HUMAN RIGHTS ACCORDING TO
ISLAMIC REFORMIST JURISTS IN IRAN

ALIREZA NAJAFINEJAD

FEM 2012 7
Abstract of Thesis Presented to the Senate of Universiti Putra Malaysia in the Fulfillment of the Requirement for the Degree of Doctor of Philosophy in Politics and Government

HUMAN RIGHTS ACCORDING TO
ISLAMIC REFORMIST JURISTS IN IRAN

By

ALIREZA NAJAFINEJAD

September 2012

Chairman: Assoc. Prof. Zaid B. Ahmad. PhD

Faculty: Human Ecology

This research has studied the subject of Human Rights in the Thoughts of Islamic Reformist Jurists in Iran after the Islamic Revolution. The objectives of the research is to present an in-depth understanding of the framework of reformist jurists approach to human rights, to elicit principle of human rights in the thought of reformist Jurists in Iran, and to formulate interpretation of Shari’a in thoughts of Islamic reformist jurists with respect to human rights.

The primary data are selected among speeches, interviews, verdicts and the books that are written by the main reformist thinkers. Qualitative content analysis is the method of the research for analyzing of information.

The Islamic reformist jurists try to present new ideas and interpretation by using
ijtihad in principle and reduce the conflicts between jurisprudence and human rights as much as it is possible. The finding demonstrated that it seems even these new ideas are still far from human rights. The Islamic reformist jurists try to demonstrate that, there isn't any discrimination between the human, but they do not accept the freedoms of opinion, changing the religion, speech and the religious and sexual equality and democracy through which they indicate the purpose of human rights.

Moreover, the finding also shows that, those ideas which were stated under the title of dynamic Jurisprudence are still not the viewpoint of the majority of jurists and in fact, these decrees are not the ideas of all jurists. The study also demonstrated that according to the gained result from this investigation, they merely pay attention to human rights on account of the problems caused in the Islamic societies.
Abstrak tesis yang dikemukakan kepada Senat Universiti Putra Malaysia sebagai memenuhi keperluan untuk ijazah Doktor Falsafah Politik dan Kerajaan

HAK-HAK MANUSIA MENGIKUT ULAMA REFORMIS DI IRAN

OLEH

ALIREZA NAJAFINEJAD

September 2012

Pengerusi: Prof. Madya. Zaid B. Ahmad. PhD

Fakulti: Ekologi Manusia

Penyelidikan ini mengkaji hak-hak manusia mengikut pemikiran Pakar Undang-Undang Reformis Islamik di Iran selepas revolusi Islam. Objektif kajian ini adalah untuk menerangkan kefahaman yang mendalam tentang kerangka pendekatan ulama reformis terhadap hak-hak manusia, untuk menghuraikan prinsip hak-hak manusia dalam pemikiran Ulama reformis di Iran, dan untuk mengolah interpretasi Shari'a dalam pemikiran Ulama reformis Islamik yang berkaitan dengan hak-hak manusia.

Data utama telah dipilih daripada ucapan, temu bual, verdik dan buku yang ditulis oleh pemikir-pemikir ulama. Analisis kandungan qualitatif merupakan kaedah kajian bagi menganalisis maklumat.
Ulama reformis Islamik telah cuba untuk mengutarakkan idea baru dan interpretasi menggunakan prinsip ijtihad dan sedaya upaya mengurangkan konflik antara sistem perundangan dan hak-hak manusia.

Hasil kajian ini menunjukkan bahawa idea baru tersebut masih belum berkesan bagi memenuhi tuntutan hak manusia. Pakar Undang-Undang reformis Islamik cuba menerangkan bahawa tidak terdapatnya diskriminasi antara manusia, tetapi mereka tidak menerima kebebasan memberikan pendapat, pertukaran beragama, serta kesamaan gender dan amalan demokrasi yang melaluinya sejauh mana yang mungkin, membentangkan idea-idea baru dan pentafsiran mereka memperkatakan matlamat hak manusia.

Tambahan lagi, hasil kajian juga menunjukkan bahawa idea tersebut yang tercatat dalam sistem perundangan majoriti pakar Undang-Undang dan sebenarnya, fatwa tersebut bukan merupakan idea ke semua akar Undang-Undang. Kajian ini juga menunjukkan bahawa pakar Undang-Undang hanya menitikberatkan masalah hak manusia yang melibatkan masyarakat Islam.
ACKNOWLEDGEMENTS

It is with great pleasure that I express my appreciation to the various people who provided me with their full assistance and support in completing this thesis. I appreciate all members of my supervisory committee; Prof. Dr. Zaid B. Ahmad, Prof. Dr. Jayum A. Jawan, and Dr. Adlina Binti Ab Halim who directed my work through their guidance and critiques. And I would like to personally thank those who have enabled me to start and complete this study with their help, support and encouragement personally.

- My father; and my mother; who believe in me and always encourage me to continue education and wish to see my success.

- My wife Azadeh Kheiri who encouraged and supported me in time of difficulty.

I would like to dedicate this research to all my family including my parents, wife and my brother Hussein whose memories and presence have made life more beautiful for me.
APPROVAL

I certify that a Thesis Examination Committee has met on 25-9-2012 to conduct the final examination of Alireza Najafinejad on his thesis entitled "Human Rights in Thought of Islamic Reformist Jurists in Iran" in accordance with the Universities and University Colleges Act 1971 and the Constitution of the Universiti Putra Malaysia [P.U.(A) 106] 15 March 1998. The Committee recommends that the student be awarded the Doctor of Philosophy.

Members of the Examination Committee are as follows:

**Nobaya Binti Ahmad, PhD**  
Associate Professor  
Faculty of Human Ecology  
Universiti Putra Malaysia  
(Chairman)

**Ku Hasnita Binti Ku Samsu, PhD**  
Faculty of Human Ecology  
Universiti Putra Malaysia  
(Internal Examiner)

**Asnarulkhadi b Abu Samah, PhD**  
Associate Professor  
Faculty of Human Ecology  
Universiti Putra Malaysia  
(Internal Examiner)

**Hassan-Yari, Houchang, PhD**  
Professor  
Political and Economics Science Department  
Royal Military College of Canada  
(External Examiner)

________________________________________

**SEOW HENG FONG, PhD**  
Professor and Deputy Dean  
School of Graduate Studies  
Universiti Putra Malaysia

Date:
This thesis was submitted to the Senate of Universiti Putra Malaysia and has been accepted as fulfillment of the requirement for the degree of Doctor of Philosophy. The members of the Supervisory Committee were as follows:

**Zaid B. Ahmad, PhD**
Associate Professor  
Faculty of Human Ecology  
Universiti Putra Malaysia  
(Chairman)

**Jayum A. Jawan, PhD**
Professor  
Faculty of Human Ecology  
Universiti Putra Malaysia  
(Member)

**Adlina Binti Ab Halim, PhD**
Lecturer  
Faculty of Human Ecology  
Universiti Putra Malaysia  
(Member)

______________________________

**BUJANG BIN KIM HUAT, PhD**
Professor and Dean  
School Of Graduate Studies  
Universiti Putra Malaysia

Date:
DECLARATION

I declare that the thesis is my original work except for quotations and citations which have been duly acknowledged. I also declare that it has not been previously, and is not concurrently submitted for any other degree at full name or other institutions.

______________________________
ALI REZA NAJAFINEJAD
**LIST OF TABLES**

**Table 3.1** Applied Theory (Reform Methodology) 60

**Table 7.1** Reformation of Shari’a in Thoughts of Reformist Jurists 193

**Table 8.1** Formulate the Interpretation of Shari’a in Thought of Iranian Jurists 219
# TABLE OF CONTENT

<table>
<thead>
<tr>
<th>ABSTRACT</th>
<th>ii</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABSTRAK</td>
<td>iv</td>
</tr>
<tr>
<td>ACKNOWLEDGEMENTS</td>
<td>vi</td>
</tr>
<tr>
<td>APROVAL</td>
<td>vii</td>
</tr>
<tr>
<td>DECLARATION</td>
<td>ix</td>
</tr>
<tr>
<td>LIST OF TABLES</td>
<td>x</td>
</tr>
</tbody>
</table>

## CHAPTER

### 1 INTRODUCTION

1.1 Background

1.1.1 Historical Glance of Human Rights Discourse in Iran

1.2 Problem Statement

1.3 Research Questions

1.4 Objectives of the Study

1.5 Significance of the Study

1.6 Scope and limitation of the Study

1.7 Organization of Study

1.8 Conclusion

### 2 LITERATURE REVIEW

2.1 Introduction

2.2 Definition and History of Human Rights

2.2.1 International Human Rights

2.2.2 The Perspectives of Human Rights

2.3 Human Rights in Iran

2.3.1 Classification of Iranian Approaches on Human Rights

2.4 Conclusion

### 3 METHODOLOGY

3.1 Introduction

---

xi
3.2 Collection of Information 49
3.3 Analysis of Information 52
3.4 Theoretical framework 55
  3.4.1 Introduction 55
  3.4.2 What is the Reform Methodology? 57
  3.4.3 Human Rights and Shari's, Areas of Contention 61
  3.4.4 Why is Reform Necessary? 62
  3.4.5 The Importance of Theory Reform Methodology in Current Study 65
3.5 Summary 67

BIOGRAPHY OF MAIN THINKERS 68
3.6 Introduction 68
3.7 Hussein Ali Montazeri 68
  3.7.1 After Islamic Revolution 71
  3.7.2 School of Thought 73
3.8 Yousef Saanei 75
  3.8.1 Political Positions After Islamic Revolution 76
  3.8.2 School of Thought 78
3.9 Mohsen Kadivar 80
  3.9.1 After Arresting 81
  3.9.2 School of Thought 82
3.10 Conclusion 85

4 DIFFERENT APPROACHES OF REFORMIST JURISTS ON HUMAN RIGHTS 86
4.1 Introduction 86
4.2 Montazeri: Human Rights and supporting of Political Protesters Rights 86
4.3 Saanei: Islam is Religion of Human Rights 97
4.4 Mohsen Kadivar: Rights of Mankind and Human Rights 107
4.5 Conclusion 120

5 COMMON PRINCIPLE OF REFORMIST JURISTS ON HUMAN RIGHTS 124
5.1 Introduction 124
5.2 Montazeri 125
7.2 Summary and Conclusion 208
7.3 Recommendation 223
7.4 Summary 223

REFERENCES 225
APPENDIX 240
BIODATA OF STUDENT 243