudud" or Discretionary "Ta'zir" punishment'.<sup>4</sup>

<sup>1</sup> Bassiouni Cherif, *The Shari'a and Islamic Criminal Justice in Time of War and Peace* (Cambridge University Press 2013) 61; See also Noah Feldman, *The Fall and Rise of the Islamic State* (Princeton University Press 2008) 24.

<sup>2</sup> Sundus al-Momani and Saba Asha, The importance of the Arabic language in understanding Islam, please see this research on the following link: <https://sotor.com/> accessed 01 January 2022.

<sup>3</sup> Duha Al-Talabani, 'A Study of his Analysis of the Law of Preventing Trafficking in Persons in Jordanian Law and Comparative Laws' (2016) 43 *Studies of Sharia and Law Studies* 1283.

<sup>4</sup> Ali Al-Mawardi, *Al-Ahkam Al-Sultaniya* (Dar Al-Hadith Cairo no publication date) 322

The legal prohibitions are: either to do an act that is forbidden or to disobey an act that is commanded.<sup>1</sup> The prohibitions have been described as legal prohibitions. Islamic Sharia is the source of legality or otherwise, so the act or omission is not considered a crime unless it is specified by the Sharia, which entails a penalty.<sup>2</sup> Crimes are classified as those committed against God or those committed against a human being.<sup>3</sup> They are divided into Hudud punishments, Ta'zir or Qisas (retribution) and blood money.<sup>4</sup> The former is considered a violation of God's hudud, or 'boundaries', and is linked to punishments specified in the Quran and, in some cases, inferred from hadith.<sup>5</sup> The Hadud punishment is:<sup>6</sup> 'The punishment that is truly ordained by God Almighty'.<sup>7</sup> The punishments for the crimes are specific and limited in number in the two main sources.<sup>8</sup> They are for six crimes:<sup>9</sup> *zina* (illicit sexual intercourse),<sup>10</sup> *qathf* (false accusation of adultery),<sup>11</sup> *shurb al-khamr* (drinking alcohol),<sup>12</sup> *sariqah* (some types of theft),<sup>13</sup> *brigandage* (highway/armed robbery),<sup>14</sup> and *Baghi* (Transgression).<sup>15</sup> There exists controversy over whether or not apostasy in regard to Islam is also a Hudd crime.<sup>16</sup> Hudud's penalties are never waived or curtailed.<sup>17</sup>

Ta'zir is a legitimate and not specified punishment for every sin that does not have Hudud punishment, retribution 'Qisas'<sup>18</sup> nor any form of expiation (penance),<sup>19</sup> and it is to this definition that the majority of jurists refer.<sup>20</sup> The Qur'an and Sunnah mention a few of the Ta'zir crimes, but no specific punishments are specified.<sup>21</sup> Some have defined Ta'zir as: 'Every sin for which there is no Hudud punishment or any form of expiation'.<sup>22</sup> It can be said that the person who performs this discipline is the judge.<sup>23</sup> It is possible to argue that Islamic Sharia

<sup>1</sup> Mohammed Jubeir, "Definition of Crime According to Islamic Law and Islamic Legislative Sources" (1976) From Effect of Islamic Legislation on Crime Prevention in Saudi Arabia - Proceedings, 35 42, <<https://www.ojp.gov/pdffiles1/Digitization/87248NCJRS.pdf>> accessed 01 January 2022

<sup>2</sup> *ibid*

<sup>3</sup> UN Office on Drugs and Crime (UNODC), 'Combating Trafficking in Persons in Accordance with the Principles of Islamic Law' (Refworld, June 2009) <<https://www.refworld.org/docid/4a69b6ba2.html>> accessed 10 August 2022

<sup>4</sup> Silvia Tellenbach, 'Islamic Criminal Law' In Markus D. Dubber and Tatjana Horlle (eds), *The Oxford Handbook of Criminal Law* (1<sup>st</sup> edn, Oxford University Press 2015) 249-252.

<sup>5</sup> Rudolph Peters, *Crime and Punishment in Islamic Law* (Cambridge University Press 2005) 45

<sup>6</sup> Mohamed El-Awa, *Punishment in Islamic Law* (American Trust 1981)127-129.

<sup>7</sup> Ali Al-Marginani, *Al-Hedaya Explanation of the Beginning of the Beginner*, Investigated by: Talal Youssef (House of Revival of Arab Heritage Beirut 1995) (2) 339; Ali Al-Mawdari, and the royal rulings of Al-Mawardi. 344.

<sup>8</sup> Rudolph Peters, *Crime and Punishments in Islamic Law* (Cambridge University Press 2005) 30. The goal of hudud punishments is to deter future offenders from committing the same crime. According to Peters, fixed penalties must be carried out in public to deter others from committing the same offence; See also Justice Javed Iqbal, *The Concept of State in Islam* (Iqbal Academy 2000) 24.

<sup>9</sup> Wahbah Al-Zuhily, *Al-fih al-Islami wa Adalatha* (2<sup>nd</sup> edn, Dar Al-Fikr Letebah wa At-Twzia 1985) 193.

<sup>10</sup> Quran, 24:2; If the perpetrator is married, the penalty is 100 lashes or death by stoning (adultery). As the Qur'an states 'The [unmarried] woman or [unmarried] man found guilty of sexual intercourse - lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion [i.e., law] of Allah, if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment'

<sup>11</sup> Quran, 24:4; For which is punishable by 80 lashes. As the Qur'an states 'Those who accuse the chaste women (of fornication), but they do not produce four witnesses, flog them with eighty stripes and do not accept their any evidence anymore. They are the sinners'

<sup>12</sup> Al-Shafi'i, Al-Umm, (6), 281; Muhammad Al-Sarakhsi, Al-Mabsut, (9) 295. Hadith, Sahih Muslim, No 3281; For which carries a penalty of 40 or 80 lashes. There is a controversy between schools; During the Prophet's lifetime, the 40-lash penalty for alcohol consumption was introduced into the Prophetic tradition. However, the punishment was increased to 80 lashes under the rule of ibn Al-Khattab (the Prophet's Companion). This punishment was adopted by Maliki and Hanafi, on the contrary, the Shafii and Hanbali schools of thought followed the Prophet's lead and punished alcohol consumption with 40 lashes.

<sup>13</sup> Quran, 5:38; For which results in amputation of the right hand as punishment. As the Qur'an states [As for] the thief, the male and the female, amputate their hands in recompense for what they earned [i.e., committed] as a deterrent [punishment] from Allah. And Allah is Exalted in Might and Wise}.

<sup>14</sup> Quran, 5:33; For which results in amputation of the right hand and left foot as punishment. As the Qur'an states {Indeed, the penalty for those who wage war against Allah and His Messenger and spread mischief in the land is death, crucifixion, cutting off their hands and feet on opposite sides, or exile from the land. This 'penalty' is a disgrace for them in this world, and they will suffer a tremendous punishment in the Hereafter}.

<sup>15</sup> Muhammad Bassiouni. 'Crimes and the Criminal Process' (1997) 12 (3) Arab Law Quarterly 269.

<sup>16</sup> Wetenschappelijke Raad voor het Regeringsbeleid and SCIENTIFIC COUNCIL FOR GOVERNMENT POLICY, 'Dynamism in Islamic Activism: Reference Points for Democratization and Human Rights' (Amsterdam University Press 2006) 109-152. 2

<sup>17</sup> Mashood Baderin, *International Human Rights and Islamic Law* (Oxford University Press 2003) 1.

<sup>18</sup> Quran, 2:179. The Qur'an states {There is life for you in retaliation, O people of understanding, so that you may refrain.}; Qisas: A legal, specific, and exacted punishment that requires equality between the crime and the penalty when possible, and where its causes are: killing, injury, slashing, and removing the benefit of an organ. The right to enforce the Qisas punishment is held solely by the victim's closest heirs.

<sup>19</sup> Penance: It is what the Sharia decrees as reparation for a deficiency or error, or as a restraint from sin and a violation.

<sup>20</sup> Muwaffaq Al-Din Ibn Qudamah, *Al-Mughni Sharh Mukhtasar Al-Kharqi* (Cairo Library 1968) (9) 179

<sup>21</sup> Cherif Bassiouni (ed), *The Islamic Criminal Justice System* (Oceana Publications 1999) 212. Some Ta'zir crimes: are mentioned in the Quran, but they did not stipulate a punishment, for example, usury (unlawful interest) and bribery. As the Qur'an states {And do not eat up your property among yourselves for vanities, nor use it as bait for the judges, with intent that ye may eat up wrongfully and knowingly a little of (other) people's property}; As also the Qur'an states "Allah has permitted trading and forbidden 'Riba' interest (usury)".

<sup>22</sup> Ibn Qayyim al-Jawziyya, *Informing the Signatories on the authority of the Lord of the Worlds, investigation: Muhammad Abd al-Salam Ibrahim* (Dar al-Kutub al-Ilmiyya, Beirut, 1991) 1 (2) 76

<sup>23</sup> Abdelwahab Bouhdiba and Muhammad Ma'ruf Al-Dawalibi, *The Different aspects of Islamic culture, v. 2: The Individual and society in Islam* (Unesco publishing, 1998) 61.

sources broadly describe crimes while leaving specific details to Islamic states. The Quran states ‘O believers, obey Allah and the Messenger, as well as those given authorities (i.e. those in command) among you’.<sup>1</sup> Thus, those responsible for maintaining public order and safety must decide on the appropriate punishment for ta’zir offences.<sup>2</sup> Zeidan believes that the risk and the circumstances of the crime, the background of the offender and the extent of societal harm are all decisive factors in determining the disciplinary punishment.<sup>3</sup> These penalties are for the purpose of applying and upholding justice, punishing criminals, and protecting the public interest.<sup>4</sup>

Regarding crimes of retribution (Qisas) and blood money, these crimes are usually punishable by the same actions, they are classified as a right of persons.<sup>5</sup> Qisas and blood money are considered specific punishments for individuals. The meaning behind this is that they are penalties once and for all. As a result, there is no penalty range with upper and lower bounds. It is a personal right, meaning that the victim can be asked for forgiveness. If the perpetrator is pardoned, the penalty will be waived.<sup>6</sup> There are five types of retaliation and blood money crimes: (a) deliberate murder (b) quasi-deliberate murder (c) manslaughter murder (d) intentional assault on a person below the level of killing and (e) unintentional assault on a person below the level of killing. An assault on a person below the level of killing is defined as an assault that does not result in death, such as by wounds and beatings.<sup>7</sup> The purpose of this division in Islam is to impose the appropriate punishment on offenders.

### **3.2.1.2 The Meaning of “Trafficking” in the Arabic Language**

‘Trafficking’ in the Arabic language means buying and selling with the intention of making a profit through trade. If the subject of trade is permissible, then the trade is lawful, such as trading in goods and merchandise. If the subject of trade is prohibited, then it is illegal to trade, such as drug trafficking and human trafficking.<sup>8</sup>

### **3.2.1.3 The Meaning of ‘Humans’ in the Arabic Language:**

Humans are distinguished as beings capable of goodness and beauty, and by the nature of the human body. Humans are created female and male, one or the other, each are distinguished and each can be singular, and plural; the male is a human, as is the female; both are human beings, each with unique characteristics.<sup>9</sup>

The text of the Holy Quran states, ‘I am only a human being like you,’ indicating that people are equal in humanity, but they are distinguished for their greater knowledge, the ability to reason and rationalise and to do admirable deeds. Following this is stated, ‘It is revealed to me,’ showing that by this that I am distinguished from you, indicating the uniqueness of each individual. In another verse, The Holy Quran says, ‘No man has touched me,’ singling out the word ‘human.’ And is indicated in another verse, ‘So he represented to her a perfect human being’. It is an expression of the angels who appeared to her in the form of a human being. The text of the Quran: ‘This is not a human being,’ advocates a requirement to glorify him and exalt his position and that he is more honourable and generous than a human being.<sup>10</sup> This honouring of human beings in Islam is the fundamental basis of rights, and this is consistent with the preamble of the Universal Declaration of Human Rights, ‘Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world’.<sup>11</sup>

### **3.2.2 The Definition of the Crime of Human Trafficking under Islamic Sharia:**

The practice of human trafficking has been known in the Islamic world for a long time.<sup>12</sup> It is considered one of the most serious crimes, especially when targeting children and women.<sup>13</sup> Human trafficking takes many forms,<sup>14</sup> one of which is prostitution.<sup>15</sup> Prostitution was a widespread practice in former times, and can be

<sup>1</sup> Quran, 4:59.

<sup>2</sup> Mohammed Kamali, *Sharia Law: An Introduction* (One World 2008) 187.

<sup>3</sup> Abdulkarim Zedan, *Almadkhal Le Derasat AlShariah Al Islamiyah* (Dar Al-Ressalah, 1969) 45.

<sup>4</sup> *ibid.*

<sup>5</sup> Abdulqadir Odeh, *Islamic criminal legislation compared to secular law* (Dar al-Kateb al-Arabi Beirut no date of publication) 79.

<sup>6</sup> *ibid.*

<sup>7</sup> James Anderson, ‘Homicide in Islamic Law’ (1951) 13 Cambridge University Press 811.

<sup>8</sup> Muhammad Eid, *Organised Crime Gangs and Their Role in Trafficking in Persons* (Naif Arab University for Security Sciences Riyadh 2005) 91

<sup>9</sup> Muhammad Ibn Manzoor, *Lisan Al Arab* (Vol 4, Dar Sader Beirut 2010) 59

<sup>10</sup> The term ‘human trafficking’ when translated into Arabic may confuse some non-specialists, as some may take the term literally and assume it refers to the genuine sale and purchase of human beings or the existence of markets for slaves. The linguistic concept of the word ‘trafficking’ gives the Arabic reader this definition, whereas, in fact, it is only a metaphorical meaning, since this does not necessarily have to involve a sale and purchase transaction in the legal sense, whereas the actual meaning of the crime of human trafficking may involve other acts. It can also be said that the means of exploitation can be considered a crime of human trafficking. Nasser Al-Shahrani, ‘International Efforts in Combating Trafficking in Human Beings’ (Naif Arab University Press for Security Sciences, Riyadh, 2010). 8; Duha Al-Talabani (n 3)

<sup>11</sup> Universal Declarations of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)

<sup>12</sup> Muhammed Shanqeeti, *Prohibition of Trafficking in Women and Their Independence in Islamic Law* (Naif Arab University for Security Sciences, Riyadh 2010) 452.

<sup>13</sup> Mohamed Mattar, ‘Trafficking in Persons, Especially Women and Children, in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses’ (2002) 26 Fordham International Law Journal 721.

<sup>14</sup> Mohammed Murad, *Islamic Sharia’s position on trafficking in women and children and organ transplantation* (Naif Arab University for Security Sciences Riyadh 2010) 446

<sup>15</sup> Report of the 9th Regular Session of the OIC Independent Permanent Human Rights Commission, ‘Human trafficking in OIC countries’

thought of as turning a woman's body into a commodity to earn a profit.<sup>1</sup> Islamic Sharia has prohibited sexual exploitation of others;<sup>2</sup> before the spread of Islam, if a person had a slave-girl, he would send her to commit adultery in order to gain money for the master.<sup>3</sup> Therefore, the Quran has revealed;

And do not compel your girls to prostitution, seeking the materials of this life, while they desire to remain chaste. Should anyone compel them—then after their compulsion, Allah is Forgiving and Merciful.<sup>4</sup>

At present, this form of human trafficking is known as the sex trade.

The Arabian Peninsula knew slavery before Islam, as slaves brought from African countries such as Abyssinia and Nigeria were then sold to others.<sup>5</sup> With the advent of Islam, the Quran came with a call for slaves to be treated with dignity.<sup>6</sup> This is because slavery was a system with many contributory factors, such as wars, piracy and kidnapping.<sup>7</sup> In addition to people selling themselves, a father also had the authority to sell his children.<sup>8</sup> This kind of treatment of humanity demonstrates evidence of the moral trajectory taken by the Quran warranting the complete eradication of slavery.<sup>9</sup>

This section is divided into two subsections. First, it highlights the definition of the crime of human trafficking in ancient Islamic jurisprudence. Second, it discusses the definition of the crime of human trafficking in contemporary Islamic scholarship.

### 3.2.2.1 The Definition of the Crime of Human Trafficking in the Ancient Islamic Jurisprudence

Since 'human trafficking' is a modern term, ancient Islamic jurisprudence scholars do not provide a definition of the crime of human trafficking. However, forms of this trade have existed since ancient times, and have been discussed by scholars in Islamic jurisprudence books.<sup>10</sup> Human trafficking was forbidden by Islamic Sharia and punishments given for it, as will become clear later. However, local laws and international conventions have defined it using very similar terms.<sup>11</sup>

It can be said that Islamic and international laws both make provisions for combating trafficking in persons.<sup>12</sup> Several international and regional human rights instruments which have been adopted in the Muslim world, as well as by some Islamic constitutions and national legislation, condemn and prohibit trafficking in persons and related crimes.<sup>13</sup> This confirms that these laws do not contradict the principles of Islamic Sharia.<sup>14</sup> This article addresses some practices that lead to human trafficking under Islamic human rights law. Some Islamic countries maintain international principles and provisions in dealing with the problem of trafficking in persons. These principles and rulings are based on Islamic legal traditions.

However, old forms of human trafficking still persist. In fact, they represent some of the forms of human trafficking in the current era as well. These forms have developed in light of contemporary international trends and have recently revealed new patterns.

### 3.2.2.2 The Definition of the Crime of Human Trafficking in Contemporary Islamic Jurisprudence

Human trafficking has appeared in contemporary Islamic jurisprudence with several definitions, including:

All legal and illegal behaviour that turns a person into a mere commodity or a victim that is controlled by professional intermediaries across national borders. This is with the intent of exploiting them for low-paid work or in sexual acts or others. These definitions applied whether the act was done with the will of the victim or by default, or in any other form of servitude.<sup>15</sup>

It is noted that the above definition indicates that the crime of human trafficking occurs within legal or illegal activities. However, international and regional charters and legislation related to human trafficking are

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(May 2016) <<https://oic-iphrc.org/en/data/docs/studies/358156.pdf>> accessed 02 January 2022

<sup>1</sup> Quran, 49:13. Islam had advocated equality and dignity among people: {People, we have created you from a male and a female and made you into nations and tribes that you might know one another. The noblest of you before Allah is the most righteous of you. Allah is the Knower, the Aware}.

<sup>2</sup> UN Office on Drugs and Crime (UNODC) (n 7)

<sup>3</sup> Ali Ünal, *The Qur'an with Annotated Interpretation in Modern English* (Tughar book USA 2008) 734.

<sup>4</sup> Quran, 24:33.

<sup>5</sup> John Hunwick, 'Arab Views of Black Africans and Slavery' (2006) *West Africa, Islam, and the Arab world*, 75.

<sup>6</sup> Gustave Le Bon, *The world of Islamic civilization* (1<sup>st</sup> edn, Tudor Publishing company 1974) 459-460

<sup>7</sup> Abdullalh Alwan, *The System of Slavery in Islam* (Dar Al-Salam for Printing Publishing and Distribution 1986) 11-12

<sup>8</sup> *ibid.*

<sup>9</sup> Adis Duderija (ed), *Maqasid al-Shari'a and Contemporary Reformist Muslim Thought: An Examination* (New York Palgrave Macmillan 2014) 236.

<sup>10</sup> Majid Salmassi, The phenomenon of human trafficking, a jurisprudential study (2014) 7-8 (28) *Journal of Ijtihad and Renewal*. 111 115.

<sup>11</sup> Iyad Ibrahim, 'The Phenomenon of Human Trafficking' (An Islamic jurisprudential vision) (2021) 1 (4) 175 184-186.

<sup>12</sup> Report of the 9th Regular Session of the OIC Independent Permanent Human Rights Commission, 'Human trafficking in OIC countries' (May 2016) <<https://oic-iphrc.org/en/data/docs/studies/358156.pdf>> accessed 02 January 2022.

<sup>13</sup> UN Office on Drugs and Crime (UNODC), (n 7).

<sup>14</sup> UN Office on Drugs and Crime (UNODC), (n 7),

<sup>15</sup> Suzi Nashid, *Human trafficking between the shadow economy and the formal economy* (New University House for Publishing and Distribution Alexandria 2005) 172.



limited to acts of recruitment, transportation, transfer and reception.<sup>1</sup> In addition, one finds that the definition stipulates the transformation of a human being into a mere commodity, by professional intermediaries across national borders. However, the crime of human trafficking may also be carried out by either a professional or unprofessional intermediary and may be committed across either national or international borders.

Human trafficking is also defined as: ‘the recruitment or transfer of persons by force, coercion, or deception for the purpose of exploitation in all its forms, including sexual exploitation, forced labour, forced service, beggary, slavery, trafficking in human organs, and so on’.<sup>2</sup> This definition refers to the particular activities on which the crime of human trafficking is based, including recruitment and transportation, as well as the means used to commit the crime, namely force, coercion, and deception. Moreover, the definition indicates that such acts should be for the purpose of exploitation. This definition does not limit the forms of exploitation, but gives examples, as indicated by the phrase ‘and so on’. This definition is consistent with the definition contained in the Palermo Protocol. Moreover, the definition includes all aspects of the crime of human trafficking, including the recruitment of children. It is therefore considered more comprehensive than others.<sup>3</sup>

The following section explains various forms of exploitation under Islamic human rights law.

### 3.3: Human Trafficking under Islamic Human Rights Law

It can be inferred that human trafficking crimes are based on human exploitation.<sup>4</sup> Thus, exploitation is what distinguishes human trafficking from some similar acts, for example, the crime of smuggling migrants, or illegal immigration.<sup>5</sup> In accordance with the definition in the Palermo Protocol, exploitation can take various forms, such as forced labour or services, prostitution or other forms of sexual exploitation, and the removal of organs.<sup>6</sup> Islamic law generally stipulates that the exploitation of human beings is prohibited because in Islam, exploitation is contrary to human dignity.<sup>7</sup> Islamic Sharia also explicitly prohibits certain forms of exploitation which are consistent with the Palermo Protocol.<sup>8</sup> This prohibition includes forced labour or services and the exploitation of the prostitution of others, as well as the prohibition of trafficking in the removal of organs.<sup>9</sup> In addition to the practices covered by the Protocol in a specific form, a number of Islamists prohibit other forms of exploitation, including what may occur as a result of illegal practices on expatriate workers, forced marriage, child or pleasure marriage. Islamic Sharia complies with IHRL in prohibiting most of these practices. This section, therefore, is divided into three subsections; firstly, the general prohibition of exploitation in Islam; secondly, the viewpoint of Islamic schools of thought on the subject of forced and temporary marriage, as well as child marriage in Islamic law; and thirdly, human trafficking as being punishable under Islamic law.

#### 3.3.1 Prohibition of Exploitation in Islam

Islamic law forbids exploitation in general<sup>10</sup> and has explicitly stipulated the prohibition of exploiting people’s needs and vulnerability. Specifically, Islamic law prohibits monopolising goods and services,<sup>11</sup> particularly in times of distress and panic. It was therefore decided to consider the practice monopoly as a form of exploitation. For example, monopolising basic commodities in times of need, and times of crisis such as a pandemic for the purpose of increasing prices and making greater profit.<sup>12</sup> Islamic law also prohibits bribery; bribery being a key issue in this discussion. Bribes given to the border officials, customs, law enforcement, and other government officials facilitate the commission of unlawful acts and the use of illegal means, as well as the exploitative practices which define the character of human trafficking. While some government employees may be content to cover up the crime in exchange for money, others actively seek to profit from the human trafficking business.<sup>13</sup> As a result, the prohibition of bribery in Islam, along with many other Islamic principles, supports the

<sup>1</sup> Kelly Hyland, ‘The Impact of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children’ (2001) 8 Human Rights Belief 30.

<sup>2</sup> Mohammed Al-Arian, *Operations of human trafficking and mechanisms to combat it* (New University House Alexandria 2011) 30.

<sup>3</sup> Fouad Abdelmoneim, ‘The principle of equality in Islam compared to Western democracies and Marxist regimes’ (PhD thesis 1972) 177.

<sup>4</sup> Nasser Al-Shahrani, *Combating Human Trafficking The National Legislative Framework in the Kingdom of Saudi Arabia* (Naif Arab University for Security Sciences Riyadh 2008) 8.

<sup>5</sup> Muhammad Abdulhadi, *Human Trafficking between Islamic Jurisprudence and liberal Law* (Dar al-Fikr al-Jamii, Alexandria, 2015) 90.

<sup>6</sup> Article 3(a) of the Palermo Protocol states that exploitation “shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.

<sup>7</sup> Nasser Al-Shahrani (n 65)

<sup>8</sup> Zuraini Ab. Hamid & Khairil Azmin Mokhtar, Human Trafficking: The International Malaysian Legal Law Framework and Shariah Perspective (2013) 21 IIUM Law Journal 287.

<sup>9</sup> ibid (n 66)

<sup>10</sup> Report of the 9th Regular Session of the OIC Independent Permanent Human Rights Commission, ‘Human trafficking in OIC countries’ (May 2016) <<https://oic-iphrc.org/en/data/docs/studies/358156.pdf>> accessed 02 January 2022.

<sup>11</sup> Arvie Johan, ‘Monopoly Prohibition According to Islamic Law: A Law and Economics Approach’ (2015) 27 MIMBAR HUKUM 166.

<sup>12</sup> Ibtisam Al-Ghamdi, ‘Monopolizing the Victuals at the Epidemic Time: A Jurisprudence Comparative Study’ (2020) Dhamar University - College of Arts.

<sup>13</sup> UNODC, ‘Corruption as a Facilitator of Trafficking in Persons and Smuggling of Migrants’ (March 2021) [https://www.unodc.org/roseap/uploads/documents/Publications/2021/UNODC\\_RSO\\_Corruption\\_Desk\\_Review\\_FINAL.PDF](https://www.unodc.org/roseap/uploads/documents/Publications/2021/UNODC_RSO_Corruption_Desk_Review_FINAL.PDF)> accessed 06 February 2023.

comprehensive Islamic framework for combating human trafficking. As a result, bribes given to state officials to cover up this crime are forbidden and thus punishable under Islamic Sharia.

Respecting people's rights and interests is considered one of the most important basic Islamic rules in transactions as well as removing injustice and grievances between people. Islam has guided and directed the path of lawful earnings through trade: the Qur'an states: 'But Allah has permitted trade and has forbidden interest'.<sup>1</sup> However, Islam has also controlled and restricted trade to ensure that people's rights are observed, justice is established, and unlawful earning is forbidden. Obtaining people's money unjustly requires an element of exploitation. Consequently, the Qur'an stipulates 'O believers, you should not usurp unjustly each other's wealth'.<sup>2</sup> Exploiting people is therefore forbidden according to the provisions of Sharia. Human trafficking crimes are based on human exploitation. To demonstrate this, this section will present the Sharia's position on some forms of exploitation mentioned in international and Islamic definitions.

### 3.3.2 Temporary Marriage for Pleasure, Forced and Child Marriages

Before expanding on the study of the provisions of Islamic law when dealing with forced or temporary marriage or child marriage, it is important to note that there are some unethical customary practices, which are still very prevalent in some Islamic countries. These practices contradict Islamic principles and lead to exploitation.<sup>3</sup> In this section, the research examines some specific patterns of exploitative marriages, which arose as a result of religious and secular interpretation of morals and customs. These practices may lead to actions prohibited under IHRL, and therefore they must be analysed in line with compatibility with the principles in Islamic Sharia law. There is no doubt that the Islamic Sharia ban on these practices contributes to combating human trafficking.

These harmful practices are the result of traditional practices, passed down through the generations. These customary practices are a source of harm to individuals or groups. The Office of the United Nations High Commissioner for Human Rights has condemned some traditional practices, including forced marriage, early marriage, son preference, early pregnancy, as well as excessive dowries.<sup>4</sup>

However, these practices remain prevalent in some Islamic countries. Most of their victims are women and children who are exposed to the most serious human rights violations which are undoubtedly in violation of the provisions and principles of Islamic Sharia. These traditional practices are mostly rooted in cultures that arose in Arab history before Islam, or in an incorrect interpretation of Islamic Sharia rulings. Hence, this section is divided into two subsections. First, it discusses minor and forced marriages in Islamic *Fiqh*. Second, it discusses the issue of temporary marriage in Islamic *Fiqh*.

#### 3.3.2.1 Marriage for Minors and Forced Marriage

In some Muslim societies, young girls may be trafficked through forced marriage.<sup>5</sup> This practice is common in areas where ignorance of the provisions of Islamic jurisprudence abounds, as well as in societies where tradition and custom allow these errors to be committed.<sup>6</sup> The majority of Islamic jurists argue that Islamic law permits marriage to a minor without the girl's explicit consent to the marriage. Ibn al-Mundhir<sup>7</sup> said, 'The scholars are unanimously agreed that it is permissible for a father to give his young eldest daughter in marriage if her husband is a qualified person.'<sup>8</sup>

On the contrary, others believe that the marriage is invalid unless the minor attains the necessary physical capacity, and that both parties must consent to this marriage. This group justifies their view with the verse 'Test orphans until they reach marriageable age; then, if you find they have sound judgment, hand over their property to them'. What is meant by the words 'until they reach marriageable age'<sup>9</sup> is the validity of both the husband and wife for marriage, and that spouses bear the responsibilities of marriage. This is also the opinion of many commentators. Imam Al-Baghawi<sup>10</sup> said in the book of *Ma'ālim al-Tanzīl*: '“Until they reach marriageable age”,<sup>11</sup> refers to the age of mature men and women.' Al-Alusi<sup>12</sup> also said in his book *Ruh al-Ma'ani*, an exegesis

<sup>1</sup> Quran, 2:275.

<sup>2</sup> Quran, 4:29.

<sup>3</sup> UN Office on Drugs and Crime (UNODC) (n 7)

<sup>4</sup> UN Office of the High Commissioner for Human Rights (OHCHR), 'Fact Sheet No 23 Harmful Traditional Practices Affecting the Health of Women and Children' (August 1995). <<https://www.refworld.org/docid/479477410.html>> accessed 06 January 2022.

<sup>5</sup> United Nations Office on Drugs and Crime (UNODC), 'The concept of 'exploitation' in the trafficking in persons protocol' (2015) <[https://www.unodc.org/documents/congress/background-information/Human\\_Trafficking/UNODC\\_2015\\_Issue\\_Paper\\_Exploitation.pdf](https://www.unodc.org/documents/congress/background-information/Human_Trafficking/UNODC_2015_Issue_Paper_Exploitation.pdf)> accessed 06 January 2022

<sup>6</sup> UNHRC, 'Report of the OHCHR on Preventing and eliminating child, early, and forced marriage' (02 April 2014) 26<sup>th</sup> session UN Doc A/HRC/26/22. Para number is missing

<sup>7</sup> Abu Bakr Muhammad ibn Ibrahim ibn al-Mundhir al-Naysaburi was a student of al-Rabi' ibn Sulayman, a Shafi'i scholar who was a direct disciple of al-Shafi'i. He would eventually rise to the rank of *ijtihād*. Even though he was ranked of *ijtihād*, he used to adhere to most of al-legal Shafi'i's opinions.

<sup>8</sup> Muwaffaq Al-Din Ibn Qudamah, *Al-Mughni* (Dar Alam Al-Kitab 1997) 3(9) 386.

<sup>9</sup> Quran, 4:6.

<sup>10</sup> Ab Muammad al-usayn ibn Masd ibn Muammad al-Farr' al-Baghaw born 1041 or 1044 (433 AH or 436 AH) died 1122 (516 AH) was a well-known Persian Muslim mufassir, hadith scholar, and Shafi'i faqih who is well known for his important work *Malim at-Tanzil*.

<sup>11</sup> *ibid* (n 82).

<sup>12</sup> Sayyid Mamd ibn 'Abd Allh al-usayn al-ls al-Baghddd was an Iraqi Islamic scholar best known for producing *Ruh al-Ma'ani*.

(tafsir) of the Qur'an: 'Until they reach marriageable age and are suitable for guidance and education'. Thus, it can be argued that the marriage of a minor is a deviation from the provisions of Islamic Sharia, which is based mainly on the right of each person to choose their spouse. This is a right granted for everyone in general under international human rights law.<sup>1</sup>

Thus, it is conceivable to say that child marriage is not permissible until after puberty and only if it is in the best interests of the child. It is also not permissible to have sexual relations before children reach the necessary physical capacity. In the KSA, a new law prohibits the documentation of a marriage contract for anyone under the age of 18. After verifying their interest in the marriage, the court may authorise the marriage of a person under that age, male or female, if he/she is an adult.<sup>2</sup> Islamic Sharia considers puberty as the end of childhood.<sup>3</sup>

According to various sects of Islamic law, the most popular viewpoint is to explicitly grant non-virgin women the right to choose a husband and enter into a marriage contract. This is the viewpoint of the Abu Hanifa School of Islamic jurisprudence. In contrast, the other three schools of thought hold that the woman's guardian must sign her marriage contract on her behalf. However, the wife must consent to the marriage. Although schools differ in opinion regarding the conclusion of the marriage contract by a guardian, a guardian is not permitted to arrange the marriage of a girl under duress. The explicit consent of both spouses must be given; otherwise, the marriage will become void. Consequently, marriage without the consent of both parties is prohibited by all schools of jurisprudence in Islam, as indicated previously. The Prophet Muhammed (PBUH) said 'A previously married woman should not be married until her consent has been sought, and a virgin should not be married until her permission has been sought'.<sup>4</sup> This is consistent with IHRL, and thus it is clear that some customary practices violate the principles of Islamic Sharia. It can be argued that the guardianship of a man over a girl in Islam may be a reason for exploitation, abuse and illegal practices that result in forced marriage.

### 3.3.2.2 Temporary Marriage for Pleasure (Mut'ah Marriage)

Mut'ah marriage or temporary marriage is one of the forms of marriage which is practised in some Islamic countries such as Iran and eastern part of KSA.<sup>5</sup> This form of marriage is when a man pays an amount of money to marry a woman for a certain period, such as for a day or more of marriage.<sup>6</sup> This marriage ends at a mutually agreed-upon time.<sup>7</sup> It can be argued that temporary marriage may in some circumstances give rise to human trafficking and sexual exploitation.<sup>8</sup> Temporary marriage is prohibited by Sunni,<sup>9</sup> Ibadite,<sup>10</sup> Zaydi,<sup>11</sup> and Ismaili<sup>12</sup> sects.<sup>13</sup> They consider that temporary marriage is a forbidden marriage, and it is not permissible for anyone to undertake it or contemplate it.<sup>14</sup> On the contrary, the Shiite sect holds that temporary marriage is permissible according to Islamic Sharia.<sup>15</sup> The first group justifies the prohibition of pleasure marriage on the grounds that this marriage was permissible at the beginning of Islam, until the Prophet Muhammed (PBUH) prohibited it. The Shiite sect views pleasure marriage as being permissible based on the text of the Quran, 'So for whatever you enjoy [of marriage] from them, give them their due compensation as an obligation'.<sup>16</sup> They interpret this verse in three ways. First, that the Quran mentions enjoyment, but does not mention that marriage, enjoyment, and pleasure are the same. Second that the Quran enjoins the payment of wages as a contract of rent for the benefit of intercourse. Third, that the Quran commanded that the reward be paid after enjoyment, and this can only be in a contract such as for enjoyment and pleasure. Whereas a dowry is obligatory for the marriage; the husband pays the dowry first and then can marry, so the noble verse indicated that pleasure marriage is permissible.<sup>17</sup> These interpretations have been discussed by scholars, but the conclusion is that what is meant by the verse is permanent marriage and not pleasure or temporary marriage. The Qur'an mentions types of taboo at the

<sup>1</sup> Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages (adopted 10 December 1962, entered into force 09 December 1964) 521 UNTS 231 art 1.

<sup>2</sup> Saudi Personal Status Law (Royal Decree No M/73) 2022 art 9.

<sup>3</sup> Muhammad Zia-Ul-Haq, 'Legal Status of Children in Islamic Law Abstract' <<https://iri.aiou.edu.pk/wp-content/uploads/2016/07/06-legal-status-of-children-in-islam.pdf>> accessed 2 February 2023.

<sup>4</sup> Sunan an-Nasa'i 3267, Book 26, Hadith 72, Vol 4, Book 26, Hadith 3269.

<sup>5</sup> Marriage for pleasure or temporary marriage is a marriage based on the contract, the specified period and the dowry, in which the spouses do not inherit, and the woman does not have to spend on the husband.

<sup>6</sup> In the Shia sect; it is permissible for a divorced woman to conclude a temporary marriage contract without the consent of the guardian, but if she is a virgin, the consent of her guardian is required.

<sup>7</sup> Abd al-Salam al-Harani, editor in jurisprudence, (Al-Maaref Library Riyadh without year of publication) (2) 23.

<sup>8</sup> United Nations Office on Drugs and Crime. (n 78).

<sup>9</sup> Abdullah Alwan (n 51)

<sup>10</sup> The Ibadi movement or Ibadism, is an Islamic school of thought that is followed in Oman, Algeria, Tunisia, Libya, and East Africa.

<sup>11</sup> Zaidiyyah, and Zaidism is a Shia sect theologically related to the Ibadi and Mutazila schools.

<sup>12</sup> Ismlism is a Shia sect.

<sup>13</sup> Mughni Al-Muhtaj (3/142), Al-Hawi by Al-Mawardi (11/449-455), Al-Mughni by Ibn Qudamah.(7/178).

<sup>14</sup> Al-Mughni by Ibn Qudamah (7/178).

<sup>15</sup> Sahih Muslim, Book of Hajj, chapter on the recommendation of marriage for the one whose soul longs for me and finds provisions, and the work of those who are unable to provide supplies by fasting (2/1025 (No. 1406).

<sup>16</sup> Quran, 4:24.

<sup>17</sup> Abu Bakr al-Kisa'i, *Badaa' al-Sana'i in the Order of Laws* (first published 1189) (2)273.

beginning of the verse and permits what follows. 'And lawful for you, beyond all that, is that you seek after (them) with your riches (i.e., that you pay them a dowry)' As for naming what is given to women as a wage here, this is correct. The dowry in marriage is called a wage, and the Qur'an states: 'So marry them with the permission of their people and give them their due compensation according to what is acceptable'.<sup>1</sup> i.e., their dowries. As for the delivery of the reward after sexual intercourse by saying 'So, to those of them whose company you have enjoyed, give their dues (dowry) as obligated'; this does not indicate the permissibility of Mut'ah marriage because in the verse there is an advance and a delay.<sup>2</sup> Therefore the correct interpretation is the prohibition of Mut'ah marriage since Imam Al-Shafi'i said, 'I don't know of anything in Islam that was Halaal on one occasion, then made Haraam, then made Halaal and then Haraam with the exception of Mut'ah'.<sup>3</sup> Ibn al-Arabi<sup>4</sup> said, and Ibn Abbas<sup>5</sup> used to say that Mut'ah marriage is permissible, and then it was proven that he retracted it. Therefore, there was a consensus on the prohibition of Mut'ah marriage.<sup>6</sup>

It may be impossible to differentiate between whether the practice of this type of marriage is by custom and habit, or if it is permissible according to the Shiite doctrine in Islamic law. However, this marriage may lead to illegal practices, such as sexual exploitation, which is forbidden in Islam, based on peremptory texts regarding the prohibition of deception and coercion and other bad practices that are prohibited by Islam. Other types of marriages are widespread in some Islamic countries, such as marriage facilitated by a mediator: that is a broker. The client will give the mediator a list of specifications about the future spouse such as social and economic status, education level, age, religious views, and/or beauty standards. A foreigner may choose one of these women and then marry her and take her with him to his homeland, where he may exploit her. Thus, an originally lawful marriage may lead to unlawful practice.

The practice of some Muslim sects that permit their male followers to marry minors and permit forced marriage explicitly contradicts the provisions of international law, especially the Palermo Protocol, and these practices challenge the KSA's compliance with both IHRL and Islam as well.

### 3.3.3 Human Trafficking as Punishable under Islamic Law

It is widely acknowledged that Sharia offers a comprehensive framework for organising all aspects of people's lives. The principles, commitments, commands, and one's limitations are established or derived from primary and secondary Islamic sources. This is classified as a comprehensive framework for the Islamic community.<sup>7</sup> As previously stated, crimes in Islamic law are divided into three parts: firstly, the Hudud crimes, secondly, Ta'zir crimes and thirdly, the crimes of retribution (Qisas) and blood money. This begs the question - how is human trafficking classified under Islamic law? It must be remembered that the offence of human trafficking has not been defined or explicitly mentioned within Islamic legal sources, particularly the Qur'an or Sunnah.<sup>8</sup> It is then possible to conclude that this modern crime is categorised as a disciplinary offence (Ta'zir punishment) because this category includes all crimes for which Sharia does not specify a punishment.<sup>9</sup> In other words, given the fact that there is no stipulated punishment under Islamic law for the crime of trafficking in human beings, the sanction depends on the discretion of the ruler.<sup>10</sup> Therefore, the prescribed punishment for such an act can be different from one Islamic country to another. It is important to recognise that despite the latitude granted to rulers in Islam, they must impose the proper punishment for such a crime while keeping two critical factors in mind.

The first factor is that the primary goal of Ta'zir punishment is the rehabilitation of the perpetrator while also protecting the community interest from violations.<sup>11</sup> Ta'zir punishment may prevent a threat to one of the purposes of Sharia, including the following five principles, which are called the five necessities in Islamic law - the preservation of 'religion, life, reason, progeny, and property'.<sup>12</sup>

The second factor is that human trafficking must be acknowledged, not just as a crime against the public, but also as a crime against the victim whose personal security and dignity have been curtailed and interfered

<sup>1</sup> Quran, 4:4

<sup>2</sup> ibid

<sup>3</sup> The meaning of the needy to know the meanings of the words Al-Minhaj (4/232).

<sup>4</sup> Ibn Arabi (1165 – 1240), full name Muhy al-Dn Ab Abd Allh Muammad ibnAl ibn Muammad ibn al-Arab al-tim al-al-Andalus al-Murs al-Dimashq, nicknamed al-Qushayri and Sultan al-Arifin, was an Arab Andalusian Muslim scholar, mystic and poet.

<sup>5</sup> Abd Allah ibn Abbas, also known as Ibn Abbas, was a cousin of the Islamic prophet Muhammad (PBUH) and is regarded as the greatest mufassir of the Qur'an.

<sup>6</sup> Al-Zakari, *The Book of Flags* (4) 184.

<sup>7</sup> Mohammed El-Awa, *Punishment in Islamic Law* (American Trust 1981) 135.

<sup>8</sup> Majid Salmassi (n 243).

<sup>9</sup> UN Office on Drugs and Crime (UNODC) (n 7).

<sup>10</sup> UN ibid.

<sup>11</sup> Peters (n 9) 66.

<sup>12</sup> Mohammed Al-Ghazali, *Al-Mustafa Min Ilm Al-Usul* (Al-Matbah Al-Amiriyah, 1904) 287, 288; See also Matthew Lippman, 'Islam Criminal Law and Procedure: Religious Fundamentalism v. Modern Law' (1989) 12(1) *Boton College International and Comparative Law Review* 29



with.<sup>1</sup> While clarifying the strictness of Sharia forbidding theft and brigandage, Al-Hageel indicates that these crimes may jeopardize human beings' standing, dignity and lives, and as a result of these crimes, human lives will be endangered.<sup>2</sup> This analogy can be extended to crimes involving human trafficking.<sup>3</sup> This is because they both involve similar risks that endanger human life and generally jeopardise the security of any society. In support of this, Abu Al-Basal states that human trafficking crimes, if organised and carried out on a large scale, may be considered brigandage, and thus border (Hudud) punishment must be used.<sup>4</sup> The Hudud punishment can be used as well in some aspects of human trafficking such as kidnapping a child; al-Basri's<sup>5</sup> statement in this regard is to apply Hudud punishment for theft.<sup>6</sup> Other aspects of human trafficking of a more serious nature, can also be construed as Hudud crimes, and as such, an appropriate punishment must be imposed. Al-Murad also mentions that the penalties are inextricably linked to the offender's act. In this respect, if victims are killed while travelling to or after arriving at their destination, retribution can be extended and enforced.<sup>7</sup> Therefore, the Quran stated 'We ordained therein for them: "Life for life, eye for eye, nose for nose, ear for ear, tooth for tooth, and wounds equal for equal'. Al-Qurtubi reported that the verse indicates that an assault on any part of the human is a crime punishable by reciprocity, where the verse prohibits any assault on the eyes, nose and ears, and then also mentions the prohibition against wounding any person. In the Qur'an, it states 'wounds lead to legal retribution'.<sup>8</sup> These punishments violate international human rights standards.

As a result, preventive measures lack an approach that includes a focus on protecting human dignity. Thus, it becomes important to discuss the usefulness of the concept of human dignity in the context of the prohibition of human trafficking under Islamic law in the next section.

### 3.4 Applying the Concept of Human Dignity in the Context of the Prohibition of Human Trafficking under Islamic Law

There is no doubt that human dignity in Islam is linked to the issue of human trafficking.<sup>9</sup> Islam honours mankind, as is reflected within several readings and aspects in the Qur'an. Human trafficking is a violation of human dignity, and in the Quran, honour is lauded by the Creator of mankind; therefore, the brotherhood of man cannot be despised by the honourable one.<sup>10</sup> The Qur'an contains many verses that establish the principle of honour and respect for human dignity and decree punishment for those who violate it.<sup>11</sup> References to human dignity in Islam can be traced back to the revelations in the Qur'an where it states that at the time of creation, God ordained that human beings are the vice-regents of God on earth because of their dignity.<sup>12</sup> God also ranked humans above all other creatures, angels included.<sup>13</sup>

'We have honoured the children of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of our creation'.<sup>14</sup>

This honour that God bestowed on every human being, regardless of their religion, gender or colour, is protected by many provisions in Islamic Sharia, to ensure that the rights guaranteed by Islam are not diminished.<sup>15</sup> This protection includes determining punishment for every unlawful transgression against the five necessities mentioned above.<sup>16</sup> Every transgression against these necessities is an infringement of a right that is

<sup>1</sup> Mohamed Mattar, 'Human Security or State Security? The Overriding Threat in Trafficking in Persons' (2006) 1 Intercultural Human Rights Law Review 249.

<sup>2</sup> Suleiman Al-Hageel, *Human Rights in Islam and their Applications in Saudi Arabia* (King Fahd National Library, 2001) 166.

<sup>3</sup> UN Office on Drugs and Crime (UNODC) (n 7)

<sup>4</sup> Abu Al-Basal, 'Establishing the limit of hiraba in Islam on those who practice organised trafficking in human beings' *Ammon* (Amman, 23 July 2011) <<https://www.ammonnews.net/article/92947>> accessed 06 January 2022.

<sup>5</sup> Abu Sa'id ibn Abi al-Hasan Yasar al-Basri, also known as Hasan of Basra (Arabic: Al-Hasan al-Basri; 642 – 15 October 728)

<sup>6</sup> Ahmad Al-Bayhaqi, Al-Sunan Al-Kubra, The Book of Theft, the chapter on Whoever stole a young slave from Haraz (Dar Al-Kutub Al-Ilmiyya, 2003) 3 (8) 465.

<sup>7</sup> Mohammed Al-Murad, *Combat Human Trafficking* (Naif Arab University for Security Science Press 2005) 81.

<sup>8</sup> Abu Abdullah Muhammad ibn Ahmad Al-Qurtubi. (1964) *The Whole of the Sciences of the Qur'an*, I 2, Egyptian Book House, Cairo, 1/263

<sup>9</sup> Abdulhadi Mohamed, *Human Trafficking between Islamic Jurisprudence and Positive Law* (Dar Al-Fikr Al-Jami'i, Alexandria 2015) 19.

<sup>10</sup> Kabuye Sulaiman, 'The Islamic Worldview of God, Man and Nature, and Their Relationships' (2020) 8(12) *Scholars Journal of Arts, Humanities and Social Sciences* 560.

<sup>11</sup> Vaffi Sheriff, 'Concept of Human Dignity in Islamic Thought' (2019) 3 *International Journal of Research and Innovation in Social Science* 148

<sup>12</sup> Mohammed Kamali, 'Human dignity in Islam and its impact on society' *New Straits Times* (Kuala Lumpur 25 October 2017): see also Miklós Maróth, 'Human dignity in the Islamic world. In: *The Cambridge handbook of human dignity*' (2014) *Journal of Political Studies Review*. (13), 156; See Qur'an 38: 71-76 and in 7:11.

<sup>13</sup> Vaffi Sheriff, 'Concept of Human Dignity in Islamic Thought' (2019) 3 *International Journal of Research and Innovation in Social Science* 148.

<sup>14</sup> Quran, 17:70

<sup>15</sup> Muwaffaq al-Dīn 'Abd Allah ibn Aḥmad ibn Qudāmah, *Al-Kāfī fī Fiqh al-Imām Aḥmad Ibn Ḥanbal*, ed. Muḥammad Fāris and Mus'ad 'Abd al-Ḥamid al-Sa'īdani, (4), (Da'ir al-Kutub al-Ilmiyyah, Beirut, 2004) 163.

<sup>16</sup> Deri Wanto, Rahmad Hidayat, and Repelita, 'Maqasid shariah's Change as Theory: From Classical to Cotemporary Maqasid Shariah' (2021) 6 *Al-Istinbath Jurnal Hukum Islam* 427.

safeguarded by the Sharia and requires a guarantee as well as punishment under its provisions. On the other hand, this protection constitutes the recognition of the human rights of the children of Adam.

As a result, this section discusses the concept of human dignity in the context of the prohibition of human trafficking under Islamic law. The section is broken down into four subsections. First, the meaning of human dignity in Islamic terms will be examined. Second, the section will explain what the five necessities are. Third, the section will discuss human rights in Islam. Fourth, the section will emphasise the value of the concept of human dignity in combating and reducing the causes and incidence of human trafficking.

### 3.4.1 Understanding Human Dignity under Islamic Law

Human dignity is an historical concept.<sup>1</sup> However, its emergence as a legal concept in constitutional laws is relatively recent.<sup>2</sup> As a general rule in Islam, any legislation or action that contradicts the rules of Sharia is considered null and void and therefore in the case of Saudi Arabia, the guiding principle of legislation is that anything that does not conform to Sharia's law, is invalid.<sup>3</sup>

Although there are familiar areas of comparison, the concept of human dignity in international law is in contrast to Islamic principles in several ways. One of the most important contradictions is that God (the Creator) laid the foundation of human dignity, and its origin is substantiated as God unequivocally said in the Qur'an 'and we have certainly honoured the children of Adam'.<sup>4</sup> This is a divine honour that transcends every honour to mankind that has been brought about by human laws governing life affairs. A Muslims' sense of dignity stems from their faith in the Creator, the Lord of the worlds, and is reinforced by mankind's fear of God. The 'dignity' in human dignity is a matter of morality and not law, because morality is the origin of the religious faith that inspires the sense of gratitude in the depths of the human soul.<sup>5</sup>

There is an extremely important distinction between the moral and legal standards of dignity. Jurists are aware that the frameworks of law and morals are not identical. When legal standards predominate, it is clear that the issue is one of external behaviours in the first instance, while moral standards are primarily internal, connected to the conscience, and refer to religious belief. It can be said that legal and ethical standards may overlap. When the legal judgement on an action relates to an element (intention and intent), or when the moral judgement relates to the practical situation, there is an overlap.<sup>6</sup>

The principles which define the concept of human dignity are sensitive and delicate, which make it nearly impossible to determine their dimensions and implications. Hence, it is very difficult to create a universal definition.<sup>7</sup> However, the concept of human dignity involves an ethical principle that states that mankind should be treated as an end in themselves rather than a means, and that their dignity is above all considerations.<sup>8</sup> The consolidation of this concept between individuals might assist in the elimination of human trafficking in societies.<sup>9</sup>

Tabatabai<sup>10</sup> points out that to acknowledge the dignity of a human being is to deal with them carefully, and honourably.<sup>11</sup> Saleh's<sup>12</sup> conception of human dignity insists that the idea must not be defined in the context of the physical nature of the human being, so that the person will not be used in trading or as an object such as a tool, but be recognised as a holder in their own right.<sup>13</sup> In addition, human beings should be protected from being subjected to scientific experiments that pose a danger to their life, and a vital organ should not be taken from a person and given to another person to save their life. Human dignity is about the inherent essence of the human being. Therefore, the right to protect human dignity is an absolute and indivisible principle; it is of a sacred and an inalienable value.<sup>14</sup> Since exploitation is the main purpose of human trafficking, the recognition of human

<sup>1</sup> Ruiz Carlos, 'Human dignity: History of an idea' [2002] University of Santiago de Compostela at [https://www.researchgate.net/publication/314643293\\_Human\\_dignity\\_History\\_of\\_an\\_idea](https://www.researchgate.net/publication/314643293_Human_dignity_History_of_an_idea) accessed 16 July 2022.

<sup>2</sup> Barbara Misztal, 'The idea of dignity: Its modern significance' (2012) 16 European Journal of Social Theory 101.

<sup>3</sup> Saudi Basic Law of Governance (Royal Decree No A/90) 1992 art 1.

<sup>4</sup> Quran, 17:70.

<sup>5</sup> Abdulaziz Al-Tuwaijri, 'Dignity in light of Islamic principles and publications of the Islamic Educational, Scientific and Cultural Organization' (2015) 2ed edn (ISESCO). 7-8; Tariq Al-Bishri, in *the Contemporary Islamic Question: Contemporary Legal Status between Islamic Law and International Law* (Dar Al-Shorouk, 1997) 30.

<sup>6</sup> Tariq Al-Bishri, in *the Contemporary Islamic Question: Contemporary Legal Status between Islamic Law and International Law* (Dar Al-Shorouk 1997) 30.

<sup>7</sup> Mahbobeh Abedi, and Majid Vaziri, 'Human dignity as a rule of Islamic jurisprudence' (2014) 30 VALIA journal 148.

<sup>8</sup> Kuwait's Constitution of 1962 (reinstated 1992) art 29.

<sup>9</sup> Murad Wahba, *The Philosophical Dictionary* (Dar Quba Modern 2010) 611.

<sup>10</sup> Muhammad Husayn Tabataba'i, was an Iranian scholar, theorist, philosopher, and one of the most prominent thinkers of modern Shia Islam.

<sup>11</sup> Mohammed Tabatabai: *the balance in the interpretation of the Qur'an* (Volume 13, Al - Alami Foundation for Publications, 1997) 165-170

<sup>12</sup> Dr Fawaz Saleh is a professor at the Faculty of Law at Damascus University, formerly Vice-President of the International Bioethics Committee at UNESCO. For a detailed description of his biography, see [https://groups.google.com/g/aabfs\\_du/c/x5iEJCJMlKE](https://groups.google.com/g/aabfs_du/c/x5iEJCJMlKE) accessed 16 July 2022.

<sup>13</sup> Fawaz Saleh 'The Principle of Respect for Human Dignity in the Field of Bioethics: Comparative Legal Study' (2011) 27 Damascus University Journal of Economic and Legal Sciences, 252.

<sup>14</sup> Saleh (n 153) 151.

dignity in Islam guarantees the fight against human trafficking in all its forms.

Al-Layth<sup>1</sup> defined dignity as follows - a person is honoured for what harms them: if they are kept away from harm.<sup>2</sup> It is also as a free person, of good origin who prevented themselves from falling into sin.<sup>3</sup> It should be noted that human dignity according to the Islamic texts is not restricted to rights alone, but also involves establishing duties as well.<sup>4</sup> Thus, a person who commits any act that violates the Sharia will be liable to punishments and denial of some of their rights accordingly. Based on this, it can be argued that human dignity in Islam positively affects the fight against human trafficking.

Islamic scholars are of the opinion that this honour and dignity which God has given to every human is irrespective of one's religion, whether a believer in Islam or not, one's nationality, or colour and is subject to many conditions that guide their applicability in order to ensure that they are not violated.<sup>5</sup> Beginning with the idea of equality which is the foundation of the rule of law and the equal dignity of all persons under the Sharia, Islam decrees that there is no difference between any persons on judgement day except by the measurement of their piety. This is a fundamental position contained in the Qur'an which states

People, We created you all from a single man and a single woman, and made you into races and tribes so that you should recognize one another. In God's eyes, the most honoured of you are the ones most mindful of Him: God is all-knowing, all aware.<sup>6</sup>

Concerning the righteous and pious, the noblest, the most honoured and dignified in this verse is referring to a purely celestial value, unrelated to the characteristics of the people of the earth and their circumstances at all.<sup>7</sup> Islamic philosophy sees piety as a choice that all people have the freedom to attain. People are equal in rights and duties; their freedom is reserved, and their respect is protected for their bodies, ideas, opinions or persons, even if they are non-Muslims.<sup>8</sup>

Human dignity is, according to Islamic law, an inalienable value of people granted by God to all the children of Adam. This was categorically stated in the Qur'an, 'We have honoured the progeny of Adam'.<sup>9</sup> The particular verse is clear in the universality of honouring all human beings, and this is discussed in detail by some of the interpreters of the noble Qur'an. In the interpretation of Tabatabai, he referred to the above verse saying:

It appears that the meaning of the verse is a manifestation of the status of all human beings in general, with the exception that some of them are concerned with the divine special dignity, closeness and purely spiritual virtue. This text refers to polytheists, infidels, and Muslims.<sup>10</sup>

In his work, 'The Spirit of the Meanings' (interpretation of the Holy Qur'an), Al-Alusi<sup>11</sup> explained the foundation of the verse that says 'We have honoured the progeny of Adam'. He explained that God granted dignity for human beings whether they are righteous or otherwise.<sup>12</sup> This granted dignity and merits to all people without exceptions.<sup>13</sup> Human beings are created with honour and therefore should be treated as such without distinction as to race, colour, language or origin.<sup>14</sup> The protection of this honour constitutes recognition of the human rights of all the children of Adam.

The Islamic concept of human dignity requires the full realisation of fundamental human rights as well as a high level of absolute justice and full equality.<sup>15</sup> Simultaneously, this concept is fully consistent with the nature of the Islamic message addressed to all humanity. This is because Islam is a humanistic religion calling for a universal message of finality from God to all people until the judgement day. The Islamic concept of mankind is that of a unique creature distinguished by their traits, qualities and functions. Therefore, an order of rights and privileges must be created in order to allow people to carry out the functions and duties required of them providing for accountability, calculation, and reward and punishment.<sup>16</sup> This is confirmed by Al-Yasoui's<sup>17</sup>

<sup>1</sup> Al-Laith bin Al-Mudhaffar Al-Kinani, one of the most important scholars of the Arabic language.

<sup>2</sup> Al-Zubaidi (n 141) 41

<sup>3</sup> *ibid.* 44.

<sup>4</sup> Abdulaziz Altwaijri, *Human Dignity in the Light of Islamic Principle* (Islamic Organization for Education and Cultural Sciences Publications 2015) 21

<sup>5</sup> Mohammed Kamali, 'Human dignity in Islam and its impact on society' *New Straits Times* (Kuala Lumpur, 25 October 2017); Mohammad Amin, *Hasheat Ibn Abidin* (Dar Alfekar 1966) part 5, 58.

<sup>6</sup> Quran 49:13.

<sup>7</sup> The Organisation of Islamic Awareness Editing, words that have a meaning: the most noble of you in the sight of Allah is the most righteous of you, 8 (11). 31

<sup>8</sup> Ghayath Al-Ahmad, *Human Dignity and its Applications in Medical Issues*, Center for the Study of Islamic Legislation and Ethics.

<sup>9</sup> Quran 17:70.

<sup>10</sup> Tabatabai (n 155).

<sup>11</sup> Abdal-Karm Al-Qusheiri, (n 160).

<sup>12</sup> Shahabuddin Alusi, *Spirit of the Meanings in the Interpretation of the Great Qur'an*, (Dar revival of Arab heritage 2005), Part XV. 118.

<sup>13</sup> *ibid.* 44.

<sup>14</sup> Altwaijri (n 162) 14.

<sup>15</sup> Ali Al-Shurbaji, *Human Rights in Islam* (Dar al-Yamamah 2012) 27.

<sup>16</sup> *ibid.*

<sup>17</sup> Salah Abu-Jouda Al-Yasoui, is the director of Dar Al-Mashriq, and a member of the Jesuit Order. University Professor and Director of the Institute of Oriental Literatures at Saint Joseph University, Beirut and Director of Dar Al Mashreq since 2008.

statement that the concept of human dignity is closely related to human rights and is the basis and prerequisite for it.<sup>1</sup> However, Al-Ahmad defines dignity as an imprecise, ambiguous concept, for which we can hardly find a comprehensive definition or define its dimensions. Human dignity is an intrinsic value that makes one feel equal to others.<sup>2</sup> Furthermore, human dignity is a consistent value, which cannot be diminished or waived, even if the subject voluntarily submits to loss or infringement of it. It is agreed that human dignity contrasts with other things, such as torture, abuse and degrading treatment. Islam has presented a comprehensive vision of human rights stemming from the view of humans as honourable creatures.

The purposes of Islamic Sharia are to make human beings the object of its care and attention.<sup>3</sup> Al-Shātibī said: The objectives of sharia aim to preserve humankind and nature.<sup>4</sup> These objectives seek to protect their human rights.<sup>5</sup> The highest levels of sharia provide for the protection of the five necessities, collectively known as “daruriyyat” - the preservation of religion, the preservation of the soul, the preservation of the reason, the preservation of progeny [honour], and the preservation of property. These are the basic purposes and values of Islam and must be protected as a priority for all members of society. This protection also includes the determination of the penalty and compensation for any illegal exploitation of these purposes. There is no doubt that the crime of human trafficking is based on the exploitation of people's vulnerability. This exploitation is in violation of the principles of Islamic law and human dignity. This section analyses the preservation of the five necessities in Islamic laws as the foundation of KSA's secular regulations. Thus, the next section discusses these necessities in more detail.

#### 3.4.2 Save the Essentials ‘Daruriyyat’

No one doubts that every law legislated for the people aims to carry into effect the intention of the legislator.<sup>6</sup> All laws, especially the law of Islam, come for the good of mankind in the present and the future.<sup>7</sup> By extrapolating the evidence from the Qur'an and Sunnah, it is clear to us that Islamic Sharia has authority through rulings to improve the general welfare of society and individuals. The wisdom of the rulings of Islam is to bring benefits, which are the things that society members need to provide based on strong foundations.<sup>8</sup> It also aims to ward off evil, which lead to harm for members of society, whether material or moral. These are called the purposes of Sharia, which define the general framework of Sharia and reveal the goal that it is for beneficial purposes.<sup>9</sup>

Ibn Ashour<sup>10</sup> says:

we are looking at a legal issue in which it is forbidden or permissible. We first look at the reason or purpose for the legalisation or prohibition. Thus, there may be difficulty in determining whether an act or behaviour complies with or contravenes the law. One then looks at the intent and this is called the objective of the Sharia.<sup>11</sup>

The greatest purpose of the Sharia is to bring goodness and ward off evil. This is done by reforming the human condition and dealing with the corruption of it. Humans are dominant in this world, and therefore the reform of human beings is for the good of the world.

People's interests in life are not always on the same level in terms of importance and danger, and neither are people's needs. Some interests are essential. These interests relate to the existence of the human being and the components of their life. Some of these interests come in the second degree to be complementary to the previous necessary interests.<sup>12</sup> Necessity is related to need. According to the scholars of the principles of jurisprudence, it is what is based on a person's religious, worldly life, upon which their human existence in this world and their happiness in the hereafter depend. If these necessary interests are lost, the system of human life will be disrupted, people's interests will be corrupted, and chaos will spread in life, exposing their existence to danger, destruction and loss.<sup>13</sup>

The essential interests of people are limited to five things: religion, soul, reason, progeny (or honour), and property.<sup>14</sup>

<sup>1</sup> Salah Abu-Jouda Al-Yasoui, ‘The Problematic Concept of Human Dignity: Cultural challenges based on human rights’ (Manhal Foundation) 3.

<sup>2</sup> Al-Ahmad (n 164).

<sup>3</sup> Maqāsid (Arabic: مقاصد, lit. goals, purposes) or maqāsid al-sharī'a (goals or objectives of sharia) is an Islamic legal doctrine.

<sup>4</sup> Ibrāhīm al-Shātibī, *al-muafaqatī in the Fundamentals of Sharia* (Dar Ibn Afan Saudi Arabia 2007) 17-20.

<sup>5</sup> Al-Furqan Islamic Heritage, Fayeze Hassan's article entitled Legal Purposes, (Necessities) and Combating Human Trafficking, is available at: <https://al-furqan.com/> accessed 05 April 2022.

<sup>6</sup> Muhammad Saed Abdul-Rahman, *Tafsir Ibn Kathir Juz' 18 (Part 18): Al-Muminum 1 to Al-Furqan 20* 2nd Edition (MSA Publication Limited 2009) 58

<sup>7</sup> Ibrāhīm al-Shātibī (n 182); See also Khalid El Fadl, *Rebellion and Violence in Islamic Law* (Cambridge University Press 2001) 27.

<sup>8</sup> Jasser Ouda, *Maqāsid al-Sharī'a* (2012) Herndon USA: al-M'had al-'a'lami lil fikr al-Islami

<sup>9</sup> Adis Duderija (n 54), 18.

<sup>10</sup> Muhammad al-hir ibn 'Ashūr was a well-known Islamic scholar who graduated from the University of Ez-Zitouna.

<sup>11</sup> Muhammad ibn 'Ashūr, *The Objectives of Islamic Sharia* (edn 8, Dar Sahnoun for Printing Tunisia 2018) 35-36

<sup>12</sup> Abdel Aziz Abdel Salam, *Rules of Judgments in the Interests of the People* (Al-Azhar Colleges Library Cairo 1968) (1) 29.

<sup>13</sup> Ibrahim Al-Shatibi, *Consents in the Fundamentals of Sharia* (2<sup>nd</sup> edn, Dar Al-Kutub Al-Ilmiyya Beirut 2009) 221.

<sup>14</sup> Muhammad Al-Ghazali, *al-mustasfaa from the Science of Fundamentals* (Dar Al-Arqam, Beirut 2016) 636.

The protection of the necessities, as expressed by Al-Shatibi<sup>1</sup> consists of two things: Firstly, what establishes the origin of human existence? Secondly, what prevents a person from the imbalance that occurs to them?<sup>2</sup> The religions agreed to observe these basic principles and the necessary interests of people, so they advocated for them, were supportive of them, and worked to protect and preserve them.<sup>3</sup> This section focuses on preserving the soul, preserving the mind and its reasoning, and preserving its lineage.

#### 3.4.2.1 The Right to One's Soul as part of Human Dignity.

In the Qur'an, it is stated that: 'whoever kills a soul unless for a soul or for corruption [done] in the land – it is as if he had slain mankind entirely. And whoever saves one – it is as if he had saved mankind entirely'.<sup>4</sup>

The text states that whoever has saved a soul has revived all people. In this sense, the revival of the soul is the liberation of the slaves. Given that the meaning of slavery for some jurists is a presumed death, those who have survived it have revived from death.<sup>5</sup> Life in Islam equals freedom by demonstrating Islam's zeal for human freedom, making people feel more secure and reassured, and more willing to perform their duties and social functions.<sup>6</sup> The verse's Islamic commandment to liberate the soul serves as an interpretive tool. Indeed, the call to raise up all people is evidence of the Qur'anic's ethical path in the hierarchy, which guarantees the Islamic position on the abolition of slavery.

The right to life is one of the fundamental rights of humans and is an integral part of dignity. In Islam, God is the creator and He has bestowed dignity on mankind by giving them life. Life is something which cannot be bestowed by any human beings and only God can give such rights. It is in this regard that the right to life is considered sacred and, therefore, it is impermissible to deprive a person of his life in Islam arbitrarily. This is consistent with the text of Article 6, paragraph 1 of the International Covenant on Civil and Political Rights: 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life'.<sup>7</sup> Since self-preservation is one of the necessary purposes and one of the manifestations of dignity, God ordered mankind to preserve their life and not put themselves in danger. The Qur'an, also states: 'And spend in the way of Allah and do not throw [yourselves] with your [own] hands into destruction [by refraining]. And do good; indeed, Allah loves the doers of good'.<sup>8</sup> God explicitly forbids the human in this verse to throw himself into ruin.

Preserving the soul from damage is accompanied by the preservation of some parts of the body, such as the human organs, the destruction of which is considered to be the same as the destruction of the soul, trafficking in human beings, and sexual exploitation of children, trafficking in human organs, as well as exploiting people's needs and poverty. Self-preservation is related to the right to life with human dignity, as there is no life with humiliation. Therefore, any assault on a person through beating and torture constitutes an outright violation of human dignity and, as such, calls for punishment and compensation. This is consistent with the UDHR, which states: "Everyone has the right to life, liberty and security of person".<sup>9</sup>

#### 3.4.2.2 Respect the Human Mind and its Reasoning.

Respecting a humans' will and thought is an honour for humanity in Islam. God honours human beings' minds and also distinguishes them from other creature as having an intellect. Islam is keen to respect the human mind and integrity of all that can be tainted by ignorance and superstition. God taught human beings how to use the mind, to gain knowledge, to reason and to argue. In addition, God taught humans the use of evidence as well as the way in which their mental energy could be deployed without being wasted. In the Qur'an, it states:

There shall be no compulsion in [acceptance of] the religion. The right course has become clear from the wrong. So, whoever disbelieves in taught religion and believes in Allah has grasped the most trustworthy handhold with no break in it. And Allah is Hearing and Knowing.<sup>10</sup>

The above verse has decreed that there is no compulsion in accepting a prescribed religion. No one can be compelled to accept any particular religion as this could be considered as a breach of a human's right of free choice in what they believe.<sup>11</sup> Despite the Creator's ability to force creatures to obey him, he gave them the freedom of choice to accept religion or not. One of the manifestations of human dignity in Islam is the human

<sup>1</sup> Ab Isq, Ibrhm ibn Mūsā al-Shib was a Sunni Islamic legal scholar from Andalusia who followed the Maliki madhab.

<sup>2</sup> Ibrahim Al-Shatibi, *al-muafaqati in the Fundamentals of Sharia* (2<sup>nd</sup> edn, Dar al-Kutub al-Ilmiyya, Beirut, 2009) 221.

<sup>3</sup> Muhammad Abu Zahra, *The Philosophy of Punishment in Islamic Jurisprudence*, (Reprinted by the Institute of Arab Studies, Cairo, 1963) 42.

<sup>4</sup> Quran 5:32.

<sup>5</sup> Ekmeleddin Muhammad Al-Baberti (1970) *Explanation of Al-Anayah on Al-Hadayah*: Printed with the explanation of Fath Al-Qadeer of Ibn Al-Hamam, first edition 4/328.

<sup>6</sup> Maher Al-Sousi, *Human Dignity in the Light of Islamic Law* (2015) Proceedings of the International Scientific Conference on International Humanitarian Law in the Light of Islamic Law. Application guarantees and current challenges.

<sup>7</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR)

<sup>8</sup> Quran, 2:195.

<sup>9</sup> Universal Declarations of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR) art 3.

<sup>10</sup> Quran, 2:256

<sup>11</sup> Abdullah bin Ahmed bin Mahmoud Al-Nasafi, (1998) *Tafseer al-Nasafi*, edition 1, Dar al-Kalam al-Tayeb, Beirut, 1/211.



mental ability to reflect and choose.

### 3.4.2.3 Preserving the Lineage

As for preserving lineage, this means preserving the affiliation of children to their fathers. Preserving lineage is intended for its own sake on the one hand, and it is a means of preserving offspring on the other hand so that lineages do not mix resulting in children becoming homeless. For this necessity, Islam has legislated for many provisions that begin with the prohibition of insulting honour, as slander, making it a 'Hadd' fixed punishment.

For example, Islam forbids adoption because adoption is an attack on the lineage of the child and the father; this includes the sexual exploitation of children and the practice of pornography in all its forms. Therefore, everything that protects these necessities is called for by the true Sharia, and everything that violates these necessities is to be avoided.

### **3.4.3 Human Rights in Islam**

The idea of human rights did not appear as an official issue until the thirteenth century as a result of racist and popular revolutions in Europe. This idea was largely developed in the eighteenth century in America in order to resist natural discrimination, political domination and the social system.<sup>1</sup>

Human rights were then not fully known or understood. In fact, they were not fully practised until the advent of Islam and its universal humanitarian call.<sup>2</sup> The Noble Qur'an and the Sunnah contained texts that honour and favour mankind over all other creatures. These two separate texts further command humanity and equality among themselves and their tribes.<sup>3</sup> The call in the texts is justified as directed to the totality of humankind by the address going thus 'O people', the word 'people' encompassing the word 'human' and 'mankind'. This was confirmed by the Messenger (PBUH) when he announced human rights in the Farewell Pilgrimage sermon and its practical application which Muslims have since adhered to in both theory and practice. The prophet Muhammed said:

O people, your Lord is one and your father Adam is one. There is no favour of an Arab over a foreigner, nor a foreigner over an Arab, and neither white skin over black skin nor black skin over white skin, except by righteousness. Have I not delivered the message?

They said, 'The Messenger of Allah has delivered the message'.<sup>4</sup> There is no sectarianism or populism between man and man, and there is no difference in terms of colour and language, as the Qur'an states 'Another of His signs is the creation of the heavens and earth and the diversity of your languages and colours. There truly are signs in this for those who know'.<sup>5</sup>

Thus, the Prophet Muhammed (PBUH) emphasises two things in his sermons. The first is the establishment of a unified society in general. The second is establishing the unity of the nation based on brotherhood. This is considered to be the Muhammadan policy of assembling the discordant elements and human races on one front based on equality. This is how the companions of the Prophet Muhammed followed him, referencing this to an old saying about the ruler Omar ibn al-Khattab (RA) 'When did you enslave people although they were born free?'<sup>6</sup>

As for the modern era, after many Arab and Islamic countries joined the United Nations, demands emerged for a statement of human rights in Islam. Consequently, publications concerned with human rights and provisions in Islamic Sharia appeared, and then Islamic organizations and bodies began to formulate human rights texts and charters. Among those texts and charters,<sup>7</sup> are the Islamic Charter of Human Rights of 1980 (ICHR), the International Islamic Declaration of Human Rights of 1981 (IIDHR), the Islamic Declaration of Human Rights of 1989 (IDHR), and the Cairo Declaration on Human Rights in Islam of 1990 (CDHR).<sup>8</sup>

Almost all articles of these charters agree on the following: that mankind is one family, all are equal in dignity and assignment, there is no distinction between them, they are born free, that slavery, exploitation and oppression are forbidden, that the right to life is guaranteed in Sharia for every human being, that the annihilation of the human species is prohibited, and that the sanctity of humankind and their reputation be preserved, whether a man is alive or dead.

### **3.4.4 The Role and Usefulness of Human Dignity in Islamic Law**

The role and significance of human dignity in Islamic human rights cannot be overstated. The concept is central to Islamic legal discourse, and it has had a profound impact on many Islamic rulings and provisions. Most

<sup>1</sup> Wahba Al-Zuhaili, *Human Rights in Islam* (5<sup>th</sup> edn Dar Ibn Kathir Beirut, 2008). 101

<sup>2</sup> Robert Traer, 'Human Rights in Islam' (1989) 28(2) *Islamic Research Institute*, International Islamic University, Islamabad 117.

<sup>3</sup> Adnan Al-Khatib, *Human Rights in Islam* (1<sup>st</sup> edn, Dar Tlass for Studies Translation and Publishing Damascus 1992) 32.

<sup>4</sup> Abu Amina Elias, 'Farewell sermon: Your lord is one, your father is one' (Daily Hadith Online). <<https://www.abuaminaelias.com/dailyhadithonline/2011/12/30/lord-father-adam-one/>> accessed 25 December 2022.

<sup>5</sup> Quran, 30:22.

<sup>6</sup> Ali Mansour, *Islamic Law and International Law* (Dar Al-Qalam, Cairo 1390) 47.

<sup>7</sup> Wahba Al-Zuhaili, *Human Rights in Islam*. 112-114

<sup>8</sup> Cairo Declaration on Human Rights in Islam (Adopted at the Nineteenth Islamic Conference of Foreign Ministers, 31 July to 5 August 1990).

Islamic conventions, such as the IIDHR, the ICHR and others as previously mentioned, contain ideas and elements dealing with the protection of human dignity. In this regard, Ghamaz even described it as the foundation of the essential interests of maqāṣid al-sharīʿa and maṣlaḥa and the protection of the five necessities of Islam.<sup>1</sup>

The importance and utility of the principle of human dignity in Islam can be viewed or analysed as the bedrock or source of law for Islamic Sharia. It establishes the legal framework and obligations of state and non-state actors to observe and respect human rights. Ghamaz stated that human dignity serves as a value, a legal obligation and a source of ethics for humans.<sup>2</sup> As a framework, and as incorporated into Islamic treaties, conventions, and constitutions, the concept of human dignity is used to shape provisions and decisions that impose an obligation on states and non-state entities to observe, promote, and defend the dignity of a human person. In Islamic law, the concept has been elevated to the level of jus cogens.<sup>3</sup>

Courts and tribunals in Muslim countries such as in KSA have issued rulings and decisions demonstrating the importance of human dignity in Islam. For example, a decision issued by the Administrative Court<sup>4</sup> addressed the issue of racism in the design of a trademark, resulting in the refusal of a particular trademark to be registered with the Ministry of Commerce.<sup>5</sup> Another provision called for the punishment of a group of public sector employees who violated their right to privacy.<sup>6</sup> Such acts, according to the Court, are violations of human dignity. As a result of its acceptance, recognition, and incorporation into Islamic primary sources, human dignity is very useful in Islamic legal discourse and plays a central role in protecting human rights under Islamic Sharia. This argument is supported by a review of the contents of the Islamic Charter and the Universal Islamic Declaration of Human Rights of 1990 (UIDHR), the primary legal instruments on human rights. For example, the preamble to the Islamic Council of Europe Declaration emphasises the principles of human dignity by stating, ‘The human rights decreed by divine law aim at conferring dignity and honour on mankind and are designed to eliminate oppression and injustice’.<sup>7</sup> Furthermore, this declaration states in several parts that the principle of respect for human dignity is sacred. The essence of this declaration is how clearly it reflects KSA’s conception of human rights and human dignity, which is based on Sharia principles as laid out in the Quran and Sunnah. The Quran, for example, states, ‘And we have certainly honoured the sons of Adam and carried them on land and sea and provided for them of the good things and preferred them over much of what we have created, with [definite] preference’.<sup>8</sup> In a similar vein, ideas about human dignity were incorporated and reflected in the CDHR. Article 1 of the CDHR, for example, states that ‘All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, colour, language, sex, religious belief, political affiliation, social status or other considerations’.<sup>9</sup> There are numerous provisions in the CDHR that protect dignity. For example, Article 2 states that ‘Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and state to protect this right from any violation, and it is prohibited to take away life’.<sup>10</sup> Article 11 states that ‘(a) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them’.<sup>11</sup> Article 20 states that ‘It is not permitted to subject him to physical or psychological torture or to any form of humiliation, cruelty or indignity’.<sup>12</sup>

Because human rights are universal in Islam, victims of human trafficking are entitled to all of the above rights regardless of their gender, age, racial, ethnic, or national origin, immigration status, or any other type of potential discrimination. As a result, certain rights, such as the right to a fair hearing and trial, the right to access to justice, and the right to an effective remedy, are especially relevant when dealing with the consequences of human trafficking. Thus, it can be argued that the protection mechanisms enumerated above under the Islamic

<sup>1</sup> Amin Ghamaz, "Preserving Human Dignity as One of the Goals of Islamic Sharia and Status Quo (An Applied Fundamental Study)" (2021) *Journal of the Faculty of Islamic and Arabic Studies for Girls in Alexandria* 4 (37) 190-230.

<sup>2</sup> *ibid.*

<sup>3</sup> Ahmed Mohamed, 'Human dignity in the Islamic perception and its jurisprudence applications : a comparative study' (2020) *Journal of the College of Sharia and Law* 22 3 1679

<sup>4</sup> Quran, 17:70; The court refused to register this trademark, which was submitted by a plaintiff in the Ministry of Commerce because of its violations of the principle of human dignity, which the court considered to be one of the principles considered in the Shari'a. The court relied on the inclusion of this principle in general verses and evidence from the Qur'an and Sunnah as mentioned in this article.

<sup>5</sup> For a detailed description of this, see Judgment No. (No 35/ 5/٤). dated the 3rd of Shaaban of the year 1427 (2006) from the Supreme Administrative Court.

<sup>6</sup> The court sentenced the accused female prison guards who were employed at Medina prison. The court convicted them of abuse of duty to care due to inspecting female visitors in a way that violates their dignity. For a detailed description of this, see Judgment No. (67/5/5) dated 12th Rajab of the year 1432 from the Supreme Administrative Court.

<sup>7</sup> For full text of the Universal Declaration of Human Rights see "The Journal of Islamic Law", Vol.2, Spring-Summer 1997, 2-20.

<sup>8</sup> (n 93)

<sup>9</sup> Cairo Declaration on Human Rights in Islam (Adopted at the Nineteenth Islamic Conference of Foreign Ministers, 31 July to 5 August 1990).

<sup>10</sup> CDHR, art 2.

<sup>11</sup> CDHR, art 11.

<sup>12</sup> CDHR, art 20.

Charter, the CDHR, and others under relevant international conventions on the rights and dignity of the human person, labour rights, and social and economic justice are aimed at combating and suppressing human trafficking within national and international borders. These laws also aim to increase states' responsibility and commitment to the protection and promotion of the rights of all people whatever they citizens or not who fall within their jurisdictions or authority. As a result, it is safe to state that Islamic Sharia and IHRL are complementary in combating the crime of human trafficking. Reflecting on a number of international and regional human rights instruments adopted in the Islamic world, it is apparent that human trafficking and other related crimes are condemned and criminalised.

### 3.5 Conclusion

Having reviewed the literature on this topic, the research leads to the following conclusions. Foremost, that since early times, Islamic civilisations were keen to preserve human dignity regardless of gender, colour, language or even religion. Although there may not be a clear definition or explicit text in the main sources of Islamic law regarding the prohibition of human trafficking, Sharia, in general, forbids exploitation and protects the rights of the vulnerable, especially those of women, children and migrant workers. Furthermore, the study attempted to distinguish between harmful and illegal customary practices, such as forms of forced and child marriage and temporary marriage, that violate the principles of Islamic law, which arguably prohibits such practices. The study examined how Islamic law classifies human trafficking and the harsh punishments associated with this heinous crime. As a result, human trafficking may be classified as a Ta'zir punishment and every country should impose severe penalties for this crime. At the same time, such a punishment should be imposed only in accordance with Islamic Sharia which guarantees protection for the accused. Islamic law also includes a number of safeguards for victims of human trafficking. In short, it seems reasonable to conclude that Muslim countries are equipped to fully, adequately and effectively implement Islamic principles, and they have a religious obligation to prevent human trafficking and protect victims.

The principles and provisions of Islamic Sharia respect the human being and deepens the sense of human dignity through granting fundamental rights to human beings, such as the rights to life, liberty, justice and equality, which are considered necessary for a dignified livelihood.. The concept often hinges on the idea that dignity of a human is based on an ethical principle that states that mankind should be treated as an end in themselves rather than a means, and their dignity as human beings is above all considerations. The Islamic message seeks reform through advancing the happiness of mankind, and endeavours to implant the utmost respect through moral virtues and maqāṣid al-sharī'a and maṣlaḥa and the protection of the five necessities of Islam.

Human dignity in Islam is considered as one of the most important of all principles. Hence, no decision or conduct by rule, law, or others of authority should be made in which there is an affront to the Islamic principles of human dignity. Therefore, Islamic Sharia, as required in Islamic countries, certainly contributes to the fight against human trafficking. As a result, it serves to strengthen and supplement the global framework for combating human trafficking.

Lastly, within the scope of these topics, a comparison and contrast study concluded that the framework of Islamic laws are compatible and consistent with international human rights law. Consequently, it was determined that both can contribute towards the global efforts to combat human trafficking. This notion will also be reflected in the later articles including within the critical analysis of the KSA's failures to adhere to and enforce both these legal principles in order to effectively combat human trafficking.