

Human Rights: An Overview of Islamic Dimensions

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ABSTRAK

Kekeliruan masih wujud, khususnya di Barat, mengenai undang-undang Islam, terutama dari aspek ubungan konsep Negara Islam dengan hak asasi rakyat secara umum, dan kedudukan hak asasi orang-orang bukan Islam secara khusus. Kekeliruan disebabkan kurang atau tiada pendedahan konsep hak asasi Islam, di samping dominasi teori hak asasi Barat dari segi pendidikan, pemikiran dan pengaruhnya di forum-forum dan media antarabangsa. Hasilnya, kelihatan kurang penilaian dan penghargaan diberikan kepada nilai-nilai bukan Barat mengenai hak asasi. Artikel ini bertujuan menghilangkan sebahagian dari kekeliruan itu, dan cuba memperlihatkan sumbangan, pendekatan dan beberapa dimensi Islam dalam memberi perlindungan terhadap hak-hak asasi manusia. Di samping ingin menunjukkan aspek kesejagatan dan toleransi teori hak asasi Islam yang mampu menangani, bukan sahaja soal perlindungan hak asasi kepelbagaian bangsa dan agama dalam sesebuah negara, tetapi juga dari aspek hubungan antara negara-negara dalam dunia majmuk, khususnya dalam usaha mewujudkan tatacara baru dunia.

ABSTRACT

Misconceptions about Islamic law remain, especially in the West, regarding the connection of the concept of Islamic State with human rights in general, and the rights of the non-Muslims in particular. These misconceptions are due to a lack or absence of exposure of an Islamic theory of human rights, and the domination of the Western version of human rights in education, thoughts and its influence in the international media and forums. As a result, the West seems to be less appreciative of the non-Western values on human rights. This article attempts to remove some of these misunderstandings, and highlight some of the Islamic contributions, approaches and dimensions in the protection of human rights. Also, to show the universality of the Islamic theory, in dealing, not only with the multi-religious and racial elements within the national boundaries, but also with international relation in a plural world, especially in the process of establishing a new world order

INTRODUCTION

The principal aim of this article is to provide a general survey of some aspects of human rights in the Islamic perspective. The subject of human rights is increasingly important, especially when it is discussed in the light of Islam, amidst the dominance of the Western idea of human rights.

Generally, discussion on this subject has always been mixed up with much misunderstanding and prejudice, especially in the West. Misconception particularly revolves around the concept of Islamic State in relation to human rights in general, and the position of non-Muslims in particular. Consequently, Islam has been allegedly associated with rigidity, intolerance and denial of human rights. The reason may be attributed to an apparent lack or absence of exposition of the Islamic point of view concerning human rights in the Western legal and political studies. As a result, the advocates of the Western conception of human rights seem to be less appreciative of other non-Western values and dimensions.

This article is a modest endeavour to examine in a wider sense the Islamic approach to human rights, and explore the methods, scope and limits of their protection. Also, to demonstrate some of the contributions made in the upliftment of human dignity and promotion of the welfare of individuals and society. It is hoped that this article will clear some of the misconceptions surrounding the Islamic notion of human rights. This must, of course, be examined within the context of the Shariah.

NATURE AND SCOPE OF SHARIAH

Islam is not only a religion, but also a complete way of life. It is the embodiment of divine guidance for all fields of human life. The main purpose of human existence is to worship Allah and act in accordance with His teachings. Thus, there is no separation between religion and every aspects of human life. In view of the comprehensive nature of Islam, it covers such varied subjects as religious rituals, personal character, morals, habits, family relationship, social, political and economic affairs, public administration, rights and duties of citizens, judicial system, laws of war and peace and international relations.

The Islamic Legal aspects are usually termed "shariah", albeit the term may be given a wider connotation which embodies both legal and non-legal contents. The most distinguishing characteristic of shariah is that it is a sacred and universal law, emanating from Allah (Qu'ran) Himself as the sole law giver and transmitted to mankind through his Prophet Muhammad (s.a.w) whose practice (Sunnah) supplements this law. Another important source of Islamic law is called "Ijtihād" This is

an exercise of one's reasoning to arrive at a legal conclusion, on a legal issue not specifically mentioned in the Qur'an and Sunnah, done by qualified Muslim jurists. There are other secondary bases of law that are either derived from the Qur'an and Sunnah, or exist in the various forms or techniques of *Ijtihād* such as *ijma'* (consensus of the Muslim jurists) and *qiyās* (analogical deduction). All these sources enrich the corpus of Islamic law

The main objective of the Shariah is to construct human life on the basis of virtues (*ma'rūfāt*) and to cleanse it of the vices (*munkarāt*). The individual and society are required to conform to these norms. Islam lays down the entire scheme of life in such a manner that virtues may flourish and vices may not venom human life. According to Islam, what is laid down in the Qur'an and Sunnah must not be changed in order to satisfy the everchanging and imperfect nature of human beings, but on the contrary, they should adjust themselves so as to live in accordance with the religious and moral requirements.

However, it should be noted that the Qur'an and Sunnah provide only those details and general principles which are essential. Thus, considerable room is left for development by the people through a proper exercise of *Ijtihād*. There are also safeguards against rigidity. Indeed, the Qur'an warns against seeking the regulation of everything by express divine command, as that might make the framework rigid, and therefore, burdensome (Quran 5:101-2). That Allah has "left out" is meant to be devised, in accord with the prescribed standards and values, namely that equity is to be fostered and inequity is to be eschewed.

The Shariah contains the basic law of the Muslim community and the universal values of human beings. It also embodies constitutional principles. By virtue of its origin, the shariah is the ultimate source of authority in an Islamic State. The purpose of the state and its very reason of its existence is to maintain the law of God. While the interpretation and development of the law, as well as the details and form of a government are left to the *ijtihād* and discretion of the community, the basic principles as embodied in the shariah, are eternal and immutable. The state is morally obliged to accept its limitation on its executive, legislative and judicial powers.

SHARIAH AND HUMAN RIGHTS

It appears that the Western political or constitutional history is invariably silent as to the contribution of Islam to human rights. The origin and development of human rights have been normally referred to the Roman and Greek civilisations, and in modern times, attributed to the English Magna Carta (1215) and Bill of Rights (1688), and the decla-

rations of human rights in France (1789) and the United States of America (1766) which later culminated in the promulgation of several international charters and conventions on human rights and fundamental freedoms in the twentieth century. The theoretical foundation of fundamental rights has almost always been traced to the works of European writers of the seventeenth and eighteenth centuries. Thus, the historical omission of the rights of man and woman as expounded, and generally practised, during hundreds of years of Islamic civilisation – a gap that has never been explained by Western scholars.

The fact is that the Islamic message since the seventh century contained principles of human rights which formed part and parcel of its basic tenets, along with its great emphasis on duties of man towards fellow human beings. Islam condemned various forms of violation of human rights, for example, the killing of innocent people (Quran, 81:8-9) and slavery (Ali Abdel Wahid Wafi 1967: 70). A particular mention should be made of the Charter of Medina, described as the ‘first written constitution in the world’, promulgated by the Prophet Muhammad (Hamidullah 1975). The Constitution (Sahifah Madinah) defined the rights and duties of both Muslim and non-Muslim citizens.

Thus, according to Islam, human rights were guaranteed in the Qur’an and the Sunnah long before the birth of Western civilisation. There are also precedents set by the Rightly Guided Caliphs. The fundamental rights in Islam are of greater scope, depth, and dimension than the rights conferred by secular states. Although such rights can also be incorporated in a written constitution, they derive their sanction from the shariah, and thus, cannot simply be abrogated by the state.

It follows that in Islam, a bill of human rights is not one which is originally composed by a committee of scholars or leaders, resolved and promulgated by a government, a parliament or a representative assembly. Muslims believe in a bill of rights which is eternal, whose author is Allah. There is a bill which was taught by all the Prophets, and which is crystallised in the Holy Qur’an (Faruqi 1983: 12). An Islamic bill of rights was promulgated by Allah, for all places and times. It is in fact an integral part of the shariah, and embodied in the Islamic constitutional law and political principles.

The rights guaranteed in the shariah, whether directly or indirectly, have not been the result of a bitter series of tussles by men against men, or by subjects against their rulers, as generally occurred in the Western political history. On the other hand, they have been readily available in the Qur’an and the Sunnah. The general rights of religious tolerance and privacy, for example, were already entrenched in the Qur’an since the seventh century, whereas in the West, both rights had evolved over many centuries before they became established, or began to be given some

recognition. The shariah envisages a holistic and teleological view of human rights, and provides some details and guiding principles governing their development and regulation of their implementation. Hence, human rights are not subservient to an unrestricted claim, on the basis of an overemphasis on unbridled individualism, and an illusive notion of Western human rights.

Although the Qur'an and the Sunnah are replete with the principles of human rights, the subject of fundamental rights and liberties, according to one commentator, has received little attention in the works of early ulama' (Kamali 1993: 23; 1994: 17-19). The reason is perhaps understandable, in view of the fact that the general approach of early Islamic jurisprudence placed a great emphasis on the moral and religious duties of Muslims, and that human rights are inherent in the shariah. It may also be argued that because of the different approach and nature of Islamic law and political history, the Muslims, especially the early ulama' did not find it necessary to assert individual's rights, as the latter was part of the general and ordinary laws of the shariah.

Traditionally Muslims rarely studied politics in isolation from related disciplines. Problems such as the nature of the state, the varieties of governments, the qualifications of rulers, the limitations of their power and the rights of the ruled were discussed as part of the comprehensive treatises on jurisprudence and theology – all securely within the unassailable walls of the syariah. The fact that political thought was always subsumed under some other disciplines in the spectrum of classical Islamic sciences did not by itself restrict its scope, or impoverish its content (Hamid Enayat 1982: 3-4).

The Islamic approach stressing on the concept of duty, rather than that of right, does not necessarily imply that Islam denies human rights, or play down their importance, because the very end of the shariah is to protect the interests and welfare of mankind, in this world and the next. It may be argued that the method adopted by Islam is more effective in protecting human rights, as Professor C. G. Weeramantary (1988: 123) said:

The result may now be very much the same but the route by which it is reached is different. However, the Islamic stress on relationship with the divine, and the concept of duty, could well lead to a more dedicated and purposive commitment to human rights than might be possible in a system which depends on concessions grudgingly granted under compulsive pressures.

In spite of the stress on the concept of duty, there were occasions when rights were couched in a positive and direct manner. This can be seen, for example, in the Constitution of Medina, and the Farewell

Sermon of the Prophet Muhammad at Arafat, although the wording of both documents may not be the same with that of modern constitutions or declarations of rights. In any event, human rights (albeit less obvious) and duties are an integral part of the study of *fiqh* (Islamic law). For example, Abu Hanifah was reported to have defined the term *fiqh* as “a science which concerns the individual’s rights and duties” (*maʿrifat al-nafs mālahā wa mā ʿalaihā*) (Hamidullah 1973: 4). This is in line with the fact that in Islam, rights are interwoven with duties. The word *haqq* and its derivatives that appear in the Quran on many occasions also have some bearing on the theory and origination of rights (Kamali 1993).

METHODS OF PROTECTION

There are at least two methods whereby human rights can be deduced and secured: (a) Political and constitutional principles, and (b) specific rights.

POLITICAL AND CONSTITUTIONAL PRINCIPLES

Islam lays down several fundamental principles of public law which have some bearing on the protection of human rights. The protection of human rights is either manifest or inherent in such principles. The most important of them may perhaps be summarized as follows:

1. Sovereignty of God or the supremacy of shariah (*hākimiyyatu Llāh* or *siyādat al-shariʿah*): This erodes the very basis of an absolute rule of man which has always been the cause of the violation of human rights.
2. Vicegerency and trusteeship (*khilāfat* and *amānat*): These will bring about the principles of accountability and responsibility of those in authority before God and the ruled.
3. Consultation (*shūrā*): This is mandatory upon a ruler. This principle confers political rights on the people, including the right to be consulted in the public affairs of the state.
4. Justice (*ʿadl*): This principle has been given a great emphasis in the Qur’an and the Sunnah. It is enjoined in a general universal order encompassing all human affairs and relationship. Justice must be seen to be done even, to adversaries and, against one’s own interests or, at the expense of the loved ones. Oppressors are strongly condemned.
5. Freedom and equality (*hurriyyat wa musāwāt*).
6. Specific provisions on the rights and duties of the rulers and citizens (*huqūq wa wājibāt*).

Based on those principles, we may safely say that Islam introduced the concept of a limited government, in the sense that the Islamic rule is based on the supremacy of the shariah, or the sovereignty of God. This does not mean, however, that the Islamic government is theocratic where the role of the people is completely denied, as it has been misunderstood by most Western scholars. Ample room is given to the people, under the principle of *Ijtihād* and consultation (*shūrā*), in order to work out details, formulate policies and enact detailed regulations in the light of the specific provisions in the Qur'an and Sunnah and the general principles of the shariah, especially in the area of constitutional and administrative law. Islam only lays down the binding principles of a government (*Mabādi' al-hukmī*) whereas its form (*ashkāl*) and detailed procedures are generally left to the people to decide in order to suit their varied circumstances and needs.

SPECIFIC RIGHTS

This section attempts to indicate some of the approaches and basic features, regarding the way human rights are derived and developed from the shariah.

The principal aim of the shariah (*maqāsid al-sharī'ah*) is to secure compliance with the five basic principles or objectives, namely the protection of life, property, religion, descent and reason. These objectives generally govern the development of law in the state as well as in international relations. From these basic principles, numerous specific rights can be deduced, for example, the rights to life, property and religious belief.

The duties enjoined upon humanity under the divine guidance can also produce, and result in, several fundamental human rights. Such duties were traditionally classified into two main categories: (1) *Huqūqullāh* (the duties of the Muslims which are considered rights of God because of their general importance, and (2) *Huqūq al-'ibād* (those duties which are considered rights of mankind). The former concerns a universal public need or interest, or the rights which are collective in nature, the benefits of which are due to society as a whole. Whereas the latter relates to a particular need or interest (Fathī al-Durainī 1984: 186-7). Both categories can be considered public and individual rights respectively. There are of course certain duties towards other creatures of God, such as trees and animals which are not the concern of this article. Human rights ensuing under the both categories can be identified and enforced by the state.

Human rights are the necessary outcome of man's freedom declared in the Qur'an. Islam's appeal for man's freedom was addressed to all

human beings without distinction as to race, sex, colour, or creed. Islam's human message may be summed up in the following Quranic verse:

We have dignified the Children of Adam and transported them around on land and at sea. We have provided them with wholesome things and favoured them especially over many of those whom We have created. (Quran 17:70)

If that is the nature of man's freedom, it is natural that other concepts shall flow from it, such as political and social freedoms, equality between men and women, etc.

Certain rights are established in an explicit and affirmative manner, as it is evident, for example, in freedoms of religious beliefs and expression. The Qur'an emphasises the importance of these freedoms on many occasions (Quran 2:256; 10:99).

Freedom of religion naturally comprises to the freedom of having political and ideological differences. It also includes the freedom to propagate one's religion. Islam also grants freedom of thought and expression to all human beings, and sometimes, the exercise of this freedom is considered obligatory. Highest credit will be given to those who speak up for truth in the face of a tyrant (Abu Daud).

Freedom of speech may also be implied under a variety of other topics or other principles in the Qur'an. For example, such freedom can be subsumed under such doctrines as *ḥisbah* (commanding good and forbidding evil), the religious duty of *nasīḥah* (advice), and the constitutional principle of *shūrā* ('democratic' right). Again, this principle and the recognition of the freedom of speech, in order to be effective, subsume and necessitate freedom of association and the right of opposition, provided that the views expressed do not run counter to the shariah (Kamali 1993,26). Another related right is the right of protest against the tyranny of the government. The exercise of this right or duty was regarded by the Prophet Muhammad as the best kind of *jihād* (Abu Daud).

In Islam, human rights must be accompanied by the positive obligations of the state. Emphasis is not only placed on civil and political rights, but also on the right to economic security. Thus, it is the duty of the state to provide economic security to its citizens without discrimination. Other freedoms may be meaningless without such basic necessities of life as food, clothes and shelter, and economic facilities. They are necessary for the maintenance of human happiness and dignity. It is the moral and legal duty of the state to ensure that 'no person's standard of living fall below an equitable level' (Muhammad Asad 1980: 88, 91). Therefore, all the resources of the state must be harnessed, in order to achieve these objectives.

As will be seen later, the liberty of a Muslim is restricted by the legal

commandments of the Qur'an and the Sunnah. However, one of the important legal principles is that everything which is not prohibited is permitted (*al-asl fī al-ashyā' al-ibāhah*). As the number of legal restrictions are small, the resulting freedoms are certainly vast, and generally, they may also be categorised as human rights. Therefore, it is impossible to mention all the permitted rights. According to one commentator, the fact that certain permitted rights are explicitly mentioned in the Qur'an and the Sunnah does not change their nature, or make them differ for any purpose from those not expressly and specifically mentioned (Ibrahim Khalid Al-Mahdi 1988: 43). No matter how such rights have been deduced and multiplied under the authority of shariah, one thing is certain that all the Muslims are perforce obliged to respect them. However, another commentator suggested that a formal distinction between fundamental rights and other rights in the shariah can be made with reference to the norms and principles contained in the Qur'an and the Sunnah (Kamali 1994: 22).

In recent years, there have been a sizable number of Muslim scholars who specifically wrote about human rights according to the Islamic perspective. In 1951, a Convention of the Ulama' representing all schools of thought which was held in Karachi, agreed on 21 basic principles of an Islamic State, and the provisions on human rights and obligations were included. There is now the Universal Islamic Declaration of Human Rights, proclaimed by the Islamic Council of Europe. There is also a specific resolution on the protection of human rights in the Islamic criminal justice system, agreed upon by the First International Conference on the Protection of Human Rights in the Islamic Criminal Justice, held in Italy in 1979. Provisions on the rights of the people were also enshrined in the Constitution of the Islamic Republic of Iran 1979, and more recently in the newly written Constitution of the Kingdom of Saudi Arabia 1992. Similar provisions can also be found in several other drafts or models of Islamic Constitution. For example, the Islamic Constitutional Models drafted by the Islamic Research Academy of Azhar University and the Islamic Council of Europe.

Thus, specific fundamental rights are now perhaps easily discernable. For example, a Convention of the Ulama' unanimously agreed in 1951 (Karachi Convention) that the 'citizens shall be entitled to all the rights conferred upon them by the Islamic law, i.e., they shall be assured within the limits of the law, of full security of life, property and honour, freedom of religion and belief, freedom of worship, freedom of person, freedom of expression, freedom of movement, freedom of association, freedom of occupation, equality of opportunity and the right to benefit from public services' (Maududi 1969: 321-3).

A much more detailed catalogue of human rights is to be found in

the Universal Islamic Declaration of Rights 1981. This Declaration guarantees right to life, freedom, equality and prohibition against impermissible discrimination, justice, fair trial, protection against abuse of power, protection against torture, protection of honour and reputation, right to asylum, rights of minorities, right and obligation to participate in the conduct and management of public affairs, freedom of belief, thought and speech, freedom of religion, right to free association, rights evolving economic order, protection of property, right to status and dignity of workers, right to social security, right to found a family and related matters, rights of married women, right to education, right of privacy and right to freedom of movement and residence (European Human Rights Report 1981. 433-41).

The contents of human rights mentioned above had been based on some reference to the Qur'an and Sunnah. They were merely declaratory of what was already available in the both sources. The aim was to make the position clearer and avoid any misunderstandings about the Islamic concept of human rights.

NON-MUSLIMS AND HUMAN RIGHTS

The traditional categorization of citizens into Muslims and non-Muslims (*dhimmi*) was merely aimed at distinguishing the Muslims with regard to their responsibilities and requirements in the Islamic system, without any intention to discriminate between Muslims and non-Muslims in any other respect, such as humanity, race or colour (Abdulrahman Abdulkadir Kurdi 1984: 57). The distinction in the terms merely remained one of political administration and not of human rights (Abdul Rahman I. Doi 1984: 427). The Arabic term *dhimmi* means 'those whose obligations are a trust upon the conscience and pledge of the state or the nation' (Said Ramadan 1970: 122).

There has been a suggestion that the term *dhimmi* has lost its traditional implications in modern times and, therefore, according to one commentator, it would be better to drop the term in order to foster peace and stability, and inspire cordial relationships among the various communities within the nation (Muhammad Abd. Rauf 1991. 53). It is perhaps significant that such term and classification did not appear in any declarations of Islamic human right, including the Iranian Constitution and the new Constitution of Saudi Arabia. The Convention of Ulama 1951 also declared that:

the non-Muslim citizens shall have, within the limits of the law, complete freedom of religion and worship, mode of life, culture and religious education. They shall be entitled to have all their matters concerning personal law administered in

accordance with their own religious code, usages and customs. All obligations assumed by the state, within the limits of shariah towards the non-Muslim citizens shall be fully honoured. They shall be entitled equally with the Muslim citizens to the rights of citizenship (Maududi 1969: 321-3).

The position of the non-Muslims in early history of Islam can be seen in the Constitution of Madina (623). This document served as a practical example of a constitutional government introduced by the Prophet fourteen centuries ago, under which the Muslims and non-Muslims lived together and equally enjoyed human rights. The Constitution, among other things, defined the rights and duties of the citizens, and thus, reflected a mutual understanding between the federation of the different clans of Muslims, on the one hand and of the Jews, on the other.

Despite the constitutional clause on the supremacy of the shariah, it guaranteed liberty of conscience, religion, equality, equity and fraternity to all, irrespective of one's caste, creed, colour or social situation in life (Hamidullah 1975). For example, the Constitution provided that 'the Jews shall have their own religion and the Muslims their own' (art. 25). Further, it stipulated that the Jews and Muslims 'must help the other against any one who attacks the people of this document' (art. 37). The Islamic rule also retained some of the existing customs of the people, and under the federal system of government, different clans were given some autonomous powers, especially in religious and cultural matters (Zāfir al-Qāsimī 1982: 31-37).

The rights given to a non-Muslim are of an irrevocable nature unless he renounces the covenant which grants him citizenship. It becomes every Muslim's religious duty to protect life, property and honour of a non-Muslim since such duty forms an important part of religious faith. It is wrong to presume that since an Islamic state is based on a definite ideology, the state will annihilate the non-Islamic elements within its fold. The Qur'an and Sunnah speak of strengthening and cementing the relationship between Muslim and non-Muslim citizens. The Qur'an said:

God does not forbid you to act considerately towards those who have never fought you over religion nor evicted you from your homes, nor (forbid you) to act fairly towards them. God loves the fairminded. God only forbids you to be friendly with the ones who have fought you over (your) religion and evicted you from your homes, and have abetted others in your eviction. Those who befriend them are wrongdoers (Quran, 60:8-9).

The Prophet warned the Muslims against any high handedness towards the non-Muslims and he said: "whoever persecuted or usurped or took work from him beyond his capacity, or took something from him with evil intentions, I shall be a complainant against him on the Day of

Resurrection” (Abu Daud). He also said: “One who hurts a *dhimmi*, he hurts me; and one who hurts me, hurts Allah” (Al-Tabrāni). The shariah has emphasised a great deal on the rights of the non-Muslims so much so that any Muslim who violates them is deemed to have committed a grave sin. Furthermore, whatever may be the extent of oppression which a non-Muslim state may perpetrate on its Muslim citizens, it is not permissible for an Islamic State to retaliate on its non-Muslim subjects in the slightest degree (Maududi 1982: 11).

SAFEGUARDS AGAINST VIOLATION

The shariah does not only guarantee human rights and freedoms, but also provides necessary safeguards and remedies. These naturally follow from the very nature of the political system envisaged in Islam. The remedies are to be provided by the state machinery and the court. Furthermore, violators are also answerable in the next world. Under the doctrine of the supremacy of shariah, political leaders, legislators and judges are obliged to comply with the shariah, and its violation will be considered unconstitutional. The factor which gives superiority to the Islamic attitude towards human rights is that it places their formulation and fulfilment within the religious obligation and the responsibility to answer for all actions at the Last Judgement.

Since the rights provided by the shariah do not change with the change of governments, therefore they are not subject to any change, and the government has no right to encroach upon them. All governmental authorities and public duties are considered a trust, entrusted to them by God. From the principles of trust and accountability, it follows that the government possesses only the right of conditional obedience which is due only to those who observe the shariah, namely their duties towards citizens. Human rights can be rightly and justly protected through the unanimity of purpose and reciprocal obligations of the government and the people. An appreciation of the respective rights and duties, and their limits, will not only protect the freedom, but also guard against any inordinate claims.

More specifically, there are at least five safeguards against the violation of human rights:

AN INDEPENDENT AND IMPARTIAL JUDICIARY

In the Islamic state, the liberty and honour of individuals depend on the fairness of the courts in protecting them from encroachment of other individuals and any tyrannical or overzealous governmental officers. To achieve this, the state should invest human rights with legal sanction,

enforceable through an impartial judicial system. An independent and responsible judiciary is a *sine qua non* for an effective protection of human rights, freedom, justice and equality. The hallmark of the independence and impartiality of the Islamic judiciary can be seen from the following statement of the Prophet Muhammad:

O people, nations before you were destroyed and went astray because when a noble person committed a crime they did not apply the law to him but when an ordinary man committed the same crime they inflicted the legal penalty on him. I swear by God if Fatimah the daughter of Muhammad (referring to his own daughter) commits theft, Muhammad will cut off her hand (Bukhārī and Muslim).

JURISDICTION OF *MAZĀLIM*

This jurisdiction (known in Islamic history as *Wilāyat al-Mazālim*) was created for the redress of public abuses, and it would converge with other jurisdictions in promoting respect for Islamic law. The main purpose of this *mazālim* was to complement other jurisdictions, especially to correct miscarriages of justice and provide redress and remedies in cases of injustice and tyranny committed against the people by public authorities (Muhammd Fathi Uthman 1982: 189).

INSTITUTION OF *HISBAH*

In Islam, the duty to protect human rights is not imposed only on the government. It is in fact a collective responsibility of both the government and the people. In order to establish a just order in Islam, it is inevitable that injustice should be exposed and its victims compensated. The Qur'an insists upon being a party of people who should carry out the duty of promoting virtues and preventing evil (Quran, 3:104). This duty, under the institution of *hisbah*, makes society vigilant against the state and its agencies, and ensures that their actions will not overstep the divine limits and the law.

The duties of *hisbah* and *shūrā* constitute evidence of the right of the people to question and call the government and public authorities to be accountable for whatever action that has been taken. They should always be open to criticism and willing to correct themselves. The first Caliph Abu Bakar after taking charge of the caliphate said:

I have been given authority over you. If I do well, help me, and if I do ill, then put me right (Ibn al-Athir: 224-5).

The principle of conditional obedience as mentioned earlier, in the words of Muhammad Asad, 'naturally presupposes the citizens' right and

duty to watch over the activities of the government and to criticise its administrative and legislative policies whenever there is reason to suppose that matters are wrongly handled' (Muhammad Asad 1980: 77).

POSITIVE RIGHTS AND OBLIGATIONS

A logical corollary of the right to criticise is the right of the citizens to education and the right of access to necessary information, as Muhammad Asad further observed:

But the duty and the right to express one's opinion freely may be meaningless and on occasion even injurious to the best interests of society if those opinions are not based on sound thought, which in turn, presupposes the possession of sound knowledge. Consequently, it is the citizens' right and the government's duty to have a system of education which would make knowledge freely accessible to every man and woman in the state (Muhammad Asad 1980: 7).

The state's duties must also be reflected in certain well-defined, positive obligations (Fathi Uthman 1982: 66; Muhammad Asad 1980: 85) so that the reciprocal approach to rights and obligations of both state and citizens can be justly established. The neglect of such duties and intrusion on rights should therefore be remedied and enforced by the court. The Karachi Convention 1951 agreed that it was the responsibility of the government to guarantee the basic necessities of life, i.e., food, clothing, housing, medical relief and education to all citizens without distinction of race or religion, who might temporarily or permanently be incapable of earning their livelihood due to unemployment, sickness or other reasons (Maududi 1969: 321-3). It is the purpose and duty of the Islamic State to protect human rights. Thus, human rights are not only of a defensive nature against the state.

JIHĀD

Jihād means a struggle or striving. The term does not necessarily mean the use of sword as it is misunderstood by some people. It can be through speech and writing. *Jihād* as a holy war is used in respect of waging it for defence as against any aggression or taking an offence in unavoidable circumstances when the onslaught of enemies is imminent (Abdul Rahman I. Doi 1984: 438,443). *Jihād* is allowed to those who have been wronged in order to remove subversion, hostility and oppression against human rights as Allah has said in the Qur'an:

Why should you not fight for God's sake when men, women and children who are considered helpless say: "our Lord, lead us out of the town whose people are so

oppressive, and grant us a patron from your presence and grant us a supporter from your presence” (Quran, 4:75).

In inevitable situations, the people are given the right to flee their homes and take refuge in a safe place or country, in order to protect themselves against oppression and violations of human rights (Muhammad Fathi Uthman 1982: 190-1).

LIMITS OF HUMAN RIGHTS

In Islam, human rights are not without any limits. Generally, the shariah restricts the scope of human freedom through do's (awāmīr) and don't's (nawāhī). Islamic human rights are anchored in eternal principles and values. Their application may develop following human situations, but only with critical guarantees for the permanence of those principles and values. Human rights are only sacrosanct within the necessary limits prescribed by the shariah.

One of the Islamic legal maxims states that every thing is permissible, unless there are limitations imposed by the shariah. These limits are designed to guide, or harmonise, rather than to restrict, human freedoms. The general principles governing the limitation of human rights perhaps can be summed up in the words of Dr. Shaikh Shaukat Hussain as follows:

Human rights..... are as sacrosanct as other laws of the shariah and are thus to be observed in accordance with these. None of the Divine injunctions can be curtailed for the sake of human rights. It is clear from this that all laws laid down by the shariah limit the scope of human rights in general. Legislature or executive can pursue for implementation and limitation of human rights only in pursuance of injunctions of the shariah. It can go beyond these limitations only when the shariah permits it to do so. Where ever the injunctions concerning human rights are laid down in the form of certain objectives with major auxiliary principles it is implied that it has been left to human agencies to devise operative orders for achieving these objectives. Similarly where divine injunctions containing rights do exist in the form of broad outlines, necessary rules and regulations are to be provided by the state. In case where objectives, normative principles as well as operative orders are prescribed very little role is left for the Islamic state (Shaikh Shaukat Hussain 1990: 76).

In the absence of the principles based on revelation, “right” and “wrong” will become purely relative terms, to be interpreted arbitrarily according to one's personal or communal needs, which, in their turn, are subject to the continuous changes in one's socio-economic environment (Muhammad Asad 1980: 7).

There are specific grounds on the basis of which human rights can be restricted. Some of these grounds are explicit, and prescribed in detail in the Qur'an and Sunnah. For example, as regards freedom of speech, the Qur'an among other things forbids the exercise of such freedom for stirring sedition, obscenity, slander, defamation, blasphemy, hurting others and instigation of unlawful acts. In any event, freedom of expression must be exercised for the propagation of virtue and truth, and not for spreading evil or wickedness. Right to property can be curtailed, for example, if one's property was *utilised*, in a manner that might be harmful to others, or for unlawful purposes (Shaikh Shaukat Hussain 1990: 76-80; Kamali 1994: 161-235).

At all events, there must be some valid reason before the state is allowed to infringe upon the rights of citizens. Article 8 of the Basic Principles of an Islamic State 1951 (Karachi Convention) stated that no citizen shall, at any time, be deprived of the rights conferred by Islamic law, except under the law, and none shall be awarded any punishment on any charge without being given full opportunity of defence and without the decision of a court of law. For example, personal freedom cannot be violated, save after proving delinquency in accordance with the due process of law. It has been related that some people were arrested in Madina, in the days of the Prophet, for being of doubtful antecedents. Subsequently, while the Prophet was delivering the Friday sermon, a companion got up and enquired of him as to why and on what grounds had his neighbours been arrested. The Prophet kept quiet while the question was repeated twice, thus giving an ample opportunity to the Police Officer present there to explain the legal position. When the question was put a third time, and it again failed to elicit the reply from the Police Officer, the Prophet directed that those people should be released (Maududi 1969: 238-9; Abu Daud).

HUMAN RIGHTS – AN INTERNATIONAL PERSPECTIVE

The shariah is the unified source of moral precepts and it prevents a duality of moral standards. In Islam, what sanctions the individual's private conduct, also sanctions the individual's public conduct. All the human rights granted by the shariah are meant for the welfare of the world. The Qur'an introduced the Islamic notion of universality and a global understanding and co-operation. According to Islam, pluralism should not deter a universal spirit of brotherhood. The Qur'an said:

O mankind, We have created you from a male and female, and set you up as nations and tribes so you may recognise (ta^cāruf) one another. The noblest

among you with God is that one of you who is the most righteous; God is Aware, Informed (Quran, 49:13).

The Farewell Sermon of the Prophet proclaimed that “the Arab has no superiority over the non-Arab and the non-Arab has no superiority over the Arab, all are children of Adam and Adam was made of earth” (Muslim). This ḥadīth and the verse mentioned earlier reflect one of the most striking characteristics concerning human equality, provided for the first time in human history. While Islam recognises artificial boundaries and racial distinctions for facility of reference, it does not intend to restrict the social horizon of its members. On the other hand, it envisages a world organisation wherein all members may enjoy equal status and rights without any distinction whatsoever. The Qur’an warns against the emergence of the more powerful nations to flout their contractual and other obligations towards the weaker (Quran, 16:92).

Another Western misrepresentation is particularly traceable in respect of the Islamic contributions in the area of international relations and law especially on human rights. It is a historical fact that the world’s earliest treatise on international law was written by Mohammad Hasan Shaibani (749-805), whereas Grotius (1583-1645) who has been widely considered the father of modern international law only published his treatise in 1625 (Anwar Ahmad Qadri 1986, 277). Moreover, Grotius himself drew heavily on Arabic works as it is evident in Chapter X (article 3) of his treatise, where he discussed the concept of *postliminium* (the return of things captured by the enemy), and he noted that it was known in Islamic law (Weeramantary 1988,151).

Among the most important Islamic contributions can be seen in the definition of rules on prisoners of war, protection of civilian populations, limitations of belligerent activities and reprisals, asylum, pardon, safe conduct, diplomatic immunity, negotiations and peace missions. Protection of human rights can be seen, particularly in the acts forbidden in war. Among them are; cruel ways of killing, killing of non-combatants, for example, women, children, the old, the infirm, the monks and wounded soldiers, killing of prisoners of war; adultery and fornication with captive women; killing of envoy even in retaliation; massacre in the vanquished territory; and the use of poisonous weapons.

Prisoners are also to be protected from heat and cold and they have the right to draw up wills for their property. Among victims of war, a mother is not to be separated from her child, nor other relatives from each other. Wounded soldiers who are not fit to fight must not be attacked. On the other hand, they must be protected and hospitalised. Thus, Islam recognised for the first time in recorded history, a fully fledged notion of rights for the enemy, in peace as much as in war (Kurdi

1984, 109-112; Weeramantary 1988, 134-8). Such rights are not merely declaratory, but binding on every Muslim State as a matter of religious obligation.

Another important aspect in our plural societies, concerns a mutual understanding of one community or nation to respect the rights of those who do not subscribe to its ideology or belief. Islam from the beginning recognised the concept of pluralism. This is evident in the Islamic private international law. For example, the Islamic recognition of an autonomous power in religious matters, by enabling non-Muslims to set up their separate courts to administer their own personal and family laws. Islamic rule in territories such as Turkey or India invariably preserved to people of other faiths their traditional courts and laws. Hindus in India, members of the Greek Orthodox Church in the Ottoman Empire and Christians in Egypt, all enjoyed the continuance of their own personal laws without interference (Weeramantary 1988: 144).

This tolerance is significant, in view of the unresolved fundamental question, for instance in Britain, of whether growing pluralism of the British population should be expressed in legal pluralism too. Although there have been claims by the British Muslims to their own separate system of personal law, the British Government seems very unlikely to accede to their application. Here, the lack of tolerance and the Western version and conception of human rights appear to be a major stumbling block towards a greater religious freedom for the largest minority in Britain. The Western idea of human rights that abhors certain aspects of Islamic law, for example, the right of a husband in respect of divorce and polygamy, has apparently intruded and gone much deeper into the Muslim religious and family law matters. Ironically, certain privileges were accorded to the Jews, Quakers, and Sikhs for religious reasons (Chibli Mallat & Jane Connors 1990: xii, 150,159). The right to the protection of Islamic faith that was supposed to be developed under the law of blasphemy, had been denied, and its claim gradually overpowered by another claim of other more valuable interests or aspects of fundamental rights according to the Western mind, for example, freedom of the press (Abdul Samat Musa 1988).

The threat of the less tolerant Western world in general, especially in the definition of human rights, and its apparent tendency to become the arbiter of what is right and proper is increasingly evident. A notable example is its recent onslaught on the religious freedom and values of the Muslim world. This is clear, for example, from the controversy over some issues, discussed in the International Conference on Population and Development (held in Cairo from September 5-13, 1994), in respect of the proposed imposition of western values, regarding sex, abortion and family life. This western morality, if adopted, would have an adverse

effect on the Islamic religious domain and family institution (New Straits Times, August 31, 1994). The Western failure to take non-Western values into account in the formulation of international policies, can also be witnessed in other areas, for example, in providing the definition of freedom and criteria of democracy and human rights (Chandra Muzaffar 1993).

On the other hand, Islam recognises a diversity of nations within the world community. The word *ta'āruf* (knowing or recognising one another), in the Quranic verses mentioned earlier, implies peace, co-existence, cooperation, equality and justice, and not a relationship of dominance and subjugation. As Islam is a way of life for individuals and nations, and has its own ideas governing the lives of Muslims, it is therefore justified and fair that their ideas should also be taken into consideration in the formulation of global policies, especially those concerning human rights. Democratisation of ideas as advocated in the West, should not only be confined to national affairs, but on the other hand, it should also be extended to matters involving international relations. This is necessary in order to prevent the breakdown of a global concept of human rights.

CONCLUSION

It is clear from the previous discussions that Islam firmly guarantees both domestic and international protection of human rights. However, it must be recognised that not all noble principles of human rights are now completely realised in practice. Justice to all mankind, as commanded by Islam, must be seen to be done in all spheres of human life. Thus, the Muslims as individuals and nations should intensify efforts towards the safeguarding of human rights through executive, administrative, legislative and judicial means. Indeed, Islam seeks to stimulate this consciousness, so that by the due discharge of the respective rights and duties, human welfare can be properly fostered in all social, economic, and political fields.

There is a close relationship between the Islamic constitutional principles and the protection of specific human rights. Unfortunately, in the post-colonial period, most Muslim countries have generally inherited the Western theories of nation-state and constitutional law. It is, therefore, arguable whether the Islamic concept of human rights can constitutionally and effectively operate and evolve or develop in practice. Nevertheless, in view of the universal nature of the Islamic human rights and their connection with religion, the Muslim state should consider to infuse their principles into its legal system, and ensure that new policies and constitutional interpretations do not run counter to such

principles. In any event, according to Islam, the protection of human rights must always be founded on moral and religious principles.

At an international level, the Islamic conception of human rights should be equally given due weight, and the right of the individual nations to observe their own values should be respected, rather than suppressed by an unrepresentative view of the international community. This will ensure an equitable co-existence in our plural world. The world may also consider the potential contribution of the Islamic tradition and its fertile source in the creation of a new world order.

REFERENCE

- Abdul Samat Musa. 1988. *Freedom of Expression in English Law: Its Development and Limits*. A doctoral thesis, University of Manchester.
- Ali Abdel Wahid Wafi. 1967. Human Rights in Islam, *Islamic Quarterly* II.
- Abul'ala Maududi. 1969. *Islamic Law and Constitution*. Lahore: Ashraf Press.
- Abul'ala Maududi. 1982. *Human Rights in Islam*. Delhi: Markazi Maktaba Islami.
- Abdulrahman Abdulkadir Kurdi. 1984. *The Islamic State: A Study Based on the Islamic Holy Constitution*. London: Mansell Publishing Limited.
- Abdur Rahman I. Doi. 1984. *Shariah The Islamic Law*. London: Taha Publishers.
- Abdul Karim Uthman. 1968. *Al-Nizām al-Siyāsī fī al-Islām*. Beirut: Dar al-Irshad.
- Anwar Ahmad Qadri. 1986. *Islamic Jurisprudence in the Modern World*. New Delhi: Taj Company.
- Chibli Mallat & Jane Connors (ed.). 1990. *Islamic Family Law*. London: Graham & Trotman.
- Chandra Muzaffar. 1993. *Human Rights and the New World Order*. Just World Trust.
- Fathī al-Durainī. 1984. *Al-Haq Wa Madā sultāt al-Dawlah Fī Taqyīdihī*. Beirut: Muassasah al-Risalah.
- Hamīdullah. 1975. *The First Written Constitution in the World*. Lahore: Ashraf Press.
- Hamīdullah. 1973. *The Muslim Conduct of State*. Lahore: Ashraf Press.
- Hamid Enayat. 1982. *Modern Islamic Political Thought*. London: The Macmillan Press Ltd.
- Ibn al-Athīr. n.d. *al-Kāmil fī al-Tārīkh*. Vol. 2.
- Ibrahim Khalid Al-Mahdi. 1988. *Limitations of Testamentary Power Under Islamic Law and American Law As Applied In The Sudan*. Kuala Lumpur: Al-Rahmaniah.
- Ismail R. Al-Faruqi. 1983. Islam and Human Rights. *The Islamic Quarterly* 27
- Mohammad Hashim Kamali. 1993. Freedom of Association: The Islamic Perspective. *IIUM Law Journal*.
- Mohammad Hashim Kamali. 1994. *Freedom of Expression in Islam*. Kuala Lumpur: Berita Publishing Sdn. Bhd.
- Mohammad Hashim Kamali. 1993. Analysis of Right (haqq) in Islamic Law. *The*

- American Journal of Social Sciences.*
- Muhammad Asad. 1980. *The Principles of State and Government in Islam.* Gibraltar: Dar al-Andalus Limited.
- Muhammad Abd. Rauf. 1991. *Ummah the Muslim Nation.* Kuala Lumpur: Dewan Bahasa dan Pustaka.
- Muhammad Fathi Uthman. 1982. *Huqūq al-Insān Baina al-Sharī'ah al-Islāmiyyah Wa al-Fikr al-Qānūn a-Gharbī.* Beirut: Dār al-Shurūq.
- Muhamed S. El-Awa. 1978. *On the Political System of Islam.* Cairo: American Trust Publications.
- Shaikh Shaukat Hussam. 1990. *Human Rights in Islam.* New Delhi: Kitab Bhavan.
- Weeramantary, C.G. 1988. *Islamic Jurisprudence An International Perspective.* London: Macmillan Press.
- Zafir al-Qāsimī. 1982. *Nizām al-Hukmī fi al-Sharī'ah wa al-Tārīkh.* Beirut: Dār al-Nafā'is, al-Kitāb al- Awwal.

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