

Human dignity, minimum and maximum: what is the justification for the difference between male and female Diyah” in Islam?

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Abstract

Human dignity is discussed in fields such as law, theology and ethics. In human rights and law, dignity is fixed and equal for everyone, but in theology, it can be different based on human actions. The highest human position is obtained through voluntary selection of goodness. However, failure to achieve this does not indicate a complete loss of dignity from a religious point of view, as there are other characteristics that can bestow dignity. The existence of these dignifying factors creates minimum and maximum degrees of dignity, the maximum being discussed in theology, and the minimum in law and human rights. The laws on compensation for harm may lead to the false conclusion that dignity can be purchased, but we must remember that dignity has two dimensions: material and spiritual. While damage to the spiritual dimension cannot be undone, “Diya” has been provided in Islam to compensate for the material dimension. This explains the difference between male and female Diya in Islamic laws. Spiritual dignity is independent of gender, but to compensate for material dignity, higher Diya has been proposed for men as they have a more prominent role in financing the family. In the end, we will discuss that due to the role changes in the society nowadays, the laws will need to be modified.

Keywords: Humans; Personhood; Human dignity; Personal autonomy; Bioethics.

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Introduction

Human rights are among the main topics and cornerstones of bioethics, and are built upon the concept of human dignity. Therefore, human dignity can be considered as the cornerstone and the main subject of bioethics (1, 2). For many years, different schools of thought have contemplated questions such as what principle is human dignity based on, and what is the dignifying characteristic of humans that makes them worthy of dignity beyond that of other beings. There are many differences and disputes in the field of human dignity (3 - 5), and one area of disagreement is whether it is fixed and equal for all, or variable and different from person to person.

In religions, there is usually talk of degrees, while in discussions of human rights, the focus is often on a common level for all humans, and this is where differences and conflicts arise. It seems that some of these differences are more definitional and conceptual, and not tangible or objective.

Mystics and to some extent theologians also discuss human dignity by examining the elevated aspects and divine positions of humans, which is depicted in verses of "caliphate"¹ and "trust"². These two verses discuss the distinguishing feature

separating humans from other creatures and how this feature can lead humans to the position of God's caliphate on earth, or to corruption and bloodshed. These verses are among the most important topics studied by mystics throughout history with great emphasis on human beings' position as God's caliphate on earth. The two verses also present a good example of the maximum degree of dignity attainable by humans (6). Not all human beings can meet the criterion for dignity in this sense, which in our view is "voluntary selection of goodness and virtues" (5). This point of view implies that dignity can be found in various degrees among humans. Mystics also believe in different levels of human dignity, but they are often indifferent and even negligent toward the lesser degrees of dignity. This is due partly to their perfectionism and partly to the requirements of mysticism and theology, which are individualistic and of a perfectionistic nature.

Legal experts believe human dignity and equality to be the fundamental principles of law, especially in humanitarian law and human rights law. They see dignity as an inherent and constant characteristic among individuals, not to be taken away by anyone. This definition serves as the basis

¹ *The Holy Quran, surah Baqarah (2), verse 30*

² *The Holy Quran, surah Ahzab (33), verse 72*

of human rights (7), and represents the lowest level of human dignity.

On the other hand, religious jurisprudence, like law, is social and should define the boundaries and minimum levels of dignity among humans. However, Islamic jurisprudence, due to its religious nature and its attention to theology and mysticism, and also in view of political and social concerns, has not specified a minimum for dignity and has suffered from scattered and contradictory statements and *fatwas* (8). For example, there is no book on "the rights of unbelievers" that presents examples of "minimum human dignity" according to the traditional jurisprudential view.

When mystics speak of "human dignity", we can assume that they are referring to maximum levels that are not universal but rather rare, while lawyers think of minimum levels that should apply to everyone. Religious jurists lean toward one of these two sides from time to time. The fact that neither of these professions have considered a common interpretation of human dignity leads to pitfalls and disputes. In this study, we intend to determine the extent of human dignity with special attention to its minimum level, and to find sources of dignity for humans, besides voluntary selection of goodness and virtues.

Finding a common definition for dignity and determining its limits can connect these different intellectual groups and end the disputes between international laws and the judgments of some religious legislators and have a great impact on the implementation of laws, especially in Islamic jurisprudence. In this study, we intend to determine the limits of human dignity by finding different sources of dignity for humans, and at the same time pay special attention to the minimum level of human dignity as the subject of the human rights debate. To achieve this goal, we will study various sources in the fields of philosophy, jurisprudence and theology, and then we will interpret and compare them.

Discussion:

Non-Human Dignity

Although we consider "*voluntary selection or acceptance of goodness and virtues*" as the criterion for human dignity (5), this does not mean that other creatures do not have dignity, or that other characteristics cannot serve as the criteria for dignity in humans and other creatures. While "acceptance" is specific to humans and emphasizes human dignity, other types or bases of dignity are not specific to human beings, but they still bestow dignity. Therefore, dignity can be diverse and have

different levels. In the lowest levels of dignity, there are characteristics that are not dependent on the definition of human and the philosophical nature of human dignity (9, 10); however, they exist in humans and are the dimensions and extensions of "non-human dignities" in humans, and although they are not abstractions of human dignity, they are linked to it in an inclusive manner. This "minimum dignity in humans" should not and cannot be neglected. In the following section, we will explain these other sources of dignity.

Dignity of the Living

Animals have a certain degree of dignity, not at the level of humans, but at their own level. They are considered more dignified than lifeless objects and deserve respect. This is also mentioned in Islamic texts, and even the behavior of Prophet Muhammad shows the value and dignity of animals, to the extent that the Prophet praised a person for giving water to a thirsty dog (11).

Plants also have dignity since they are alive and able to grow, which can be perceived from the perspective of the verse that condemns "striving to corrupt and destroy crops in the land"³. The Quran considers destruction of plants as an example of corruption, which is considered worse than

harming non-living assets in the general understanding. Additionally, there are *hadiths* from the Prophet instructing his followers to plant trees and promising amazing rewards for doing so (12), declaring such acts as breaking the branches of trees to be sins (13), and considering watering plants as a form of charity (14), which show the sanctity of plant life and growing plants.

Physical strength can be a source of dignity as well, indicating that even a body has its own dignity: "Indeed Allah has chosen him over you, and enhanced him vastly in knowledge and physique"⁴.

It is clear that these values are not significant enough to overshadow human dignity, achieved through voluntarily selection of virtues and even sometimes are purely material and not moral. However, their material nature does not diminish their importance.

Knowledge has been mentioned as another source of dignity in Islam. The Prophet freed the prisoners of war from the Battle of Badr on the condition that they teach ten Muslims how to read and write, and this is proof that he considered their knowledge as a source of protection and a means to recover their freedom and dignity (15).

³ *The Holy Quran, surah Baqarah (2), verse 205*

⁴ *The Holy Quran, surah Baqara (2), verse 247*

Wealth may also be considered as a source of dignity. After the battle of Badr, those prisoners of war who were not able or willing to teach Muslims how to read and write were freed by paying compensation (16). Thus, they could recover their freedom and dignity through property, although this sort of dignity is not valuable in a human sense. Also, Quran considers disregarding people's properties to be an act of corruption: "... and wrong not people in respect of their goods, and do not (spread) evil in the earth, causing corruption."⁵ The root of the word "saad" (happy) and "saadat" (happiness) may have been derived from the Persian word "sud"(profit), which indicates the psychological evolution of the material concept of profit being extended to the semantic concept of "happiness". Aristotle believes happiness to have its origin in a similar source as well (17). The Quran also mentions the dignity of possessions, which goes beyond material value: "When death approaches any of you and he leaves behind any property, he makes a bequest for his parents and relatives, in an honorable manner"⁶. On the other hand, not honoring the wealthy, as seen in the story of Korah⁷ or the narrations about

the excellence of the poor (18), does not mean disregarding wealth itself; rather, it shows that the dignity of wealth cannot be an alternative for voluntary selection of goodness, which is the true criterion for human dignity. Wealth is inherently good, and considering it worthless goes against realism and the realities of the world (19). Associating dignity with wealth is rooted in its role in increasing opportunities and choices of life. It should be noted that material possessions do not necessarily imply the superiority of their owners and are sometimes acquired through luck: "Do not suppose that those who brag about what they have done, and love to be praised for what they have not done, will be saved from punishment, and there is a painful punishment for them"⁸. Also, in the story of Korah, the following verse contradicts the idea that wealth is given based on knowledge: "He said, 'I have indeed been given [all] this because of the knowledge that I have'"⁹. Nevertheless, ownership is still respected according to the principle of authority (20), to the extent that Prophet Mohammad said, "The sanctity of one's property is similar to the sanctity of one's life," (21) and "He

⁵ The Holy Quran, surah Houd (11), verse 85

⁶ The Holy Quran, surah Baqara (2), verse 180

⁷ The Holy Quran, surah Ghesas (28), verses 79-81: So he emerged before his people in his finery.... So we caused the earth to swallow him and his

house, and he had no party that might protect him from Allah, nor could he rescue himself.

⁸ The Holy Quran, surah Al-e-Emran (3), verse 188

⁹ The Holy Quran, surah Ghesas (28), verse 78

who is killed for his property and family is a martyr" (22).

Paying attention to the dignity of living beings also reminds us of the importance of preserving ecosystems and preventing climate change. There are many other examples in living beings that can be a source of dignity for them and humans, and naming more will be time consuming for readers, and for this reason, we will not mention any more instances.

Dignity of the Insentient

It cannot be denied that even lifeless objects have dignity. Industries (e.g., productive and welfare industries), beauties (e.g., beautiful arts), and valuable objects (e.g., gems and precious stones) all have material or aesthetic value. This dignity is clear in the words of Prophet Mohammad: "Indeed, Allah is beautiful and loves beauty" (23) and "Wear your adornments on every occasion for prayer"¹. There are other *hadiths* in this regard, recommending to wear a ring (24), comb one's hair (25), and wear perfume (23), etc., which are, of course, so many steps below human dignity achieved through voluntarily selection of virtues.

In other words, human dignity may be at the peak of all other levels and types of dignity, but it is not

contradictory to others; rather, it is a superior example that supports and strengthens other manifestations of dignity in an implicit and excellent manner.

So far, with these examples from various sources, we have proved that dignity is not limited to human beings, and the human dignity that is obtained through voluntary selection of goodness is not its only manifestation. Dignity has many diverse aspects, and human beings can possess different aspects and various degrees of dignity. For example, an artist is superior to someone without artistic abilities, based on the dignity of art. Similarly, a brave person is respected for their bravery and strength, based on the dignity of courage: "*And remember our servants, Abraham, Isaac and Jacob, men of strength and insight*"¹.

A knowledgeable person is superior to someone with little knowledge, based on the dignity of knowledge: "*Are those who know equal to those who do not know? Only those who possess intellect take admonition*"¹.

Accepting the fact that material characteristics such as wealth can be dignifying may lead to the misconception that behavior, functions and even damage caused to humans can be measured

¹ The Holy Quran, surah Araf (7), verse 31
¹ The Holy Quran, surah Saad (38), verse 45

¹ The Holy Quran, surah Zomar (39), verse 9

financially and compensated with money. This perception is in conflict with the sublime spiritual position of human dignity. It should be noted, however, that material issues are an important part of every person's life, and interpersonal cooperation, social transactions and social improvements cannot be based only on the spiritual aspects or even non-spiritual but non-material aspects of human dignity. In any case, the material dimensions of people's lives require material contracts, which leads us to our next subject of discussion.

Dignity and Value

Dignity in people comes from “*voluntary selection of goodness and virtues*” (5), which is a value-based concept that does not belong in the category of wealth and possessions. Therefore, it cannot be bought or sold, and reparation rules rooted in human rights cannot replace it with money. However, we cannot forego compensating for deficiencies in functions because as Imam Ali said, “*What cannot be done completely should not be abandoned*” (26). These valuations look more at functions rather than at humans, and their purpose is not to materialize human dignity, but to do the least that can be done to at least partially compensate for the damage.

In every human collaboration, individuals invest a part of their life and receive a reward. In employments that may last, for example, 30 years, this investment encompasses a significant part of an individual's useful and effective life. What is more important is that each person, consciously and through prior reflection and deliberation (and not as an afterthought), decides to entrust it to the employer. This pre-sale of life and human functions takes a minimalistic and materialistic approach to human dignity, rather than a maximalist, existential perspective, and is a pragmatic view of the basic and inevitable needs of human social life.

In every damage done to a person, we face two types of loss:

First, "damage to spiritual dignity", which is irreparable and can only occasionally be compensated for by punishing the perpetrator with the same offence. There are, however, limitations, conditions and justifications that often make it impossible to do so. In the Abrahamic culture, this type of compensation is known as "qisas", or retaliation.

Second, "damage to material/financial dignity", which focuses on the loss of the value of human functions and not the value of a human being.

Therefore, it is relatively calculable and estimable from a functionalist perspective. Note that this assessment is about the objective progression of dignity and not its mental and moral value.

Forgiving the first type of damage may not mean forgiving the other, and it is conceivable that someone forgive the first type and not the second. In this case, taking compensation should not be considered a trade of dignity, but rather an attempt to mitigate the loss and at least repair the material damage, although the spiritual dimensions cannot be recovered.

The harm of the first category is therefore not considered in the case of involuntary manslaughter due to absence of intention, and only the harm of the second category is brought up. In contrast, a conscious killer who has intentionally violated dignity cannot walk away by simply paying compensation without the forgiveness of the victim's family, as this sort of dignity falls into the category of "values" and is not purchasable. Nobody can forego their human dignity or transfer it to someone else. In this situation, the killer will not be excused and therefore monetary compensation is not justifiable.

Here, a defense can be made regarding the difference in diyah (blood money or wergild) for women and men in Islamic jurisprudence. This

difference does not pertain to a difference in dignity but rather to economic disparities, as in every other respect, women and men are equal in terms of the essence of dignity, and the differences are of the same kind that exists in the minimum and maximum levels of dignity within a gender. This is why the concept of qisas (retaliation) is the same for both genders. The difference in diyah is not about the humanity of women and men as otherwise, both would not be subject to retaliation for murder. The difference pertains to patterns of function and economic utility in the society, which can change with economic conditions. It is worth noting that such rulings may be a call for people to be guided toward a certain way of life, or may be just a social consequence of existing conditions. We proceed to explain the differences between these two perspectives and their potential impact on dignity in the next section.

Diyah: A Consequence, or a Call to Action?

Legal and jurisprudential rulings sometimes serve as an invitation for the society to follow a particular legal and jurisprudential system, while at other times, they are the natural result of the existing conditions in the society. In the former case, these rulings have importance and desirability for the ruler, while in the latter case, they lack desirability

and are merely the tools and means for the ruler to achieve their goals and purposes.

For example, the concept of a woman's blood money being half of that of a man's in Islamic jurisprudence can be attributed to economic necessities that currently exist, or to an economic plan recommended by religious authorities. Emphasis on the "existing necessities" implies that if these circumstances change, the rulings can also change, whereas the term "recommended" signifies that in certain societies where the economic roles of men and women have become more similar, the rulings may not be easily altered. Determining which one of these two situations is the cause of the current laws of Diya in Islam, needs a detailed discussion and investigation among experts in this field.

In both cases, it can be argued that these economic judgments do not represent a "valuation of dignity" but rather the maximum outcome or call to action within the existing or desired economic system. However, there is still room for discussions on social justice, individual capabilities, different economic and social models, and biological needs for individuals of both genders.

Conclusion

There is a minimum threshold for human dignity that is universal and is discussed in human rights. Theology and mysticism, on the other hand, suggest that there are higher dimensions of dignity that are unique and may even cause humans to rise so high as to become God's vicegerents. The reason for discussing these two categories in the same context is that they share the same origin and nature, with differences only in magnitude, minimum and maximum degrees, and their legal and moral functions.

Additionally, there are values in living beings and even inanimate objects, suggesting that despite lacking a human aspect, they still command lower levels of dignity like humans. These manifestations of dignity arise from the degrees of existence and functions of living and even non-living entities. Therefore, human dignity, although the topmost kind of dignity, is not contradictory to other levels and types of dignity, and alongside human dignity, humans can also possess other types and forms of dignity, even though under equal conditions, they can excel other beings in these aspects, as you see figure 1.

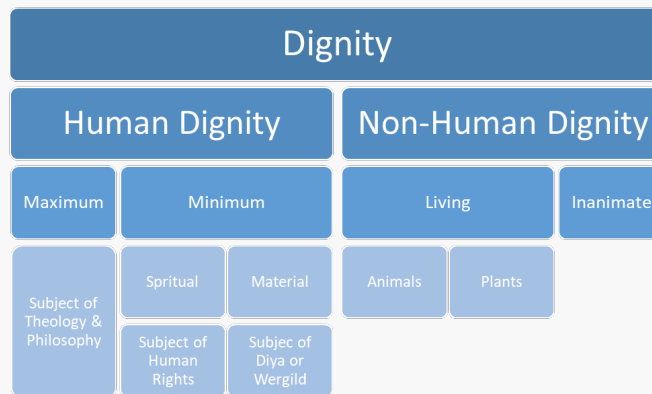


Figure 1: Different types of dignity.

Diyah covers these non-human dignities, not human dignity itself, and encompasses material dimensions rather than spiritual ones. The contrast between retaliation in the case of intentional and unintentional crimes and the differences in blood money of different genders reflect the differences in the origin of the two forms of dignity. Furthermore, in investigating the current rules, we should consider the fact that the intent of the legislator in promoting a desired legal system, or addressing the consequences of the existing legal system, can affect necessity of commitment or possibility of changing the rules. This issue should be addressed in discussions of compensating

damages and alternatives to civil liability, as well as in the interpretation of the relationship between dignity and blood money.

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