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ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION



HUMAN RIGHTS IN ISLAM

Prepared by:

**The AALCO Secretariat
E-66, Vasant Marg, Vasant Vihar
New Delhi– 110057
(INDIA)**

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HUMAN RIGHTS IN ISLAM

I. INTRODUCTION

1. The item “Human Rights in Islam” was included in the agenda of the AALCO at the initiative of the Kingdom of Saudi Arabia at its 41st Session (Abuja, 2002). During the 41st session a brief discussion on the item was held. The resolution adopted at the Session decided to include it on the agenda of the 42nd Session of the Organization. The resolution also requested Member States “to forward to the Secretariat their views and observations on the topic, so as to facilitate the preparation of an in-depth study”.¹

2. During the 42nd Session of the Organization, the agenda item ‘Human Rights in Islam’ was further discussed. The resolution adopted at the Session decided to place it on the agenda of the 43rd Session of the Organization. The resolution reiterated the request made to the Member States “to forward to the Secretariat their views and observations, so as to facilitate the preparation of an in-depth study on this item.” In pursuance of the resolution, the Secretariat again sent letters to the Member States on 25th September 2003, 30th January 2004 and 27th February 2004. The Secretariat, however, till 30th April 2004, received the views and observations (in Arabic) from the State of Qatar only.

3. This Secretariat Report therefore focuses upon the consideration of the topic at the 42nd Session. The Report analyses, in particular, the understanding of the concept of human rights in Islam. It may be noted that due to constraints of time and resources (translated literature), this study is based upon the available primary and secondary references. We are highly indebted to the works of Sulieman Abdul Rahman Al Hageel, *Human Rights in Islam and Refutation of the Misconceived Allegations Associated with these Rights*² for its Quranic quotations and Islamic sources, which were very useful in developing the second part of the Report. In addition, the best instruments on the subject, viz. The Cairo Declaration on Human Rights in Islam, have been annexed hereto with an Explanatory Note.

¹ As a follow-up the Secretariat sent letters to the Member States on 10th December 2002, 14th January 2003 and 13th May 2003.

² Sulieman Abdul Rahman Al Hageel, *Human Rights in Islam (and refutations of the misconceived allegations associated with these rights)*, (sponsored by HRH Prince Sultan Ibn Abdul-Aziz Al-Saud), 2001). Additionally, referred to Allamah Sayyid Muhammad Husayn Tabatabai, *Shi’a*, (translated by Sayyid Husayn Nasr); George Jordac, *The Voice of Human Justice*, (translated by M. Fazal Haq); *Islamic Views on Human Rights: Viewpoints of Iranian Scholars*, Organization of Islamic Culture and Communications, Directorate of Research and Education, Center for Cultural-International Studies, (Alhoda Publishers, Tehran, 2001); and *Imam Ali, Nahj al-Balaghah*, Selection from Sermons, Letters and Sayings of Amir Al-Mu’Minin, ‘Ali Ibn Abi Talib, (selected and compiled by as-Sayyid Abu’l-Hasan Muhammad ibn al-Husayn ar-Radi al-Musawi and translated by syed Ali Raza), Karachi, the 17th May 1971.

II. CONSIDERATION OF THE TOPIC AT THE 42ND SESSION OF THE ORGANIZATION

A. DISCUSSION AT THE 42ND SESSION

4. The **Secretary-General Amb. Dr. Wafik Z. Kamil** said that he had the honour to introduce the important topic of “Human Rights in Islam” for deliberations and placed for consideration the Secretariat document AALCO/XLII/2003/ SEOUL/S 16.

He recalled that the Hon’ble Minister of Justice of Saudi Arabia in his Statement at the AALCO’s 40th Session, held in New Delhi (HQ), in 2001 had proposed for the inclusion in the agenda of AALCO an item “Human Rights in Islam”. However, a formal proposal together with an Explanatory Note was forwarded by the Government of Saudi Arabia just prior to the 41st Session. Accordingly, the item was included in the Agenda of the 41st Session held in Abuja 2002.

Further, the resolution adopted at Abuja Session requested Member States “to forward to the Secretariat their views and observations on the topic, so as to facilitate the preparation of an in-depth study”. It also decided to include the item on the agenda of the 42nd Session.

He stated that as a follow-up, the Secretariat had sent three times, letters to Member Governments seeking information and their views on this item. Till the end of May 2003, it did not receive such communication from any of the Member States.

The Secretariat document for the consideration of the 42nd session highlighted the contents of the Memorandum of the Government of Saudi Arabia and the views of the delegations at the 41st Session at Abuja. It also contained charts depicting the participation of the Member States of the Organization of Islamic Conference in selected human rights conventions under the United Nations. The Cairo Declaration on Human Rights adopted by OIC on 5th August 1990 was annexed to the study.

He observed that the word Islam meant peace, purity, submission and obedience. In the religious sense, Islam meant submission to the will of God and obedience to His law. Those who professed Islam believed that everything and every phenomenon in the world was administered totally by God-made laws, i.e. they were obedient to God and submissive to his laws, they were in the State of Islam.

He explained that the religion Islam was based upon the will of Allah, the Almighty and guaranteed the rights of the people so that they could live in peace, tranquility and brotherly love.

The source of human rights in Islam was the Creator of this Universe and it was He who gave them sanctity and enforcing power. Ideological conviction was deeply rooted in the human soul by virtue of faith and that was what made the soul accept willingly the

duties, which were obliged by such rights and committed to enact, protect and maintain these rights.

He said that criticism was often made that Islamic States did not subscribe to the universal norms of human rights, particularly those that were contained in the Universal Declaration of Human Rights of 1948. In this context, he stated, it would not be out of place to mention that Islam prescribed for a noble treatment of humanity and protected human rights and organized the affairs of man in such a manner that ensured human dignity and guided man to the right path and saved him from the abyss of ruin and destruction. The concept of human rights in Islam was antecedent to international charters and could be traced to the divine revelation in *Quran* and the *Sunnah* (the prophetic traditions).

In this context, he noted with distress, particularly in the wake of September 11th terrorist attacks, the trend that had emerged of linking particular religion or ethnic groups with terrorism. He deplored such linkages, which has now been legitimized by certain governments by adopting policies that sought to refuse entry to asylum seekers or immigrants, based on *inter alia* the ethnic or religious persuasion of individuals.

5. The **Delegate of Indonesia** supported Saudi Arabia's initiative for the inclusion of the item entitled "Human Rights in Islam" on the agenda of AALCO's work programme. His delegation shared the view that study by AALCO could find common grounds, which could serve as the basis for demonstrating a clear picture of Islam in dealing with human rights issues. His delegation was convinced that extensive discussion on this particular subject in this Session would contribute to the efforts of doing away with the misperception from the minds of certain elements in the West in relation to Islam. Moreover, it could also pave the way for religious harmonization.

His delegation shared the view that in Islam human rights was one of the most important "necessities" in human life. They are more than mere rights. He said that Islam considered human rights as an imperative condition that gives meaning to the human life. Consequently, safeguarding them means not only a "right" for man, but a "duty" as well. In addition to that, anyone who prevented a man from achieving these "necessities" would commit a transgression. Furthermore, Islam has reached far in sanctifying these "human obligatory necessities" to the extent that it regarded them as the foundations. They were indeed the basis of believe, and hence the practice of religion of Islam.

He argued that not all articles in the Universal Declaration on Human Rights (UDHR) could be accepted by Muslim countries. Although some Muslim countries attended the deliberations of the UDHR, Islamic views on human rights had not been appropriately accommodated in the text of the UDHR. For that reason, many Muslim countries questioned the universal spirit and nature of the UDHR. Therefore, his delegation was of the view that some provisions of the UDHR, which seemed to be not in line with the Islamic values, should be further discussed.

He said that since the beginning of its inception, Islam attached a great importance to the issue of respect and protection of human rights. Both *Al-Qur'an* and *Hadith* have clearly stipulated the basic human rights values. In this respect, he referred to the Madina Charter concluded in 612 AD* which also incorporated the human right provisions, which were more advanced as compared with the Magna Carta adopted more than six centuries later.

His delegation was of the view that some provisions of the UDHR *vis-à-vis* Islamic law on human rights seem to be controversial, particularly those concerning with different religion marriage and apostasy.

However, the controversy did not necessarily lead to rejection of the articles of UDHR as the whole. Apart from those provisions relating to different religion marriage and apostasy, the provisions of UDHR were compatible with the Islamic teachings.

The development of human rights protection in Muslim countries has achieved remarkable progress. The basic principle of constitutionality of modern state emphasizing the protection of human rights has been adopted in constitutions of Muslim countries, such as Indonesia, Malaysia, Iran, Pakistan, and many other Islamic countries. Moreover, the fact that Indonesia and some other Islamic countries have established ministries or special bodies entrusted to promote human rights protection in their respective countries reflect their commitment to respect human rights.

His delegation was of the view that discussion on human rights and Islam should be taken seriously from now on. He also recommended that the AALCO Secretariat could consider the feasibility to hold a special seminar or workshop, in collaboration with Saudi Arabia and Indonesia, focusing on this particular issue.

6. The **Delegate of Saudi Arabia**³ thanked the Secretary-General for keeping the important topic of “Human Rights in Islam” as a deliberated item for the 42nd Session.

He observed that the heavenly religion of Islam was based upon the dignity given to man was based upon justice and good deed. In the application of Islamic *Shariah*, Saudi Arabia was committed to preserving the five principles which inter alia included dignity, honour, safety and security. He said that the subject matter of the agenda item required much attention and was of great importance.

He said a Working Paper has been presented by his delegation on the item.

Saudi Arabia, he said, condemned terrorism in all its forms, however it called for a proper definition of terrorism. To fight the menace of terrorism it had ratified the Arab Convention on combating terrorism.

* (*sic*) Madina Charter concluded in 621 AD.

³ Statement delivered in Arabic. Unofficial translation based upon the interpreters version.

7. The **Delegate of Kuwait**⁴ thanked the Secretary-General for the Secretariat document and welcomed the initiative of Saudi Arabia in proposing this important topic. He observed that all religions aimed at preserving dignity and therefore it was important to know the importance of human rights. Islamic religion was a noble religion and even fourteen centuries back it had firmly entrenched human rights in it. However, it provided that public interest had precedence over private interests. Islam was a religion of tolerance, provided for free expression of opinion, and was based upon the principle of conviction through dialogue.

8. The **Delegate of Qatar**⁵ thanked Saudi Arabia for its proposal on this topic. Islam he said was the first heavenly religion to prescribe human rights. Islamic Shraiah prescribed for laws for all aspects of the community. It also provided for the rights of non-Muslims. The non-Muslims also had rights and duties under Islam. It provided for great care for non-Muslims. The general principles of the religion provided for justice and equality.

9. The **Delegate of Islamic Republic of Iran** was delighted that Human Rights in Islam had been included as an agenda item. He said that discussion of Human Rights in Islam in workshops and meetings was essential because there were different schools of thoughts and conceptual discourses in Muslim countries. It was a very serious task to study the consistency of Islam and Human Rights. His delegation agreed that the common denominator of all discourses in all circumstances was the respect for human rights in Muslim countries. Islam was a faith for better life in this world and eternal salvation for the other world. The distorted image of Islam by certain western media to introduce Islam as a violent religion emanates from the dangerous idea of “clash among civilizations.” However, policy and practice of Muslim countries in respecting human rights can prove vice versa. There was a wide range of actions and options maintaining law and order in Muslim countries such as enhancement of civil society, taking participating measures to promote education at all levels particularly for women and children and to eradicate poverty and discrimination altogether. This would provide a better ground for preserving human rights in the troubled time.

10. The **Delegate of United Arab Emirates**⁶ thanked the Secretary-General for including this topic on the agenda and supported the Saudi Arabian Working Paper on the subject. He also welcomed the proposal of sisterly Republic of Indonesia to convene a Seminar to discuss the issue in greater detail. It was one of that subject matter that was required to be discussed technically and judicially and therefore Secretariat should consider and propose for an appropriate place for discussion of this topic in greater detail.

11. The **Delegate of Sudan**⁷ thanked Saudi Arabia for its initiative in introducing the topic and also its Working Paper. He observed that human rights in Islam were not rights

⁴ Statement delivered in Arabic. Unofficial translation based upon the interpreters version.

⁵ Statement delivered in Arabic. Unofficial translation based upon the interpreters version.

⁶ Statement delivered in Arabic. Unofficial translation based upon the interpreters version.

⁷ Statement delivered in Arabic. Unofficial translation based upon the interpreters version.

provided by anyone but Rights granted by God. It was not a grant by anyone. He called for a greater dialogue on the subject so that a better understanding could be developed on it.

12. The **Delegate of Malaysia** thanked the Secretariat for inclusion of this important topic on a reference made by the Kingdom of Saudi Arabia. He said that the Organization of Islamic Conference (OIC) had considered the issue of Human Rights in Islam. In this respect, one of the fundamental principles of the OIC Charter was to promote and encourage respect for human rights and fundamental freedom for all people without distinction as to race, sex or religion. The 19th Session of the Islamic Conference of Foreign Ministers, held in Cairo, in 1990 adopted and issued a document entitled “Cairo Declaration on Human Rights in Islam”. He also noted that the 30th Session of the ICFM held in Tehran from 28th May to 30th May 2003 discussed legal matters relating to the follow-up of the Cairo Declaration on Human Rights in Islam. At that meeting, Malaysia expressed its support for Resolution No.2/30-LEG which recognized the importance of the follow-up of the Cairo Declaration on Human Rights in Islam and called upon the Inter-governmental Group of Experts to start the formulation and consideration of Islamic Charters on Human Rights, which will take the form of Covenants, each of which would deal in detail with one or more issues based on the provisions of the Cairo Declaration.

He informed the meeting that Malaysia would be hosting the 10th Islamic Summit Conference from 16 to 18 October 2003. His country therefore welcomed the recommendations and outcomes of deliberations during and after the 42nd Session of the AALCO on the issue of Human Rights in Islam to be brought to the attention of the 10th OIC Summit to be held in Kuala Lumpur in October 2003.

7B. RESOLUTION ADOPTED AT THE 42ND SESSION

RES/42/15
20 June 2003

HUMAN RIGHTS IN ISLAM

The Asian-African Legal Consultative Organization at its Forty-second Session,

Having taken note of the reference made by the Kingdom of Saudi Arabia and its proposal to include the item “Human Rights in Islam” on the provisional agenda of the Organization,

Recalling that, in accordance with RES/41/15 adopted at the Abuja Session, the Organization decided to include item entitled “Human Rights in Islam” in its work programme,

Having considered Secretariat Document No. AALCO/XLII/SEOUL/ 2003/S 16 on this item,

Recognizing the importance of this subject and the initiative of the Kingdom of Saudi Arabia,

1. **Requests** Member States to forward to the Secretariat their views and observations, so as to facilitate the preparation of an in-depth study on this item; and
2. **Decides** to place the item on the provisional agenda of its forty-third session.

III. SECRETARIAT OBSERVATIONS AND COMMENTS: HUMAN RIGHTS IN ISLAM

13. This section analyzes the understanding of the concepts of human rights in Islam. As Prof. Brownlie has stated, “Human Rights is a broad area of concern and the political subject matter ranges from the questions of torture and fair trial to the so-called Third-Generation rights, which includes the right to economic development and the right to health”.⁸ However, due to paucity of time and resources and literature (English translation), the analyses have been limited only to the branch of civil law. It is aimed that an endeavour would be made to analyze the criminal/penal law provisions pertaining to Human Rights in Islam in the brief for the 44th Session of AALCO. It may be noted that consistent requests were made to the Member States to forward to the Secretariat their views and observations on the topic, so as to facilitate the preparation of an in-depth study on this item.⁹ However, unfortunately limited comments from the Member States have been received by the Secretariat during the year on this subject.¹⁰ It is desired and strongly urged by the Secretariat that more reflections and comments are received from the Member States in future, in order to facilitate the preparation of a more comprehensive and detailed report on this topical issue. The Secretariat also welcomes the comments from the Member States on this Report.

A. THE ROLE OF PHILOSOPHICAL APPRAISAL (SECULARISM VIS-À-VIS RELIGION)

14. By taking up the issue of Human Rights in Islam, one may ask what are the reasons and grounds for that. Secondly, one should have a clear idea about the definition of rights and their nature and the status of human beings in Islam. Thirdly, one need to know what objectives, by the term ‘human rights’, Islam is trying to achieve. While finding answers to these questions, we come across with the philosophical approaches. Needless to say that the answers, to some extent, would differ from secular to religious perspective. Even the religious perceptions, based upon different denominations, would vary, though we cannot claim that the secular viewpoint is absolutely homogenous. Nonetheless, the secular doctrine has achieved to codify its views in terms of criterions, standards, rules and norms.¹¹ These should be studied in the backdrop of Islam. By doing this, we intend to explore the common grounds, sharing the same viewpoints, even to the extent possible, complementing each other, removing the existing barriers,

⁸ Ian Brownlie, *Principles of Public International Law*, (Oxford, 2004, 6th ed.), p.529.

⁹ Para 2 of the resolution RES/41/15 adopted at the 41st Session on the agenda item ‘Human Rights in Islam’; Para 1 of the resolution RES/42/15 adopted at the 42nd Session on the agenda item ‘human Rights in Islam’.

¹⁰ Initial proposal and Explanatory Note received from the Kingdom of Saudi Arabia in the 41st Session and Arabic materials received from the State of Qatar on 22-04-2003.

¹¹ Human Rights are universal legally binding guarantees consisting of values, norms, principles or standards, requiring respect for fundamental freedoms or human dignity and protecting individuals or groups against any violations or abuse of those guarantees.

misunderstandings and misconceptions. This could be definitely achieved through constructive dialogue and excluding clashes.

15. In brief, as regards the impact of these two approaches, namely secular approach and religious perspective, one can state that the secular philosophical viewpoint towards human rights is influenced by pragmatism, seeking safety and security of human beings in this material world, while the religious outlook is an idealistic one, seeking the salvation of human beings in this materialistic and spiritual world and Thereafter.

16. Another important and determinant factor is different sources of human rights. As far as human rights from secular approach is concerned, the sources are: Conventions/Treaties, International Customary Law, General principles of Law and the Jurists Opinions.¹² Although there is no clear hierarchy of sources in the secular approach, however as regards human rights in Islam, the primary and most viable source in Islamic views on Human Rights is the Holy Quran, namely God's revelation. Second source after the Quran is the Prophet's words and deeds, as well his tacit approvals, referred to as *Sunnah*.

17. Although the common features, which these two schools of thought share, are more than their differences, however the differences occur in the sources and in some aspects of human rights issues wherein there are different perceptions, e.g. the right to life, in the context of abortion or suicide.

18. In Islam, the life is a gift or deposit granted by the Almighty and the man cannot decide upon it exclusively according to his discretion. Therefore, in Islam, one who commits suicide deprives himself (or herself) from the inheritance, regardless of receiving punishment Hereafter. On the other hand, according to the individualism, emanating from the secular perspective, the human being is his own master. Based upon this view, one could draw the conclusion that the decision as regards abortion or suicide rests exclusively and solely on personal discretion, negating any criminal punishment or any civil liability.

19. Another example is having sexual intercourse, not within the matrimonial bonds, without force, compulsion or deceit, and conducted upon mutual consent. This is not

¹² Article 38 of the Statute of the International Court of Justice provides that,

(1) The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

(b) international custom, as evidence of a general practice accepted as law;

(c) the general principles of law recognized by civilized nations;

(d) subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

(2) This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto.

considered to be an offence under the secular approach as one is master of one's body. While in Islam, this relation constitutes a criminal offence. The reason for this could be traced in the explanation of Imam Zein al-Abedin, who believe that all movements and actions are surrounded by divine rights and that it is incumbent on man to fulfill them. He says, "The most important right of God is the rights that God has set for Himself. The right, which is the origin of all rights, originate from it, from head to toe".¹³ Imam Zein al-Abedin described the activities attributed to seven parts of the human body,¹⁴ one of them being his sexual organ and provides although an individual has a right upon these body parts, however these body parts in turn also have rights upon him and thereby forbids any wrong use of them.

20. With respect to the third source, viz. the wisdom and consensus among the religious jurists, there are common denominators. This manifests itself by the fact that revelation and prophecy are the peaks of human wisdom and only suit those who have exalted spirit and superior wisdom. This is why our scholars regard the Holy Prophet, (may peace and blessing of Allah be upon him), the Absolute Wisdom.¹⁵ Although Islam, by viewing human wisdom and conscience as God's most exalted creation upon which every recompense or award would be measured, and the Prophet, by instructing that what is decided by wisdom, is decided by religion, has laid a very strong common foundation.¹⁶ However, its authenticity as well as its enforceability is subject to its consistency with God's revelation or established *Sunnah*.

B. THE SOURCES OF HUMAN RIGHTS IN ISLAM

21. The sources of human rights in Islam are the sources of the Islamic Shari'a. There are the following four primary sources:

¹³ Hujjat al-Islam Muhammad Javad Hujjati Kirmani, "Survey of the Similarities and Differences of Human Rights in Islam and in the West", in *Islamic Views on Human Rights: Viewpoints of Iranian Scholars*, Organization of Islamic Culture and Communications, Directorate of Research and Education, Center for Cultural-International Studies, (Alhoda Publishers, Tehran, 2001), p.106.

¹⁴ Seven parts of the body, viz. tongue, eyes, ears, hands, legs, abdomen (stomach) and sexual organ.

¹⁵ Hujjat al-Islam Muhammad Javad Hujjati Kirmani, *supra* n.13, p.100.

¹⁶ One can easily confirm that the common basis and perspectives are far more than differences. One example could be found in what has been stated before namely, the Holy Quran and the Prophet as well as human wisdom, which has come to the same conclusion that the humanity as a whole constitutes one family. This has been best expressed by the famous Persian poet Sa'di in 14th century A.D., when he says:

*"The sons of Adam are the limbs of each other
Having been created of one essence
When the calamity of time afflicts one limb,
The other limbs cannot remain at rest
If thou has no sympathy for others
Thou are unworthy to be called by the name of a man."*

Also at another occasion, he says:

*"I am joyous of the world
as the world is His creation.
I fell in love with all the creation
As they are all coming from Him".*

- 1) The Quran
- 2) The Sunnah
- 3) Consensus
- 4) Juristic Reasoning

The First Source: The Quran

22. The Quran is the principal source from which all other sources are derived. The Quran addresses the following:

- a. The call for a virtuous humane life without any discrimination in duties and rights or discrimination for race or ethnic origin.
- b. The call for goodness and the containment of evil.
- c. The command of good prescribed and dictated by the Islamic Shari'a.
- d. The prohibition of evil that is denounced and condemned by Shari'a.
- e. The call for peace among people and nations unless they wage war against Muslims or attempt to displace Muslims from their homeland. This point has been strongly emphasized in the Quran, thus we read, "O you who believe! Enter into Islam whole-heartedly; and follow not the footsteps of the Satan..."¹⁷ Islam has also adopted announcing of the word "peace" as a term for greeting among people; the same word is also used to terminate each prayer, peace upon you: the Prophet of Islam; peace upon us and all who practice righteousness and peace upon you. Even the God has described the paradise as the "home of peace".¹⁸

The Second Source: The Sunnah

23. The second source of Islamic Shari'a and human rights is the Sunnah. As it is known, by the Sunnah, we mean the lawgiving statements, actions or tacit approvals of the Prophet.¹⁹

24. According to scholars of *hadith*, Sunnah means everything that is attributed to the Prophet including verbal statements, practices, approvals, and physical description, and character whether before or after prophethood. Sunnah, however, to the scholars means legal sources, everything that is attributed to the Prophet²⁰ except physical description and character, if it is proven to be authentic and correct.

¹⁷ Quran 2:208.

¹⁸ Quran 6:127.

¹⁹ The other branch of Islam interprets 'Sunnah' to include the practices (deeds) of or the practices impliedly consented to by the Prophet or one of the 12 Imams (the descendents of Fatimah, the daughter of the Prophet).

²⁰ *Ibid.*

In the early 11 years after the *hajirah* (632 A.D.), the Prophet sent the army close to (the now) Syria and Palestine which at that time was under the rule of Roman Empire. The Prophet gave the command of the army to a very young person, Osama bin Zaid*. This instigated criticism by the adversaries of the Prophet and they ridiculed that the Prophet made a slave/servant the commander of the army and ordered all the high tribal dignitaries from Mecca and Madina to engage in battle under his command. The Prophet reacting to this criticism by the adversaries, said that the ridicules which are made by them against the commandment of Osama, are the same as they made against his father when he was conferred such commandment. The Prophet further said that he is capable of undertaking such commandment as his father was and gave the instruction that all dignitaries, *inter alia* who migrated from Mecca to Madina (*mohajirun*), to accompany him, including Abu Bakr* and Omar*. Later the Prophet became ill and passed away after a short span.²¹

25. From the Prophet and his deeds, (may peace and blessing of Allah be upon him), like that of appointing a liberated slave as the Commander-in-Chief of army and subjecting high tribal dignitaries of Mecca and Madina to accompany him in the battle, emerges a *sunnah* in Islam that there is no distinction based on social status and the main criteria is merit of an individual.

26. Additionally, one of the evidences of *Sunnah* can be found in the full freedom allowed by Islam to the people. For instance, many persons belonging to the Hijaz and Iraq went away and joined Mu'awiya, but Imam Ali* did not stop them, nor did he consider it necessary to keep them under observation. They were free men in his eyes and were free to adopt any course they liked. If a person chose the right path it was well and good, but if he decided otherwise, the path to Damascus was open for him and Mu'awiya was awaiting such a person with his treasures. Hence, when Sehl bin Hanif Ansari, the Governor of Madina, informed him that some persons had gone over to Mu'awiya he wrote to him in reply: "I understand that some of the persons belonging to your area are secretly joining Mu'awiya. You need not worry at all about the number of people who have left, and the support, which has been lost. It is sufficient for their going astray and your being relieved of worry and sorrow that they are running away from truth and guidance towards ignorance and perversion. They are worldly people who are inclining towards the world and running to it. They recognized, saw, heard and learnt justice. They have understood very well that here all are treated to be equal in the matter of rights and are, therefore, running away towards the place where discrimination is practiced. By God they have not run away from injustice and have not joined justice and we hope that God will make easy every difficulty which is involved in this matter, and will make the stony land level for us".²²

* He was the son of Zaid, who was a slave of the Prophet and was liberated by him and later accepted as his adopted son.

* The first Caliph.

* The second Caliph.

²¹ Ibnul Asir, *Alkhamil Fit, tareekh*, Vol.II, (Beirut, Lebanon, 1989), p.5.

* Martyred in 662 A.D.

²² George Jordac, *The Voice of Human Justice*, (translated by M. Fazal Haq), (Ansariyan Publications, Qum, Iran, 1990), p.140.

27. Another instance of *Sunnah* is the complete freedom of thought, expression and association of people as reflected in Imam Ali's treatment of the Kharijites.²³ Imam Ali behaved kindly towards the Kharijites of the second category and did not permit his companions to contend with them. He also gave these Kharijites pensions as much as to the Muslims and had allowed them to go freely wherever they liked.

The Third Source: Consensus

28. Consensus is the third source of Shari'a and human rights. Consensus can be defined as the unanimous opinion or judgment proclaimed by the Shari'a scholars at a given time based on the light of the general rules of the Quran or the Sunnah and their detailed implementations.²⁴

The Fourth Source: Juristic Reasoning

29. Juristic reasoning is the fourth source of Shari'a and human rights. It is the individual judgement proclaimed by Muslim scholars at different places and times based on the light of the general rules of the Quran, the Sunnah and consensus including the details and practical application provided therein. Thus, reasoning is an opinion that has not gained consensus, otherwise, if unanimously agreed upon, it will be a consensus.

30. If there is an issue that has not been mentioned directly in the Quran, the Sunnah, or consensus, a legal reasoning can be established on such issue. The Quran and the Sunnah have acknowledged reasoning as a fourth source for Islamic legislation.

C. THE DISTINCTIVE CHARACTERISTICS OF HUMAN RIGHTS IN ISLAM

31. In Islam, rights stem from the Islamic faith. This faith is the spiritual element in the Islamic order and it is reflected in all its norms and teachings.²⁵ Rights are considered as a divine gift, not a gift from a creature to a creature, who can give it whenever he wishes or take it whenever he pleases. But rights are determined by Allah to man in accordance with his human nature. Therefore, Human rights in Islam are derived from

²³ One group of the Kharijites was that which had rebelled openly and it was these people most of whom were put to sword in the Battle of Nahrawan. However, there were others who held beliefs common with the Kharijites but they considered it expedient not to rebel, and were mixed up with the people of Kufa.

²⁴ *Symposium between eminent Saudi Muslim Scholars and Western European jurists about Islamic Shari'a and human rights*. 7/2/1392, Beirut, Dar Al Kitab al Lubnani, 1973, p.63. (as quoted in Sulieman Abdul Rahman Al Hageel, *Human Rights in Islam (and refutations of the misconceived allegations associated with these rights)*, (sponsored by HRH Prince Sultan Ibn Abdul-Aziz Al-Saud), 2001).

²⁵ Fou'ad Abdul Moniem Ahmed, *The System of Islamic Governance in Islam*, Alexandria, University Youth Institution, 1411, p.253.

the Islamic faith. According to this faith, mankind is regarded as a most favoured of Allah's creation and the most dignified on them.

32. From the fact that human rights in Islam are permanent and unchangeable rights granted by Allah, following consequences follow:

- (1) These rights in Islam are Divine bounties that Allah bestowed on His creatures. Therefore, they are not gifts donated from a creature to another creature like him, which can be donated or deprived according to human will. But instead, they are rights established by Allah the Almighty for humanity.
- (2) These rights are not absolute but restricted to conformity with the objectives of the Islamic Shari'a. Examples of regulations are:
 - a. Restrictions and regulations on freedom of expression in Islam.
 - b. Regulations on religious freedom in Islam.
- (3) These rights enjoy a sufficient degree of prestige, respect, and sanctity and constitute a guarantee for their protection against the rulers. This is because the ruler loses the legal base for confiscation of these rights, as the same would be considered as rebelling against the legislation of Allah.
- (4) The qualification of these rights as a "Divine Gift" elevates it to a status that the human beings willingly respect it from within the soul based on faith in Allah. This guarantees adherence and prevents violation of these rights.²⁶
- (5) Since human rights are described as a "Divine Gift", they are not susceptible to repeal or abrogation.
- (6) As these rights are conferred by Allah, they are free from excess and neglect; i.e., excess in rights of individuals at the expense of welfare of community, or neglect of their rights for the benefit of the authorities.²⁷

D. THE POSITION OF HUMANKIND IN ISLAM

First the Man's relationship towards the God

33. **Man is in essence valuable and worthy.** The holy Qur'an regards man as one endowed with dignity. *We have honoured the children of Adam.*²⁸ This dignity is a theoretical value, which may find a practical aspect.

34. Man's dignity shows that he has advantages. In other words, man's dignity implies that he has sublime traits. By virtue of the same reason, after the creation of this

²⁶ Yusuf Al Qaradhawi, *General Characteristics of Islam*, Wahba printing press, 1397, p.48.

²⁷ *Ibid.*, p.45-49.

²⁸ Sura of The Night Journey, verse 70.

great essence, God thus addressed *Iblis* (Satan), “Why did you not bow down before what I created with my own hands?”²⁹

35. This statement, namely the creation of Adam by God’s hands shows that man is in essence valuable and worthy, for this statement is used when we regard especial respect for something. This explanation elucidates that God has no physical body or hand but the idea is that all divine essence has played a part in the creation of Adam; hence, man can be the manifestation of all divine qualities and consequently, God’s viceroy.

36. According to the Islamic doctrine, human being is God’s Vicegerent. This is considered to be the existing relation between the God and human beings. Islam’s perspective towards man is a fundamental principle of Islam itself. From it all his duties and rights derive. Allah says in the Quran, “Behold, your Lord said to the angels, “I will create a vicegerent on earth”.³⁰ Allah highlights the exalted human status among all other God’s creation by ordering the angels to bow down to man: “And behold, We said to the angels, “Bow down to Adam’. And they bowed down; but not so Iblis, he refused and was haughty”.³¹

37. Allah has chosen man as His Vicegerent on earth so that humans may become responsible agents³² and slaves of the Most Gracious, whom Allah describes [in these words]: “And the slaves of (Allah) the Most Gracious are those who walk on the earth in humility and when the ignorant address them, they say, “Peace!”

38. Allah the Almighty has honoured man and asked him to worship Him alone and not to bow down to any one but Him. Allah Almighty says, “Say: Verily, my prayer and my service of sacrifice, my life and my death, are all for Allah, the Cherisher of the worlds”.

39. Imam Ali perceives that the Gnostic (*‘arif*)* is the one who worships God through knowledge and because of love for Him, not in hope of reward or fear of punishment. The gnostic “divine attraction” (*jadhbah*) draws the attention of the God-centered man toward the transcendent world and awakens the love of God in his heart. In truth it is the same inner attraction that has brought into being the different religions within the world, religions which are based on the worship of God.³³

40. **Man is a God-seeking being.** It is not such that man has perfect relation to God but that the relation between Man and God is like spiritual poverty and perfect need for Him; “O people! You are poor before God”³⁴

²⁹ Sura of Sad, verse 75.

³⁰ Quran 2:30

³¹ Quran 20:116

³² *Symposium between eminent Saudi Muslim Scholars and Western European jurists about Islamic Shari’a and human rights, supra* n.24.

* A religious scholar.

³³ Allamah Sayyid Muhammad Husayn Tabatabai, *Shi’a*, (translated by Sayyid Husayn Nasr), p.112.

³⁴ Sura of The Angles (35), verse 15.

41. In this verse, there are two realities: firstly, man does not have an independent soul; secondly, his relationship is only with God and he has no other relationship whatsoever.

42. Thus, any kind of formulating rights should correspond with this God-seeking spirit. The set of rights considering for man an independent soul or considering man independent of God does not spring from a divine source.³⁵

43. **Man is eternal.** From other sources in Islam, it is understood that man is eternal perceived both by reason and by the holy sayings. The holy Qur'an regards that man has an eternal soul who will step into another world after this world and will enjoy eternity there. According to reason, man has an incorporeal soul and that this soul is not exposed to destruction.

44. All human beings long for a longer life and strive to live longer. This implies that man innately seeks after eternity; The Holy Qur'an holds that all cosmic order moves towards God. This cosmic order goes towards resurrection to testify what its travelers have done or complains of what they have done to redeem them.³⁶ According to authoritative *hadiths*, this cosmos and all its parts complain of, testify to or redeem deeds of man.³⁷

45. **Man has Genetic Relationship with the Cosmos.** Man – this eternal incorporeal essence that comes to meet the Almighty has inseparable relationship with the Cosmos. Hence, nothing happens in man unless it affects his soul. Any movement, speech and writing issuing from man affect his temperament; it begets either light or darkness. Hence, all the issues including the legal principles are associated with man's nature. With the acceptance of this principle, it may no longer be concurred that man is free in everything. Eating, dressing and the likes affect man.

46. Lawful (*halal*) food does not exercise the same effect that unlawful (*haram*) food does. Truth does not have the same effect that untruth does. All these have special functions. For example, sin blackens the heart and removes purity from it: "What they have done has blackened their hearts."³⁸

Second the status of human beings vis-à-vis each other: Equality

47. In his speech during the Farewell Pilgrimage, Prophet Muhammad* declared human rights when he said, "O mankind! Your Lord is one, and your father is one, you all belong to Adam and Adam was made of clay. The best of you in the sight of Allah is

³⁵ Ayatullah Abdullah Javadi Amuli, "Sources of Human Rights" in *Islamic Views on Human Rights: Viewpoints of Iranian Scholars*, supra n.13, p.2.

³⁶ *Ibid*, pp.1-3.

³⁷ Bihar al-Anvar, Vol.7, chapter 16.

³⁸ Sura of The Stinters (83), verse 14.

* Born in 570 A.D. and passed away in 632 A.D.

the one who is most righteous. There is no superiority for an Arab over a non Arab except for by righteousness.”³⁹

48. In his blessed speech, Prophet Muhammad, the Messenger for all mankind, (may peace and blessing of Allah be upon him), summarized the position of Islam towards human rights very clearly: People are equal in the shared value of humanity. They are like the teeth of a comb in terms of equality. There must be no preferences among people except for piety on the basis of their good deeds as well as what each of them accomplishes for his Lord, himself, his nation and the human society.⁴⁰

49. Allah says in the Quran, “O mankind! We created you from a male and a female, and made you into nations and tribes that you may know each other (not that you may despise each other). Verily the most honoured of you in the sight of Allah is (who he is) the most righteous of you..”⁴¹

50. It is also stated in the Quran: “O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes that you may know each other (not that you may despise (each other). Verily the most honoured of you in the sight of Allah is (who he is) the most righteous of you...”⁴²

51. Allah Almighty states in the Quran, “We have honoured the sons of Adam; provided them with transport and sea, given them for sustenance things good and pure; and conferred on them special favours, above the great part of our creation.”⁴³ Also Islam honoured man by prohibiting degrading, disdaining, humiliating or calling him bad names. Allah says, “O you who believe! Let not some men among you laugh at others; it may be that the (later) are better than the (former). Nor let some women laugh at others. It may be that the (latter) are better than the former. And do not defame nor be sarcastic to each other by (offensive) nicknames. Ill seeming is a name connoting wickedness, (to be used of one) after he has believed. And those who do not desist are (indeed) doing wrong.”⁴⁴

52. Allah honoured man by prohibiting any wordings or acts that affects man’s dignity, i.e. backbiting, calumny, spying and the like. Allah has scorned those who commit these sins and any other acts or wordings that might touch man’s honour or dignity by saying: “O you who believe! Avoid suspicion, in some cases it is a sin; and spy not on each other; nor speak ill of each other behind their backs, would any of you like to eat the flesh of his dead brother? Nay, you would abhor it. But fear Allah: Verily Allah is Oft Returning, Most Merciful. O mankind! We created you from a single (pair) of a male and female, and made you into nations and tribes, that you may know each

³⁹ Sulieman Abdul Rahman Al Hageel, *Human Rights in Islam (and refutations of the misconceived allegations associated with these rights)*, (sponsored by HRH Prince Sultan Ibn Abdul-Aziz Al-Saud), 2001, pp.14.

⁴⁰ *Ibid.*

⁴¹ Quran 49:13

⁴² Quran 7:128

⁴³ Quran 17:70

⁴⁴ Quran 49:11

other (not that you may despise each other). Verily, the most honoured of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things).⁴⁵ And Allah says, “Woe to every (kind of) scandal monger and backbiter.”⁴⁶ Allah Almighty, addressing the Prophet Mohammed (may peace and blessings of Allah be upon him), states, “Obey not any mean, swearer, slanderer going about with calumnies, (habitually) hindering (all) good, transgressing beyond bounds, deep in sin”.⁴⁷ It is also stated in the Quran: “And pursue not that of which you have no knowledge; for surely the hearing; the sight; and the heart, all of those shall be questioned.”⁴⁸

Third the status of Muslims vis-à-vis each other

53. Islam conceives all of mankind as one single nation. Although the message of Islam has been addressed to all of mankind, but it is professed that, “The believers are but a single brotherhood”.⁴⁹ The Prophet said, “A Muslim is the brother of the Muslim, he shall not allow him to be aggrieved or release him to his enemies.”⁵⁰ He also said, “The example of the Muslims in their mutual love and compassion is like the example of the body: when a single organ is impaired all other organs of the body will likewise sustain fever and sleeplessness.”⁵¹

54. Further elaborating the relation between Muslims vis-à-vis each other and vis-à-vis non-Muslims, Islam instructed Ma'qal son of Qais as under: “O Ma'qal! Fear God. Don't be unjust to the Muslims and don't oppress the *Zimmis**. Don't be proud, because God doesn't like the proud”.⁵²

55. A manifestation of *Sunnah* may be found when Sufyan son of Auf Asadi, a commander of Mu'awiya's army invaded the city of Anbar. Three principles emerge from this historical incident, namely that it is the duty of the nation to protect the religious minority, viz. *Zimmis*; that it is not only the duty of the nation but also of all the Islamic societies to provide such protection; and lastly, as provided under the International Humanitarian Law⁵³ that during the time of armed conflicts, atrocities shall not be committed against the civilians. This was manifested in the course of Caliph Ali's speech, wherein he said:- “I have received information that, a member of this group used to enter the houses of Muslims and Zimmi women and removed the anklets from their

⁴⁵ Quran 49:12-13

⁴⁶ Quarn 104:1

⁴⁷ Quran 68:10-12

⁴⁸ Quran 17:36

⁴⁹ Quran 21:92

⁵⁰ Sulieman Abdul Rahman Al Hageel, *supra* n.39, p.29.

⁵¹ *Ibid.*

* ‘*Zimmis*’ refers to the followers of the holy scriptures, namely Jews, Christians and Zoroastrians (the old Persian religion).

⁵² George Jordac, *supra* n.22, pp. 185-186.

⁵³ The four Geneva Conventions of 1949, in particular third Geneva Convention on Civilians and the two Additional Protocols of 1977.

feet and the bangles from their hands as well as the necklace and earrings which they were wearing and they had no means of protection except that they should say: "We are from God and we have to return to Him and remain patient... Now if a Muslim dies of sorrow on account of these tragedies he cannot be blamed for it. In my opinion it ought to be so".⁵⁴

56. With regard to relation of Muslim vis-à-vis non-Muslem, the following sentence also appeared in the pact which Imam Ali concluded with the Christians of Najran: "They will not be subjected to injustice and oppression nor will any of their rights be reduced".⁵⁵

E. DEFINITION OF 'RIGHTS' IN ISLAM

57. One of the sermons of Imam Ali manifests a definition of rights and speaks about the rights and duties of persons towards the God, towards oneself and towards others. With respect to rights and duties of person towards the God, he provides that an individual is considered as a Vicegerent of God. The humankind is God's Viceroy, not Adam alone.⁵⁶ On the other hand, as God's viceroy, every man is entrusted with the God's rights, such as performance of *Salat*, fasting and prophecy.... With respect to the duties towards the God, Imam Ali provides that the Almighty has assigned for man certain responsibilities, in addition to conferring certain rights. These rights and responsibilities stemming from a divine source may not contrast each other. Thus, religious obligations, that is, the obligatory and the prohibited, have priority over man's will and humane rights, including the individual and the collective ones, are of secondary importance.⁵⁷

58. Last but not the least, God's viceroy indicates *inter alia* the rights and duties of human being towards himself and the others, e.g. every man as God's viceroy shall have the right to take part in determining his political destiny. Thus, leadership is particular to everyone.⁵⁸ This has been confirmed by Prophet, that "*khllokom Ra,e, va, kollokom masulun an Raiyateh*", meaning you are all shepherds and you are all responsible before the fellow subordinates.

59. Further, Imam Ali perceives that right is the broadest affair in description, and the rarest affair in moment of action and justice. As regards the rights and duties towards others, he refers to the balance struck between rights and duties, where he underlines that no one has right towards others unless others have rights towards them and others have no rights towards those others unless they have rights towards them. Also if someone has

⁵⁴ George Jordac, *supra* n.22, pp.185-186.

⁵⁵ *Ibid.*

⁵⁶ For further information Allamah Tabatabai, *Al-Mizan Fi Tafsir al-Quran*, Quran 2:30.

⁵⁷ Hujjat al-Islam Muhsin Kadivar, "Political Rights of People in Islam", in *Islamic Views on Human Rights: Viewpoints of Iranian Scholars*, *supra* n.10, pp.110-111.

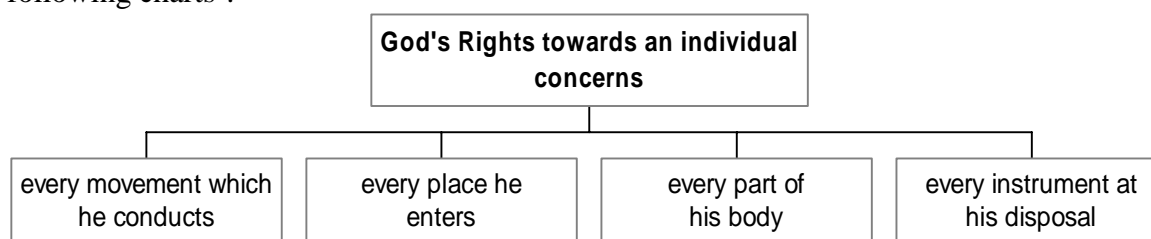
⁵⁸ For further information see Kazim Husayni Ha'iri, *Walayat al-Amr fi' Asr al-ghaybat*, pp.175-178. Also see Hujjat al-Islam Muhsin Kadivar, *supra* n.57, pp.116-117.

rights towards anyone, the rights are particular to the Almighty God. So the Almighty God has proclaimed necessary some rights towards some people and proclaimed them equal as compared to some others and has proclaimed some of them incumbent as compared to others.⁵⁹

60. The reference area to people's rights is the area of the permissible and in this area which is often called *Mantaqat al-Faragh*⁶⁰ (The Area of Separation), man is free to make decisions and of course he is responsible for his decisions. *Mantaqat al-Faragh* is not a small place but an extensive one. The political rights of people become manifested in this place.⁶¹ He who abandons the right of God and he who violates them shall be forgiven by an act of repentance but he who violates the rights of people ought to repent and ask forgiveness from the people.⁶²

61. Additionally, the basic perception of Imam Zein al-Abedin's treaties is that in Islam although individuals have rights vis-à-vis the universe and all other existing subjects and objects created by God, however in turn these subjects and objects inhere right over the individuals. Thus, rights conferred under Islam to individuals are mutual rights, in other words when an individual has right against others, reciprocally others have rights against that individual. This reciprocity of rights gives rise to duties that are incumbent upon the individual. Therefore every right of an individual has three dimensions: first, his right to others; second, the reciprocal rights of others over the individual; and third, the duties emerging therefrom.

62. Imam Zein al-Abedin's perception of rights has been summarized in the following charts* :



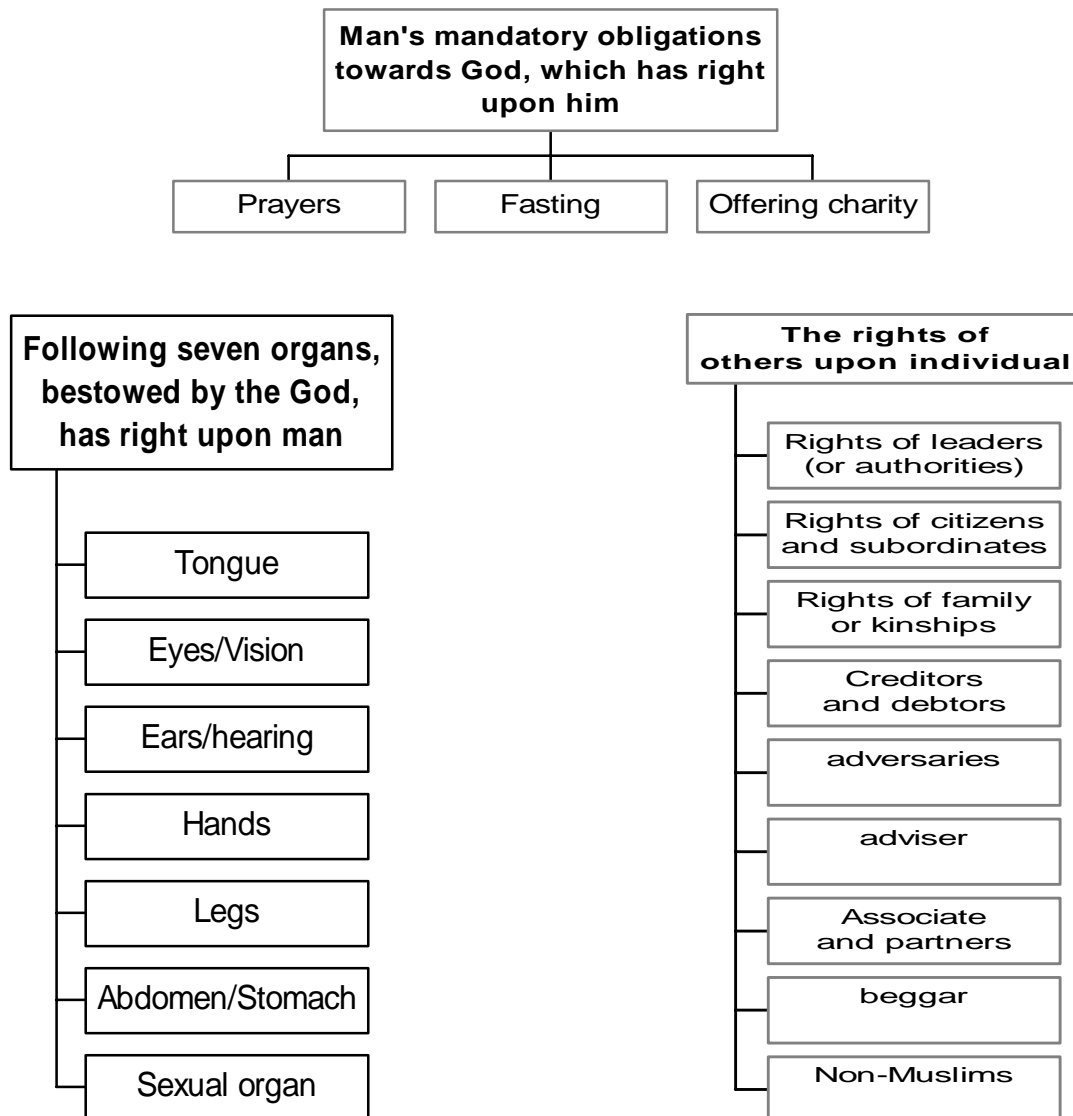
⁵⁹ Nahj al-Balaghah, Sermon 34, *infra* n.66, pp.332&333, also *ibid* sermon 34, p.79. *Ibid*, letter 50, p.424.

⁶⁰ For further information see Muhammad Baqir Sadr, *Iqtisadina, Mantaqat al-Faraq fi al-Tashir al-Iqtisadi*, (Beirut, al-Tab' at al-sadisat 'Asharat, 1981, p.400.

⁶¹ Hujjat al-Islam Muhsin Kadivar, *supra* n.57, p.111.

⁶² For further information see Thaqat al-Islam Kulaini, *Al-Kafi*, Kitab al-Imam wa al-Kufr, Vol.2, Bab al-Zulm, Hadith 2, p.331.

* Treaties on Rights, Zein al-Abedin, (born in 659 A.D. and passed away in 713 A.D.), see *Tohafol – oghul* (written in 12th century A.D.), for Spanish translation see, *El. Tratado de los Derechos*, published in Mexico, Junio 1977, (editor, Dr. Alireza Deihim).



F. SPECIFIC HUMAN RIGHTS IN ISLAM

I. CIVIL AND POLITICAL RIGHTS

1. Right to Life

63. The first right enumerated for man by the Holy Qur'an is the right to life. There are two phases for life: physical and spiritual. No one has the right to take this right from others. The violation of physical right results from killing. According to the Holy Qur'an, this is equal to destroying the whole society unless it is done under sound reasons. "Who so slays a soul not to retaliate for a soul slain, nor for corruption done in the land, shall be as if he had slain mankind altogether."⁶³

⁶³ Quran 5:32.

64. The violation of the spiritual right to life results from misleading others. They destroy their spiritual life. The loss of spiritual life means the loss of bliss; otherwise the spirit of man shall not be destroyed. For the same reason, the Holy Qur'an regards spiritual life as opposed to atheism. In other words, anyone that becomes atheist, they shall lose bliss and die spiritually.⁶⁴

2. Right to Freedom

65. One of the main messages of all the Prophets is to free their followers from the bondage and servitude. This could be traced and substantiated by the role played by Moses, when he demanded the freedom of the Bani Israel* from Pharaoh's servitude. The Pharaoh was idolater and Moses invited all to worship any one but God.⁶⁵

66. In the works of the Iman Ali, the message of freedom is clearly discernible. The most obvious document in this regard is *Nahj al-Balaghah* where Iman Ali addresses his son Hassan Mujtaba, "Be not servant to anyone but God, for He has created you free".⁶⁶

67. As is seen in this statement, true freedom lies in breaking from any servitude but from God. For the same reason, Iman 'Ali finds his honor in this kind of freedom, "O God, it suffices me to be Thy servant; this is great honor for me to have Thee as my Lord".⁶⁷

3. Right to Equality and Non-discrimination

68. The Universal Declaration of Human Rights, 1948 dealt with equality and non-discrimination under Article 3 as noted above. Islamic Shari'a has dealt with equality and non-discrimination as an enforceable and binding legal duty. Islamic Shari'a determined equality of all human beings with respect to their origins, ethnic affiliations and humanitarian values. There is no favour for an Arab over a non-Arab save for righteousness. Allah Almighty says, "O mankind, we created you from a single (pair) of

⁶⁴ Ayatullah Abdullah Javadi Amuli, *supra* n.35, p.8.

* The Jews.

⁶⁵ Islam provides that freedom lies in freedom from servitude of others but Allah. However, the proponents of other schools believe that freedom lies in man's capability to choose anything. In their eyes, man is free to choose any religion he desires, for they regard religion as an ordinary thing. Thus, as man chooses his profession and residence, he chooses his own religion. According to this belief, religion finds its origins in the traditions and beliefs of people. However, in Islam, this absolute freedom is servitude, for if man is free to choose whatever he likes as his religion, then he falls into the pitfall of his desires and follows them, "Has thou seen him who has taken his caprice as his God?" (Quran 45:23)

⁶⁶ *Imam Ali, Nahj al-Balaghah*, Selection from Sermons, Letters and Sayings of Amir Al-Mu'Minin, 'Ali Ibn Abi Talib, (selected and compiled by as-Sayyid Abu'l-Hasan Muhammad ibn al-Husayn ar-Radi al-Musawi and translated by syed Ali Raza), Karachi, the 17th May 1971, Letter 31, p.128, part 87.

⁶⁷ Bihar al-Anwar, Vol.74, chapter 15, p.42, tradition no.23 and vol.91, chapter 32, p.92, tradition no.6.

a male and a female, and made you into nations and tribes, that you may know each other. Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is acquainted (with all things).”⁶⁸ Also, Allah addresses mankind with the expression, “the children of Adam.” He says in the Quran, “O children of Adam!”⁶⁹ In these verses, Allah addresses all human beings in general as the sons of Adam; this generality indicates that all human beings are treated on an equal footing.

69. Islam has transported man from the partisanship and bigotry of tribalism, clan, faction, race, sex and colour to the much wider parameters of a humanity that goes back to one origin. These differences are not supposed to drive people to separation, antagonism, and hostility. Rather, they should make them cooperate and know each other. When Abu Dhar Al Ghafari* became furious with Bilal Ibn Rabah**, the former called the latter “the son of the black woman.” When the Prophet heard this insult, he got angry and said, “This is too much! There is no honor for the son of the white lady against the son of the black lady except for piety and righteousness.” Upon hearing this, Abu Dhar placed his cheek on the ground and asked Bilal to put his foot on his cheek.⁷⁰

70. Prophet Mohammed, (may peace and blessings of Allah be upon him), has also referred to the principle of equality in Islam by saying: “O mankind! Your Lord is One. All of you are the sons of Adam, and Adam is created from clay. There is no virtue or honor for an Arab over a non-Arab neither for a non-Arab over an Arab, or for red over black neither black over red or white over black except for piety. Have I delivered the message? The present should inform the absent.”⁷¹ He said in the domain of equality between the people in implementing “*Hudud*,” “The nations before you were destroyed because if a noble committed theft they [the rulers] would not apply *hadd* on him, whereas if the weak and humble committed theft, they would inflict hard punishment on him. Behold! If my daughter Fatima committed theft I will order her hand to be amputated.”⁷²

4. Right to Freedom from Slavery and Servitude

71. Prohibition of slavery is one of the basic principles of International Human Rights Law and has acquired the status of customary international law. Prohibition and freedom from slavery and servitude is one of the fundamental principles of Islam.

⁶⁸ Quran 49:13

⁶⁹ Quran 7:26

* The follower of the Prophet.

** The follower of the Prophet from Ethiopia.

⁷⁰ *Al Tadamun Al Islamie* (journal) issue of Zhul Qaida 1411 H (as quoted in Sulieman Abdul Rahman Al Hageel, *Human Rights in Islam*, *supra* n.39).

⁷¹ From the statement of Prophet Mohammed in his last pilgrimage.

⁷² Narrated by Al-Bukhari and Muslim.

72. Caliph Umar* has said: "How did you make the people your slave when their mothers gave birth to them as freemen?"⁷³ In consonance with the remarks of Umar, Imam Ali said: "Do not be the slave of anyone when God has created you free." He further states that man has been born free and not that someone else should take pity on him and set him free.⁷⁴

73. This sentence of Imam Ali shows that he considered the freedom of man to be inherent and natural and all the actions of man are the outcome of this inherent and natural freedom. This freedom is free from all external influences. This freedom is enjoyed by him internally and not externally. It is like the light of the sun which cannot be separated from it.

5. Right to Freedom from Forced Labour

74. Development of land and payment of full wages, commensurate with the work done, were the two strong pillars on which Islam intended to erect the structure of a good and pious society. An instance of observance of the right to freedom from forced labour is manifested in the following:

Some persons belonging to a particular place came to Imam Ali and said: "There is a canal in our area which is now filled with dust. If it is dug again it will be very beneficial for us". They then requested him to write to the governor of the area to make it compulsory for everyone to dig the canal. The Commander of the Faithful approved the digging of the canal but did not accede to their request that the people should be compelled to dig it. He wrote thus to Qarza, son of Kaa'b, the governor of the area: "Some persons belonging to your area came to me and told me that there was a canal in that region which is now filled with dust. If these people dig the canal once again it will lead to the development of the area and they will be able to pay the revenue. This will also lead to the increase in the income of the Muslims residing in the area.

These persons asked me to write a letter to you desiring you to collect the people of that place to dig the canal and to make it obligatory upon them to bear the expenses of the work.

I do not consider it appropriate to compel any person to do a work which he does not like to do. You should, therefore, call the people and employ those of them who are willing to do the work. When the canal is ready only those persons who do digging work will be entitled to use it, and those who do not participate in the work will have no right on its water. If

* Assassinated in 644 A.D. (first half of the 7th century)

⁷³ George Jordac, *supra* n.22, pp.136-138.

⁷⁴ *Ibid.*

those people develop their area and their financial position improves, it is much better than their remaining weak”.⁷⁵

6. Right to Peace (Peaceful Coexistence, *Pacta Sunt Servanda*)

75. Islam is a religion of peace and universal brotherhood. The secular meaning of the word “Islam” is peace. “Bear in mind that you do not throw away the offer of peace which your enemy may make himself. Accept it, for that will please god.” Caliph Ali statement bear witness to this fact.⁷⁶ He further advises, “Abstain from shedding blood without a valid cause. Do not wish to build the strength of your state on blood for, it is this blood which ultimately weakens the power and undermines the authority and shakes its very foundations; power then slips to other hands.”⁷⁷

76. Islam also mandates Muslims that peace treaties should be adhered to. This is one way of achieving peaceful coexistence of various nations. The Caliphs of Islam had always discharged their obligations under various peace treaties.⁷⁸

77. According to Islam love and friendship is the greatest blessing for mankind. It says: “Almighty God has strengthened the tie of love between the human beings.” Also it says: “One who gains victory by evil means is in fact defeated”. “Nothing is worse than fighting and bloodshed”.

78. In resonance with the principles of International Humanitarian Law,⁷⁹ Islam emphasizes: “Never challenge another person to combat”. Fighting is as much injurious for truth as it is the source of refuge for falsehood. It is by means of truth that man is exalted, the society is strengthened and the world become prosperous. It was for this reason that at time, in order to put to end to trouble and to invite the friends to peace, Caliph Ali said: “For your enemies this loss is sufficient that they have gone astray”.

79. Islam asks a sinner and a transgressor to express regret for his lapse so that fighting might not take place. As regards the oppressed persons, Islam asks them to

⁷⁵ *Ibid.*, pp.175-176.

⁷⁶ *Ibid.*, p. 225

⁷⁷ *Ibid.*, p.226

⁷⁸ “But, if under the peace treaty you have accepted any obligations, discharge those obligations scrupulously. It is a trust and must be faithfully upheld and whenever you have promised anything, keep it with all the strength that you command, for whatever difference of opinion might exist on other matters, there is nothing so noble as the fulfilment of a promise. So never make excuses in discharging your responsibilities and never break a promise, nor cheat your enemy, for breach of promise is an act against God and none except the positively wicked acts against God. ...So, do not make any such promise which you cannot fulfil, nor attack your enemy without ultimatum. ...A treaty should, therefore, be free from fraud, duplicity and deception. Never execute a pact open to interpretations, but once it is executed, don't exploit equivocation, if any; nor repudiate any treaty concluded in the light of Divine injunctions, even in the face of grievous difficulties.” Imam Ali directs Malik Ashtar.

⁷⁹ Dr. Ali Reza Deihim, *An Introduction to the International Criminal Law*, (the Institute of Political and International Studies, Tehran, 2002), Chp. III, pp.59-83.

accept the apology of the transgressor however big his offence might be. It says: "Accept the apology of a person who apologizes to you. It also says: "Fight against your worldly desires by means of reason. Islam further says: "If you feel secure from vexation by someone try to make him your brother".

80. It provides: "Refrain from enmity and dispute. Because these two things make the heart sick and discord is generated from them." Also, "Do good to your enemy because this victory is more agreeable and sweet". It further provides "The goodness of a goodness which is acquired through evil is futile and the affluence which is the result of indigence and adversity has not value".⁸⁰

81. Further, in the testament which Caliph Ali wrote for Malik Ashtar while appointing him as the Governor of Egypt he says: "If you settle some conditions with your enemy or conclude a pact with him you should relieve yourself of its burden by honouring it. You should discharge faithfully the responsibility undertaken by you and should make yourself a shield for the protection of your promise. You should not, therefore, abandon what you undertake to do nor dishonour the covenants you make and should not deceive your enemy".⁸¹

7. Administration of Justice and Independence of Judiciary

82. In an Islamic State, the ruler is not supposed to keep aloof from the people. The ruler is one amongst them. He has to meet people regularly and interact with them.⁸² Grievance redressal is one of the objectives of these interactions. In fact, all the Caliphs of Islam were very devout in meeting people and in sorting out their problems. The following directions given by Ali reached the ears of the governors continuously:

"Redress the grievances of the people and meet their needs because you derive your capital from them. Do not deprive anyone of what he needs, and do not obstruct him from attaining his object. Do not sell the summer or winter dress of anyone to realize revenue. Do not take away from any person a quadruped which is required by him for his business and do not whip a person for even a penny."⁸³

83. Once Ali saw his coat of mail in the possession of a Christian. He took him in the court of a judge named Shurayh so that he might give a decision regarding its ownership. When both of them appeared before the judge Ali said: "This coat of mail is mine. I

⁸⁰ George Jordac, *supra* n.22, pp.191-197.

⁸¹ *Ibid.*, p.202.

⁸² Caliph Ali says: "Meet the oppressed and the lowly periodically in an open conference and conscious of the Divine presence there, have a heart-to-heart talk with them and let none from your armed guard or civil officers or members of the police department or the intelligence department be by your side, so that the representatives of the poor might state their grievances fearlessly and without reserve.no nation or society, in which the strong do not discharge their duty to the weak, will occupy high position." *Ibid.*, p.223

⁸³ George Jordac, *supra* n.22, p.65

have neither sold nor gifted it to anyone”. The judge asked the other person: “What have you to say about the claim made by the Commander of the Faithful?” The Christian said: “This coat of mail is mine. In spite of this, however, I do not consider the Commander of the Faithful to be a liar”. Then the judge Shurayh turned to Ali and said: “Can you produce any witness who should depose that this coat of mail is yours?” Ali smiled and said: “Shurayh is right. I cannot produce any such witness”.

84. The judge gave a judgement in favour of the Christian who took the coat of mail and departed. The Commander of the Faithful kept looking at him from behind. After having gone a few steps, however, he returned and said: “I testify that such an order resembles the order of the prophets, because one who is the Commander of the Faithful has appeared along with a person like myself in the court of the judge who is also his subordinate and the judge has given a judgement against him”. Then he added: “O Commander of the Faithful! I swear by God that this coat of mail is yours and my claim was false”.⁸⁴

85. Judiciary has a very important role in the administration of justice. Islam recognises the independence of judiciary. Caliph in his testament had highlighted the Independence of judiciary.

Select as your Chief Justice from the people, one who is by far the best among them-one who is not obsessed with domestic worries, one who cannot be intimidated, one who does not err too often, one who does not turn back from the right path once he finds it, one who is not self-centered or avaricious, one who will not decide before knowing the full facts, one who will weigh with care every attendant doubt and pronounce a clear verdict after taking everything into full consideration, one who will not grow restive over the arguments of advocates and who will examine with patience every new disclosure of fact and who will strictly impartial in his decision, one whom flattery cannot mislead, one who does not exult over his position....Never select men for responsible posts (subordinate judiciary) either out of any regard for personal connections or under any influence, for that might lead to injustice and corruption. Increase their salaries to give them a contented life. A contented living is a help to self-purification.⁸⁵

8. Right to Religion

86. Absolute freedom of religion, under the international human rights law as discussed above, is considered as personal, heartfelt and everyone has a right to preserve it for himself and that the diversity of belief has to be respected.

⁸⁴ *Ibid.*, p.67

⁸⁵ *Ibid.*, pp. 219-20

87. Man due to his power of choice is entitled to choose his destiny and accept or reject the divine religion⁸⁶ and no one shall be compelled to accept Islam. Religion – in its objective and subjective entity – and in Islam (which regards religion as the inherent law in man) lives in the minds and hearts of people, but the origin is an outward one; the ideology, world vision, the explanation of the realities in the world and rules stem from natural laws and as Muslims ulama (religious scholars) state, “Religious matters stem from genetic realities and the belief in religion means the harmonizing of man with nature”.⁸⁷

88. Hence, as nature is not illusionary or absurd, religion should not be based on illusion. Be as it may, as man and his belief are to be respected, Islam allows that everyone who is not able to understand the amazing nature of Islam and accepting and no one else has the right to refrain his fellow beings from accepting Islam. Concerning this, the Holy Quran states, “There is no compulsion in religion”.⁸⁸

89. The path of salvation is made distinct from aberration and no one shall be compelled to accept religion, for everyone is free to choose the right path by virtue of his rationale and intellect and tell apart wrong from right. As pronounced in the Holy Quran, one can exercise freedom in the choice of one’s religion, but thereafter one is bound to follow it as a covenant is made with God, based on the will of man.⁸⁹

9. Man’s Right over his own Property and Wealth

90. As regards man’s right over his property, Islam prohibited trespasses and laid down the guarantees for the protection of the properties more than fourteen centuries ago. Allah has threatened the non-believer with painful chastisement for trespassing or encroaching on the others’ properties, as He says, “That they took usury, though they were forbidden and that they devoured men’s wealth wrongfully; We have prepared for those among them who reject faith a severe torture.”⁹⁰ The term, property here, includes whatever can be possessed and owned by man, whether currency or goods of material value, movable or immovable.

⁸⁶ “There is no compulsion in religion”. Quran 2:25.

⁸⁷ Ayatullah Sayyid Muhammad Khamini’i, “Individual Rights in Islam” in *Islamic Views on Human Rights: Viewpoints of Iranian Scholars*, *supra* n.13, pp.48-59.

⁸⁸ Quran 2:25; and also verses: “To you your religion, and to me my religion” (The Unbelievers (109), verse 6); “Wouldst thou then constrain the people, until they are believers?” (Jonah (10), verse 99); “So let whosoever will believe, and let whosoever will disbelieve” (The Cave (18), verse 29); “The remind them! Thou art only a reminder, thou are not charged to oversee them” (The Enveloper (74), verses 21-23); “It is thine only to deliver the Message, and Ours the reckoning” (Thunder (13), verse 40); “It is only for the Messenger to deliver the Message” (The Al. Ma’idhah (5), verse 99); and the likes.

⁸⁹ Ayatullah Sayyid Muhammad Khamini’i, *supra* n.87, p.58.

⁹⁰ Quran 4:161

91. Prophet Mohammed, (may peace and blessing of Allah be upon him), talked about the inviolability of man's life in conjunction with man's property when he said, "Your lives and property are inviolable forever until you meet your Lord."⁹¹

92. Also, as narrated by Abu-Bakrah, the Prophet Mohammed, (may peace and blessing of Allah be upon him), delivered a *Khutbah* (religious talk) on the day of *Nahr* (10th of *Dhul Hijjah*). He said, "Allah and His Messenger know better." He remained silent till we thought he might give that day another name. He said, "Isn't it the day of *Nahr*?" We said, "It is." He further asked, "Which month is this?" we said, "Allah and His Messenger know better." He remained silent till we thought that he might give it another name. He then said, "Isn't it the month of *Dhul-Hijjah*?" We replied, "Yes, it is." He further asked, "What town is this?" We replied, "Allah and His Messenger know it better." He remained silent till we thought that he might give it another name. He then said, "Isn't it the forbidden (sacred) town (of Makkah)?" We said, "Yes, it is." He said, "No doubt, your blood and your properties are sacred to one another like the sanctity of this day of yours, in this month of yours, in this town of yours, till the day you meet your Lord. No doubt! Haven't I conveyed Allah's Message to you?" We said, "Yes." He said, "O Allah! Be witness. So it is incumbent upon those who are present to convey it (this information) to those who are absent because the informed one might comprehend it (what I have said) better than the present audience, who will convey it to him. Beware! Do not renegade (as) disbelievers after me by striking the necks (cutting the throats) of one another."⁹²

93. Further, in this regard, there is a *hadith* by the holy Prophet that says, "All people are the masters of their properties".⁹³ When people are in control of their properties, they can do any kind of ownership in what they have, and others have no right to interfere in their properties unless by their permission.⁹⁴

10. Right of People to be Consulted

94. The Almighty God has considered the will of people as being the realm of public affairs and has bidden people to consult each other in this regard. "And those who respond to their Lord, and establish prayer, and conduct their affairs with counsel among themselves."⁹⁵ It is clear that by saying, "and their affairs with counsel among themselves" is not meant the divine responsibilities or principles because in the realm of religious responsibilities, the vote of people is not the criterion. The reference is to the *mantaqat al-faragh* in which police takes place on the basis of public counsel. In other

⁹¹ *Al Jamie Al-Sagheir*, Al-Soyouti, vol.1, No.6271.

⁹² *Sahih al-Bukhari*, Vol.2, *Hadith* No.797, quoted from explanation given as regards Surah 2. Al-Baqarah, Part 2, ayah – 191, *Translations of the Meanings of the Noble Quran in the English Language*, Dr. Muhammad Taqi-ud-Din al-Hilali & Dr. Muhammad Mushin Khan, (King Fahd Complex, Madinah K.S.A.), pp.39-40.

⁹³ Allamah Majlist, *Bihar al-Anwar*, vol.2, Kitab al-Ilm, Chapter 33, *hadith* 7, p.272' also see *rasa'il al-Shi'ah*, vol.3 Abwab Ahkam al-Wasaya, Chapter 17, *hadith* 2, p.381.

⁹⁴ *Hujjat al-Islam Muhsin Kadivar*, *supra* n.57, p.114.

⁹⁵ Sura of Counsel (42), verse 38.

words, in the public realm decisions are made with attention to people's satisfaction acquired by counseling them. If people lack rights in the public realm, why are the authorities bound to counsel with them?⁹⁶

11. Right of People/society towards the State (or authority)

95. As manifested in the words of Imam Ali, "and the greatest rights prescribed by the Almighty is the right of the guardian towards people and the right of the people towards the guardian and this right God has regarded incumbent upon people and guardians alike."⁹⁷

96. "Therefore it is incumbent upon you to give advice in the exercise of that right and assist each other. No one can reach the truth of the true obeisance of God although they may be longing to satisfy Him and strive hard to be His true servants. Among the rights of God towards people is giving advice and assisting each other in the light of their powers and no one is needless – in what the Almighty has prescribed upon him – of getting assistance. However great his status may be, and however he has succeeded in religion, there is no one inferior to him to help or to be helped although people consider him small and he may seem small in their eyes".⁹⁸

97. "There may be people who regard praise to come after sweet works, so do not praise me for my obeying God, my good conducts but ask me of the rights I have not exercised or the obligatory things I am impelled to do."⁹⁹

II. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

1. Rights of Orphans

98. Islam recognizes that in every nation there are certain groups of people who are unable to support themselves and therefore it is the responsibility of the nation as well as every individual to support them. Islam confers certain specific rights to such needy sections of society, namely orphans, small children, old persons etc. Allah Almighty says, "They ask you concerning orphans. Say the best thing to do is what is for their good. If you mix their affairs with yours, they are your brothers; but Allah knows the one who intends mischief from the man who means good. And if Allah had wished he could have put you into difficulties. Allah is indeed Exalted in power, Wise."¹⁰⁰ Also, "To orphans restore their property (when they reach their age). Nor substitute (your)

⁹⁶ Hujjat al-Islam Muhsin Kadivar, *supra* n.57, p.115.

⁹⁷ Nahj al-Balaghah, Sermon 216, *supra* n.66, p.333.

⁹⁸ *Ibid*, p.334.

⁹⁹ *Ibid*, p.335.

¹⁰⁰ Quran 2:121

worthless things for (their) good ones. And devour not their sustenance (by mixing it up) with your own, for this is indeed a great sin.”¹⁰¹

99. Islam provides that it is the responsibility of the nation to support those who are unable to earn, for instance young orphan children. It is an exclusive right of orphans, and not an act of kindness and the governments and its representatives are responsible to pay this right. Islam Says: “Out of all members of the society these persons are more deserving of justice. Hence you should pay the right of everyone of them and equip yourself with an excuse to be presented before God. Take care of the orphans and the old persons who can neither earn their livelihood nor stand before others to beg”.¹⁰²

2. Prevention of Corruption (Misappropriation or Favouritism)

100. Islam mandates that a ruler should be a righteous person, who is not tempted by material gains, which leads him to favouritism, misappropriation of public funds and corruption. He is judged by his modesty, simplicity and honesty.¹⁰³

101. This is well manifested in the works of Imam Ali. Once Ali received information that a military officer had taken bribe. He held his hand and gave it such a violent jerk that it was about to be dismembered from his body. Then he said to him: “The people earlier than you were annihilated because they deprived the people of their rights and they were, therefore, obliged to acquire their rights by offering bribes. They compelled the people to do invalid things as a result of which falsehood became prevalent”.¹⁰⁴

102. Ibn Abi Rafe’ has narrated¹⁰⁵ thus:

“I was the administrator of the public treasury during the period of the caliphate of Ali and was also his scribe. The property received from Basra for the public treasury included a pearl necklace. The daughter of Ali sent word to me saying: “I understand that there is a pearl necklace in the public treasury which is controlled by you. Send that necklace to me on loan so that I may wear it on Eid al-Azha day. Thereafter I shall return it”.

¹⁰¹ Quran 4:2

¹⁰² George Jordac, *supra* n.22, pp.178.

¹⁰³ Make this clear to yourself that those immediately about and around you, will like to exploit their position to covet what belongs to others and commit acts of injustice. Suppress such a tendency in them. Make a rule of your conduct never to give even a small piece of land to any of your relations.... Deal justice squarely regardless of the fact whether one is a relation or not. If any of your relations or companions violates the law, mete out the punishment prescribed by law, however painful it might be to you personally for it will be all to the good of the state. *Ibid.*, p.225

¹⁰⁴ George Jordac, *supra* n.22, p.165.

¹⁰⁵ *Ibid*, p.68-69

I sent the necklace to her on the conditions that she would be responsible if it was lost or damaged, and that she would return it within three days. She accepted these conditions.

By chance the eyes of Ali, Commander of the Faithful fell on the necklace and he recognized it. He asked his daughter as to where she had obtained it from. She replied: "I have taken it on loan from Ibn Abi Rafe' the incharge of the public treasury to wear it on Eid al-Azha day and have promised to return it to him within three days". The Commander of the Faithful summoned me and said: "Do you consider it lawful to commit breach of trust with the Muslims?" I replied: "May God forbid that I may commit treachery with the Muslims". Thereupon he said: "Then why did you lend such and such necklace to my daughter without obtaining my permission and without the concurrence of the Muslims?"

I replied: "O Commander of the Faithful! She is your daughter. She borrowed it to adorn herself and guaranteed its safe return so that I might restore it to its proper place." Ali said: "Take it back today and do not do so in future otherwise I shall punish you."

When Ali's daughter came to know about it she said to him: "O father! I am your dear daughter. Who else is more entitled to wear this necklace?". Ali replied: "O daughter of Abu Talib! Don't deviate from the right path. Can you tell me how many Muhajir and Ansar women adorn themselves with such necklaces?"

Eventually I took back the necklace from the daughter of the Commander of the Faithful and restored it to its proper place.¹⁰⁶

3. Freedom from Poverty and Indigence

103. Eradicating poverty and indigence from the society is one of the fundamental objectives of Islam. An ideal Islamic State is a state where the rights of the poor, orphan, widows, and aged are well protected. This is well manifested in the testament which Imam Ali, the fourth Caliph of Islam wrote to Malik Ashtar while appointing him as Governor of Egypt. It says:

Fear God when dealing with the problem of the poor who have none to patronise them, who are forlorn, indigent, helpless, and are greatly torn in mind-victims of vicissitudes of time.... For God's sake, safeguard their rights for on you rests the responsibility of protecting their interests. Do not let any preoccupations slip them from your mind for no excuse whatsoever for the disregard of their rights will be acceptable to God....

¹⁰⁶ *Ibid.*

Do not treat their interests as of less importance than your own and never keep them outside the purview of your important considerations and mark the persons who look upon them and of whose condition they keep you in ignorance....Seek your reward from God by giving to each of them what is due to him and enjoin on yourself as a sacred duty the task of meeting the needs of such aged among them as have no independent means of livelihood and are averse to seeking alms.¹⁰⁷

104. Further, the social principles and views of Ali in nine sentences consist of the cause of affluence and indigence and the class differences of the people or in other words the best rules and regulations for eliminating poverty and need, and establishing equality of rights between them.¹⁰⁸ These principles and views are as follows:

1. Prevent hoarding
2. No indigent person remained hungry except because a rich man usurped his share.
3. I have not seen excessive wealth with anyone except that I have seen the right of someone being infringed.
4. You should be more anxious to develop land then to collect revenue.
5. I do not consider it proper that a person should be compelled to do a work which he does not like.
6. The hearts of the pious people are in Paradise and their bodies are busy doing work in the world.
7. The canal belongs to him who participated in its digging and not to him who did not provide physical or financial assistance to it.
8. Keep in view the achievement of a person, and do not attribute the achievements of one person to another.
9. Beware! Don't appropriate to yourselves the things in which all have equal rights.

4. Freedom from Oppression

105. Islam never permits oppression of any kind. In fact, it is the duty of a Muslim to liberate the oppressed from oppression. "Nothing deprives man of divine blessings nor excites divine wrath against him more easily than oppression. Hence it is that God listens to the voice of the oppressed and overpowers the oppressor."¹⁰⁹

¹⁰⁷ *Imam Ali*, Nahj al-Balaghah, *supra* n.66, pp.433-471.

¹⁰⁸ George Jordac, *supra* n.22, pp.180-181.

¹⁰⁹ *Ibid.*, p.214, Imam Ali on various occasions had emphasised the need for eliminating oppression. "I swear by God that it is preferable for me to lie on the thorns and be chained rather than that I should oppress anyone or usurp even the most ordinary thing". "It is my duty to wage a war against oppression and the oppressors, and against those who unlawfully grab the wealth of others, and I shall have to account for it on the Day of Judgment". "If the almighty God had not taken a promise from the rulers that they will not sit quiet in the event of the oppressor becoming over satiated with food and the oppressed one remaining hungry, I would have thrown the reins of the caliphate on his shoulders and would have satisfied

106. According to Imam Ali, God has made it mandatory for the ulema that they should not remain silent spectators of injustice of the oppressor and the grief and helplessness of the oppressed person. He says” “And the sin which will not be forgiven is that one person may oppress another”. He held the view that: “Oppressing a weak person is the worst type of oppression”.¹¹⁰

5. Duty to Trade Honestly

107. Islam permits trade and business on all items, except which are explicitly prohibited by the Quran and the Prophet. At the same time, Islam gives the consumer, the right of not being cheated by greedy businessmen. In fact, hoarding and other business and trade related frauds are considered as crimes.¹¹¹

6. The Right to Education

108. The characteristics of the Cultural rights under International Human Rights may be summarized as follows:

1. Every person has the right to education and this right should not be denied by others.
2. Father have the right to select religious education for their children according to their beliefs.
3. Education aims to allow persons to have access to knowledge and develop the feeling of human dignity, as well as promotion of respect for human rights and fundamental freedoms.
4. The general interest of the child is the sole guidance for those responsible for the child’s education and direction.

109. The cultural rights in International Human Rights law are conferred in the form of a private right and there is no general precept. These private rights are expressed in negative form rather than in positive terms, for instance, the provision reads as: “No one’s right to education shall be denied.”¹¹² Such expression weakens the substantive right, as the relinquishment of one’s right does not constitute a violation because it does not affect others’ right.

110. On the other hand, the most important characteristic of the Cultural rights in Islam can be summarized as follows:

its last one like the first one”. “Do not oppress others just as you do not like to be oppressed by others”. *Ibid.*, p. 285& 458.

¹¹⁰ *Ibid*, p.211.

¹¹¹ Imam Ali while guiding the Governor designate, says, “Prevent them (businessmen) from hoarding; for the prophet of God had prohibited it. See to it trade is carried on with the utmost ease, that the scales are evenly held and that prices are so fixed that neither the seller nor the buyer is put to a loss. And if, in spite of your warning,...commit the crime of hoarding, then inflict upon him a severe punishment. *Ibid.*, p.222

¹¹² The First Optional Protocol to the European Covenant (European Council).

- (1) Cultural rights in Islam have been referred to as obligatory ordinances. They are not subject to any relinquishment. Therefore, they are not considered to be mere human rights as expressed in international covenants on human rights.
- (2) This ordinance is mandatory for the individual and the society, i.e. both are responsible for the enforcement of this norm. Thus, it is a public obligation required by life and cannot be viewed as merely a private right.
- (3) This ordinance is protected in Islam by penalties rather than mere recommendation or moral values without guarantees. Accordingly, the public authority in Islam is endowed with the authority to enforce this ordinance, unlike the perspective of these rights in international human rights law.

G. CONCLUSION

111. Due to the constraint of time and resources, in this Report of the Secretariat, the analysis of Human Rights in Islam has been limited only to the branch of civil law. It is aimed that an endeavour would be made to analyze the criminal/penal law provisions pertaining to Human Rights in Islam in the brief for the 44th Session of AALCO.

112. It may be noted that consistent requests were made to the Member States to forward to the Secretariat their views and observations on the topic, so as to facilitate the preparation of an in-depth study on this item. However, unfortunately limited comments from the Member States have been received by the Secretariat during the year on this subject. It is desired and strongly urged by the Secretariat that more reflections and comments are received from the Member States in future, in order to facilitate the preparation of a more comprehensive and detailed report on this topical issue.

113. It may be recalled that during the discussion at 42nd Session, the **Delegate of Indonesia** recommended that the AALCO Secretariat could consider feasibility to hold a seminar or workshop, focusing on this particular subject.¹¹³ In addition, the **Delegate of Malaysia**, recognizing the importance of the follow-up the Cairo Declaration on Human Rights in Islam,¹¹⁴ called upon the Inter-Governmental Group of Experts to start the formulation and consideration of Islamic Charters on Human Rights.¹¹⁵ In furtherance of this, the Secretariat proposes that the Member States may consider organizing a workshop/seminar, in order to facilitate useful deliberations and insights on this topical issue.

114. The above premises provides a comprehensive discussion of human rights in Islam, however for further content and quality of human rights in Islam, we have made a reference to the Cairo Declaration on Human Rights in Islam issued by the Islamic Conference Organization in 1411 (1990). This declaration was inaugurated by prominent

¹¹³ Verbatim Record of the Fifth General Meeting held on 19th June 2003, "Human Rights in Islam", *Verbatim Records of 42nd Session: Seoul, 2003*, pp.173-175, at p.175.

¹¹⁴ Resolution No.2/30-LEG.

¹¹⁵ Verbatim Record of the Fifth General Meeting held on 19th June 2003, *supra* n.113, p.178.

Muslim scholars who determined human rights as proclaimed by the Quran and the Sunnah. The Cairo Declaration has been annexed herewith as Annex-I with an Explanatory Note.

ANNEX

A. ANNEX-I

THE CAIRO DECLARATION ON HUMAN RIGHTS IN ISLAM

The Cairo Declaration guarantees the following human rights in Islam:

- Article 1: Equality of human beings
- Article 2: The right to life
- Article 3: The right to protection of civilian during wartime and armed hostilities
- Article 4: The right to human dignity
- Article 5: The right to marriage
- Article 6: The rights of woman
- Article 7: The rights of child
- Article 8: The right to enjoy legal faculty
- Article 9: The right to education
- Article 10: The right to freedom of religion without any compulsion
- Article 11: The right to freedom from slavery
- Article 12: The right to domicile and refuge
- Article 13: The right to work
- Article 14: Prohibition of usury
- Article 15: The right to property and ownership
- Article 16: The right to development
- Article 17: The right to environment and social security
- Article 18: The right to privacy
- Article 19: The right to equality before law
- Article 20: The right to liberty and security of a person and freedom from torture and inhumane treatment and punishment
- Article 21: Prohibition against hostage taking
- Article 22: The right to freedom of expression and freedom of press
- Article 23: The right to participate in public affairs.
- Article 24 & 25: Religious safeguards and limitations

THE CAIRO DECLARATION ON HUMAN RIGHTS IN ISLAM

5 AUGUST 1990

The Nineteenth Islamic Conference of Foreign Ministers (Session of Peace, Interdependence and Development), held in Cairo, Arab Republic of Egypt, from 9-14 Muharram 1411H (31 July to 5 August 1990),

Keenly aware of the place of mankind in Islam as vicegerent of Allah on Earth;

Recognizing the importance of issuing a Document on Human Rights in Islam that will serve as a guide for Member states in all aspects of life;

Having examined the stages through which the preparation of this draft Document has so far, passed and the relevant report of the Secretary General;

Having examined the Report of the Meeting of the Committee of Legal Experts held in Tehran from 26 to 28 December, 1989;

Agrees to issue the Cairo Declaration on Human Rights in Islam that will serve as a general guidance for Member States in the Field of human rights.

Reaffirming the civilizing and historical role of the Islamic Ummah which Allah made as the best community and which gave humanity a universal and well-balanced civilization, in which harmony is established between hereunder and the hereafter, knowledge is combined with faith, and to fulfill the expectations from this community to guide all humanity which is confused because of different and conflicting beliefs and ideologies and to provide solutions for all chronic problems of this materialistic civilization.

In contribution to the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Shari'ah.

Convinced that mankind which has reached an advanced stage in materialistic science is still, and shall remain, in dire need of faith to support its civilization as well as a self motivating force to guard its rights;

Believing that fundamental rights and freedoms according to Islam are an integral part of the Islamic religion and that no one shall have the right as a matter of principle to abolish them either in whole or in part or to violate or ignore them in as much as they are binding divine commands, which are contained in the Revealed Books of Allah and which were sent through the last of His Prophets to complete the preceding divine messages and that safeguarding those fundamental rights and freedoms is an act of worship whereas the neglect or violation thereof is an abominable sin, and that the safeguarding of those fundamental rights and freedom is an individual responsibility of every person and a collective responsibility of the entire Ummah;

Do hereby and on the basis of the above-mentioned principles declare as follows:

ARTICLE 1

(a) All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity.

(b) All human beings are Allah's subjects, and the most loved by Him are those who are most beneficial to His subjects, and no one has superiority over another except on the basis of piety and good deeds.

ARTICLE 2

(a) 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 states to safeguard this right against any violation, and it is prohibited to take away life except for a shari'ah prescribed reason.

(b) It is forbidden to resort to any means which could result in the genocidal annihilation of mankind.

(c) The preservation of human life throughout the term of time willed by Allah is a duty prescribed by Shari'ah.

(d) Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari'ah-prescribed reason.

ARTICLE 3

(a) In the event of the use of force and in case of armed conflict, it is not permissible to kill non-belligerents such as old men, women and children. The wounded and the sick shall have the right to medical treatment; and prisoners of war shall have the right to be fed, sheltered and clothed. It is prohibited to mutilate or dismember dead bodies. It is required to exchange prisoners of war and to arrange visits or reunions of families separated by circumstances of war.

(b) It is prohibited to cut down trees, to destroy crops or livestock, to destroy the enemy's civilian buildings and installations by shelling, blasting or any other means.

ARTICLE 4

Every human being is entitled to human sanctity and the protection of one's good name and honour during one's life and after one's death. The state and the society shall protect one's body and burial place from desecration.

ARTICLE 5

(a) The family is the foundation of society, and marriage is the basis of making a family. Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from exercising this right.

(b) The society and the State shall remove all obstacles to marriage and facilitate it, and shall protect the family and safeguard its welfare.

ARTICLE 6

(a) Woman is equal to man in human dignity, and has her own rights to enjoy as well as duties to perform, and has her own civil entity and financial independence, and the right to retain her name and lineage.

(b) The husband is responsible for the maintenance and welfare of the family.

ARTICLE 7

(a) As of the moment of birth, every child has rights due from the parents, the society and the state to be accorded proper nursing, education and material, hygienic and moral care. Both the fetus and the mother must be safeguarded and accorded special care.

(b) Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of the Shari'ah.

(c) Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with the tenets of the shari'ah.

ARTICLE 8

Every human being has the right to enjoy a legitimate eligibility with all its prerogatives and obligations in case such eligibility is lost or impaired, the person shall have the right to be represented by his/her guardian.

ARTICLE 9

(a) The seeking of knowledge is an obligation and provision of education is the duty of the society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee its diversity in the interest of the society so as to enable man to be acquainted with the religion of Islam and uncover the secrets of the Universe for the benefit of mankind.

(b) Every human being has a right to receive both religious and worldly education from the various institutions of teaching, education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner that would develop human personality, strengthen man's faith in Allah and promote man's respect to and defence of both rights and obligations.

ARTICLE 10

Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism.

ARTICLE 11

(a) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to Allah the Almighty.

(b) Colonialism of all types being one of the most evil forms of enslavement is totally prohibited. Peoples suffering from colonialism have the full right to freedom and self-determination. It is the duty of all States peoples to support the struggle of colonized peoples for the liquidation of all forms of and occupation, and all States and peoples have the right to preserve their independent identity and econol over their wealth and natural resources.

ARTICLE 12

Every man shall have the right, within the framework of the Shari'ah, to free movement and to select his place of residence whether within or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall be obliged to provide protection to the asylum-seeker until his safety has been attained, unless asylum is motivated by committing an act regarded by the Shari'ah as a crime.

ARTICLE 13

Work is a right guaranteed by the State and the Society for each person with capability to work. Everyone shall be free to choose the work that suits him best and which serves his interests as well as those of the society. The employee shall have the right to enjoy safety and security as well as all other social guarantees. He may not be assigned work beyond his capacity nor shall he be subjected to compulsion or exploited or harmed in any way. He shall be entitled - without any discrimination between males and females - to fair wages for his work without delay, as well as to the holidays allowances and promotions which he deserves. On his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.

ARTICLE 14

Everyone shall have the right to earn a legitimate living without monopolization, deceit or causing harm to oneself or to others. Usury (riba) is explicitly prohibited.

ARTICLE 15

(a) Everyone shall have the right to own property acquired in a legitimate way, and shall be entitled to the rights of ownership without prejudice to oneself, others or the society in general. Expropriation is not permissible except for requirements of public interest and upon payment of prompt and fair compensation.

(b) Confiscation and seizure of property is prohibited except for a necessity dictated by law.

ARTICLE 16

Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical labour of which he is the author; and he shall have the right to the protection of his moral and material interests stemming therefrom, provided it is not contrary to the principles of the Shari'ah.

ARTICLE 17

(a) Everyone shall have the right to live in a clean environment, away from vice and moral corruption, that would favour a healthy ethical development of his person and it is incumbent upon the State and society in general to afford that right.

(b) Everyone shall have the right to medical and social care, and to all public amenities provided by society and the State within the limits of their available resources.

(c) The States shall ensure the right of the individual to a decent living that may enable him to meet his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs.

ARTICLE 18

(a) Everyone shall have the right to live in security for himself, his religion, his dependents, his honour and his property.

(b) Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference.

(c) A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.

ARTICLE 19

(a) All individuals are equal before the law, without distinction between the ruler and the ruled.

(b) The right to resort to justice is guaranteed to everyone.

(c) Liability is in essence personal.

(d) There shall be no crime or punishment except as provided for in the Shari'ah.

(e) A defendant is innocent until his guilt is proven in a fast trial in which he shall be given all the guarantees of defence.

ARTICLE 20

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of maltreatment, cruelty or indignity. Nor is it permitted to subject an individual to medical or scientific experiments without his consent or at the risk of his health or of his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.

ARTICLE 21

Taking hostages under any form or for any purpose is expressly forbidden.

ARTICLE 22

(a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah.

1.. Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari'ah.

(c) Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical Values or disintegrate, corrupt or harm society or weaken its faith.

(d) It is not permitted to excite nationalistic or doctrinal hatred or to do anything that may be an incitement to any form or racial discrimination.

ARTICLE 23

(a) Authority is a trust; and abuse or malicious exploitation thereof is explicitly prohibited, in order to guarantee fundamental human rights.

(b) Everyone shall have the right to participate, directly or indirectly in the administration of his country's public affairs. He shall also have the right to assume public office in accordance with the provisions of Shari'ah.

ARTICLE 24

All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.

ARTICLE 25

The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration.

B. ANNEX- II

EXPLANATORY NOTES RELATING TO THE ARTICLES OF THE CAIRO DECLARATION ON HUMAN RIGHTS IN ISLAM

I. BACKGROUND

In order to emphasize the existing backgrounds of Islamic human rights, the experts on jurisprudential and legal issues of the Islamic Conference set forth a plan and the last draft was approved in Tehran (26-28 December 1989).¹¹⁶ It was agreed that the aforementioned draft be proposed and approved in the nineteenth assembly of the foreign ministers of the Islamic Conference members. The assembly was held from 31 July to 5 August 1990 in Cairo and was subsequently approved via resolution no. p. 49/19.¹¹⁷

The Islamic Conference Organization approved the Declaration of Human Rights in Islam (hereafter “the Cairo Declaration”) as introducing the common interpretation of human rights and not a committing contract of convention, made a few emendations and additions, rendering it more similar to the Universal Declaration of Human Rights (hereafter “the Universal Declaration”). It may be, however, noted that the Cairo Declaration has not gone beyond a declaration. The declaration consists of 25 articles and a preamble which begins with these words, “The Member States of the Organization of the Islamic Conference reaffirming the civilizing and historical role of the Muslim Ummah which made the best nation that has given mankind a universal and well-balanced civilization in which harmony is established between this life and the Hereafter...”.¹¹⁸

II. GENERAL FEATURES OF CAIRO DECLARATION

The Cairo Declaration, like the Universal Declaration, places stress on human dignity and enumerates the rights which should be exercised. Some of the principles mentioned in the Universal Declaration are also mentioned therein with a few additions and emendations. Some others mentioned in the Covenant on Civil, Political and Social, Rights or in conventions such as the Convention on Children's Rights and the Convention on the Right to Development are mentioned therein.¹¹⁹ Some rights are especially emphasized like the banning of exploitation, the right to resist it or the right to resist aggression, and the right to life in a clean atmosphere free from moral corruption.

¹¹⁶ Dr. Husayn Mihrpur, “Criticism and Study of Cairo Declaration of Human Rights in Islam”, in *Islamic Views on Human Rights: Viewpoints of Iranian Scholars*, *supra* n.13, pp.132-142.

¹¹⁷ The resolution no. p. 49/19 states, “The nineteenth summit of the Islamic Foreign Ministers Conference, with the knowledge of man's position in Islam as God's viceroy in the earth and the importance of a bill of human rights in guiding the Member States in all aspects of life and with a study of the aforesaid document and the report of the experts in legal issues in Tehran, agrees to the bill of human rights in Islam in order that the document may be used by the member states in human rights.”

¹¹⁸ The preamble of the Cairo Declaration of Human Rights.

¹¹⁹ The examples can be observed in articles 3, 7, 12 and 20.

Besides the security of life and family, the respect for man even after his death, the respect for his corpse, and the banning of hostage.¹²⁰

The rights as proclaimed in the Cairo Declaration can be summarized in the following points:¹²¹

1. The dignity of man in line with the provisions of the Quran: “We have honored the sons of Adam.”¹²²
2. There is no distinction based on origin, gender, race and wealth in the domain of dignity and fundamental rights between one man and another in line with the teaching of the Prophet¹²³
3. Mankind constitutes one family. The best of mankind in the eyes of Allah is the most useful to the international community as stated by the Prophet.¹²⁴
4. The call for cooperation in doing good, and provision of all kinds of kindness for all mankind regardless of nationality and religion as stipulated in the Quran.¹²⁵
5. Man has the right to freedom of faith and he shall not be subject to compulsion. This is in line with the verses, “Let there be no compulsion in religion,”¹²⁶ and, “Will you compel mankind, against their will, to believe!”¹²⁷
6. Inviolability of life and property of man, in conformity with the saying of the Prophet, “Behold, your blood and property are inviolable.”¹²⁸
7. The inviolability of the houses for the protection of the freedom of the human being. This is in conformity with: “O you who believe! Enter not

¹²⁰ Dr. Husayn Mahrpur, *supra* n.116, pp.132-142.

¹²¹ *Symposium between eminent Saudi Muslim Scholars and Western European jurists about Islamic Shari’a and human rights. Supra* n.24, p.32-34.

¹²² Quran 17:70

¹²³ Cited from the speech of the Prophet, “There is no virtue for an Arab over a non Arab and no virtue for a white over a black man except for righteousness”. And also among his teachings, is, “Women are partners of men”, Narrated by Al-Tirmidhi.

¹²⁴ Prophet says, “All people are the dependents of Allah and that the most beloved to Him of them is the most beneficial of them to His dependents.”

¹²⁵ Quran 49:13 : “[He] made you into nations and tribes that you may know each other (not that you may despise each other). Verily the most honored of you in the sight of Allah is (who he is) the most righteous of you.” And, Quran 60:8 “Allah forbids you not, with regard to those who fight you not for (your) faith nor drive you out of your homes, from dealing kindly and justly with them: for Allah loves those who are just.”

¹²⁶ Quran 2:265

¹²⁷ Quran 10:99

¹²⁸ Cited from the farewell hajj speech delivered by the Prophet.

houses other than your own, until you have asked permission and saluted those in them: that is best for you, in order that you may heed (what is seemly)”.¹²⁹

8. The need for solidarity between the individuals of the community to achieve a dignified life for every one and liberation from want and poverty by requiring a right to a designated portion of the wealth of those whom are able. This will be spent on the needy in accordance with the divine command.¹³⁰
9. Education is an obligatory duty upon each Muslim, in order to combat ignorance and illiteracy. This is in accordance with the teaching of the Prophet, “The seeking of knowledge is a mandatory duty on every Muslim.”¹³¹ Also, the Quran urges mankind to consider the signs of the universe for knowledge.¹³²
10. The right to health has been established to contain epidemic diseases. This indicates keenness for the protection of the public health and the protection of the poor community from being affected.¹³³

These provisions are not meant to be moral teachings, but instead, they are imperative tenets.

III. COMPARISON BETWEEN THE CAIRO DECLARATION ON HUMAN RIGHTS IN ISLAM AND UNIVERSAL DECLARATION ON HUMAN RIGHTS

Although the Cairo Declaration incorporates many principles mentioned in the Universal Declaration of Human Rights, with a few additions and emendations, however there are certain dissimilarities between the two. This section outlines a comparison between the two instruments of Human Rights.

a. Equality of Responsibilities or Equality of Rights

The Universal Declaration refers in the preamble and Article 1 to the philosophical principle of the inherent dignity of man and in Article 2 that each right should be

¹²⁹ Quran 24:27

¹³⁰ Quran 70:24 : “...and those in whose wealth is a recognized right for the needy who asks and him who is deprived (for some reason from asking)”

¹³¹ Narrated by Ibn Majah.

¹³² Quran 55:32 : “Say: Behold all that is in the heavens and on earth”; and: “.. if it be you can pass beyond the zones of the heavens and the earth, pass! But not without authority shall you be able to pass!”

¹³³ The Prophet said, “If you hear that there is an epidemic disease that strikes a certain region, do not enter that region; and if it hits your zone you must not leave the area, fleeing there from.” (Narrated by Imam Ahmed Hambal)

exercised without any discrimination or distinction of any kind.¹³⁴ However, it is not related to elevating the spirituality of people and also does not enumerate duties of man. On the other hand, Article 1 of the Cairo Declaration emphasizes the equality of human dignity for all, and equality in basic obligations and responsibilities.¹³⁵ It provides, in other words, that all human beings are equal in that they are the best creatures on the earth; however, those who earn proper religious belief gain more dignity and outdo in the acquired dignity.¹³⁶

The comparison between Article 2 of the Universal Declaration and Article 1 of the Cairo Declaration reflects the difference in the underlined approach. Article 2 of the Universal Declaration states:

“Everyone is entitled to all rights and freedoms set forth in the declaration without distinction of any kind, such as race, color, sex, language and religion, political or other opinion, national or social origin, property, birth or other status.

Paragraph one of the Article 1 of the Cairo Declaration states:

“All human beings form one family whose members are united by submissions to God and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, color, language, sex or religious belief, political affiliation, social status or other considerations”.

Then it adds,

“True faith is the guarantee for enhancing such dignity along the path to human perfection”.

b. Freedom of Choice and Change of Religion

Another important feature of the bill is the freedom and change of religion. The Universal Declaration places stress on the freedom of belief, and religion as enumerated in the Article 18 of the Universal Declaration¹³⁷ as well as Article 18 of the International Covenant on Civil and Political Rights.¹³⁸ The same idea is mentioned in Article 1 of the

¹³⁴ The Universal Declaration insists that we should have equal treatment in guarantee of the right to life and ownership of properties and contribution in the management of the affairs of the country and the right to accomplish position and occupation to people with different beliefs and opinions.

¹³⁵ Paragraph one of Article 1.

¹³⁶ Dr. Husayn Mhrpur, *supra* n.116, pp.132-142.

¹³⁷ Article 18 of UDHR states, “Everyone has the right to freedom of thought, conscience and religion and this right includes right to change his religion or belief either alone or in community with others in public or private to manifest his religion or belief.”

¹³⁸ Article 18 of ICCPR states, (1) “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to have or to adopt a religion or belief of his choice, and freedom either individually or in community with others and in public or private to manifest his religion or

Declaration of Elimination of inequality and Religious Discrimination approved by the General Assembly on 25 November 1981.

On the other hand, Cairo Declaration recognizes Islam as an inherent religion and does not expressly and officially recognize the freedom to change the religion without fear of punishment or of being deprived of certain rights. Article 10 of the Cairo Declaration states, "The use of poverty or ignorance to change a religion is not allowed." The Holy Quran states that there is no compulsion in religion. Even the Holy Prophet said that one could not compel people to accept religion.¹³⁹ However, apostasy is severely condemned by Holy Quran. It may be noted, however, that Article 10 and Article 1 are expressed in such a way that they raise ambiguity as to whether it is not allowed to change one's religion of Islam to another religion or to turn to apostasy.¹⁴⁰

c. The Source of the Government Authority

Another different point lies in the matter of the government and the source of government authority in the two Declarations. Paragraph 3 of Article 21 of the Universal Declaration explicitly asserts,

"The will of people shall be the basis of the authority of government; this shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

Paragraph A of Article 23 of the Cairo Declaration,¹⁴¹ on the other hand, compares the government authority to a deposit entrusted to the care of the ruler. The nature of a deposit is that it should not be taken advantage of. Hence, tyranny, trust or any other misuse of power is regarded as a betrayal of trust. Hence, the one the deposit is entrusted to and betrays the deposit has no longer valid authority. However, in Article 23 it is not obvious from whom to whom this deposit is shifted.

belief in worship, observance, practice and teaching." (2) "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."

¹³⁹ For instance see: Sura of Jonah, verse 99, "And if thy Lord has willed, whoever is in the earth would have believed, all of them, all together. Wouldst thou then constrain the people, until they are believers?" and verse 108 of the very sura, "Say: 'O men, the truth has come to you from your Lord, Whosoever is guided is guided only to his own gain, and whosoever goes astray, it is only to his own loss. I am not a guardian over you.'"

¹⁴⁰ It is incumbent upon the Muslim jurists and experts of different Islamic schools to undertake an exhaustive study and elucidate this point.

¹⁴¹ Paragraph A of Article 23 of the Cairo Declaration states, "Authority is a deposit; and abuse or malicious exploitations thereof is absolutely prohibited, so that fundamental human rights may be guaranteed."

d. Prohibition of Slavery

Another noteworthy point here is that slavery is explicitly prohibited. Paragraph A of Article 11 states, "Man is born free and no one shall be held in captivity or servitude; no one shall be humiliated or exploited. Servitude belongs to God alone."

Similarly, slavery is stated as prohibited in Article 4 of the Universal Declaration. Article 4 reads as, "No one shall be held in slavery or servitude, slavery and the slave trade shall be prohibited in all their forms."

e. Recognition of the Right to Literary Works

Article 16 of the Cairo Declaration¹⁴² officially recognized the right to literary, scientific, artistic and technological products. Likewise, this right is expressed in paragraph two of Article 27 of the Universal Declaration.¹⁴³

However, the recognition of such a right in Islam is of great controversy. Some of the jurisprudents have questioned the legality of it simply because such a right does not exist in religious Shari 'ah. There must have been literary or artistic products but there were no rights for them and the legislators did not allocate any right for them.¹⁴⁴ However, some other jurisprudents regard such rights as definite rights, considering respect for them and for their observance.¹⁴⁵ Nonetheless, the declaration has adopted a positive step in this regard, considering the aforementioned right as one of the rights officially accepted by Islam.

f. Equality of Men and Women

One of the important issues of human rights is the equality of men and women or the elimination of sex discrimination. As mentioned earlier, the provisions regarding equality and non-discrimination based on gender are enunciated in Article 2 of the Universal Declaration, the International Covenant on Civil and Political Rights, the Convention on the Elimination of all Forms of Discrimination against Women and the fourth document of the World Conference of Women in Beijing and many other bills and resolutions.

The Cairo Declaration of Human Rights in Islam also places stress on the equal station of men and women as human persons. However. It says that women have fixed duties at

¹⁴² Article 16 states, "Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical production and the right to protect the moral and material interests stemming therefrom, provided that such production is not contrary to the principles of Shari'ah."

¹⁴³ "Everyone is entitled to the protection of moral or material interests of the scientific, cultural or artistic productions of which he is the author."

¹⁴⁴ Hamid Ayati, *The Rights of Artistic Creation*, p. 71, quoted by Ayatullah Muntazari and Avatullah Makarim Shirazi.

¹⁴⁵ Ibid., p. 70.

home. Therefore, they have fewer responsibilities and duties. At all events, Article 6 of the Declaration of Human Rights in Islam states,

“A) Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence and the right to retain her name and her lineage.

B) The husband is responsible for the support and welfare of the family.”

Further, Article 5 regards marriage as equal right for men and women, adding that marriage cannot be prevented by any restrictions stemming from race, color or nationality but there is no mention of religion. Similarly, Paragraph one of article 16 of the Universal Declaration states, "Men and women of full age, without any limitation due to race, nationality and religion, have the right to marry and to found a family."¹⁴⁶

g. The Condition of Accordance with the Islamic Principles

Another feature of the Cairo Declaration of Human Rights in Islam is that all the rights and principles enumerated therein should accord with the Islamic Shari'ah. Article 24 states, "All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah."

IV. CONCLUSION

To conclude, the Cairo Declaration of Human Rights in Islam is an attempt to show the identity of Islam at international plane and to introduce Islamic stance towards human rights. As is seen in this brief survey, there are not fundamental differences as to the human rights set forth in the Islamic Declaration and the Universal Declaration. Some rights are ignored in the Universal Declaration, which are dealt with in the Islamic Declaration. And there are subtleties in the Islamic Declaration, which help further expand the spiritual aspects of human life, which the Universal Declaration has ignored.¹⁴⁷

¹⁴⁶ Dr. Husayn Mihrpur, *supra* n.116, pp.132-142.

¹⁴⁷ *Ibid.*