

**Human Rights in Islam**  
**Reconciliation, Tolerance, Coexistence**  
*“The Islamic Perspective”*

**By**

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## DECLARATION

1. I declare that this Dissertation titled “Human Rights in Islam, Reconciliation, Tolerance, Coexistence ‘The Islamic Perspective’” was written independently and identifies all its sources.
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Mohamad Iwhida Ahmed  
Prague  
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# **Introduction**

## Introduction

To begin, I would like to point to a historic vote in the General Assembly of the United Nations, when the United Nations adopted the draft resolution A/60/L.48 on the 15th of March, 2006 creating a new Human Rights Council to replace the Human Rights Commission, which has brought human rights to the forefront of thought in recent times.

The creation of the new Human Rights Council is an opportunity for a fresh start for the promotion and protection of human rights based on dialog and cooperation, which is principled, effective and fair. This document emphasizes the highest standards in the promotion and protection of human rights.

In this work, I will attempt to explore the relationship between the universal principles of human rights and the traditional values rooted in Islam, to discuss the Islamic normative tradition and human rights as well as focusing on different positions concerning the roots and sources of human rights.

In order to understand Islamic teachings one has to grasp the ideas behind the different sources of them. This is of paramount importance if one bears in mind that the *Shari'a* is not a law book in the legal sense of the word, rather a discussion of the rights and duties of the Muslim. In theory, it regulates all aspects of private and public life and forms the basis of political theory. In that sense, it goes far beyond the limits of any penal law code.

*Shari'a* is not just a legal system but an extremely complex order based on religious principles that were established in order to regulate the conduct of Muslims in all aspects of life. Commercial affairs are covered by it, as well as codes of behavior, political issues, and religious devotion. Hence, one has to bear all those aspects in mind when studying and understanding the content and nature of Islamic teachings.

Modern interpretations of Islamic Law vary enormously, as current developments show. Some groups believe that Islamic law requires the most repressive and cruel actions for some issues. On the other hand there are Muslim human rights activists who see human rights as natural outflowing of the teachings of Qur'an and who support human rights as complementary to their Islamic faith.

In the time of Prophet Muhammad, a Jewish-Muslim federation extended to religious minorities the rights that are guaranteed to them in the Qur'an. When Prophet Muhammad established the first Muslim community, it was based on covenant, a real and actual social contract agreed upon by Muslims, Jews and others that treated them as equal citizens. They enjoyed the freedom to choose the legal system they wished to live under. Jews could live under Islamic law, Jewish law or pre-Islamic tribal traditions. There was no compulsion in religion even in the Islamic community.

The difference between Prophet Muhammad's community and some Islamic communities nowadays is profound. The situation of Prophet Muhammad's community was based on a social contract that applied divine law but only in consultation and with consent of all citizens regardless of their faith. Some groups of Muslims actually live in direct opposition to the spirit and letter of the Qur'an. The

Qur'an is very explicit when it says there is no compulsion in religion. Qur'an exhorts Jews to live by the laws revealed to them in the Torah. The Qur'an also orders Christians to live by their faith. From these examples it is clear that Islam advocates religious pluralism, even to the extent of permitting multiple legal systems.

Nowadays there are Muslims with new perspectives contributing to the understanding of Islam and highlighting new dimensions of Islamic heritage.

The most appropriate starting point is to define the concept of *Shari'a* before examining human rights in Islam; due most non-Muslims' lack of understanding of what should be deemed important in Islamic doctrines relating to human rights.

The most significant difference between modern attitudes towards human rights and their implementation, and an Islamic perspective is the function of religion in general and the position of God in particular. God is the seat of justice in the Muslim world, Islam sees God as the ultimate source of justice, which includes the human rights. The main goal of God's message to human kind is the attainment of Justice.

Since this academic work attempts to dispel misconceptions and false understanding by giving an inside view into the Islamic thought, it aims at making contributions and additions to the existing knowledge of Islam.

Muslims need more contact with others and the use of scientific methods in order to understand Islamic teachings.

Muslims needs to show how Islamic teachings should be understood through study and analysis.

The analysis of *Shari'a* must be changed according to the benefits and interests of the people because God wants to see all his creation living in good way, peacefully, with justice and respect for each other.

It has been noted that in the past few decades there has been a growing interest in the world of Islam and Muslims. Unfortunately, much of this interest has been focused on Islamic fundamentalism, rather than on understanding the diversity of Islam or humanity of Islam, and the result is a negative image associated with Islam and Muslims in the collective unconscious.

I have read some books, papers and articles related to my study; Human Rights in Islam Reconciliation, Tolerance, Coexistence "Islamic Perspective "and modern interpretations of Human Rights.

I found many interesting topics related to my study, among them there are two conferences were took place in Prague.

The first is Workshop conference of the Center for Research into Socio-cultural Pluralism at the Institute of Philosophy of the Academy of Sciences of the Czech Republic, under the title "Human Rights and Responsibilities in a Divided World" which took place in Prague on 20-24 September 1995.[1]

The second is Conference which took place in (our faculty) Protestant Theological Faculty of the Charles University in Prague on 20-23 February 2003. This conference was under the title "Human Rights from a Christian Perspective Traditions and Presence".[2]

The third Conference relating to my topic is the 6<sup>th</sup> International Conference on Globalization for the Common Good, taking place on July 2007 at Fatih University, Istanbul - Turkey, In this conference I presented a paper which comprises part of my dissertation.[3]

I also presented a paper at the Conference which took place at Hussite Theological Faculty, Charles University in Prague on October 2007.[4]

The final Conference relating to my topic is Peace and Conflict Resolution Conference taking place on December 2007, Sarajevo-Bosnia and Herzegovina. In this conference I presented a paper which makes up part of my dissertation.[5]

Regarding books, there is a thesis title Muslim Rights and Plights "The Religious Liberty Situation of a Minority in Sweden" by Jonas Alwall which presents a sociological analysis of religious liberty situation of the Muslim minority Sweden.[6]

In Islamic point of view there is a book title Misconceptions on Human Rights in Islam by Abdulrahman A. Al-Sheha, translated into English by Mohammed Dabas. This book addresses, in a general way, the human rights in Islam. These rights are based on Qur'an and from *Sunnah*; practice of Prophet Mohammad, the two main sources of Islamic life and jurisprudence.[7]

Tareq Ramadan is professor of philosophy and Islamic studies and one of the leading writers on the future of Islam and Muslims in the West, particularly Europe. Ramadan is a leading scholar and public intellectual whose writings and statements make clear his opposition to violence and terrorism. Indeed, the basic concern that motivates much of his work is one of reconciliation and interfaith coexistence. [8]

One of the famous Islamic scholars in field of human rights to whose opinion I will refer in my topic is Professor Abdullahi An-Na'im. His identity as Muslim has guided his academic and professional interests as he has strived to reconcile the Islam thought with his commitment to the universal acceptance of and respect for human rights. He is now widely known for his search for a cultural legitimization of human rights within Islamic contexts and his works on the modernization of *Shari'a*. He expanded this vision to explore other aspects of the challenge of cultural and contextual relativity to the universality of human rights.

Thus, he began to develop a methodology of internal discourse within cultures, and cross-cultural dialog among them, in order to promote an overlapping consensus on the universality of human rights. His basic argument is as follows: efforts to promote respect for international human rights standards are often likely to remain superficial and ineffectual until such time as they relate directly to and where possible are promoted through, local cultural, religious and other traditional communities. In his attempt to advance his perspective he has written and edited a large number of in-

depth studies, he has published some 50 article and book chapters on human rights, Islamic law and politics.[9]

Dr. Dagmar Markoá, in her paper "Women in Hindu and Muslim communities" discussed the situation of Muslim women from many cases.[10]

One of the most important subjects was "Islam and Human Rights" by Prof. Lubš Kropácek who started his paper with wisdom when he said that the topic of Human Rights has been discussed in great detail so often and from such variety of angles that basically new ideas can be hardly expected to emerge.[11] In this paper there are many ideas I would like to discuss such a human dignity and how Islam deals with human as a human regardless to his religion, race, color...etc.[12], also what Muslim authors says about the roots of human rights and what has been brought to mankind by the Qur'an.[13] Prof. Kropácek also pointed out the difference in Western and Muslim values when we talk about human rights.[14] Another topic is the situation of Muslim minorities everywhere in the world.[15] as well as non-Muslim minorities in Islamic communities.

The other subject which has an idea in agreement with my topic is "Interaction between Theological and Democratic Social Theories" by Dr. Kurt Anders Richardson when he talks about moderate minorities in Islam[16], also when he pointed out that an important religious and cultural factor of Islam is that it looks back with nostalgia to the middle Ages as a golden age.[17]

I would like also to discuss some important points in which Max L. Stackhouse believes that the sources of the ideas of Human Rights as well as prospects of these ideas. In his essay {Sources and Prospects for Human Rights Ideas: A Christian perspective}, when he say that the idea of Human Rights is basically Christian in root but universal in principle.[18]

For the legal terms I have tried to use Islamic Legal terms written in a system which the majority of scholars and researchers in this field follow.[19]

I will study what Muslims scholars say on matters relating to human rights, but there is an important thing to first state about human rights in Islam, which is that there is no Islamic consensus in this issue, because there is no one authoritative version or reference of Islamic law that can be said to qualify in all Muslims communities.

Also I will study an important issue concerning how Islam looks to others, as well as how it deals with religious minorities within the Islamic community.

I would like to study how the difference between real Islam and what we have seen in some areas, which is that while modernity is a challenge to contemporary Islamic communities, it was constitutive to the first Islamic community, also explain some important issues of Islamic teachings, not just for the non -Muslims but also for Muslims.

In the first chapter of this work I will attempt to explore the relationship between the universal principles of human rights and the traditional values rooted in the Bible and the Qura'n, also to discuss the Islamic normative tradition and human rights, focusing on how people of differing positions deal with the roots and sources of human rights.

The second chapter of this work will exclusively treat the Qur'anic text. I have attempted to collect most of the references to issues deemed within the scope of human rights laws nowadays. The references are grouped under a number of topics, thus the reader may find the same verse repeated under more than one header. This approach was necessary in order to present a balanced account of the Qur'anic treatment of the various subjects.

In chapter three I will summarize arguments given by Muslims in support of human rights. I will describe in detail the general support of Islam for principles of human rights. From practical perspective I consider that this chapter, focusing on Islam's positive aspects in field of human rights, is the main point of my work.

*Shari'a* is divine and eternal, not in its letter, but in its spirit. The letter of the law is honored precisely because of its derivation from that which is divine and eternal. To enable itself to move with time and to accommodate changing human conditions, *Shari'a* established the science which has been recognized from the earliest time. The *Shari'a* has other sources besides the texts of the Qur'an and *Sunnah*, which guarantee dynamism and creativity. To this purpose, *al Fiqh* was established as a methodology of logical deduction and analogical extrapolation from the data relevant, as well as criteria for an empirical discovery of the common welfare of the people which it declared an equally valid source of law.

In chapter four I would like to refer to some of most renowned Muslim thinkers who deal with critical issues in field of human rights such apostate, jihad, women, minorities and criminal punishment in Islam.

The subject I want to discuss in chapter five is what does Islam say about peaceful relations with people of other faiths? Does Islam believe in diversity, multi-culture and pluralism? With regard to non-Muslim minorities, there are many scholars and activists who advocate the tradition of tolerating other religions. These scholars view such protection and tolerance as a favor towards communities that are in essence subjugated.

In chapter six I will review the recent Declarations of human rights by Muslim scholars and intellectuals as well as by Islamic Institutes, also I will describe in detail the general support by Islam of the main principles of the Universal Declaration of Human Rights. This chapter is a modern proclamation of the old principles of human rights as expressed in the classical documents. It is at best, a reaction to the modern criticisms of perceived anti-human rights views on the part of Islam, and a restatement of old values. Islamic thinkers works on the subject are of particular significance and that is why a considerable space in this work was reserved to opinions of scholars from that school of thought.

In chapter seven I will talk about reconciliation, tolerance, coexistence which are very important values in Islam; it is an overall feature of Islam which characterises all its aspects of worship, jurisprudence and behaviour.

## Footnotes

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- [10] Markova Dagmar, Women in Hindu and Muslim Communities in "Islam in Contact with Rival Civilizations", Institute of Philosophy of the Academy of Science of the Czech Republic, 1998.
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- [12] Ibid. pp.10.
- [13] Ibid. pp.13.
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- [15] Ibid., pp.32.
- [16] Richardson Kurt Anders, Interaction between Theological and Democratic Social Theories, Institute of Philosophy of the Academy of Science of the Czech Republic, 1996, pp.148.
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- [19] See Al-wahab Ibrahim, Law Dictionary, Libraire du Liban, Beirut, 1972.

## **Chapter one**

*Sources and prospects for Human Rights ideas "The Islamic perspective"*

## Chapter one

### *Sources and prospects for Human Rights ideas*

#### *"The Islamic perspective"*

I will attempt in this chapter to explore the relationship between the universal principles of human rights and the traditional values rooted in Islam and to discuss the Islamic normative tradition and human rights, focusing on how people of differing positions deal with the roots and sources of human rights.

Each religion believes that faith must play a major role in the life; that morality is absolute because it believes in divine law rather than human law, it honors tradition, supports family life, cherishes community and is not hedonistic. For example, Christ preached that his kingdom is not of this world, and prepared his followers for admission to the Kingdom of God. Islam is similar in that it is not based on the laws made by men, but on the general principles set out in the Qur'an, on the spirit of Islam and religious faith, which form Islamic values.

The long history of Islam's peaceful coexistence and interaction with other cultures and civilizations proves that there is real understanding and respect to all human beings, which is the real principle of human rights. As for wishing to dominate the world, In my opinion neither Christianity nor Islam wants to dominate the world, although both of them would like to teach their faith to the whole world.

At its core, Islam is a peaceful religion and therefore has all the attributes required for surviving in the modern world. The problem most Muslims see in today's world is the unfair treatment of some Islamic issues such concept of modernity. I believe that a lot of people have misunderstood this issue. Islam does not oppose modernity at all; Islam is not opposed to space travel, modern electronic gadgets and the internet, but Islam opposes pre-civilization culture such as nudity in public, relationships outside marriage and the use of modern devices to screen pre-civilization culture.

The strong link between the three big monotheistic world religions has repercussions on many Islamic traditions, which has provided an important source of Islamic principles, therefore one can note many Jewish and Christian instructions in the *Shari'a*, Muslim scholars have repeatedly stated that the Bible provided early sources that were taken as a reference of many issues.

Islam was the religion founded on the revelation brought to humanity by Prophet Muhammad. Muslims see this revelation as the latest chapter in the ongoing religion of God, a religion that can be traced back through Jesus to Moses and Abraham. Therefore, they accept what had been before Muhammad became their Prophet and integrated the Jewish and Christian faith into their religion.

In history of Islam there were many examples of good relations between Jews, Christianity and others.

1. Prophet Muhammad's community was based on covenant, a real and actual social contract agreed upon by Muslims, Jews in the community were treated as equal citizens. They enjoyed the freedom to choose the legal system they wished to live under. Jews could live under Islamic law, Jewish law or pre-Islamic tribal traditions.
2. *Khadija* was the first wife of Prophet Muhammad. *Khadija's* cousin, *Waraqah Ben Nofe* , who was a Christian, was the first person who encouraged Prophet Muhammad, and realized that he was receiving messages from God.
3. In very beginning of Islam, when the situation in *Mecca* became unbearable, Prophet Muhammad sent some of his followers to Abyssinia, where the Christian king offered them refuge, an act of generosity that Muslims remember to this day.[1]

## **1.2 The Christian roots of Human Rights**

There is an idea that human rights, given to protect the individual are derived from Christian thought. The General Declaration of Human Rights of the United Nations of December 10, 1948 clearly demonstrates its Christian roots. The bans on slavery and torture, the principle of equality before the law, the right to rest and recreation as seen in the Sabbath or Sunday rest come from Christian traditions and not by chance. The governments confirmed these rights and anchored them in their constitutions in many countries.[2]

The very idea of human rights and their modern collective definition have grown from roots that are planted deep in European history.[3]

On the other hand, many societies claim that the Universal Declaration of Human Rights is an attempt to force western standards and ideals on to others who do not share them.[4]

If we as a human beings believe that everyone has the right to life, freedom, and the pursuit of happiness then we must oppose any system that seeks to deny those rights to others. To accept religion, culture or tradition as a justification for human rights abuses is to discriminate against the abused and to send the message that the victims are undeserving of humane consideration.

### **1.3 Christian perspectives on Human Rights:**

Christian perspectives on human rights revolve around four theological concepts that are reflected in Christian traditions.

1. Image of God, or a belief in the dignity and worth of persons as a source for the idea of human rights springs from a Biblical understanding that persons are created in God's image.

2. Order of Creation, a related theological position used to support human rights is the idea that the Sovereign God created and ordered domains and spheres of influence in the world.

3. Human Frailty and Sin, the other side of Christian attention to human rights on the basis of God's image and the good ordering of creation, arises from a theology that recognizes human sin.

4. Community and the human family.

For the human person has been created so that he is perfect, in his very being, by recognizing the Sovereign God for who He is and by glorifying Him in every aspect of life. The purpose for existing is to know, love, and serve God in this life, both individually and socially, so that the human person can be happy with Him in Heaven. Thus, it is precisely through knowing the Lord's will and yearning to submit to it that the person is perfected and conformed to God Himself. In other words, the person can only be truly happy when he is living his life as the Lord has created him to live it. Consequently, honoring Christ as Sovereign King is not contrary to or unrelated to the human person's fulfillment, but rather it is a necessary condition for it.

By taking the path to respecting all human beings, and being open to one another, one can move gradually from recognition of the religiously plural situation of the human family to an active appreciation of the faith others.[5]

In this context I would like to discuss some important points in which Max L. Stackhouse believes that are the sources of the ideas of Human Rights as well as prospects of these ideas. In his essay {Sources and Prospects for Human Rights Ideas: A Christian perspective), Stackhouse states that the idea of Human Rights is basically Christian in root but universal in principle.[6]

### **1.4 Background story of definition of Human Rights**

The first Implication that Stackhouse points out not to trust theologians, philosophers, or social critics who only take in account a single historical view and not the complex and varied experiences that people have in the real world, including the social factors or "complex matrices" that have brought them to their current state. Their proposals for the future may not be such that it is possible to have a clear, unbiased, synthetic view. By agreeing that "universal absolutes" such as the Ten Commandments or the United Nations Declaration of Human Rights are rooted in theological ways, it is

possible to see that ideas of human rights need both the religious framework and a universal reality that extends beyond the individual contexts or the "real world" in order to last.[7]

Human rights and freedoms must be rooted in an ultimate source, lest the norm of human behavior become identified with conditional reality.[8]

Stackhouse argues that, in this area of human rights, the Christian impetus illuminates parts of reality, moral reality in this case, that are universal in scope. Other people then have to test it and find out whether that is true. Some things in this tradition do seem to be quite universalistic. It is not strange at all that a tradition which is rooted in the idea of the Divine related to each particular human would say that on the basis of something we've learned from that particular human there are universal elements that everybody can acknowledge. When we find some religions trying to define the idea of human rights, most of them know that it was generated out of a particular conceptual and historical framework. They say that they can find analogies here in any human being. When they do that, very often they lift something out of the depths of their own tradition that has not been highlighted, but when it becomes highlighted, it partially converts that religious tradition internally and provides a common bridge. The theological term for this is the principle of common grace.[9]

This means that it is fair and acceptable to "proselytize" or to attempt to convert people to a particular faith through the freedom of religion. The decision, however, must be voluntary and not done through coercion. Christians believe in independent decision-making without threat to home or life or with any force whatsoever. This contributes another level of pluralism.[10]

People separate themselves from their normal social framework when they leave home, get married or most importantly, when they decide to follow the faith they were raised with or separate themselves from it or from any religion at all. Basically a person must choose alone, outside of the influence of society or their upbringing whether to follow their given faith, find a new one, or find none.

In this context there is no doubt that each person is born in a circumstance which is not of his own choice, the religion of his family or ideology of the state is thrust upon him from very beginning of his existence and by the time he is mature he is usually fully brain-washed into believing that the beliefs of his particular society are the correct beliefs that everyone should have. However, some people mature and are exposed to other belief systems, they began to question other religions or beliefs.

## **1.5 Human Rights and Justice in Christianity**

Closely related to the idea of human rights is the claim that all people have the same right to be treated as persons - whatever race, religion, sex, political persuasion or social or economic status they may be. What is the basis of human equality, if not the fact that all were equally created by God. Thus, a Christian argument for human rights must begin with the Biblical account of Creation, "Let us make man in our image, after our likeness: and let them have dominion over the fish of the sea, and over the fowl of the air, and over the cattle, and over all the earth, and over every creeping

thing that creepeth upon the earth. So God created man in his own image, in the image of God created he him; male and female created he them".[11]

The fact that Man was created in the image of God plays a major role in the relationships of human beings to each other; for example, it requires murder to be punished, for it injures the image of God. "Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man".[12]

Creation exists for the glory of God and has its meaning from God. This fact holds all the more for the 'Crown of Creation', Mankind was created according to the divine order of Creation to fulfill the purpose given him by God. God made him ruler over the earth, but also gave him the responsibility for the preservation of the earthly creation. The psalmist writes, "Thou maddest him to have dominion over the works of thy hands; thou hast put all things under his feet: All sheep and oxen, yea, and the beasts of the field".[13] Centuries ago in the Bible, God made fair judicial proceedings a human right. A just judge is necessary to determine justice, and God is the prototype of the just judge "for the Lord is a God of judgment".[14] He is the defender of justice. Those who judge fairly act in God's Name.

The Bible tells of the just king Jehoshaphat, "And said to the judges, Take heed what ye do: for ye judge not for man, but for the Lord, who is with you in the judgment. Wherefore now let the fear of the Lord be upon you; take heed and do it: for there is no iniquity with the Lord our God, nor respect of persons, nor taking of gifts".[15] A judge must be aware of the fact that God is observing him and stands by the innocent. For this reason the Bible has many directions concerning just, humane judicial proceedings. Bribery must not influence the judge's opinion. "A wicked man taketh a gift out of the bosom to pervert the ways of judgment".[16]

In The Bible there is no double standard, such as one set of laws for the wealthy and another for the peasants. The Bible required the same penal system for both nationals and for foreign residents, "Ye shall do no unrighteousness in judgment: thou shalt not respect the person of the poor, nor honour the person of the mighty: but in righteousness shalt thou judge thy neighbor".[17]

The Bible thus measures the justice of a community by its protection of the weak. Not only the condition of the wealthy or the ruling class, but also the condition of the simple citizens is to be considered. Not only the condition of the judges with money and power to defend their rights is important, but also the condition of the poor, the widows and the orphans in court. God is the Creator and the Lord of all mankind. He wishes us to treat each other as His image and His creatures-human beings dealing with human beings, not animals with animals. Human beings have "to serve their neighbor in the fullness of love" is part of a legacy that spans centuries.[18]

## 1.6 Sources and prospective for Human Rights ideas in Islam

Islam provides many human rights for the individual; the life and property of all citizens in Islam are considered sacred, whether a person is Muslim or not. Islam also protects honor. So, in Islam, insulting others or making fun of them is not allowed. Prophet Muhammad said: "Truly your blood, your property, and your honor are inviolable".[19]

Racism is not allowed in Islam, for the Quran speaks of human equality in the following terms: "O mankind, we have created you from a male and a female and have made you into nations and tribes for you to know one another. Truly, the noblest of you with God is the most pious. Truly, God is All-Knowing, All-Aware".[20]

Islam rejects certain individuals or nations being favored because of their wealth, power, or race. God created human beings as equals who are to be distinguished from each other only on the basis of their faith and piety. Prophet Muhammad said: "O people! Your God is one and your forefather (Adam) is one. An Arab is not better than a non-Arab and a non-Arab is not better than an Arab, and a red (i.e. white tinged with red) person is not better than a black person and a black person is not better than a red person, except in piety".[21]

One of the major problems facing mankind today is racism. The developed world can send a man to the moon but cannot stop man from hating and fighting his fellow man. Ever since the days of Prophet Muhammad, Islam has provided a vivid example of how racism can be ended.

Islamic law was historically developed by Muslim jurists by applying human reasoning to revealed texts with the aim to develop a normative system capable of regulating individual actions and social interactions.[22]

Early jurists relied primarily on the Qur'an and the practices of Prophet Muhammad to elaborate the rules of *Shari`a*, and referred to the process through which *Shari`a* rules were elaborated by the term *Ijtihad* (intellectual exercise). Recognizing the imperative of rational mediation for understanding the rules of *Shari`a*, early jurists exerted a great deal of time and energy to defining the grammar of interpreting the divine texts and the logic of reasoning about their implications. The differences in methodological approaches led to the differentiation of the various schools of jurisprudence. Because the Qur'anic texts were given in a concrete form; whereby the Qur'an commented on the actions and interactions of the early Muslim community, and directed early Muslims in concrete situations, the jurists applied legal analogy to expand the application of the Qur'anic precepts to new cases. The *Qiyas* technique, widely accepted by the schools of jurisprudence, requires the jurists to identify the efficient reason of a specific Qur'anic statement, and to use this reason as the basis for extending the application of the Qur'anic precept to new cases.[23]

Early jurists also utilized the statements and actions of Prophet Muhammad and his companions as a means to arrive at better understanding of the revealed texts. The practices of Prophet Muhammad and his companions became known as the *Sunna* and were captured in the *Hadith* narrations. [24]

Overcoming the literalist approach that equates *Ijtihad* with linguistic explication of the Qur'an by reference to *Hadith* has inspired them to develop methods aimed at prioritizing *Shari`a* rules and principles. Methods such as juristic rules or *Shari`a* purposes aim at the systematization of *Shari`a* rules by eliminating internal contradiction, and constitute what is referred to today as *Maqasid* approach.[25] The key to combating these defects is a continual struggle to cultivate a guiding principle of selflessness, whence flow all those religious and moral values that conduce to the sense of justice and fairness, cornerstone of an ideal society.[26]

## History of Islamic Schools

It is useful to clarify that the Islamic tradition does not consist of, or derive from, a single source. Most Muslims if questioned about its sources are likely to refer to more than one of the following: the Qur'an or the Book of Revelation which Muslims believe to be God's Word transmitted through the agency of Angel Gabriel to the Prophet Muhammad; Sunnah or the practical traditions of the Prophet Muhammad; Hadith or the oral sayings attributed to the Prophet Muhammad; Fiqh (Jurisprudence) or Madahib (Schools of Law); and the Shari'ah or code of law which regulates the diverse aspects of a Muslim's life. While these "sources" have contributed to what is cumulatively referred to as "the Islamic tradition", they are not identical or considered to be of equal weight. Of all the sources of the Islamic tradition, undoubtedly, the most important is the Qur'an which is regarded by Muslims in general, as the primary, and most authoritative, source of normative Islam.

To many Muslims the Qur'an is the Magna Carta of human rights and a large part of its concern is to free human beings from the bondage of traditionalism, authoritarianism (religious, political, economic, or any other), tribalism, racism, sexism, slavery or anything else that prohibits or inhibits human beings from actualizing the Qur'anic vision of human destiny embodied in the classic proclamation.[27]

Over the 1400 years of the existence of Islam there have been some definable schools of *Shari`a* that now exist, they all agree on the Qu'ranic basis for their legal system but they do differ in the interpretations.

After the death of the Prophet Mohammed a dispute arose within the Muslim community over the question who would be the successor to the Prophet. Muhammad had not named anyone which caused a serious struggle of power between several would-be successors that all claimed rightful authority in the name of Allah. Immediately after the death of the Prophet, Abu Baker, the father in law of the prophet was elected as the first Caliph by some of the followers of the Prophet. This election of Abu Baker divided the Muslim community into two groups that each had divergent views on the issue. As a consequence, the Shias and the Sunnis emerged as two rivalling branches of Islam. Besides those two major groups some minor ones appeared but are often seen as branches of the Shia. [28]

Altogether six different sections of Islamic faith came into existence. The Sunni community is the largest one and includes approximately 85% of the entire Muslim

The existence of a heterogeneous Muslim world as a result of the split up after the Prophet's death also translates into the foundation of different Law Schools. But this was not an immediate consequence since those only began to flourish in the century following the arrival of Islam. Originally, no real Islamic Law School but rather a type of legal thought or a certain approach to legal matters had emerged that is usually referred to as madh-hab (school of fiqh). Legal judgement was passed out by representatives of the rulers but often did not meet the agreement of religious authorities of early Islam. Theology and jurisprudence did not yet form an indissoluble alliance.

With the emergence of the Abbasids rule, the situation changed. They came into power after the Umayyad rulers were overthrown. In comparison to the Umayyad, the new power holders were more supportive of a true Islamic law and aimed at reconciling jurists and theological representatives of Islam. As a result, the first real Law Schools emerged as we know it today. They succeeded in systemizing Islamic law and purifying the traditions of false components. The about twenty different "facets" of speaking and exercising Law that could be summarized as Madh-hab **مذاهب** finally gave way to four major Sunni Schools of Law.

The four Sunni Schools (Schools of Fiqh) of thought (the four Madhahib are: the Hanafi, Maliki, Shafi'i, and Hanbali. With regard to legal matters, these four orthodox schools emphasize the various sources of Islamic Law – the Koran, Hadith, Consensus of legal scholars and Analogy – differently and accord different weight to each of them. Therein lays the fundamental disagreement between the four. They compile their own corpus of legal doctrine but nevertheless recognize each other because there is a similarity between them in broad precepts. Differences on particular points occur on the ground of the absence of clear guidelines from the Koran and the Sunna.[29]

The first two schools, Hanafi and Maliki, were founded towards the end of the first century of Islam by Imam Abu Hanifa in Kufa (Iraq) and Imam Malik in Medina. The Kufans, followed a few years later by the Medinese, ascribed their new doctrines back to earlier jurists within their respective school by a literary convention, which found particular favour in Iraq, it was customary for an author or scholar to put his own doctrine or work under the aegis of an ancient authority.[30]

In the following century, the two other schools were founded: the Shafei School of Imam Idris al-Shafei in Egypt and the Hanbali School of Imam Ahmad ibn Hanbal in Baghdad. As already mentioned, one can identify them by focusing on their differences concerning legal matters. Imam Malik, for instance, preferred a principle known as Ahal-e-Madinah, that is the practices of the people of Medina. On the contrary, Imam Ahmad ibn Hanbal of Baghdad did not adopt that principle.

However binding the different legal approaches might be, one should not overestimate them. As a matter of fact, the loyalty to a particular Madhhab among Muslims is decreasing. Today Hanafi, Shafi'i, Maliki and Hanbali followers pray together and work together. Most scholars state that individual adherents to the Muslim faith are not

required to follow a specific Fiqh School. The reason is that nothing can be demanded of a Muslim that cannot be traced back directly to Allah and His Prophet since the existence of different Law Schools reflects a historical and especially political development rather than divine desire. When in need of a Fatwa, Muslims could consult with any scholar regardless of his Madhhab (School).[31]

Adding to this, Sunni Islam does not possess clerical hierarchies and centralized institutions which may be important when looking at legal authorities. The absence of a hierarchy has been advocated as a source of strength permitting the faith to adapt to local conditions. However, it has also been a weakness that makes it difficult for Sunni Muslims to achieve any significant degree of solidarity. Within the Sunni community one can find different divisions like the Wahabis الوهابية , Ahle-Sunnat Wal Jamat أهل السنة والجماعة, Ahle Hadith أهل الحديث or Ghurba Ahle Hadits.

Among Sunni Muslims, an effective execution of power and the ability to maintain public order are sufficient in order to legitimise authority. This is in stark contrast to the more uncompromising Shia views of government who see it as the sole province of religious leaders. For Sunnis, even a bad Muslim ruler is preferable to chaos and anarchy, and the Sunni religious tradition contains only a limited right to rebel. However, if a ruler commands something that is contrary to God's law, the subject's duty of obedience lapses.

Therefore, the differences between Sunni and Shia and the various sub-divisions originally had a political background. However, those differences were also translated into theological and metaphysical interpretations. In principle, a Sunni approaches God directly; there is no clerical hierarchy. Some duly appointed religious figures, however, exert considerable social and political power. Imams usually are men of importance in their communities but they do not have to obtain any formal training; among the Bedouins, for example, any tribal member may lead communal prayers. [32]

Committees of socially prominent worshipers, comparable to Western Church boards, usually control the mosque-owned land and gifts. In many Arab countries, the administration of waqfs (religious endowments) has come under the influence of the state. Kadi (judges) and Imams are appointed by the government, a principle that illustrates once more the strong link between state and religious matters.

If jurists were free to go back to the roots of law and interpret them individually in the first two centuries of Islam, this approach stopped with the formation of the four Schools that started defending certain orthodoxy in terms of legal matters. The scope of free interpretation was gradually curtailed and by the beginning of the 10<sup>th</sup> century, there was a consensus among the jurists that the principles of law as settled by the recognized schools were sacrosanct and immutable and that there was no any necessity for new legal principles to be deduced.[33]

## 1. Hanafiyyah School

The Hanafiyyah School is the first of the four orthodox Sunni Schools of Law. It distinguishes itself from the other schools by according less authority to oral traditions as a source of legal procedure. Contrarily, it developed the exegesis of the Koran through a method of analogical reasoning known as Qiyas which necessitated a careful study of actual conditions in legal thinking. Furthermore, it established the principle that agreements of the Ummah (community) of Islam concerning a specific point in the Islam law codex, as represented by legal and religious Scholars, constituted evidence of the will of God. This process is referred to as Ijma', which means the consensus of the scholars. Thus, the school definitively established the Koran and its resulting principles known as Ijma' and Qiyas as the basis of Islamic law. In addition to these, Hanafi accepted local customs as a secondary source of the law. On the other side, it refrained from according too much authority to the principle of Tradition as legal source because this source related too heavily to particular conditions of time and space and, therefore, could not easily adapted to new challenges and circumstances.

The Hanafi School of Law was founded by Nu'man Abu Hanifah النعمان أبوحنيفة in Kufa in what is today Iraq. It was derived from the bulk of the ancient school of Kufa and absorbed the ancient school of Basra. Abu Hanifah lived in the period of the successors of the Sahabah (the companions of the Prophet). The Hanafi School was favoured by the first 'Abbasid caliphs in spite of the school's opposition to the power of the caliphs because it had originated in Iraq.

The privileged position which the school enjoyed under the 'Abbasid caliphate was lost with the decline of the 'Abbasid caliphate. However, the rise of the Ottoman Empire led to the revival of Hanafi fortunes. Under the Ottomans, Hanafites were appointed as judges and sent from Istanbul, even to countries where the population followed another madhhab. Consequently, the Hanafi madhhab became the only authoritative code of law in the public life and official administration of justice in all the provinces of the Ottoman Empire. Even today the Hanafi code prevails in the former Ottoman countries like Jordan. It is also dominant in Central Asia and India. There are no official figures for the number of followers of the Hanafi School of law. However, it is followed by the vast majority of people in the Muslim world. The big advantage of the Hanafi School (Fiqh) results from the fact that it is easier to understand and act upon than the other systems of Fiqh. [34]

The Qur'an repeatedly underlines the assumption that God wishes to be gentle and not strict with his followers. The Prophet declared that he had come to the people with a gentle and easy Sharia. Following this, it is Islam's special pride in comparison with other religions, as often stated by Muslim scholars, that it is far removed from principles like monasticism; that its ritual is not rigorous and that its enjoinders are easy to understand and act upon. Within this context, the Hanafi School is superior to its rivals on similar grounds.

So well known is the fact that Hanafi Fiqh is easy and liberal that poets and writers often employ it as a proverb. A rather curious example of this is a simile used by the Islam scholar Anwari, in which he speaks of the liberties allowed by Abu Hanifah.

The simile occurs in an improper context, but the point it makes is clear. On any question - whether pertaining to the duties of worship or to worldly transactions - one finds Abu Hanifah's precepts easy and gentle and those of the other imams difficult and harsh. This becomes evident if one looks at the rules regarding theft for illustration purpose. Those were laid down in the Kitab al-Jinayat كتاب الجنایات (The Criminal Code) and the Kitab al-Hudod كتاب الحدود (the Penal Code).

It is agreed by all authorities that the punishment for theft is cutting off the right hand. However, the mujtahids have linked the execution of the punishment to certain conditions when defining theft. Regarding the criminal act of theft according to the Hanafi School pardon is allowed at any time as well as the testimony of women which is granted an equal value than that of men.

A large part of Fiqh deals with prohibitions and permissions. In this connection, there are many precepts of the other imams, which, if they were to be closely followed, would make life unbearable if not impossible, while Abu Hanifah's precepts are easy to follow. For example, according to Shafi'i School, the following acts are impermissible: bathing or performing ablution with water heated on dung-fire; eating out of clay vessels baked on dung-fire; using vessels made of tin, glass, crystal and agate; wearing garments made of wool, sable fur and leather (in which prayer cannot be offered); vessels, chairs and saddles with silver work on them; common sales in which there is no declaration of selling and buying and so on. Abu Hanifah considers all these acts permissible.

The School also contributed largely in adding new restrictions and regulations concerning the proceeding of business and its legal dimensions. Its founder was fully alive to the new demands on religion as a consequence of the expansion of Muslim political [and economic] power.[35] The primitive civilisations of the Arab Peninsula up to the first centuries of Islam did not know then the world of contracts, legal documents that are written down, legal procedures aiming at the settlement of disputes or the adducing of evidence. Abu Hanifah was the first to introduce rules for all of these. Herein lays the basic idea of the Hanafi School: In an ever altering world with constantly changing circumstances, a system of law needs to be permanently adapted to those new situations and calls for new considerations.

Today, the Sunni Hanafi School is dominant in India, Pakistan, China, and Afghanistan. Most of the Kurds are Sunni Muslims and follow the Hanafi School as well. Furthermore, followers of Imam Abu Hanifa are found among ethnic Kazakhs but also in Turkey, Iraq, Syria, China, North Africa, Egypt and in the Malay. They also constitute the majority of the Muslim population of Albania, the Balkans, Central Asia, Kazakhstan, and Jordan.

## 2. Maliki School

The founder of the second Islamic School of Law, Iman Malik bin Anas الإمام مالك بن أنس came from Medina and had direct access to some of the most trustworthy and reliable authorities on hadith. This is because many of the leading companions of Muhammad lived there and narrated sayings and actions of the Prophet. Therefore, his

As a result of the circumstances Malik bin Anas had been confronted with, the Malikis' concept of *ijma'* differed from the one of the Hanafis in that they understood it to mean the consensus of the community represented by the people of Medina Prophet City. Imam Malik's major contribution to Islamic law is his book *al-Muwatta* كتاب الموطأ (The Beaten Path). The *Muwatta* is a code of law based on the legal practices that were operating in Medina. It covers various areas ranging from prescribed rituals of prayer and fasting to the correct conduct of business relations. The legal code is supported by some 2000 traditions attributed to the Prophet. One could view it a *corpus juries* because of the density and complexity it includes. It forms the connecting link between the *fiqh* literature and the vast *hadith* collections of latter days; this is why the School usually assumes an intermediary position in case of disputes between different scholars of Islamic Law since it refers to both, the legal approach and the principle of tradition as evoked by the *hadith* collections.[36]

Imam Malik's approach did not differ that much from the Hanifite School but he did not place as much reliance on the principle of *Qiyas* and rather leaned to *Sunna*. However, he upheld the importance of individual judgement when other sources failed. Since Imam Maliki was in a better position than Hanifi in terms of knowing the Laws as laid down by the Prophet and his companions and their successors, he also included more of them into his system.

The School that was founded spread westwards through Malik's disciples and become very influential if not dominant in North Africa and Spain. The second 'Abbasid caliph, al-Mansur (died in 775), even approached the Medinan jurist with the proposal to establish a judicial system that would unite the different judicial methods that were operating at that time throughout the Islamic world.

Despite those tendencies, over time it lost some of its appeal. Much later, in the Ottoman period, the Maliki School had to cede most of its influence to the Hanafite School because under the Ottomans judicial relevance was especially granted to the latter. North Africa, however, remained faithful to its Malikite heritage. Such was the strength of the local tradition that *kadis* (judges) from both the Hanafite and Malikite traditions cooperated with the local ruler. Following the fall of the Ottoman Empire, Malikiyyah regained its position of ascendancy in the region. Today Malikite doctrine and practice remains widespread throughout North Africa, the Sudan and regions of West and Central Africa.

### **3. Shafaiah School**

Between the relatively liberal Hanifi School and the more orthodox Maliki School one can observe a few other legal approaches that are all considered to assume a rather conciliatory position. One of the best known examples is the Shafi'I School that was founded by and named after Imam Muhammad bin Idris الإمام محمد بن ادریس who had

Baghdad and Cairo were the chief centres of the Shafi'iyah. From these two cities Shafi'i's teaching spread into various parts of the Islamic world. In the tenth century Mecca and Medina came to be regarded as the School's chief centres outside of Egypt. In the centuries preceding the emergence of the Ottoman Empire the Shafi'is had acquired supremacy in the central lands of Islam. It was only under the Ottoman sultans at the beginning of the sixteenth century that the Shafi'i were replaced by the Hanafites, who were given judicial authority in Constantinople, while Central Asia passed to the Shi'a as a result of the rise of the Safawids in 1501.

In spite of these developments, the people in Egypt, Syria, Jordan, Sudan and the Hidjaz (Gulf Area) continued to follow the Shafi'i madhhab. Today it remains predominant in Southern Arabia, Bahrain, Indonesia, East Africa and several parts of Central Asia. Shafi'i is practiced in Malaysia and the Philippines. It is followed by approximately 15% of Muslims worldwide. Additionally, most Kurds in Iraq follow the Shafii School of Sunni Islam. Only a minority, concentrated in parts of the areas of Kirkuk, follow the Hanafi School. In terms of number of adherents and also in terms of importance, the School takes rank next only to the Hanafi School.[38]

The Shafi'i School is considered the most lenient School and the Hanbali is considered the strictest in terms of social and personal rule. Hanafi took Shafi' as his rival and vice versa. Tradition, the Consensus of the Muslim community and reasoning by the principle of Analogy are the chief characteristics of this School. Its founder had taught in both Baghdad and Cairo and followed a somewhat eclectic legal path, laying down the rules for Analogy that were later adopted by other legal schools. He was noticed for his balance in judgement and consideration of views resulting from his intermediary position between the Hanafi and the Maliki School. Within this context, he allowed a more flexible and workable interpretation of the Prophet's dictum.

At the time of Al-Shafi'i, the Prophet's ahadith were gathered from different countries, and the disagreements among the scholars increased until Al-Shafi'i wrote his famous book, Al-Risalah الرسالة which is considered the foundation of Islamic jurisprudence. He was also the first one to write a treatise on the basic principles and methods of jurisprudence.

#### 4. Hanbali School

The Hanbali School is the fourth important orthodox School of Law within Sunni Islam. Like the other ones it derives its decrees from the Qura'n and the Sunna, but places them above all forms of Consensus, opinion or inference. That's why it is characterized by an uncompromising attitude. However, the school accepts as authoritative an opinion given by a companion of the Prophet, providing there is no disagreement with another companion. In the case of such disagreement, the opinion of the Companion nearest to that of the Qura'n or the Sunna will prevail.

The Hanbali School of Law was established by Ahmad bin Hanbal أحمد بن حنبل . He studied law under different masters, including Imam Shafi'I, the founder of the third school. Hanbal was regarded as more learned in the Traditions than in jurisprudence. His status also derives from his collection and exposition of the hadiths. One even has to say that his austerity in life combined with the remarkable erudition in traditional learning gave rise to the study of hadith. In the number of traditions that he collected, no one approached him. Thus, his major contribution to Islamic scholarship is a collection of fifty thousand traditions known as Musnadul-Imam Hanbal .[39] With Imam Hanbal, the true evolution of an Islamic Law and the age of independent legal scholars had come to an end. All major contributions that were done afterwards adding to the development of legal science were only supplementary.

In spite of the importance of Hanbal's work his school did not enjoy the popularity of the three preceding Sunni Schools of Law. Hanbal's followers were regarded as reactionary and troublesome on account of their reluctance to give personal opinion on matters of law, their rejection of analogy, their fanatic intolerance of views other than their own, and their exclusion of opponents from power and judicial office. Their unpopularity led to periodic bouts of persecution against them. The later history of the school was characterised by fluctuations in their fortunes. However, latter Hanbali scholars such as Ibn Taymiyya ابن تيمية and Ibn Qayyim al-Jouziya ابن قيم الجوزية display more tolerance to other views than their predecessors and were instrumental in making the teachings of Hanbali more generally accessible. [40]

From time to time Hanbaliyyah became an active and numerically strong school in certain areas under the jurisdiction of the 'Abbassid Caliphate. Nevertheless, its importance gradually declined under the Ottoman Turks. On the other side, the emergence of the Wahabi in the nineteenth century in Central Arabia and its challenge to Ottoman authority enabled Hanbaliyyah to enjoy a period of revival. Today the school is officially recognised as authoritative in Saudi Arabia and areas within the Gulf States.

## Shia Schools

### The Origins of the Sunni/Shia split in Islam

Ali Ibn Abetaleb is the central figure at the origin of the Shia/Sunni split which occurred in the decades immediately following the death of the Prophet Muhammad. Sunnis regard Ali as the fourth and last of the "rightly guided caliphs" (successors to Mohammed as leader of the Muslims) following on from Abu Bakr أبو بكر, Umar عمر and Othman عثمان.

Shias feel that Ali should have been the first caliph and that the caliphate should pass down only to direct descendants of Prophet Mohammed via Ali and Fatima, daughter of the Prophet Muhammad. They often refer to themselves as ahl al bayt "people of the house" [of the prophet].

When Uthman was murdered while at prayer, Ali finally succeeded to the caliphate. Ali was, however, opposed by Aisha, wife of the Prophet Muhammad and daughter of Abu Bakr, who accused him of being lax in bringing Uthman's killers to justice. After Ali's army defeated Aisha's forces at the Battle of the Camel, she apologized to Ali and was allowed to return to her home in Madinah where she withdrew from public life. [41]

However, Ali was not able to overcome the forces of Mu'awiya, Uthman's cousin and governor of Damascus, who also refused to recognize him until Uthman's killers had been apprehended. At the Battle of Suffin Mu'awiya's soldiers stuck verses of the Quran onto the ends of their spears with the result that Ali's pious supporters refused to fight them. Ali was forced to seek a compromise with Mu'awiya, but this shocked some of his die-hard supporters who regarded it as a betrayal that he was struck down by one of his own men.

Mu'awiya declared himself caliph. Ali's elder son Al Hassan accepted a pension in return for not pursuing his claim to the caliphate. He died within a year, allegedly poisoned. Ali's younger son Al Hussein agreed to put his claim to the caliphate on hold until Mu'awiya's death. However, when Mu'awiya finally died, his son Yazid usurped the caliphate. Al Hussein led an army against Yazid but, hopelessly outnumbered, he and his men were slaughtered at the Battle of Karbala (in modern day Iraq). Al Hussein's infant son, Ali, survived so the line continued. Yazid formed the hereditary Ummayyad dynasty. The division between the Shia and what came to be known as the Sunni was set. [42]

An opportunity for Muslim unity arose in the 750's. In 750 except for a few who managed to flee to Spain, almost the entire Ummayyad aristocracy was wiped out following the Battle of Zab in Egypt in a revolt led by Abu Al Abbass and aided by considerable Shia support. It was envisaged that the Shia spiritual leader Jafar As-Siddiq, great-grandson of Al Hussein be installed as Caliph. But when Abbass died, this arrangement had not yet been finalised and Abbas' son Al Mansur murdered Jafar, seized the caliphate for himself and founded the Baghdad-based Abbassid dynasty which prevailed until the sack of Baghdad by the Mongols. [43]

## **Theological Differences and Attempts at promoting Unity**

The line of Prophet Muhammad through Ali and Al Hussein became extinct when the last Shia Imam, Muhammad al-Mahdi, who had no brothers disappeared within days of inheriting the title at the age of four. The Shias refused, however, to accept that he had died, preferring to believe that he was merely "hidden" and would return. When after several centuries this failed to happen, spiritual power passed to the ulema, a council of twelve scholars who elected a supreme Imam. The best known modern example of the Shia supreme Imam is the late Ayyatollah Khomeini<sup>۱۲</sup>, whose portrait hangs in many Shia homes. The Shia Imam has come to be imbued with Pope-like infallibility and the Shia religious hierarchy is not dissimilar in structure and religious power to that of the Catholic Church within Christianity. Sunni Islam, in contrast, more closely resembles the myriad independent churches of Protestant. Sunnis do not have a formal clergy, just scholars and jurists, who may offer non-binding opinions. Shias believe that their supreme Imam is a fully spiritual guide, inheriting some of Muhammad's inspiration ("light") . Their imams are believed to be inerrant interpreters of law and tradition. Shia theology is distinguished by its glorification of Ali. In Shia Islam there is a strong theme of martyrdom and suffering, focusing on deaths of Ali and, particularly, Al Hussein plus other important figures in the Shia succession.[44]

Sunnis and Shias agree on the core fundamentals of Islam - the Five Pillars - and recognize each others as Muslims. In 1959 Sheikh Mahmood Shaltout, Head of the School of Theology at Al Azhar university in Cairo, the most august seat of learning of Sunni Islam, issued a fatwa (ruling) recognizing the legitimacy of the Jafari School of Law to which most Shias belong. As a point of interest, the Jafari School is named after its founder Imam Jafar Sidiq who was a direct descendent through two different lines of the Sunni Caliph Abu Bakr. And Al Azhar University, though now Sunni, was actually founded by the Shia Fatimid dynasty.

However, there remain significant differences between the two forms of Islam and these are what tend to be emphasized. Many Sunni's would contend that Shias seem to take the fundamentals of Islam very much for granted, shunting them into the background and dwelling on the martyrdoms of Ali and Al Hussein. This is best illustrated at Ashura when each evening over a period of ten days the Shias commemorate the Battle of Karbala, with a wailing Imam whipping the congregation up into a frenzy of tears and chest beating. It is alleged that instead of missionary work to non-Muslims, the Shia harbor a deep-seated disdain towards Sunni Islam and prefer to devote their attention to winning over other Muslims to their group. There is ongoing violent strife between Sunnis and Shias in Pakistan. On the other hand, in recent years there has been significant co-operation between the two groups in the Lebanon. And some of the most dynamic developments in Islam today are taking place in Shia-dominated Iran.[45]

## **Shias Today**

Iran is overwhelmingly Shia - 89%. Shias also form a majority of the population in Yemen and Azerbaijan, Bahrain and around 60% of the population of Iraq. There are also sizeable Shia communities along the east coast of Saudi Arabia and in the Lebanon.

Within Shia Islam there are different sects. Most Shias are "Twelvers", i.e. they recognize the 12 Imams. There are also Sevener and Fiver Shias who don't recognize the later Imams.[46]

## **Practical Differences**

On a practical daily level, Shias have a different call to prayer, they perform wudu and salat differently including placing the forehead onto a piece of hardened clay from Karbala, not directly onto the prayer mat when prostrating. They also tend to combine prayers, sometimes worshipping three times per day instead of five. The Shias also have some different ahadith and prefer those narrated by Ali and Fatima to those related by other companions of the Prophet. Because of her opposition to Ali, those narrated by Aisha count among the least favored. Shia Islam also permits muttah - fixed-term temporary marriage - which is now banned by the Sunnis.[47]

## **1.8 Roots of Human Rights in Islam**

Islamic law established the idea of universal rights from the outset, specifying that justice requires that everyone be treated equally before God's law: "O ye who believe! Stand out firmly for justice, as witnesses to God, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for God can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily God is well acquainted with all that ye do".[48]

Justice is the supreme purpose and ruling spirit of Islam. It provides the framework for the entire corpus of Islam, shaping and molding its beautiful configurations. The paramount purpose for which the Prophets were sent and struggled all their lives was to guide man to achieve justice, "We sent our messengers with clear signs, and sent down with them the Book and the Balance so that men may conduct themselves with justice".[49]

Indeed, no conception of Islam and Muslim should be possible without justice. Justice, in Islam, lends meaning and color to all human beings, both on an individual level and as a societal ideal. It serves as the ultimate criterion for the internal ordering of the soul and the external regulation of relationships. The Qur'an repeatedly emphasizes that wrongdoing has absolutely no place in Islam. The right to justice is a very important and valuable right which Islam has given to human being, the Qur'an says "Truly God commands you to give back trust to those to whom they are due, and when you judge between people, to judge with justice".[50]

Prophet Muhammad said: "People, beware of injustice, for injustice shall be darkness on the Day of Judgment, and those who have not gotten their rights (i.e. what they have a just claim to) in this life will receive them on the Day of Judgment".[51] Prophet Muhammad also said: "On the Day of Judgment, rights will be given to those to whom they are due (and wrongs) will be redressed".[52] Islam has prescribed a general principle of paramount importance and universal application when Qur'an says: "Co-operate with one another for virtue and heedfulness and do not co-operate with one another for the purpose of vice and aggression".[53]

This means that the human who undertakes noble and righteous work, irrespective of whether he is or whoever is, has the right to expect support and active co-operation, but he who practices vice and aggression, even if he is our closest relation or neighbor, does not have the right to support and help in the name of race, language or religion. The wicked and vicious person may be our own brother, but he is not of us, and he can have no help or support from us as long as he does not repent of his ways. On the other hand, the human who is doing deeds of virtue and righteousness may have no kinship, but will have companions and supports, or at least well-wishers.

The point is thus made clear that Muslims have to be just not only to their friends but also their enemies. In other words, the justice Islam invites is not limited to the people of one's own nation or race, or the Muslim community, it is meant for all human beings.

The multiplicity of Qur'anic rules must be reduced into a coherent set of universal principles. The universal principles should be used to ensure the systematic application of *Shari`a* in modern context. Because the generalization of a rule presupposes that the reason for its enactment is clear, no rule should be generalized unless its reason has been explicated. This principle requires that Qur'anic rules relating to social actions and interactions should be understood fully, and systematized with other rules. If this requirement is met, the literal application of *Shari`a* would be eliminated.

Because the universality of a principle requires that the conditions of its application be identical, regardless of time and space, no principle can be declared universal if the particularity of the context for which it was intended is evident. This principle requires the jurist to examine the extent to which a specific statement or rule is directly connected with the socio-political context in which it was revealed.

Qur'anic statements take priority over Prophetic ones. Hence, in the case of conflict and real contradiction, Qur'anic precepts override Prophetic ones.[54]

By its emphasis on meaning, reasoning, and purposes the *Maqasid* approach provides a powerful tool for reforming historical *Shari`a*, because it rejects the literal reading of statements apart from their rationale, and insist that those rationale cannot contradict basic Islamic values.[55]

### **Let us give an example of justice from one position of life of Prophet Muhammad.**

Prophet Muhammad, in his dealings with non-believers who tried by every means to destroy him and his community, exemplified the rule of forgiveness and reconciliation, forgiving even the most vicious of his enemies. When he finally re-entered *Mecca* in triumph, he provided them with gifts so that their hard hearts might be softened and peace might prevail after the years of conflict. Justice might have required their punishment, but there is no contradiction here since there is more than one way to achieve balance which, after all, is the ultimate objective of justice.[56]

Contrary to popular belief, the struggle for universal human rights is not modern. Although some claim that the idea of human rights is a modern concept or ideology, Judaism, Christianity and Islam share the roots of human rights principles.

Common cultural roots that are shared between people, who, in the interest of this common fate, will assist to gather and collect the problems and think about solutions that are compatible for everyone, with everyone's belief systems and values. Our task is to identify where, in the depths of all these traditions, is the residual capacity to recognize and further refine the truth and justice of human rights, for this is necessary in order to overcome what, otherwise, is likely to be a clash of civilizations.

The religious grounding of human rights also becomes the language in which to discuss and understand them. Few societies do not have their basis in some religious belief, even if there are many other political and moral beliefs and practices obscuring them. Therefore it is necessary to continue to develop these ideas.

The word Islam itself means peace, so when a Muslim meets any person he may say '*Assalam 'aikum*' 'peace be upon you' to any brother or sister in humanity. Muslim communities had and still have many faiths practicing their own religions in a simple way.

Islam attaches the highest importance to justice. Justice is the backbone of the whole act of creation. If we study the cause of the ruin of many past civilizations, we find at the root the neglect of justice. In fact, justice is a value that a ruler can ignore only at his own peril. The emphasis on justice very clearly bears out Islam's stance on a justly balanced society which is the core of human rights.

Since one of the main Islamic obligations is to revere Judaism and Christianity as previous religions from God and Islam as the final message from God, the Bible is considered a holy Book while the Qur'an is considered a completed revelation from God, so the Bible combined with the Quran make up the roots and sources of human rights.

## Footnotes

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## ***Chapter two***

### ***2 Concept of Human Rights in Islam***

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To study Human Rights in Islam, we first must examine the two most important goals: the dignity of human beings and justice. The Qur'an considers dignity to be a very important quality for humans "We have indeed honored the children of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favors, above a great part of Our Creation".[1] Qur'an says about justice, "We sent aforetime Our Messengers with Clear Signs and sent down with them the Book and the Balance (of Right and Wrong), that humankind may stand forth in justice".[2]

Islam emphasizes that all human beings are honored by God, who wants all human beings to live in peace and harmony. For this reason God wants to establish justice in this world. Without justice there is no dignity and without dignity and justice there cannot be any peace.

#### **2.1 Shari'a**

*Shari'a* literally means: the path leading to the watering place. According to Islam, *Shari'a* is Islamic teachings formed by traditional Islamic values. In Islam, *Shari'a* is the expression of the divine will, and constitutes a system of rights and duties that are incumbent upon a Muslim by virtue of his religious belief.

*Shari'a* covers all aspects of life, from matters of state, like governance and foreign relations, to issues of daily living, as well as rules for fasting, charity, and prayer. However, these prescriptions and prohibitions may be broad, so their application in practice varies. Islamic scholars have elaborated systems of law on the basis of these rules and their interpretations.

#### **2.2 Islamic sources of Human Rights**

According to Islamic legal theory, *Shari'a* has four fundamental roots, which are given precedence in this order:

- 1 - The Qur'an.
- 2 - The *Sunnah* which mean the actions and sayings of Prophet Muhammad.
- 3 - The consensus of the Muslim jurists *Ijm'*.
- 4 - Analogical reasoning *Qiyas*.

Jurisprudence is defined as the knowledge of the practical rules of the religion. The method Islamic jurists use to derive rulings is known as legal theory, or principles of jurisprudence.[3]

Next to The Qur'an, the most important source is the practice of the Prophet Muhammad. Representing a binding model for Muslims, his sayings and patterns of behavior have been collected in the *Sunnah*, which means tradition. In addition to the Qur'an and *Sunnah*, supplementary normative sources include consensus among Islamic scholars, conclusions based on analogy, customary law, and the principle of common welfare.

The relationship between religion and human rights must be examined through an approach that combines critical analysis and reflection with a consideration of the practice and implementation of human rights in particular religious and cultural contexts.

From a theoretical perspective consider that the history, theology, philosophy, ethics and language of human rights will allow the development of these insights by focusing on an area such as: human rights in one particular religious tradition; human rights, religion and one particular ethical issue.[4]

The interpretations of human rights in Islam and its relationship with international human rights norms are seen as part of an on-going contemporary international debate in the human rights field that engages Muslims as well as non-Muslims. Texts are written by some internationally renowned Muslim scholars, philosophers and religious studies thinkers as well as non-Muslim scholars. These texts are used in the attempt to provide interpretations of the Qur'an, the *Sunnah*, Muslim literature and history which accommodate international human rights norms. Through this activity the exponents produce versions of Islam that compete with other contemporary versions of the religious tradition for general recognition.

One of the questions asked concerns why these interpretations receive international attention and what purposes they fulfill in the international debate. There are also analyzed as part of an on-going, worldwide discussion among Muslim religious activists concerning the role of religion in society and the issue of religious authority. Theoretical inspiration is found in the academic fields.[5]

As a practical example of human rights in Islamic societies; one of the famous Leaders in Islam 'Ali Ibn Abe Talib advises judges that when the truth is presented they must pass their judgments without fear, favor or prejudice. Equally significant, he envisaged a judiciary that would be above every kind of executive pressure or influence, fear or favor, or corruption.[6] It was one of the earliest declarations of the importance of an independent judiciary.

In a sense, public accountability has support within the Qur'an. There is, in the Qur'an, a clear conception of consultations with the people on all matters of public importance. This is the basis of the administrative relationship between the government and the people. People also have the right to choose and remove their rulers in accordance with this principle.[7]

Some scholars, however, exhibit misunderstanding of Islamic concepts in this context; so they are mistaken when they present Islam as a religion which stresses the importance of human rights and incorporates many practices to guarantee them.[8] This is a misunderstanding in any treatment of Islam which represents itself as balanced. While it is true that the track record of human rights in the majority of Muslim communities is deplorable, this is no more attributable to Islam than abuses within any other society. Abuses of human rights are political and social issues. They happen because the perpetrators ignore the just and compassionate provisions given by Islam.

### **2.3 Rights in Islam**

Any talk about human rights must begin with an elucidation of the concept of humanity. Islam has related itself, equally, to all human beings, its purpose being to rehabilitate them as integral members of society.

This relation constitutes Islam's humanism. At its root stand the reason for creation. The first mention of the divine plan to create mankind occurs in a conversation with the angels. "I plan to place on earth a vicegerent. The angel responded: Would you place on earth a being who would also do evil and shed blood while we always praise and glorify and obey You? God said: I have another purpose unknown to you".[9] The angels, evidently, are beings created by God to act as His messengers and/or instruments. By nature, they are incapable of acting otherwise than as God instructs them to act, and hence they are incapable of morality. Their necessary predicament, always to do God's bidding, differentiates them from the human creature God was about to place on earth.

The Qur'an reports: "We [God] offered the trust to heaven and earth and mountain. They refused to undertake it out of fear. But man did undertake it".[10] In the heavens, on earth, and in the mountains, God's will is fulfilled with the necessity of natural law. Creation therefore, to the exclusion of man, is incapable of fulfilling the higher part of God's will, namely, the moral law. Only man is so empowered; for morality requires that its fulfillment be free; that its opposite or alternative, that which is amoral or immoral, be possible of fulfillment by the same person at the same time and in the same respect. It is of the nature of the moral deed that it be done when the agent could do otherwise. Without that option or possibility, morality would not be morality. If done unconsciously or under coercion, the moral deed might have utilitarian but no moral value.

Vicegerency of God on earth means man's transformation of creation including himself into the patterns of God. It means obedient fulfillment of His command, which includes all values, all ethical imperatives. The highest of imperatives are the moral. Since man alone is capable of moral action, only he can carry the (divine trust) from which (heaven and earth and mountain) shied away. Man therefore has cosmic significance. He is the only creature through whom the higher part of the divine will can be realized in space and time.

As to the content of the divine purpose, the Qur'an asserts: "And I have not created men and jinn except to worship/serve Me".[11] The verb '*abada*' means worship as well as serve. It has been used in this double sense in all Semitic languages. In the

Qur'an, it is given further elaboration by the more specific answers given to the same questions of why creation? Why man? It is He Who created heaven and earth, that the mankind may prove his self in His eye the worthier in conduct.

In order to enable man to fulfill his reason, God has created him capable, and in the best of forms. He has given him all the equipment necessary to achieve fulfillment of the divine imperatives.

Islam focused on improving the social and legal standing especially of the weaker members of society by introducing some concept of authority and respect that was not purely based on color, race, nation but traditional human values.[12]

The Qur'an does not give any concept of the State; it only gives the concept of the society. The Qur'an is concerned with morality rather than polity. An upright conduct, justice, truth, benevolence, compassion and human dignity are very basic to the Qur'an. It repeatedly asserts these values. Thus it clearly means that these values are very fundamental to an Islamic society rather than to a State.[13]

The popular image of human rights in Islam in the non-Muslim thought is usually characterized by lashes, cutting hands and capital punishment. In the eyes of many, those elements represent the cruelest hardship possible. The principles of those rights seem to be completely absent in Muslim societies from some of non-Muslim standpoint. However, much depends on the definition of human rights and its implementation because there is no general theory of human rights.

Human nature and reason have to differentiate between good and bad things, between what to take and what to leave. If we want to follow the corrupt nature, we can use the evil sides of any holy book. We have to choose the humanistic part of the tradition and lay the civilization on humanistic principles.

Every civilization was initially established on religious principles. Religious thinkers focused their discussion on the positive aspects of their past literature, and then modified it. In some aspect, their thoughts seemed to be like classical Muslim thinkers.

The Islamic thought in the classical period is associated with the notion of human rights and the concept of nature.

We can understand the importance of the respect for the dignity and uniqueness of every human being. At the same time, there is a common awareness of dignity disregarded. There are many reasons, however, to consider the issue of human rights as of strategic importance. The human dignity of every single human being can be properly affirmed and given effective protection only within the framework of an interrelated system of norms, principles and institutions. Human rights issues are frequently interpreted as belonging to the moral sphere, despite existing legally binding instruments that developed the relations between peoples.[14]

## **2.4 The most Important Rights**

These are the most Important rights according to Islamic teachings:

### **2.4.1 The Right to life and Right to basic necessities of life**

The Qur'an upholds the sanctity and absolute value of human life. The Qur'an points out that, in essence, the life of each individual is comparable to that of an entire community and, therefore, should be treated with the utmost care: "We ordained for the Children of Israel that if anyone slew a person unless it be for murder or for spreading mischief in the land it would be as if he slew the whole people: And if any one saved a life, it would be as if he saved the life of the whole people".[15]

Islam has recognized the right of the needy people that help and assistance will be provided for them. "And in their wealth there is acknowledged right for the needy and the destitute".[16] In this verse, the Quran has not only conferred a right on every man who asks for assistance in the wealth of the Muslims, but has also laid down that if a Muslim comes to know that a certain man is without the basic necessities of life, then irrespective of the fact whether he asks for assistance or not, it is his duty to reach him and give all the help that he can extend. For this purpose Islam has not depended only on the help and charity that is given voluntarily, but has made compulsory charity, zakat **زكاة** as the third pillar of Islam, next only to profession of faith and worship of God through holding regular prayers. The Prophet has clearly instructed in this respect that: "It will be taken from their rich and given to those in the community in need".[17] In addition to this, it has also been declared that the Islamic State should support those who have nobody to support them. The Prophet has said: "The Head of state is the guardian of him, who has nobody to support him".[18] The word wali which has been used by the Prophet is a very comprehensive word and has a wide range of meanings. If there is an orphan or an aged man, if there is a crippled or unemployed person, if one is invalid or poor and has no one else to support him or help him, then it is the duty and the responsibility of the state to support and assist him. If a dead man has no guardian or heir, then it is the duty of the state to arrange for his proper burial. In short the state has been entrusted with the duty and responsibility of looking after all those who need help and assistance.

### **2.4.2 The Right to respect and protection of honor**

The Qur'an says: " We have indeed honored the children of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favors, above a great part of our creation".[19] Human beings are deemed worthy of esteem, because of all creation they alone chose to accept the trust of freedom of the will. Human beings can exercise freedom of the will because they possess the rational faculty, which is what distinguishes them from all other creatures. The Qur'an declares that they have been made "in the best of molds"[17] having the ability to think, to have knowledge of right and wrong, to do the good and to avoid the evil. Thus, on account of the promise which is contained in being human, namely, the potential to be God's vicegerent on earth, the humanness of all human beings is to be respected and considered to be an end in itself.

One of the important rights is the right of the human to the protection of their honor. In the address delivered on the occasion of the Farewell Hajj, the Prophet did not only prohibit the life and property of the Muslims to one another, but also any encroachment upon their honor, respect and chastity were forbidden to one another. The Holy Quran clearly states:

According to the Islamic Law if it is proved that someone has attacked the honor of another person, then irrespective of the fact whether or not the victim is able to prove himself a respectable and honorable person the culprit will in any case get his due punishment.

Islam declared blasphemy as a crime irrespective of the fact whether the accused is a man of honor or not, and whether the words used for blasphemy have actually disgraced the victim and harmed his reputation in the eyes of the public or not. According to the Islamic Law the mere proof of the fact that the accused said things which according to common sense could have damaged the reputation and honor of the plaintiff, is enough for the accused to be declared guilty of defamation.

### **2.4.3 The Right to justice**

The Qur'an puts an emphasis on the right to seek justice and the duty to do justice. "O you who have attained to faith! Be ever steadfast in your devotion to God, bearing witness to the truth in all equity; and never let hatred of anyone lead you into the sin of deviating from justice. Be just: this is the closest to being God-conscious".[20] And again, Qur'an emphasizes the importance of upholding justice "O you who believe! Stand out firmly for justice, as witnesses to God, even against yourselves, or your parents, or your kin, and whether it is against rich or poor: for God can best protect both. Follow not the lusts of your hearts, lest you serve, and if you distort (justice) or decline to do justice, verily God is well-acquainted with all that you maintain. They refused to undertake it out of fear. But man did undertake it".[21]

In the context of justice, the Qur'an uses two concepts: '*adl*' and '*Ihsan*'. Both are enjoined, and both are related to the idea of balance. '*adl*' is defined as to be equal, neither more nor less. To explain this concept; in a court of Justice the claims of the two parties must be considered evenly, without undue stress being laid upon one side or the other. Justice is introduced in the form of scales that are evenly balanced.[22] '*adl*' was described in similar terms as that which is neither too much nor too little; hence the use of scales as the emblems of justice. Lest anyone try to do too much or too little, the Qur'an points out that no human being can carry another's burden or attain anything without striving for it. Recognizing that individual merit is a part of '*adl*', Qur'an teaches that merit is not determined by lineage, sex, wealth, worldly success, or religion, but by righteousness.[23] Righteousness consists of both right belief and action as clearly indicated "It is not righteousness that you turn your faces towards East or West; but it is righteousness to believe in God and the Last Day, and the Angels, and the Book, and the Messengers; to spend your substance, out of love for Him, for your kin, for orphans, for the needy, for the wayfarer, for those who ask, and for the ransom of slaves; to be steadfast in prayer, and practice regular charity; to fulfill the contracts which you have made".[24]

In chapter 49 verse 13 the Qur'an says: "The most honored of you in the sight of God is the most righteous of you." [25] While in chapter 4 verse 95 distinguishes clearly between passive believers and those who strive in the cause of God: "Such of the believers as remain passive - other than the disabled - cannot be deemed equal to those who strive hard in God's cause with their possessions and their lives God has exalted those who strive hard with their possessions and their lives far above those who remain passive. Although God has promised the ultimate good unto all believers, yet has God exalted those who strive hard above those who remain passive by promising them a mighty reward many degrees thereof, and forgiveness of sins, and His grace; for God is indeed much-forgiving, a dispenser of grace". [26]

Just as it is in the spirit of *'adl* that special merit be considered in the matter of rewards, so also special circumstances are to be considered in the matter of punishments. [27]

While constantly enjoining *'adl* the Qur'an goes beyond this concept to *Ihsan* which literally means goodly manner or restoring the balance by making up a loss or deficiency. In order to understand this concept, it is necessary to understand the nature of the ideal society or community *Ummah* envisaged by the Qur'an. The word *Ummah* comes from the root *Umm* أم or mother. The symbols of a mother and motherly love and compassion are also linked with the two attributes most characteristic of God, namely, *Rahim* or Gracious and *Rahman* or Merciful both of which are derived from the root *Rahm* meaning womb. The ideal *umma* cares about all its members just as an ideal mother cares about all her children, knowing that all are not equal and that each has different needs. While showing undue favor to any child would be unjust, a mother who gives to a handicapped child more than she does to her other child or children, is not acting unjustly but exemplifying the spirit of *Ihsan* by helping to make up the deficiency of a child who is unable to meet the requirements of life. Thus *Ihsan* shows God's sympathy for the disadvantaged segments of human society such as orphans, slaves, the poor, the infirm, and the minorities. [28]

#### **2.4.4 The Right to freedom**

The Qur'an is deeply concerned about liberating human beings from every kind of bondage, recognizing the human tendency toward dictatorship and despotism.

The institution of human slavery is, of course, extremely important in the context of human freedom. Slavery was widely prevalent at the time of the advent of Islam, and the economy of many societies was based on it. Not only did Qur'an insist that slaves be treated in a just and humane way but it continually urged the freeing of slaves. In chapter 47 verse 4, that prisoners of war were to be set free, "either by an act of grace or against ransom". [29] The Qur'an virtually abolished slavery since most slaves were prisoners of war. Because the Qur'an does not state explicitly that slavery is abolished, it does not follow that it is to be continued, particularly in view of the numerous ways in which Qur'an seeks to eliminate this absolute evil. The greatest guarantee of personal freedom the Qur'an decrees that no one other than God can limit human freedom, and in the statement that Judgment (as to what is right and what is wrong) rests with God alone. Since the principle of mutual consultation *Shura* is mandatory, it

is a fundamental right, as well as responsibility, to participate in as many aspects of the community's life as possible.

The Qur'anic proclamation: "There shall be no coercion in matters of faith"[30] guarantees freedom of religion and worship. This means that, according to the Qur'an's teaching, non-Muslims, living in Muslim territories, should have the freedom to follow their own faith and traditions without fear or harassment. The right to exercise free choice in matters of belief is unambiguously endorsed by the Qur'an, which states: "The Truth is from your Lord: Let him who will believe, and let him who will, reject (it)".[31]

The Qur'an also makes clear that God will judge human beings not on the basis of what they profess but on the basis of their belief and righteous conduct, which states: "Those who believe in Qur'an and those who follow the Jewish scriptures, and the Christians and the Sabians, any who believe in God and the Last Day, and work righteousness, shall have their reward faith the Lord; on them shall be no fear, nor shall they grieve".[32]

The Qur'an recognizes the right to religious freedom not only in the case of other believers in God, but also in the case of non-believers in God if they are not aggressive toward Muslims. For instance, "Revile not you those whom they call upon besides God, lest they out of spite revile God in their ignorance. Thus have we made alluring to each people its own doings. In the end will they return to their Lord, and We shall then tell them the truth of all that they did".[33]

In the context of the human right to exercise religious freedom, it is important to mention that the Qur'anic dictum that there be no compulsion in religion, applies not only to non-Muslims but also to Muslims. While those who renounced Islam after professing it and then engaged in acts of war against Muslims were to be treated as enemies and aggressors, the Qur'an does not prescribe any punishment for non-profession or renunciation of faith. The decision regarding a person's ultimate destiny in the hereafter rests with God. This right to freedom includes the right to be free to tell the truth.

The Qur'anic concept of truth is one of God's most important attributes. Standing up for the truth is a right and a responsibility which a Muslim may not disclaim even in the face of the greatest danger or difficulty. While the Qur'an commands believers to testify to the truth, it also instructs society not to harm persons so testifying. One of the most important issues in right to freedom of religion is how Prophet Muhammad assured this right, when he said in *Hadiths* that one who changes his religion is to be killed. It is true that there are some reported *Hadiths* calling for capital punishments for individuals who change their religion. But these *Hadiths* must be understood in relation to others *Hadiths* and practices of the Prophet, and in relation to Qur'anic verses.

The Qur'an is quite clear that human beings have freedom of religion; have the freedom to accept revelation or to reject it as long as they do not cause harm to others, as we find in the following verses; "Will you (O Muhammad) then compel mankind, until they become believers"[34] or "Each one does according to his way or his religion or his intentions, and your Lord knows best of him whose path is right".[35]

Prophet Muhammad pardoned *Abdullah Ibn Sa'd* عبدالله بن سعد who committed apostasy and later on was brought to him by his cousins, *Uthman Ibn `Affan* عثمان بن عفان, who interceded on his behalf. This tradition of Prophet Muhammad, leads us to believe that the other two *Hadiths* relate to individuals who change their religion and commit an act of rebellion against the community. This is in keep with the commonly held interpretation that apostasy involves acts of armed rebellion and not simply a quiet change of religion.[36]

#### **2.4.5 The Right to work and the right to just wages and property**

According to Qur'anic teaching, every man and woman has the right to work, whether the work consists of gainful employment or voluntary service. The fruits of labor belong to the one who has worked for them, regardless of whether it is a man or a woman. "To men is allotted what they earn, and to women what they earn".[37]

In the address which the Prophet delivered on the occasion of the Farewell Hajj, he said: "Your lives and properties are forbidden to one another till you meet your Lord on the Day of Resurrection".[38]

Along with security of life, Islam has with equal clarity and definiteness conferred the right of security of ownership of property, as mentioned earlier with reference to the address of the Farewell Hajj. On the other hand, the Holy Quran goes so far as to declare that the taking of people's possessions or property is completely prohibited unless they are acquired by lawful means as permitted in the Laws of God. The Law of God categorically declares "Do not devour one another's wealth by false and illegal means".[39]

#### **2.4.6 The Right to protection from slander, backbiting, ridicule and arbitrary imprisonment**

The Qur'an recognizes the right of human beings to be protected from defamation, sarcasm, offensive nicknames, and backbiting. It also states that no person is to be maligned on grounds of assumed guilt and that those who engage in malicious scandal-mongering will be grievously punished in both this world and the next, urging throughout that human beings should treat others with sensitivity and compassion.[40]

Islam also recognizes the right of the individual not to be arrested or imprisoned for the offenses of others. The Quran has laid down this principle clearly: "No bearer of burdens shall be made to bear the burden of another".[41] Islam believes in personal responsibility. We ourselves are responsible for our acts, and the consequence of our actions cannot be transferred to someone else. In other words this means that every man is responsible for his actions. If another man has not shared this action then he cannot be held responsible for it, nor can he be arrested

### **2.4.7 The Right to acquire knowledge**

The Qur'an puts the highest emphasis on the importance of acquiring knowledge. That knowledge has been at the core of the Islamic world view from the very beginning is attested to by Chapter 96: verse: 1-5, which Muslims believe to be the first revelation received by the Prophet Muhammad. This passage reads: "Read; in the name of thy Lord and Cherisher, who created, created man, out of a (mere) clot of congealed blood. Read; And the Lord is Most Bountiful He who taught (the use of) the pen taught man that which he knew not".[42]

Asking rhetorically if those without knowledge can be equal to those with knowledge, the Qur'an exhorts believers to pray for advancement in knowledge. According to the Qur'anic perspective, knowledge is a prerequisite for the creation of a just world in which authentic peace can prevail. The Qur'an emphasizes the importance of the pursuit of learning even at the time, and in the midst, of war which states: "With all this, it is not desirable that all of the believers take the field (in time of war). From within every group in their midst some shall refrain from going to war, and shall devote themselves (instead) to acquiring a deeper knowledge of the Faith, and (thus be able to) teach their home-coming brethren, so that these (too) might guard themselves against evil".[43]

### **2.4.8 The Right to a good life**

The Qur'an upholds the right of the human being not only to life but to the good life. This good life, made up of many elements, becomes possible when a human being is living in a just environment. According to Qur'anic teaching, justice is a prerequisite for peace, and peace is a prerequisite for human development. In a just society, all the earlier-mentioned human rights may be exercised without difficulty. In such a society, other basic rights such as the right to a secure place of residence, the right to the protection of one's personal possessions, the right to protection of one's covenants, and the right to move freely, also exist.[44]

Muslim thinkers believe that Islam has certain potentialities which have made it applicable to all human being. According to these thinkers, Islamic teachings are in harmony with the progress of time, the expansion of culture and the resulting changes. Let us see what is the nature of the potentialities which Islam has. In other words, let us see what devices have been put into the structure of this religion, and whether they have given it the characteristic of being in harmony with all the changing situations, without there being any need of dropping any of its teachings and without any conflict taking place between its teachings and any situation arising out of the expansion of knowledge and civilization.

There are many points, which form the structure of Islam being in harmony with the expansion of knowledge and civilization, and the applicability of its firm and stable laws to the varying circumstances of life.

## Footnotes

[1] Qur'an, 17:70.

[2] Qur'an,57:25.

[3] Ameen, Ahmed أمين أحمد ,Fager al-Islam فجر الإسلام , Cairo 1928,pp.270.

[4] A. Fyzee,A modern approach of Islam,Lahore,universal book, 1987, pp 17.

[5] Muhammad Zafrulla Khan, Islam and Human Rights,. Published by The London Mosque, Melrose Road, London SW18. p. 140-143.

[6] Al- Sharf Al-Rady الشريف الرضي , Nahj Elbalagha نهج البلاغة, (In Arabic) revised by Fares Al-Hsoon, searchers center of Theology, Tehran, PP. 234.

[7] Siddiqi Muzammil, Islam and Human Rights, available at:  
<http://www.muslimbridges.org/content/view/1009/72/>

[8] Suliman Al Hagery, Human Rights in Islam and Refutation of the misconceived allegations associated with these rights, , Dar Eshbelia, Riyadh, pp. 92.

[9] Qura'n, 2:30.

[10] Qura'n, 33:72.

[11] Qura'n, 51: 56.

[12] Muhammad Zafrulla Khan. Published Islam and Human Rights,. pp. 140-143.

[13] Ibid, pp. 151.

[14] Suliman Al Hagery, Human Rights in Islam and Refutation of the misconceived allegations associated with these rights, pp. 111.

[15] Qur'an, 5:32.

[16] Qur'an 51:19

[17] Reported by Muslim مسلم, Vol. 2, p. 92, Mo. 212.

[18] Reported by Abu Dawud, ابوداود N. 124- 234.

[19] Qur'an, 17:70.

[20] Qur'an, 95:4.

[21] Qur'an, 5:8.

[22] Qur'an 4:135.

[23] Rifat Hassan ,Human Rights in Islam, , available at:  
<http://www.thewaytotruth.org/womaninislam/humanrights.html>

[24] ibid.

[25] Qur'an 2:177.

[26] Qur'an 49:13.

[27] Qur'an 4:95.

[28] 'Abdulrahman A.Al-Sheha. Misconceptions on Human Rights in Islam, translated into English by Mohammed Said Dabas, Islamic Propagation Office Riyadh, 2001, pp15.

[29] Qur'an, 47:4.

[30] Qur'an, 2:256.

[31] Qur'an, 18:29.

[32] Qur'an, 2:62.

[33] Qur'an 6:108.

[34] Qur'an, 10:99.

[35] Qur'an:, 17:84.

[36] Ibn Hisham ابن هشام, Biography of Prophet Muhammad السيرة النبوية ( In Arabic) Dar Al-Rayes, Beirut, 2005, pp. 123.

[37] Qur'an 4:32.

[38] Ibn Hisham ابن هشام, Biography of Prophet Muhammad السيرة النبوية, pp, 239.

[39] Qur'an 2:188.

[40] Rifat Hassan ,Human Rights in Islam, , available at:  
<http://www.thewaytotruth.org/womaninislam/humanrights.html>

[41] Qur'an 6:164.

[42] Qur'an 96:1-5.

[43] Qur'an 9:122.

[44] Abdulrahman A.Al-Sheha. Misconceptions on Human Rights in Islam, , pp35.

### ***3 – Chapter three***

## ***Islam and the Contemporary Conception of Human Rights***

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## ***Islam and the Contemporary Conception of Human Rights***

In this chapter I will summarize arguments given by Muslims in support of human rights. I will describe in detail the general support of Islam for principles of human rights.

*Shari'a* is divine and eternal, not in its letter, but in its spirit. The letter of the law is honored precisely because of its derivation from that which is divine and eternal. To enable itself to move with time and to accommodate changing human conditions, *Shari'a* established the science which has been recognized from the earliest time. The *Shari'a* has other sources besides the texts of the Qur'an and *Sunnah*, which guarantee dynamism and creativity. To this purpose, *al Fiqh* was established as a methodology of logical deduction and analogical extrapolation from the data relevant, as well as criteria for an empirical discovery of the common welfare of the people which it declared an equally valid source of law.[1]

We are therefore dealing, with neither a fossilized law whose form or letter is immutable; nor with a flux of precepts which change with every situation, rather with how Islam's human rights are anchored in eternal principles whose applications may develop following human situations, but only with critical guarantees for the permanence of those principles and values.[2]

In Islam, God-given human rights are seen as the means of assuring human dignity. This theme is set forth clearly in every address of Islamic speech. When noted that it was fifteen centuries since the Prophet Muhammad and his followers took refuge in *Medina* and set up a community where the exercise of human rights, previously a mere aspiration and hope, became a reality. This became possible because of Islam's primary belief in human dignity, as emphasized by God. The Qur'an says: "And we have edified the progeny of Adam"[3]

To preserve the dignity of each human, it is necessary that society guarantees him food, drink, lodging, clothing, education and employment as well as his right to express his opinion, participate in the political life and to be assured of his own security and that of his kin.

The community has a duty to acquire the competence to ensure such rights. Duties, in this way, are seen as another aspect of rights, as though rights and duties form the twin wings which enable society to soar to the horizons of its aspired future.

It would be possible for Muslims to find refuge in the spiritual values of Islam and escape being pulled right or left by embracing its concepts on human rights, basic freedoms, justice and equity, while upholding them as themes for Muslims, and by adhering to these fundamental doctrines of Islam which Muslims have constantly upheld.

Ann Elizabeth Mayer notes that Muslims are currently deeply divided among themselves on the question of what kinds of human rights protections Islam provides. Moreover, she argues that where contemporary governments have used Islamic criteria the result has been to limit the exercise of human rights. Yet, today Muslim countries throughout the world have ratified international human rights covenants, and Muslim lawyers and scholars are quick to assert that Islam has always supported human rights.[4]

### **3.1 Islamic Aspects in field of Human Rights**

From practical perspective I consider that this chapter, focusing on Islam's positive aspects in field of human rights, is the main point of my work.

#### **3.1.1 Humanity in Islam**

The Qur'an stresses that the earth, skies, and all creation was made for the benefit of mankind. Muslims believe that one of the many beauties of Islam is that it gives a kind of outline for identity. However, rather than imposing a constricting framework through which we can move, it creates a strong foundation on which we can build.

The elects in the society have to lead society towards the principle of gentleness. It is impossible to build a civilization on the principle of violence. Acts of violence are wrong even when someone believes that he will build civilization through destruction. There is not a single civilization built on destructiveness. All civilizations are built on a moral foundation, intellectual activities, and innovations. The Greeks loved knowledge. The glory of Islamic civilization in the past was built based on knowledge; the key is a revolution towards knowledge. Destruction will never succeed in building a civilization.[5]

Idealism does not come coincidentally. Anyone who learns Islam will know that the main objective of Islamic law is the promotion of human benefit, which respects humanity or humanism. American thinker, George Maqdisi wrote a book on humanism in Islam, *The Rise of Humanism in Islam*. He stated that Islamic civilization arose out of the notion on the urgency of respecting humanity and humanism, a notion that believes in human's dignity as a *fitrah* or nature.[6]

The Qur'an expressly declares that the human race is one family. All of us are the children of Adam and Eve, whether our skin is white or black. At various places it says: "All human beings are a single nation"[7] and "All human beings are naught but a single nation and yet they disagree"[8], and "And verily this your nation (human beings) is a single nation"[9], also " And verily this your religion is one religion, and I am your Lord, so fear me".[10]

Islamic teachings are simple and intelligible; everybody may approach The Qur'an directly and translate its dictates into practice. Islam awakens in man the faculty of reason and exhorts him to use his intellect. It enjoins him to see things in the light of

reality. Qur'an advises the man to seek knowledge and invoke The God to expand his awareness: "Say 'O, my Lord! Advance me in knowledge".[11] The Qur'an also says: "Are those who know equal with those who know not? But only men of understanding will pay heed".[12] It is reported that Prophet Muhammad said that: "He who leaves his home in search of knowledge (walks) in the path of God".[13]

Islam advises man to be moderate and keep away from extravagance, Qur'an says "And eat and drink and be not extravagant; surely He does not love the extravagant".[14] On this aspect of moderation, Prophet Muhammad said: "Observe fasting and break it (at the proper time) and stand in prayer and devotion (in the night) and have sleep, for your body has its right over you, and your eyes have rights over you, and your wife has a claim upon you, and the person who pays a visit to you has a claim upon you".[15]

Islam enjoins man to devote all of his energies to the reconstruction of life on healthy moral foundations. It teaches him that moral and material powers must be welded together and that spiritual salvation can be achieved by using material resources for the good of man in the service of just ends and not by living a life of asceticism or by running away from the challenges of life.

Islam seeks to establish equilibrium between these two aspects of life - the material and the spiritual. It says that everything in the world is for man, but man was created to serve a higher purpose: the establishment of a moral and just order that will fulfill the will of God. Its teachings cater for the spiritual as well as the temporal needs of man. Islam enjoins man to purify his soul and to reform his daily life - both individual and collective - and to establish the supremacy of right over might and of virtue over vice. Thus Islam stands for the middle path and the goal of producing a moral man in the service of a just society.

Islam clearly states that its objectives are the purification of the soul and the reform and reconstruction of society. As we read in Qur'an: "We verily sent Our messengers with clear proofs, and revealed with them the Scripture and the Balance, that mankind may observe right measure; and He revealed iron, wherein is mighty power and (many) uses for mankind, and that Allah may know him who helpeth Him and His messengers, though unseen. Lo! Allah is Strong, Almighty".[16] Qur'an also says: "The decision rests with Allah only, Who hath commanded you that ye worship none save Him".[17] Thus even a cursory study of the teachings of Islam shows that it is an all-embracing way of life and does not leave out any field of human existence to become a playground for the forces of evil.

Another feature of Islam is that it establishes a balance between individualism and collectivism. It believes in the individual personality of man and holds everyone personally accountable to God. Prophet Muhammad says: "Everyone of you is a guardian, and responsible for what is in his custody. The ruler is a guardian of his subjects and responsible for them; a husband is a guardian of his family and is responsible for it; a lady is a guardian of her husband's house and is responsible for it, and a servant is a guardian of his master's property and is responsible for it. [18] and Prophet Muhammad also said "A man is a guardian of is father's property and is responsible for it, so all of you are guardians and responsible for your wards and things under your care".[19]

Islam also guarantees the fundamental rights of the individual and does not permit anyone to tamper with them. It makes the proper development of the personality of man one of the prime objectives of its educational policy. It does not subscribe to the view that man must lose his individuality in the society.[20]

Islam addresses itself to the conscience of humanity and banishes all false barriers of race, status, and wealth. There can be no denying the fact that such barriers have always existed and continue to exist today. Islam removes all of these impediments and proclaims the ideal of the whole of humanity being one family of God.[21]

### **3.1.2 Islam and Ethics**

Ethics means practice of virtue, morality and manners. Muslims believed that without ethics and purification, mastery over other sciences is not only devoid of value, but would obstruct insight. That is why it has been said that, 'knowledge is the thickest of veils', which prevents man from seeing reality. Prophet Muhammad said, "The most complete of believers in faith are those who are best in character".[22]

Islam has morality of its own. It puts great deal of emphasis on equality and justice and emphasizes dignity of all human beings.

According to Islam, man has not come into existence on his own and neither is he a product of natural forces that had somehow, by pure chance, combined to produce life. On the contrary, man is a creation of an All Wise, and a Most Merciful Creator. God gave man life and with that also gave man the freedom and the authority to do good or to indulge into evil. This authority and this freedom was given to man for the basic purpose of testing him, as to how he uses his authority and freedom.[23] As a part of this test, God also gave man the basic knowledge of 'good' and 'bad' at the time of his inception. Thus, according to Islam, every individual has been bestowed a clear standard of judgment of 'good' and 'evil' by God. The Qur'an has presented this knowledge of the human soul as evidence of the fact that soon, man shall indeed face separate consequences of his 'good' and 'bad' deeds. The Qur'an says: "The human soul - the way He molded it and inspired it with knowledge of its evil and its good - bears witness to the fact that indeed he, who cleanses it [of all impiety] shall be successful while he, who corrupts it shall face doom".[24]

Thus, according to the ethical philosophy of Islam, the knowledge of good and evil or in other words the standard of distinguishing good from evil is a part of the sapiential sense of man. This sapiential sense includes, besides many other concepts, moral concepts like justice, truthfulness, honesty, helping the weak, freedom in one's personal matters. It is quite possible though, that there is a difference in the application of these concepts in practical life situations, yet the concepts themselves have never been questioned and are, and have mostly remained, universally accepted. It is for this reason that ethical values like justice, honesty, trustworthiness and truthfulness etc. have never even been questioned philosophically, even if there is a considerable practical deviation from these values or a huge difference in the practical application of these values.

The examples of good morals communicated in the Qur'an are universally compatible with human nature, and are valid for all stages of history.

The Qur'an lays great emphasis on justice. It is the central value in the Islamic ethic. The Qur'an says that "Be just; it is closest to being pious".[25] In Islam there is no concept of piety without justice. The opposite of justice is oppression. Oppression has several shades of meaning; wrong, injustice, darkness, iniquity, oppression etc. The Qur'an often uses it in the sense of wrong doing.

Islam basically lays emphasis on establishing a just society free of all forms of oppression. Prophet Muhammad also says that a society can live without belief but not with oppression. The Islamic ethic conceives of a society which will be free of all forms of exploitation and oppression. Islam does not approve of violence at all. There is much misunderstanding about inter-connection between Islam and violence which needs to be clarified here since we are dealing with the question of Islamic ethic here. Islam does not approve of violence except in certain extraordinary circumstances. The word Islam has been derived from the root 'Salam' which means to escape danger and establish peace.[26]

The Qur'an has reminded - not introduced - man of a number of basic moral and ethical values. The Qur'an has, for instance, mentioned wrongfully depriving others of their rights and bribing authorities for this purpose to be a great sin, as a direct corollary of the basic values of justice, honesty and refraining from defrauding others. However, this reference of the Qur'an is not to introduce man to the fact that such an act is sinful, but to remind him that he himself is fully aware of it being a sinful act. Qur'an says: "Do not devour one another's wealth through unjust means, nor bribe the authorities in order that you may wrongfully usurp the possession of others - while you are well aware [of its being a sinful act]".[27]

However, there is another category of directives in The Qur'an, which relates primarily to the application of universal ethical principles. For instance, The Qur'an has mentioned the etiquette of interaction between unrelated men and women in a mutually interactive environment. This directive of The Qur'an is based primarily on the value of life *Hayaa*. However, in this particular case, The Qur'an has not stopped merely at reminding man of keeping the value of *Hayaa* in mind while interacting with the opposite sex, but has also prescribed a code that should be observed while such an interaction takes place. The same is the case, for instance, in the prohibition of usury *Riba*. The prohibition of *Riba*, according to The Qur'an is based on the universal principle of justice. Nevertheless, The Qur'an has not stopped merely at reminding man of keeping the value of justice in perspective, while economically transacting with others, but has gone further to prohibit a transaction that, in its view, was based on such an injustice.

Pakistani scholar Rashid Ahmad Jullundhri writes that Islam wants to create a society based on a deep sense of moral responsibility and justice in order to preserve human dignity accorded to man by God, and he argues that without the practical recognition of the basic rights of man all talk of human dignity will remain empty verbiage.[28]

These and other similar cases are examples where The Qur'an has not merely mentioned an ethical principle but has actually applied an ethical principle to a practical life situation and has prescribed or prohibited a certain act.

In the absence of such divine prescription or prohibition, there could have been a significant difference of opinion and, subsequently, a significant deviation in human application of these ethical values to practical life situations. People could have gone to extremes in such applications. Deviations in such applications affect the moral and spiritual cleansing of individuals, which, in turn, affects the success or failure in the hereafter. Qur'an has only made applications of universal ethical principles in cases where both the conditions mentioned above are satisfied.[29]

Thus, to summarize, the ethical teachings of Islam may be classified into two categories:

1. Where the Qur'an has reminded man of the basic ethical values with the implication that if man consciously deviates from such values, he shall then have no excuse to defend himself from facing the consequences of such deviation.
2. Where the Qur'an has applied the basic ethical principles on practical life situations and has prescribed or prohibited a particular code of conduct.

An exhaustive explanation and enumeration of issues in Islamic ethics should consist of both these categories.

The Answer to the Question 'Why Be Ethical?' in the Islamic Perspective.

Before we consider the answer to the said question in the Islamic perspective, it seems necessary to clarify that in a number of situations, the question of deviating from an ethical principle does not even arise. Let us take 'honesty', as a case in point. There are a number of situations in one's life where there is absolutely no reason to deviate from honesty.

The reason for such adherence, from the Islamic perspective is simply that it is a direct requirement of the articles of faith of Islam to adhere to such ethical or moral principles, irrespective of the volume of cost that has to be borne or that of the benefit that may be lost. The declaration of faith *Imaan* not followed by good deeds, in the eyes of Islam, is either hypocrisy or ignorance.

It should be obvious from the preceding discussion that the Islamic ethical philosophy has two basic principles:

1. The origin or the motivating factor in adherence to ethical principles under the Islamic ethical philosophy is primarily the articles of faith of Islam. In other words, ethical behavior, under the Islamic ethical philosophy is a requisite of the articles of Islamic faith. An attitude of deviation from ethical principles is a practical negation of ascription to the very elements of Islamic faith.

2. The practical application of ethical principles of *Shari`a*, with the basic universal ethical principles themselves, are a part of the basic code of ethical conduct in Islam.[30]

### **Examples of moral and amnesty from life of Prophet Muhammad**

Prophet Muhammad was a human being. He was not an angel or an unnatural spirit. He had a father and a mother. He had children. He had problems. He operated businesses. He mended his own clothing, repaired his shoes and milked his goats. He was humble and affectionate toward his family, and he lived among his friends as a sincere companion and a devoted brother. He paid equal regard to the poor and to the rich, and he graciously accepted the invitations of those who asked him into their homes. He visited the sick and paid respects to the deceased.

Prophet Muhammad's actions and movements were characterized by the utmost simplicity and humility. When he walked, people would walk in front of him and behind him. When seated among his followers, who loved him more dearly than their own lives, he would not occupy a special seat in order to make himself conspicuous. Prophet Muhammad had much wealth at his disposal. However, he never lost his compassion for the common man. During his lifetime the poorest and wealthiest of men found company with him. He lived humbly and exercised perfect discipline. People could not say, "You are rich Muhammad, and we are poor". He used his wealth to raise the living standards for Muslims and for non-Muslims who respected the laws of Islam. One morning some of Prophet Muhammad's companions noticed that when he awoke, the imprint of the burlap mattress frame he had slept on was showing on his flesh.[31]

Prophet Muhammad assisted the old and the young. He swept the floors for his wife. He was always concerned with the plight of the poor, as well as with the moral and spiritual development of the entire community.

Prophet Muhammad placed such a high value on education that he freed those captured in battle on the condition that they each taught ten Muslims to read and write. He made the way to knowledge easy for the common people, and he made the way to economic sustenance accessible to the poor.

Prophet Muhammad restored moral, intellectual and spiritual freedom, dignity and equality to women. Before his lifetime women had very few rights. The men took great pride in the birth of sons, but often didn't want daughters at all. History tells us that these men sometimes buried their infant daughters alive at birth. Most of them had no respect for their mothers or wives, and they viewed women merely as objects of sexual gratification. They even forbade a female from receiving inheritance from her father, husband or other relatives.

The Qur'an revealed to Prophet Muhammad a law which forbids the denial of inheritance to women. Prophet Muhammad also proclaimed the rights of women to receive religious instruction, to participate in Islamic businesses and in education, to vote, to express their ideas in public and to participate in the political affairs of the

community. He called his society's attention to the fact that men and women are equal in biological nature because God created both from a single being. He also taught that men and women are equal in their potential for doing good or bad, and for achieving intellectual and spiritual excellence.

Prophet Muhammad praised the role of motherhood and gave women liberty and status which befits their noble nature. As a result, the Muslim community has benefited greatly from the substantial contributions made by women in Islam. Whenever we see women relegated to an inferior status in a Muslim society, we should be aware that it is practicing unenlightened traditions rather than the religion of Islam.[32]

From these examples we recognize the character of Prophet Muhammad and his treatments with any human being.

### **3.1.3 Sanctity of life**

Islam upholds the sanctity of human life, as the Qur'an declares that killing one innocent human being is like killing the entire human race. Like all other faiths, Islam considers all life forms as sacred. First and foremost, the most basic right of a human being given by God is the right to live in peace and security. However, taking a criminal's life by the law in order to administer justice is allowed in Islam as it upholds the rule of law, and helps maintain peace and security of the society. Only a proper and competent court can decide whether an individual has forfeited his right to life by disregarding the right to life and peace of other human beings. The accused must be given full facilities under the law 'the right of defense'. Extra judicial killings are strictly prohibited in Islam.

Suicide and killing one's own self is undoubtedly forbidden in Islam as it is an abuse of the Divine gift of Life. According to Islamic Law those who commit or try to commit suicide are committing a major sin and will be sent to the fire of hell. Even patients who are in severe pain are prohibited to wish death. Prophet Muhammad said: "Do not harm yourself or injure others"[33] also he said: "Do not wish death even on the death bed".[34]

The Qur'an says clearly: "You shall spend in the cause of God; do not throw yourselves with your own hands into destruction. You shall be charitable; God loves the charitable".[35] And "O you who believe do not consume each other's properties illicitly - only mutually acceptable transactions are permitted. You shall not kill yourselves. God is Merciful towards you".[36] "Anyone who commits these transgressions, maliciously and deliberately, we will condemn him to Hell. This is easy for God to do".[37] Suicide is a state of disbelief and loss of faith that is condemned by God in the Qur'an. God commands the believers never to despair or lose hope and instead work for a brighter future. "None despairs of God's grace except the disbelieving people".[38]

The warning in The Qur'an even extends to the surprise that will face those who in despair of God's mercy commit these acts: "The day will come when each soul will

find all the good works it had done brought forth. As for the evil works, they will wish that they were far, far removed. God alerts you that you shall revere Him alone"[39], and "God advocates justice, charity, and regarding the relatives. And He forbids evil, vice, and transgression. He enlightens you, that you may take heed".[40] Qur'an also says: "O people, we created you from the same male and female, and rendered you distinct peoples and tribes, that you may recognize one another. The best among you in the sight of God is the most righteous".[41]

Prophet Muhammad said "Do not be delighted by the action of anyone, until you see how he ends up"[42], also Prophet Muhammad said "He who kills himself, Allah will torment him with that in the fire of Hell".[43] Some are under the misconception that by killing oneself for an Islamic cause, one commits an act which deserves Paradise.

Once when a man killed himself, Prophet Muhammad said "He is a dweller of the Fire".[44] The taking of one's life, which God has given as a trust, is a great sin. Likewise the taking of other lives (which is so often the case with suicide bombing) is also forbidden, as human life is indeed precious. "If anyone killed a person, it would be as if he killed the whole of mankind. And (likewise) if anyone saved a life, it would be as if he saved the whole of mankind".[45] Thus, all other types of extremities such as hostage taking, hijacking and planting bombs in public places, are clearly forbidden in Islam.

### **3.1.4 Islam and Peace**

The term Islam essentially means to submit and surrender one's will to a higher truth and a transcendental law, so that one can lead a meaningful life informed by the divine purpose of creation, and where the dignity and freedom of all human beings can be equally protected. Islamic teachings assert the basic freedom and equality of all peoples. Islam stresses the importance of mutual help and respect, and directs Muslims to extend friendship and good will to all, regardless of their religious, ethnic, gender, cultural, linguistic or racial background.

Islam, in fact, makes of peace at every greeting, which Muslims exchange whenever they meet by saying, (Peace be unto you) *Assalamu 'alaykum*. The Muslim also utters this statement at the end of every ritual prayer. From its inception, The Qur'an emphasized peace as an intrinsic Islamic value. In fact, the terms "Islam" and "Peace" have the same root (salaam). Furthermore, God has chosen the word peace *salam* **مرالس** as the Muslim's greeting to remind believers as one of God's attributes.

Islam, on the other hand, permits its followers to resort to armed struggle *Qital* to repel aggression, and indeed urge them to fight oppression, and injustice.

Peace in Islam does not mean the absence of war, but the absence of oppression, corruption, injustice and tyranny. Islam considers that real peace can only be attained when justice prevails.[46]

This is what Islam has always been working for, and the relations of Muslims with others are primarily based on peace. Muslims refuse to fight merely because others do not embrace a faith, nor does Islam allow Muslims to fight against those who disagree with them on any religious basis. Islam urges its followers to treat such people kindly:

"God does not enjoin you from befriending those who do not fight you because of religion, and do not evict you from your homes. You may befriend them and be equitable towards them. God loves those you are just and equitable".[47]

Instructions like these pave the way for the establishment of peace, and help to set down principles that call for the abolishment of war.

Reviewing the early Muslim era and reflecting on the experience of the early Muslim generations, one can clearly see that peace was always the original position of Muslims, and that war was either a punitive measure to annihilate tyranny and oppression, or a defensive measure to stop aggression. From the very beginning, Prophet Muhammad was instructed to use a friendly and polite approach to call people to Islam. "Invite to the way of your Lord with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious".[48]

Despite the violent opposition of the *Quraysh*, Prophet Muhammad proceeded to summon people peacefully to Islam, and the Muslims were further commanded, for prudential reasons, not to respond to the violence of the *Quraysh*. Muslim pacifism during the *Mecca* period was a political tool to influence change and to protect Muslims from mass destruction. After the immigration to *Madina*, the Muslims were permitted to fight against those who declared war against them.[49]

Prophet Muhammad was a peacemaker in his time. He endured torture, hunger and the killing of his loved ones by his enemies, but he remained a merciful person. In his bloodless conquest of *Mecca*, he forgave his archenemies. In 23 years of struggle for Islam, the total number of people who lost their lives from all sides was less than 700 in wars that were imposed upon him. There is an abundance of Quranic and historical evidence to show that it does not approve of coercion. Throughout the thirteen years of his mission in *Mecca*, Prophet Muhammad disallowed the use of force by his followers even though non-believers persecuted them.[50]

### **3.1.5 Family system**

Religions have a healthy attitude towards family, aside from a few superstitious laws surrounding family.

The family is the central place where Islamic practices are passed on. Bringing up children in the faith is extremely important, and extended families are close.

One of big problems facing the system of family is homosexuality. Islam has probably the most rigidly anti-homosexual in its practices of most the world religions and laws. The verses from the Qur'an condemning homosexuality are much clearer than those that the other religions or laws use. In all Muslim countries and all areas where the Islamic *Shari'a* is enforced homosexuality is strictly illegal. The debates in Islam about homosexuality are not about whether it is acceptable, but merely about how severe the punishment should be. So although there are liberal and strict elements within Islam with concern to homosexuality even the liberal opinion is the lesser of two evils.

Islam denies human rights to gays. An attempt by the United Nations to include gay people in anti-discrimination measures is being derailed by a coalition of Islamic countries. In UN many countries such Libya, Pakistan, Egypt, Saudi and Malaysia were doing everything in their power to stop the resolution.[51]

Very few individuals speak up for homosexuality, although there is an international Muslim gay rights group, they are widely detested within Muslim communities, and opposed and campaigned against by Muslim groups in Western countries.

There is a consensus among Islamic scholars that all humans are naturally heterosexual. Homosexuality is seen by scholars to be a sinful and perverted deviation from the norm. All Islamic schools of thought and jurisprudence consider gay acts to be unlawful.

Homosexuality is a moral disorder. It is a moral disease, a sin and corruption. No person is born homosexual, just like no one is born a thief, a liar or murderer. People acquire these evil habits due to a lack of proper guidance and education.[52]

Treatment, not capital punishment or jail is the best way to deal with such cases in society.

In this context I would like to point out that all Abrahamic religions share with each other in their Interfaith relationship is very much like a marriage, it is very important requirement to keep the fabric of society working together. Love for each other and love for God will cause everyone to struggle further and to work harder for the greater good of keeping the sanctity of the family unit. Because without the family unit what is there? There is only chaos and for the sake of the children, all of children we need to keep it together.

### **3.1.6 Chastity of Women**

The important element in the principles of human rights granted by Islam is a woman's honor, which must be respected and protected at all times, regardless of her origins. A Muslim must not physically abuse her under any circumstances. All promiscuous relationships are forbidden to him. The words of the Qur'an, in this respect, are: "Do not approach (the bounds) of adultery".[53]

Islam teaches modesty for women and men. Women are required to cover their bodies so that their figure is not revealed and only their faces and hands are shown. The head scarf is called a *Hijab* or *chador*. This requirement is designed to protect women and give them respect. The dress of Muslim women is similar to that of Christian nuns, who also cover their bodies and hair. Muslim women are not required to cover their faces as is done by some women.[54]

Apart from individual lapses, it can never be found in the history of Islam that Muslims commit this crime against woman. It has never happened that after the conquest of a foreign country the Muslim army has gone about raping women, or, in their own country, the Muslim government has provided prostitutes for them.

One of the most important elements in the concept of human rights granted by Islam is that a woman's chastity must be respected and protected at all times, whether she belongs to one's own nation or to the nation of an enemy, whether we find her in a remote forest or in a conquered city, whether she is a Muslim or belongs to some other religion or has no religion at all. A Muslim may not physically abuse her under any circumstances. All promiscuous relationships are forbidden to him, irrespective of the status or position of the woman or of whether she is a willing partner to the act.

A review of Muslim history and culture brings to light many areas in which the Qur'an teaches the principles of human rights, notwithstanding women, who in some cases seem to be subjected to diverse forms of oppression and injustice, often in the name of Islam, while the Qur'an, because of its protective attitude toward all downtrodden and oppressed classes of people, appears to be weighted in many ways in favor of women, many of its women-related teachings have been used in patriarchal Muslim societies against, rather than for, women. The Qur'an presents the idea of what we today call a (no-fault) divorce and does not make any adverse judgments about divorce.[55]

Woman and man were created equal by God and maintain equal standing in the sight of God. The Qur'anic description of man and woman in marriage: "They are your garments/ And you are their garments".[56]

As reflection deepens on Islamic teachings, it is to lead to the realization that the supreme task entrusted to human beings by God, of being God's deputies on earth, can only be accomplished by establishing justice which the Qur'an regards as a prerequisite for authentic peace. Without the elimination of the inequities, inequalities, and injustices that pervade the personal and collective lives of human beings. It is importance to note that there is more Qur'anic legislation pertaining to the establishment of justice in the context of family relationships than on any other subject. This points to the assumption implicit in much Qur'anic learning, namely, that if human beings can learn to order their homes justly so that the human rights of all within its jurisdiction - children, women, and men - are safeguarded, then they can also order their society and the world at large, justly.[57]

### **3.1.7 Love in Islam**

Concept of love in Islam is very unique, when a Muslim loves something or somebody, it must be for the sake of Allah; the same applies to hatred.

Islam teaches that marriage is the finest, purest and permissible relationship that should exist between a male and female; it should be the goal that they both have in mind.

There is no room in Islam for illicit affairs or vogue-word of boyfriend and girlfriend. All those stories of media and movies are not helpful to make a person comply with the teachings of Islam. Prophet Muhammad says: "Three qualities, if found in a person, will help him have perfect faith: Having Allah and His Messenger, as the most beloved ones, loving a person only for the sake of Allah and hating getting back to

disbelief *Kufr* the way one hates to be thrown into fire".[58] That means love is a fruit of piety. Love without piety is mischief.

Love brings men and woman together in a strong bond that joins couples with the rope of Islam. The Qur'an says "And hold fast all of you together, to the rope of Allah (i.e., this Qur'an), and be not divided among your selves, and remember Allah's favor on you".[59] A marriage based firmly and soundly on the Qur'an and the *Sunna* should suffer none of the pangs of insecurity and subterfuge that abound in marriages.

It is a relationship that binds them to each other through all the tests and trials of this life, through hardship and ease. Qur'an says: "Verily along with every hardship is relief".[60] It should be a relationship whose sole purpose is to worship, praise, and thank God Most High. If love, the tender blissful feeling of being in love is present in this relationship, then it is an extra blessing from God.

### 3.1.8 Marriage in Islam

Marriage in Islam is a religious duty and is consequently a moral safeguard as well as a social necessity.

Marriage in Islam is not based on whether we find our partner desirable or whether he or she contributes a great deal of money to the family. Marriage in Islam is a partnership, two people working as one unit. One unit striving for *Jann'h* longing to secure themselves a place in the shade of Allah. Love in Islam is a *Halal* marriage secure in the knowledge that the wealth and adornments of this world are but illusions and that it is in the Hereafter that our real lives will begin. Qur'an says: "And the life of this world is nothing but play and amusement. But far better is the house in the hereafter for those that are al-*Muttaqun* (the pious). Will you not then understand".[61]

Marriage acts as an outlet for sexual needs and regulates it so one does not become a slave to his/ her desires. It is a social necessity because through marriage, families are established and the family is the fundamental unit of our society.[62] Furthermore, marriage is the only legitimate or *Halal* way to indulge in intimacy between a man and a woman.

Islam takes a middle of the road position to sexual relations , it neither condemns it like certain religions, nor does it allow it freely. Islam urges to control and regulate our desires, whatever they may be so that we remain dignified and not become like animals.

Marriage in Islam is a contract between two people, a man and a woman, by which they agree to enter into a *Halal* relationship for the sake of God.

### **3. 1.8. I The purpose of Marriage.**

The general purpose of marriage is that the sexes can provide company to one another, love to one another, procreate children and live in peace and tranquility to the commandments of Allah.

Marriage serves as a means to emotional and sexual gratification and as a means of tension reduction. It is also a form of worship *Ibadah* because it is obeying God and his messenger. One could choose to live in sin, however by choosing marriage one is displaying obedience to God.[63]

Marriage is a solemn covenant (agreement). It is not a matter which can be taken lightly. It should be entered into with total commitment and full knowledge of what it involves. It is not like buying a new dress where you can exchange it if you don't like it. Your partner should be your choice for life. One should be mature enough to understand the demands of marriage so that the union can be a lasting one. For a marriage to be valid certain conditions must be met:

- 1) Consent of both parties.
- 2) A gift from the groom to his bride.
- 3) Witnesses.
- 4) The marriage should be publicized, it should never be kept secret as it leads to suspicion and troubles within the community.[64]

According to Islam, a man should not marry if he or she does not possess the means to maintain a wife and future family, or if he has no sex drive or if dislikes children, or if he feels marriage will seriously affect his religious obligation. The general principle is that prophet Muhammad enjoined in the followers to marry. He said "when a man marries, he has fulfilled half of his religion, so let him fear Allah regarding the remaining half".[65] Islam greatly encourages marriage because it shields one from and upholds the family unit which Islam places great importance.

### **3.1.8. II Selection of a partner**

The choice of a partner should be the one with the most piety. Prophet Muhammad recommended the suitors see each other before going through with marriage. It is unreasonable for two people to be thrown together and be expected to relate and be intimate when they know nothing of each other. The couple is permitted to look at each other with a critical eye and not a lustful one. This ruling does not contradict the verse which says that believing men and women should lower their gaze.

There is no concept of courtship in Islam, there is no dating or living in a friendly relationship or trying each other out before they commit to each other seriously. There is to be no physical relationship whatsoever before marriage. The romantic notions that people often have, have proven in most cases to be unrealistic and harmful to those involved. We only have to look at the alarming divorce rate in some societies to understand this point. e.g. the couple know each other for years, are intimate, live

together and so on yet somehow this does not guarantee the success of the future marriage. Romance and love simply do not equal an everlasting bond between two people. Romance and love die out very quickly when we have to deal in the real world. The unrealistic expectations that young people have is what often contributes to the failure of their relationship.[66]

Some criticize the Islamic way of marriage in particular arranged marriage, yet the irony is that statistically arranged marriages prove to be more successful and lasting than romantic types of courtship. This is because people are blinded by the physical attraction and thus do not choose the compatible partner.

Arranged marriages are based not on physical attraction or romantic notions but rather on critical evaluation of the compatibility of the couple. This is why they often prove successful.[67]

### **3.1.8. III The husband and wife relationship**

The husband is responsible for:

#### **(1) Maintenance**

The husband is responsible for the wife's maintenance. This right is established by authority of the Qur'an and the *Sunna*, whether the wife is a Muslim, non-Muslim, rich, poor, healthy or sick. A component of his role as leader is to bear the financial responsibility of the family in a generous way so that his wife may be assured security and thus perform her role devotedly.

The wife's maintenance entails her right to lodging, clothing, food and general care. He must lodge her where he resides himself according to his means. The wife's lodge must be adequate so as to ensure her privacy, comfort and independence.

If a wife has been used to a maid or is unable to attend to her household duties, it is the husband's duty to provide her with a maid if he can afford to do so. Prophet Muhammad is reported to have said: The best Muslim is one who is the best husband.

#### **(2) Gift**

The wife is entitled to a marriage gift that is her own. This may be prompt or deferred depending on the agreement between the parties. A marriage is not valid without *Mahr*. It does not have to be money or gold. It can be non-material like teaching her to read the Qur'an. *Mahr* is a gift from the groom to the bride. This is the Islamic law, unlike some cultures whereby the bride's parents pay the future husband to marry the daughter. This practice degrades women and is contrary to the spirit of Islam. There is no specification in the Qur'an as to what or how much the *Mahr* has to be. It depends on the parties involved.

### (3) Non-material rights

A husband is commanded by the law of God to treat his wife with equity, respect her feelings and show kindness and consideration. Prophet's last sermon stressed kindness to women.[68]

#### **The wife obligations are:**

### (1) Non-material rights

One of the main duties of the wife is to contribute to the success and blissfulness of the marriage. She must be attentive to the comfort and wellbeing of her husband. The Qur'anic verse which illustrates this point is: "Our lord, grant us wives and offspring who will be the apples of our eyes and guide us to be models for the righteous".

### (2) Faithful, trustworthy and honest.

The wife must be faithful, trustworthy and honest. She must not deceive her husband by deliberately avoiding contraception. She must not allow any other person to have access to that which is exclusively the husband right i.e. sexual intimacy.

A wife should make herself sexually attractive to her husband and be responsive to his advances. The wife must not refuse her husband sexually as this can lead to marital problems and worse still - tempt the man to adultery. The husband of course should take into account the wife's health and general consideration should be given.

### (3) Obedience

The purpose of obedience in the relationship is to keep the family unit running as smoothly as possible. The man has been given the right to be obeyed because he is the leader and not because he is superior. If a leader is not obeyed, his leadership will become invalid -Imagine a king or a teacher or a parent without the necessary authority which has been entrusted to them.[69]

Obedience does not mean blind obedience, it is subject to conditions; It is required only if what is asked from the wife is within the permissible categories of action. Also It must be maintained only with regard to matters that fall under the husband rights.

On the treatment of wives, narrated Mu'awiyah al-Qushayri: I went to the Prophet Muhammad and asked him: "What do you say (command) about our wives?" He replied: "Give them food what you have for yourself, and clothe them by which you clothe yourself, and do not beat them, and do not revile them".[70]

## Footnotes

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[36] Qur'an: 4:29.

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[38] Qur'an,12:87.

[39] Qur'an 3:30.

[40] Qur'an16:90.

[41] Qur'an 49:13.

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## **Chapter Four**

### ***4.Important issues in Islam Related with notion of Human Rights***

## Chapter Four

### 4. *Important issues in Islam Related with notion of Human Rights*

To talk about human rights in Islam nowadays, many issues tend to be pertinent, and often highly controversial, such as:

- How compatible are Islamic teachings with the modern interpretation of human rights?
- What about modern interpretations of Islamic traditions? Are they any more compatible with the notion of human rights?
- How do forms of laws that deal with human rights compare with an Islamic interpretation?
- What is Islamic Law stipulates about these issues: apostate, jihad, women, minorities and criminal punishment in Islam?
- Are there misunderstandings about the way Islamic Law interprets human rights that should be clarified?
- What is the future of human rights activity in Islamic communities?

According to Islam, man is God's vicegerent *خليفة الله* on earth. Humans have been honored by the Creator and gifted with the faculties of the mind and will-power. Everything else in the universe has been created for the purpose of serving them and achieving their happiness. The Divine honor bestowed on them confers upon them rights that no one else has the right to deny or violate. Humans, in their capacity as vicegerents of their Creator, are expected to defend their God-given rights and struggle for preserving them.

The implementation of human rights norms in any society requires thoughtful and well-informed engagement of religion because of its strong influence on human belief systems and behavior.

In this chapter I would like to refer to some of most renowned Muslim thinkers who deal with these critical issues in field of human rights.

**The general framework of Islam is based on the three principles of:**

1 - Oneness of Allah (وحدانية الله)

2 - Prophethood (النبوة)

3 - Caliphate (الخلافة) {In this case caliphate means a human being who is God's viceregent}.

**1 - Oneness of Allah** means that Allah alone is the Creator, Sustainer and Master of the universe and of all that exists in it - organic or inorganic. He alone has the right to command or forbid. Worship and obedience are due to Him alone. No aspect of life in all its multifarious forms, or the apparent control which human beings have over physical objects or the objects themselves has been created or acquired by human beings in his or her own right. They are the bountiful provisions of Allah and have been bestowed on human beings by Him alone.[1]

The authority of Caliphate is bestowed on the whole of any community which is ready to fulfill the conditions of representation after subscribing to the principles of Oneness of Allah and Prophethood. Such a society carries the responsibility of the Caliphate as a whole and each one of its individuals shares in it.

This is the point where the system of government begins in Islam. Every individual in an Islamic society enjoys the rights and powers of the caliphate of Allah and in this respect all individuals are equal. No-one may deprive anyone else of his rights and powers.

The agency for running the affairs of the state will be formed by agreement with these individuals, and the authority of the government will only be an extension of the powers of the individuals delegated to it. Their opinion will be decisive in the formation of the government, which will run with their advice and in accordance with their wishes.

Whoever gains their confidence will undertake the duties and obligations of the caliphate on their behalf; and when he loses this confidence he will have to step down.

**2 - Prophethood** is the medium through which Muslims receive the law of Allah. They have received two things from this source: the Qur'an, the book in which Allah has expounded His law, and the authoritative interpretation and exemplification of that Book by the Prophet Muhammad , through word and deed, in his capacity as the representative of Allah. The Qur'an laid down the broad principles on which human life should be based and the Prophet of Allah, in accordance with these principles, established a model system of Islamic life. The combination of these two elements is called *Shari'a*. [2]

**3 - Caliphate** means "representation". Man, according to Islam, is the representative of Allah on earth, His vice-regent; that is to say, by virtue of the powers delegated to him by Allah, and within the limits prescribed, he is required to exercise Divine authority. [3] The Qur'an clearly states that the aim and purpose of Islamic rule is establishment, maintenance and development of those virtues which the Creator wishes human life to be enriched by and the prevention and eradication of those evils in human life which He finds abhorrent. The Islamic teachings are intended neither solely as an instrument of political administration nor for the fulfillment of the collective will of any particular set of people; rather, Islam places a high ideal for the achievement of which must use all the means at its disposal. [4]

This ideal is that the qualities of purity, beauty, goodness, virtue, success and prosperity which God wants to flourish in the life of His people should be engendered and developed and that all kinds of exploitation, injustice and disorder which, in the sight of Allah, are ruinous for the world and detrimental to the life of His creatures, should be suppressed and prevented. Islam gives a clear outline of its moral system by stating positively the desired virtues and the undesired evils.

The constant demand made by Islam is that the principles of morality must be observed at all costs and in all walks of life. Hence, it lays down as an unalterable policy that the community should base its policies on justice, truth and honesty. It is not prepared, under any circumstances, to tolerate fraud, falsehood and injustice for the sake of political, administrative or national expediency. Whether it be relations between the rulers and the ruled within the Islamic community, or the relations of the Islamic community with others, precedence must always be given to truth, honesty and justice.

Islam imposes similar obligations on the authority and the individual: to fulfill all contracts and obligations; to have uniform standards in dealings; to remember obligations along with rights and not to forget the rights of others when expecting them to fulfill their obligations; to use power and authority for the establishment of justice and not for the perpetration of injustice; to look upon duty as a sacred obligation and to fulfill it scrupulously; and to regard power as a trust from Allah to be used in the belief that one has to render an account of one's actions to Him in the life Hereafter.[5]

#### **4.1 Secularism**

Secularism implies that the Divine Guidance, worship of God, and obedience to God, should be confined to the personal life of each individual and except for the small sphere of a person's private life, all other affairs of this world should be settled purely from the worldly viewpoint, according to the wishes and expediency. In such matters it is out of the question to think of what God may have commanded, what His Guidance consists of and what the Divine Books may lay down.

The view that religion cannot be separated from politics in Islam is due to the primary concern with Islamic values. It was thought by early Islamic scholars '*Ulama* and jurists that if religion was separated from politics, the rulers would totally neglect these fundamental Islamic values and would behave in a manner which would only satisfy their greed for power. In fact in those days there was no concept of secularism as a philosophy of humanism. The scholars '*Ulama* were afraid that if religion and politics were separated there would be absolutely no check on the conduct of the rulers. In fact, one does not find clear articulation to this effect (that religion cannot be separated from politics in Islam) in any early Islamic source. This formulation itself is of nineteenth century origin when non-Islamic powers began to impose secular laws in Islamic communities i.e. the laws which were not basically derived from *Shari`a*.

The Qur'an, in fact, directly encourages pluralism, shown in its "And We have sent down to you (O Muhammad) the Book (this Quran) in truth, confirming the scripture

that came before it and Mohayminan (Trustworthy in highness and a witness) over it (Old Scriptures)".[6] This verse clearly states that every people have their own law and a way, i.e. every nation is unique in its way of life, its rules etc. It also says that if Allah had pleased He would have created all human beings a single people but He did not do so in order to test them (whether they can live in harmony with each other despite their differences in laws and way of life). Thus it is clear assertion of pluralism. One must respect the other's faith and live in harmony with others.

In the early Islamic period there were no other laws than *Shari`a*, and since there was no such concept of the State in the Qur'an, the Islamic community itself is a historical construct. The structure of Islamic community evolved over a period of time. The Qur'an and *Hadith* were the primary sources for the new State. It is important to note that before Islam there was no State in Mecca or Medina. There was only a senate of tribal chiefs who took collective decisions and it was tribal chiefs who enforced those decisions in their respective tribal jurisdiction. There were obviously no written laws but only tribal customs and traditions. Any decision had to be taken within the framework of these customs. As there was no other source of law.

The collection of documents that we today know as El-Medina Document is spread over 47 sections. Amongst these sections is a specific mention of complete equality for the Jews and Pagans of Medina who formed equal part of the nation '*Ummah*' as per the preamble of the document. There was no special tax or *Jizya* levied on them.[7]

The city-state of Medina was a federation of all the tribes residing in the *Yathrib* Area. Each member of each tribe was to have complete rights and complete obligations as an equal citizen. Another astounding feature of this document is the nature of authority that the Prophet had over this newly formed Medinan community of Muslims, Jews and others. He was recognized as the political leader and not a spiritual one. Allegiance of the non-Muslims was nothing more than political.

Prophet Muhammad as the head of the state did not derive his authority from the fact that he was the Prophet but because he was the leader of the Majority of the people in Yathrib. Therefore there was no divine right to rule, not even for the Prophet Muhammad. Hence the city-state of Medina or more appropriately the Medinan Confederation of tribes, was hardly an 'Islamic' state rather it was a practical political alliance designed to fulfill the collective needs of all the people who resided in the city, and nothing more.[8]

From all this will be seen that Islamic teachings as embodied in the Qur'an and *Sunna* of the Prophet (and not opinions of the jurists) are not against the concept of human rights and individual freedom (freedom of conscience). Islam, in fact, is a religion which legally recognized other religions and gave them dignified status and also accepted the concept of dignity of all children of Adam irrespective of their faith, race, tribe, nationality or language.

Islam upholds pluralism, freedom of conscience and human and politic rights and thus does not clash with the concept of secularism.

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An-Na'im's **النعيم** argument calls for synergy and interdependence between religion and secularism. He sees the Islamic *Shari'a* as an important point of reference for him. The Muslim law system, which dates back to the seventh century, must, in his opinion, always be open to being questioned.[9]

It can, even today, provide answers through fresh interpretations, which each person must be prepared to carry out for him or herself. *Shari'a* is not, according to him, to be thought of as a national law, but rather as a frame of moral values similar to that provided for Christianity by the Ten Commandments.[10]

Human rights and secularism need political support. If you fail to convince people that secularism and human rights are good for them, and if you do not manage to convince them of this in terms of their own religious beliefs, then you leave the field to the fundamentalists. You then give them the opportunity to mobilise the power of faith for their own political purposes. Those values which society chooses to uphold, whether in national institutions, or laws, are all religious values.[11]

In that sense An-Na'im does not believe that secularism has any ready answers to profound ethical problems. In order to fulfill its function, secularism needs to be ethically minimalist. There are many questions in which it cannot interfere. It can handle the basics about how we can live with and maintain respect for one another. But answers to questions on things like abortion or the right to take one's own life must be sought elsewhere.[12]

In this issue An-Na'im believes that religion and the state should be separate, institutionally. If one looks at Muslim history, one sees that the two have always been treated as separate entities. The idea that politics and the state go together is post-colonial. In Muslim history, this came about only in the 20th century[13], also, he does not distinguish between secularism and religion because he believes that in the secular there is much that is religious and it is difficult to separate them.[14]

An-Na'im advocates a cross-cultural dialogue to promote universality at a theoretical or conceptual level by highlighting moral and philosophical commonalities of human cultures and experiences.[15]

The Rule of treating others as one would wish to be treated by them which are found in some formulation or another in all the major cultural traditions of the world can be presented as a universal moral foundation of human rights norms. This principle of reciprocity could provide universal rationale for human rights as those rights which one would claim for himself or herself, and must therefore concede to others. However, efforts to articulate shared values and principles must be founded on mutual respect and sensitivity to the integrity of other cultures.[16]

An-Na'im points out; 'Islamic Law requires the state to fulfill its obligation to secure social and economic justice and to ensure decent standards of living for all its citizens before it can enforce the *Shari'a* punishments.[17]

An-Na'im suggests that cross-cultural and inter-faith dialog on the subject of human rights is most likely to be successful if direct confrontation is avoided and dialogue is based on a combination of mediation, internal discourse and reconciliation. In particular, individuals and groups ought not to be confronted with the need to make exclusive choices between religious commitments on the one hand, and international human rights law on the other. In any event, self-criticism of one's own human rights policy is a necessary precondition to any serious cross-cultural dialog on human rights.[18]

*Shari'a* appears in the Qur'an in the sense that believers look at the sources of their faith in order to find guidance. *Shari'a* is not a law. The state cannot decide to make a family law out of it. It would then no longer be the *Shari'a*, but rather the political will of the state, But *Shari'a* does, nevertheless, affect the justice system.[19]

All that is only a legitimizing discourse for the existing power relations. If you look at the Islamic world then you see that there is an enormous difference in the interpretation of individual points. It is always, in the final analysis, the political will to get something done that is decisive.

So religion should not be treated any differently to other ideologies that serve to legitimate claims to power.

## 4.2 Apostate

Freedom of conscience is one of the fundamental rights of humans enshrined in the Qur'an; it is therefore ignorant for anyone to suggest that Islam allows putting people to death just because they convert to another religion.

Islam never advocates killing people who choose to leave Islam. To kill anyone who chooses to follow a religion other than Islam is against the fundamental teachings of the Qur'an.

Freedom of conscience is a fundamental principle of the Qur'an that is clearly stated. Thus, if apostates cause no harm to the Muslim community and do not call for spreading hostility towards Islam, they should not be punished; rather they should be advised kindly and wisely to learn the truth about Islam.

Even a casual reader of the Qur'an will not fail to be impressed by its emphasis on the freedom of conscience as a cornerstone of its moral structure. To cite a few verses as:

1 - "If it had been your Lord's will, all who are in the earth would have believed. Will you, then, force the people to become believers?".[20]

2 - "And if they surrender themselves unto Him (i.e. God), they are on the right path; but if they turn away – behold, thy duty (O Muhammad), is no more than to deliver the message: for God sees all that is in [the hearts of] His creatures".[21]

3 - "Hence, pay heed unto God, and pay heed unto the Messenger, and be ever on your guard [against evil]; and if you turn away, then know that Our Messenger's only duty is a clear delivery of the message entrusted to him".[22]

4 - "But if they turn away [from thee, O Prophet, know that] we have not sent thee to be their keeper: thou art not bound to do more than deliver the message entrusted to thee".[23]

I should further state that all of the moral teachings of the Qur'an are based on the notion of moral responsibility, which entails the freedom of choice. Furthermore, the Qur'an does not allow anyone to harm those who are living in peace, no matter what religion they adhere to. This principle has been clearly stated in the Qur'an as follows: "Thus, if they let you be, and do not make war on you, and offer you peace, God does not allow you to harm them".[24]

In pursuance of this policy, Prophet Muhammad issued clear directives to his soldiers never to disturb those who are engaged in any form of worship. The policy of living and letting others to live is firmly enshrined in the following verses: "Say: O disbelievers! I do not worship what you worship, nor do you worship what I worship, to you your religion, and to me, mine".[25]

In full conformity with the above teachings, neither the Prophet Mohammad nor any of the four rightly guided caliphs who succeeded him were in the habit of hunting down people and executing them for merely changing their religions. Rather, they refrained from doing so except in rare cases involving treason.

There are two Muslim schools of jurisprudence on the matter. The first school, to which most classical jurists belonged, considers apostate *Riddah* a religious offence punishable by death. The second considers apostate *Riddah* a political offence that has nothing to do with 'the Islamic guarantee of a person's right to freedom of faith. So, *Riddah* in this case is not really apostasy but sedition, an act of mutiny or treason, that is punishable within the framework of the authority's responsibility for preserving the community and maintaining law and order.

The traditional position of Muslim scholars and jurists has been that apostasy is punishable by death. The longstanding problem of the traditional position, as held by classical jurists or scholars, can be explained and excused as not being able to see apostasy, an issue of pure freedom of faith and conscience, separate from treason against the community or the state.

However, the accumulated experience over the history in terms of abuse of this position about apostasy against Muslims as well as the changed context of a globally-connected, pluralistic society should help us appreciate the contemporary challenges in light of the Qur'anic norms and the Prophetic legacy. In this context, while the classical misunderstanding about this issue of apostasy is excusable, the position of some of the well-known contemporary scholars is not.[26]

Abu A'la Maududi, the late founder and leader of Jama't-e-Islami and a leading independent, revivalist Islamic personality of 20th century, is frequently referred to for his ardent argument for capital punishment for apostasy. He argued that there is an

broad agreement of the leading jurists on this issue. He claims to copy the consecutive writings of all the lawyers from the first to the fourteenth century A.H. (Islamic calender). would make our discussion very long.[27]

Yet we cannot avoid mentioning that however much the four Schools of Law may differ among themselves regarding the various aspects of this problem, in any case all four schools without doubt agree on the point that the punishment of the apostate is execution.

Such a sweeping claim is misplaced because the alleged agreement is about apostasy-cum-treason, not about solely apostasy. Furthermore, any claim of consensus *ijma'* on almost anything should be taken with a great deal of circumspection

Another well-known Muslim scholar and jurist of our time, is Yusuf al-Qaradawi يوسف القرضاوي. He asserts: "The duty of the Muslim community - in order to preserve its identity - is to combat apostasy in all its forms and origins, giving it no chance to pervade in the Muslim world." Similar to Maududi, he also claims *ijma'* on this: "That is why the Muslim jurists are unanimous that apostates must be punished. ... apostasy is a criminal act.[28]

Al-Qaradawi also fails to separate apostasy from treason. Such scholars of high repute have shown such serious lapse in recognizing that, as Dr. Irfan Ahmad Khan a scholar and Qur'anic exegete, argues: "Freedom of faith and religion is meaningless without the freedom to change one's faith".[29]

Then, also there are scholars, who are either wishy-washy or ambivalent in regard to their positions. Some are too married to the traditional views held in the past, right or wrong. Views and positions of scholars and leaders, such as Maududi and al-Qaradawi, not only provide powerful ammunition for propaganda against Islam and Muslims, but also confound the mind of Islamic community, particularly the youth, whose discerning minds see through the double-standard or self-contradiction quite transparently.

While many contemporary Muslim scholars have expressed their views affirming the freedom of faith, the collective voice of Muslims is still feeble and little known.

In my point of view it's necessary to collate opinions and positions of various Muslim scholars, academics, intellectuals, imams, professionals, community leaders and others on this issue.

These voices, representing a broad spectrum of Muslim community *'umma*, are tipping the scale of the discourse on this issue in favor of affirming and upholding the pristine Islamic principle about freedom of faith. It also debunks the claim of unanimity *ijma'*, which was not quite true in the past, and it is even less true in the present.

Views of some of the early scholars might not be categorical or without variant reports. However, the excerpts included can be basis for identifying them as the precursors of the contemporary views on this issue.

There are many scholars, early and contemporary, who hold that in case of apostasy capital punishment is not warranted, but have sanctioned or kept open the possibility of other punishments.

There are also scholars who believe that punishment of apostasy is not *had* which is mandatory, specified punishment based on the Qur'an or sunna, but it is subject to *ta'zir* which means discretionary punishment, determined by the proper Islamic judicial system.

There is no hadith confirming punishment or retribution solely for apostasy. In every single case, where punishment has been meted out, *riddah* involved treason or rebellion.[30]

The following is an example of how Prophet Muhammad dealt with apostasy.

A Bedouin gave the pledge of allegiance to Allah's Apostle for Islam. Then the Bedouin got fever at Medina, came to Allah's Apostle and said, "O Allah's Apostle! Cancel my Pledge," But Allah's Apostle refused. Then he came to him (again) and said, "O Allah's Apostle! Cancel my Pledge." But the Prophet refused. Then he came to him (again) and said, "O Allah's Apostle! Cancel my Pledge." But the Prophet refused. The Bedouin finally went out (of Medina) whereupon Allah's Apostle said: Medina is like a pair of bellows (furnace): It expels its impurities and brightens and clears its good.[31]

Notably, as M. E. Subhani explained "This was an open case of apostasy. But the Prophet neither punished the Bedouin nor asked anyone to do it. He allowed him to leave Medina, nobody harmed him".[32]

Treason, however, is another matter. The punishment for treason in the Qur'an is as strict as it is in the Hebrew Bible. But it must never be confused with mere change of religion.

According to the Islamic history, when Prophet Muhammad died, some of the Muslims deserted Islam for several reasons. The biggest of those reasons was that they opposed paying the Zakah which means 2.5% of annual income in the form of Islamic taxes for the poor. Keep in mind that Allah was constantly warning the Prophet and the Muslims about the hypocrites. Some Arabs in pre-Islamic times were used to exploiting each others. The strong ate the poor, and high interest rates were enforced on loans given to the poor to ultimately forced them to sell off their cattle, or their sons, daughters and/or wives as slaves.

After the death of Prophet Muhammad, some of the rich hypocrites decided to join with the Pagan Arab tribes to fight the Muslims and end Islam. The leader of the apostates/renegades was Mosilama, who started his army of infidels in what we call today the country of Oman, which is more than 1500 kilometers away from Mecca and Medina where the Muslims resided.

After Mosilama became strong and popular and was able to gather enough pagans and hypocrites to form an army, he led them to march to Mecca and Medina to fight the Muslims. When his army finally reached the mountains near Mecca, the Muslims had

fought them several battles until he was ultimately killed and his army soundly defeated.[33]

The objection that I have with some Mosilama views is for the following reasons:

- 1- It was the renegades or apostates that declared the war on the Muslims. The Muslims did not start the war.
- 2- It's not logical to use the story of Mosilima to prove that it is licence today to kill any person who deserts Islam. Mosilima was not a peaceful renegade. He wanted to destroy the Muslims through war. He had to be fought and killed. It's not justice to use such position as a standard and kill all renegades, especially those who might embrace Islam and then desert it later due to the anti-Islamic media and for any other reason.
- 3- The Qur'an talked about the apostates several times, and not a single command exists in the Qur'an that orders the killing of any of them.

### **4.3 Woman**

One of the most controversial human rights issues is the status of women in Muslim society. Issues pertaining to equality between man and woman in general, law of inheritance, relative ease of the right to divorce for men, law of evidence and injunctions related with modesty in dress and public roles have been discussed widely.

Though satisfactory answers to these burning questions are yet to be developed and established in the larger Muslim thought, one important historical context should be noted, which serves as a useful point of caution before taking extreme positions.

The Islamic law takes a somewhat different approach. The Quranic texts explicitly separate the duties along sexual lines. The man is to give the woman a gift, categorized by the jurists as a dower, *Mahr*. The *Mahr* is the basis of the entire Islamic family law.

Once it is accepted by the woman, it is a sign of conclusion of the marriage contract. It gives her a property right in her own capital. If the actual payment is not deferred, she may use it any way she wishes, and if she uses it for making her own business, she may keep the profits for herself. She is not obliged to contribute to maintain the family. If of a certain social status, her husband is obliged to pay for a servant to help her. If the payment of the *Mahr* is deferred, and the husband dies, the *Mahr* is treated as a debt on the entire estate, so that if large enough it could eat up the estate and no one of the other heirs, including the children, could in principle inherit anything. The man by contrast is obliged to pay the woman the *Mahr*, make a monetary contribution to the maintenance of the family. He is awarded for these one-sided obligations a double inheritance share assuming a dower has not eaten it up. The man as son or as surviving widower inherits twice that of the daughter or the surviving widow.[34]

I would like to say that Muslims differ widely in their interpretations of Islamic law and on the question of whether women can be afforded equality under Islamic law. That is, here, as elsewhere, there is no consensus among contemporary Muslims about what Islamic law requires. By and large, Muslims seem to be coming to terms with the idea that women should enjoy at least approximate equality with men in areas like employment, government service, and education, but there is resistance to accepting the idea that the traditional rules of Islamic family law should be reformed.

There are Muslims who believe that women are meant to be equal partners in the family and others who think they have been assigned different, complementary roles, so that it is natural that men have superior rights within the family. According to the latter position, men are the masters and women the dependents, being subject to male authority and discipline.

God's commandments about the status of women and the relations between men and women, which have been revealed through Qur'an, consist of full justice. In this regard, Islam suggests equality of rights, responsibilities and duties between the two genders.

In the Qur'an God insists that the tasks and responsibilities of women are the same as those of men. Furthermore, while performing these tasks and responsibilities men and women must help and support each other.[35]

God emphasizes that believers will be rewarded in the same manner according to their deeds, regardless of their gender, Qur'an says: "Their Lord responds to them: 'I will not let the deeds of any doer among you go to waste, male or female - you are both the same in that respect'[36], also Qur'an says: "Anyone who acts rightly, male or female, being a believer, We will give them a good life and We will recompense them according to the best of what they did".[37]

In another verse, Muslim men and women are considered together, and it is stressed that both have the same responsibility and status in God's sight: "Men and women who are Muslims, men and women who are believers, men and women who are obedient, men and women who are truthful, men and women who are steadfast, men and women who are humble, men and women who give alms, men and women who fast, men and women who guard their private parts, men and women who remember Allah much: Allah has prepared forgiveness for them and an immense reward".[38]

In Qur'an there are many more verses stating that men and women are exactly equal in terms of their tasks and responsibilities and their rewards or punishments in return. There are a few differences in social issues, but these are for the comfort and protection of women. The commands of the Qur'an regard the congenital differences between the two genders resulting from their creation, and suggest a system maintaining equal justice for men and women in this light.

There is no text in the Qur'an, no saying of Prophet Muhammad, which can possibly be held to justify the practice of depriving women of the natural benefits which God has decreed for all mankind and there is no text in the Qur'an, or saying of Prophet Muhammad which justifies her life-long imprisonment in her home. Decency and

modesty is enjoined by the Qur'an, the circle of a woman's intimate relations is prescribed by the Qur'an.

Islam does not see women as objects. Therefore, it is not seen as appropriate that a woman of good morals should marry a man of bad morals. In the same way, it is not permitted for a woman of bad morals to marry a man of good morals: "Corrupt women are for corrupt men and corrupt men are for corrupt women, Good women are for good men and good men are for good women. The latter are innocent of what they say. They will have forgiveness and generous provision".[39]

The historical truth is that Prophet Muhammad is feminist. From the lowest degradation, he uplifted women to a position beyond which they can only go in theory. Most of the Arabs of his day held woman in supreme contempt, ill-treated and defrauded them habitually, and even hated them.[40]

For we read in the Qur'an:"Ye who believe! It is not allowed you to be heirs of women against their will, not to hinder them from marrying, that you may take from them a part of that which you have given them, unless they have been guilty of evident lewdness. But deal kindly with them, for if ye hate them it may happen that ye have a thing wherein Allah hath placed much good".[41]

Some Arabs regarded the birth of girl babies as the very opposite of a blessing, and had the custom to bury alive some of them they deemed superfluous.[42] The Qur'an peremptorily forbids that practice, along with others hardly less unjust and cruel. It assigns to women a defined and honored status and commands mankind to treat them with respect and kindness. The Prophet Muhammad said: "When a woman observes the five times of prayer, and fasts the months of Ramadan, and is chaste, and is not disobedient to her husband, then tell her to enter Paradise by whichever gate she likes"[43], also "Whoever looks after two girls till they come of age will be in the next world along with me, like my two fingers close to each other"[44], also "Shall I not point out to you the best of virtues. It is to treat tenderly your daughter when she is returned to you, having been divorced by her husband"[45] and "Whoever has a daughter and does not bury her alive, or scold her, or show partiality to his other children, Allah will bring him to Paradise".[46]

As for female Muslim leaders in many Islamic Countries, Benazir Bhutto was twice elected Prime Minister of Pakistan; Tansu Ciller served as Prime Minister of Turkey; in Bangladesh the Prime Minister, Khaleda Zia and Sheikh Hasina Waged, are women; and Indonesia has a woman president in Megawati Sukarnoputri. These women have mixed records both in terms of effectiveness and honesty, but they have been neither better nor worse than male leaders in their countries, and the fact they were elected should dispel the stereotypes that unmitigated sexism prevails everywhere in the Muslim world. There is, admittedly, a saying attributed to the Prophet, according to which a nation that makes a woman its ruler will not succeed; and some Muslims have argued that this bars women from serving as heads of state. But this interpretation is not widespread, and has not stopped Muslim women from being elected.

#### **4.4 Criminal Punishment in Islam**

One of main issues which faced Islam and human rights is punishment, but I would like to say that the philosophy of punishment in Islam is to ensure that, in a person's public conduct, he does not commit a crime or any act likely to lead to one.

Islamic law does not empower any one to infringe on the right of an individual citizen. It cannot break into a man's room and punish him for adultery. It cannot plant a camera in a hotel room and punish a man based on a recording of a sexual act. But if a man and a woman choose to have sex where four eye witnesses actually see coitus, the act immediately leaves the realm of private conscience to one of public morals.[47]

#### **The objectives of the Islamic Penal System**

The Islamic penal system has many objectives, the most important of which are as follows:

**The first Objective:** Islam seeks to protect society from the dangers of crime. It is common knowledge that if crimes are not countered with serious punishments, then society will be in grave danger. Islam seeks to make social stability and security widespread, making life in society secure and peaceful. It has made this consideration a platform for action, legislating punishments that will discourage crime. This purpose has been articulated by the following verse that discusses retribution and its effects on society: "There is (preservation of) life for you in retribution, O people of understanding, that you may become pious".[48]

If the murderer, or any other criminal for that matter, knows the extent of the negative consequences for himself that his crime will cause, he will think a thousand times before committing it. Awareness of the punishment will cause the criminal to abstain from committing the crime in two ways. The criminal who has already been subject to the punishment will most likely not return to the crime again. As for the rest of society, their awareness of the effects of this punishment will keep them from falling into the crime.

To realize a general effect from the punishment, Islam has established the principle of publicly announcing when it will be carried out. Qur'an says: "A group of the believers should witness the punishment".[49]

**The Second Objective:** Islam seeks to reform the criminal. The Quran often makes mention of repentance in association with the crimes that it deals with, making it clear that the door to repentance is open whenever the criminal abandons his crime and behaves properly. It has made repentance a means of waiving a fixed punishment in some instances, like the punishment for highway robbery. The Qur'an says: "...except for those who repent before you take hold of them. Then know that God is the Forgiving, the Merciful".[50]

Qur'an says after mentioning the prescribed punishment for theft: "Whoever repents after his wrongdoing and makes amends, then verily God will accept his repentance and verily God is the Forgiving, the Merciful".[51]

This objective is seen more frequently with regard to discretionary punishments, whereby it is incumbent upon the judge to take into consideration the circumstances of the criminal and what will insure his betterment.[52]

**The Third Objective:** The punishment is a recompense for the crime. It is undesirable to treat a criminal lightly who threatens the security of society with danger. The criminal should receive his just recompense as long as he is pleased with taking the path of evil instead of the path of righteousness. It is the right of society to be secure in its safety and the safety of its individual members.[53]

**Islamic criminal law identified the most serious crimes as those mentioned in the Qur'an. These crimes and punishments are:**

Adultery: lashes or stoning.

Highway robbery: execution; crucifixion; exile; imprisonment; or right hand and left foot cut off.

Theft: right hand cut off (second offense: left foot cut off; imprisonment for further offenses).

Slander: lashes.

Drinking wine or any other intoxicant: lashes.

Apostate or Rebellion: execution in extremely Islamic schools.

Crimes against the person include murder and bodily injury: It depends on the crime.

**Muslim criminal law arranged punishments for various offences into four broad categories:**

1 - *Kisas* which means retaliation.

2 - *Hudood* which means the limit or boundary.

3 - *Ta'zeer* which means discretionary punishments.

4 - *Diya* which means blood money.

Islamic criminal law divided crimes into two categories: Crimes against God, such as drunkenness and adultery, which are regarded as crimes of deeper character, and crimes against man, as murder and robbery, which were regarded as offenses of

private nature in which the injured person has to take initiative to claim punishment of the offender.[54]

Though the crimes against man were punished by the *Shar'a*, the basic notion underlying them was to give satisfaction to the injured rather than to protect the society. The crimes against man were, though no less ruinous to the peace and tranquility in the society than the crime against the God, nevertheless regarded as private wrongs and were left to the discretion or caprice of the individual concerned, which may be characterized as the major weakness of the Islamic criminal law. For example while murder was regarded as an offense against man and so a private offense, drunkenness was deemed to be an act against God and so was regarded as a public offense. This cannot convince a modern mind because murder is a serious crime and it strikes the very basis of the existence of a civilized society, it looks rather irrational that murder be treated as a private offense and drunkenness should be deemed to be a public offense.[55]

The purpose of punishment is not vengeance against the culprit, it rather aims at protecting society from the aggressions of legal offenders and to halt transgression and crime, it seeks to prevent further criminal acts and can also be understood as a warning against its repetition by others.

In addition to those very general aims, Islam also sees punishment as a necessary requisite of divine justice and the *Shari'a* as the most prominent distillation of Islamic morals and law. This has to do with the strong connection of religious and state affairs in the Muslim world. Any judicial proceeding operates on the ground of divine affirmation; justice is pronounced in the name of God. It is believed that all penalties following the accusation and trial of an offender to the law are measured with a divine balance of justice.

## 4.5 Jihad

Another question is raised about Jihad. Some says is it not the duty of Muslims to make Jihad, but the purpose of Jihad is not to convert people to Islam. The Qur'an says, "No compulsion in religion".[56] The real purpose of Jihad is to remove injustice and aggression. Muslims are allowed to keep good relations with non-Muslims. The Qur'an says, "Allah does not forbid you that you show kindness and deal justly with those who did not fight you in your religion and did not drive you out from your homes".[57]

Jihad does not mean 'holy war' Literally, jihad in Arabic means to strive, struggle and exert effort. It is a central and broad Islamic concept that includes struggle against evil inclinations within oneself, the struggle to improve the quality of life in society, the struggle in the battlefield for self-defense or fighting against tyranny or oppression.

Islam teaches that fighting is only against those who fight. The Qur'an says: "Fight in the cause of Allah those who fight you, but do not transgress limits; for Allah loves not transgressors".[58] The Qur'an also says "And why should you not fight in the cause of Allah and of those who, being weak, are ill-treated (and oppressed)? Men, women, and children, whose cry is, 'Our Lord! Rescue us from this town, whose people are oppressors; and rise for us from Your side one who will protect; and rise for us from Your side one who will help'.[59]

Ever since the Renaissance, Muslims have been subjected to difficulties. From the Inquisition in Spain to the ethnic cleansing in some places, the Muslim people have endured colonial regime and economic and military oppression. By the means of media, Islam has been given a sinister image in the eye of the public opinion, this notorious image is mainly due to the ignorance and misunderstanding of the media and public.

A word which is often heard and associated with the acts of certain individuals, claiming to act in the name of Islam, is the Arabic word: Jihad. Its significance plays an extremely crucial role in the image of Islam. But what does this so widely known word mean?

Jihad has a great significance in the lives of Muslims (Submitters in English). Like any language, Arabic has unique words which have a particular meaning which cannot be translated precisely. The best translation known for such a word is the following: a sincere and noticeable effort (for good); an all true and unselfish striving for spiritual good.

Jihad as presented in the Quran and any of the other scriptures implies the striving of spiritual good. This Jihad particularly involves change in one's self and mentality. It may concern the sacrifice of material property, social class and even emotional comfort solely for the salvation and worship of God Alone. As a result, one who practices Jihad will gain tremendously in the Hereafter.[60]

The Jihad involves noticeable effort for righteousness. This means that the effort concentrated in the Jihad is a step in the true and ultimate path of Islam; the effort imposed on one's self. Thus Jihad is solely individual, self-centered and self-

interested. This effort is only the doing of good for salvation and pardon of God. The Quran points this out in the following verse: "The day will come when every soul will serve as its own advocate, and every soul will be paid fully for whatever it had done, without the least injustice".[61]

In respect to the above Quranic verse, God tells the believers that all acts will reflect the soul of their authors. Examples of this Jihad would be to exceed in the sincere act of good deeds; to frequent the mosques that worship God alone more often; to study the scripture in detail, to help the poor and the orphans, to stand for people's right for freedom, be equitable, never bear witness false testimony, frequent and stay in good terms with friends and neighbors, and the restraining of the doing of sins; to commit adultery, to steal, to lie, to cheat, to insult people, to gossip. "As for those who lead a righteous life, male or female, while believing, they enter Paradise; without the slightest injustice".[62]

The previous Quranic verse highlights the meaning of Jihad and its role. It has also mentioned the importance of the sincerity when it is practiced.

Jihad also includes the striving and establishing of justice. Before one can strive for justice in his/her community, justice must be one of his/her main religious and moral principles.

Jihad may also reflect the war aspects in Islam. The fighting of a war in the name of justice or Islam, to deter an aggressor, for self defense, and/or to establish justice and freedom to practice religion, would also be considered a Jihad "You shall strive for the cause of God as you should strive for His cause".[63] The Qur'an also says "O you who believe, you shall be absolutely equitable, and observe God, when you serve as witnesses, even against yourselves, or your parents, or your relatives. Whether the accused is rich or poor, God takes care of both. Therefore, do not be biased by your personal wishes. If you deviate or disregard (this commandment), then God is fully Cognizant of everything you do".[64]

Since these verses show that God accepts only justice, fighting in the name of God is fighting in the name of justice. But, contrary to many people's interpretation, Jihad is anything but a holy war; which is misunderstood by the media and public.

In the light and essence of Islam and the Qur'an, there is no war which is holy, under any circumstances whatsoever. In fact the whole text of the Qur'an and the religion of Islam revolves around the concept of peace, not war. To many people's ignorance, Islam is a word that shares the same root of the Arabic word Salaam meaning peace. To Islam, war is unholy, Jihad must mean anything but holy war.

However, there are times, in certain circumstances, when Islam tolerates, permits and sometimes even accepts the practice of war. Islam strongly emphasizes the ideas of justice, freedom, and opposition to oppression. There is another condition: fighting for self-defense. War is tolerated in these conditions, but if there is a possibility to avoid war, then this alternative, as long as it is reasonable, must be taken: "You shall prepare for them all the power you can muster, and all the equipment you can mobilize, that you may frighten the enemies of God, your enemies, as well as others who are not known to you; God knows them. Whatever you spend in the cause of God will be

repaid to you generously, without the least injustice. If they resort to peace, so shall you, and put your trust in God. He is the Hearer, the Omniscient".[65]

Self-defense includes fighting against oppression, aggression and tyranny; Islam tolerates the use of war in these cases. Permission (to fight) is granted to those who are being persecuted, since injustice has befallen them, and God is certainly able to support them. They were evicted from their homes unjustly, for no reason other than saying, "Our Lord is God."If it were not for God's supporting of some people against others, monasteries, churches, synagogues, and masjids - where the name of God is commemorated frequently - would have been destroyed. Absolutely, God supports those who support Him. God is Powerful, Almighty".[66]

The other condition and perhaps the most important and often confused as a holy war, is the war in the name of God which actually means in the cause of God as God does not encourage war but rather encourages peace whenever possible. Fighting an oppressor or aggressor is fighting against oppression or aggression, thus it is fighting for justice and therefore in the name (cause) of God.[67]

Even as an enemy, the Muslim must respect his adversaries. Islam condemns fighting and the brutal and barbaric killing of any human being. During military activities, the killing must not include civilians, provided they do not attack or provoke or share directly in the war. . The enemies, even when at war, must be treated justly. If victory is achieved in any war for justice, then there is to be no oppression, enslavement or injustice to the enemy or people. Nor must there be control over source of wealth of the nation or people or colonial regimes.[68]

The division of people and pitting them one against the other is also forbidden. Justice and freedom must be established. The cooperation and acceptance of other cultures and peoples is compulsory too.[69]

For some Muslims Jihad or *Qital* is nothing less or more than a "holy war", i.e. a war to enforce one's religious beliefs on others. Most Muslims would reject the equation of Jihad with holy war. There are still small and vocal groups of Muslims who conceive Jihad as a divine license to use violence to impose their will on anyone they could brand as an infidel, including fellow Muslims who may not fit their self-proclaimed categorization of right and wrong.

In brief; the meaning the media gives to this word Jihad is not true. This word does not mean a holy war, for there is nothing holy about a war in Islam. There are times when war is tolerated, permitted and even, in some case, to a point accepted, but it is never considered holy.

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# **Chapter Five**

## **5. Islam and Other**

# Chapter Five

## 5. Islam and Other

The subject I want to discuss here is: what does Islam say about peaceful relations with people of other faiths? Does Islam believe in diversity, multi-culture and pluralism?

With regard to non-Muslim minorities, there are many scholars and activists who advocate the tradition of tolerating other religions. These scholars view such protection and tolerance as a favor towards communities that are in essence subjugated.

As an example of relations between Muslims and non-Muslims, we should look to the collective citizenship established by Prophet Muhammad in the Constitution of *Medina* المدينة , which was founded on a common commitment to the Prophet under God. This original community included the Jewish tribes of *Medina* . The classical and medieval scholars developed the jurisprudence of this community for all peoples by analogy with the Jews of *Medina*. [1]

The general question of relations between Muslims and non-Muslims is the basis of the Qur'an and *Sunna* السنة . The general principle espoused is to deal in a kindly and just manner with those, regardless of religion, who reciprocate such treatment. Verses in the Qur'an that detract from or contradict this principle such as those which call for a *jihad* جهاد against non-believers (or for them to be oppressed), only apply in specific circumstances. Events in the life of Prophet Muhammad are cited in support of this principle, and Muslims are obliged to use their intellect and reasoning *Ijtihad* اجتهاد to ignore any rulings in the classical *Shari'a* which contradict it.

In this situation it is the duty of the Muslim majority to concentrate on applying the principles established by God and Prophet Muhammad rather than stubbornly insisting on applying outdated and inappropriate rules. [2]

Communities are founded on a shared belonging. In the case of the Islamic community, the priority of this belonging is Islam, within which there is no problem with a plurality of lesser belongings, including family, tribe, ethnic group, locality, etc. This belonging, includes non-Muslims in the Muslim community. The difference between them is that while for the Muslims the belonging includes creed, *Shari'a*, values, civilization, nationality, country, culture, history, and heritage, the belonging for the Non-Muslim does not include a shared creed or *Shari'a*; they have their own.

Islam represents their shared belonging and brings together the peoples and nations of the *Ummah* أمة with their differing beliefs and forms of worship. In fact, the Constitution of *Medina* distinguishes between *Ummah* as a religious community and *Ummah* as a political community, by citing the status of Jews as an analogy. [3]

## 5.1 Islam and People of the Book أهل الكتاب

The honor with which Islam regards Judaism and Christianity, their founders and scriptures, is not courtesy but acknowledgment of religious truth. Islam sees them in the world not as (other views) which it has to tolerate, but as truly revealed religions from God. Moreover, their legitimate status is neither socio-political, nor cultural or civilizational, but religious.[4]

Islam pursues this acknowledgment of religious truth in Judaism and Christianity to its logical conclusion, namely, self-identification with them. Identity of God, the source of revelation in the three religions, necessarily leads to identity of the revelations and of the religions. Islam see itself as reaffirmation of the same truth presented by all the preceding prophets of Judaism and Christianity. It regards them all as Muslims, and their revelations as one and the same as its own. Together with the monotheistic and ethical religion of pre-Islam, Judaism, Christianity and Islam constitute crystallizations of one religious consciousness whose essence and core is the same.

Islam's honoring of the ancient prophets and their followers is to be maintained. "Worthier of Abraham are those who really follow him, this Prophet and those who believe in him".[5] God commanded all Muslims to call the Jews and Christians in these words: "O People of the Book, come now with us to rally around a fair and noble principle common to both of us, that all of us shall worship and serve none but God, that we shall associate naught with Him, and that we shall not take one another as lords beside God. But if they still persist in their opposition, then warn them that We shall persist in our affirmation".[6]

Evidently, Islam has given the maximum that can ever be given to another religion. It has been acknowledged as true the other religion's Prophets and founders, their scriptures and teaching. Islam has declared its God and the God of the religions of Jews and Christians as One and the same. It has declared that the Muslims, the assistants, friends, and supporters of the adherents of the other religions, are all under God. If, after all this, differences persist, Islam holds them to be of no consequence. Such differences must not be substantial. All of the differences can be surmounted and resolved through more knowledge, good will, and wisdom. Islam treats them as domestic disputes within one and the same religious family. And as long as each one recognizes that God alone is Lord to each and every one of us, no difference and no disagreement is beyond solution.[7]

Islam teaches that Jews, Christians and Muslims are people of the Book, by which it means that these religions share the same basic beliefs articulated through the Bible and the Qur'an.

Tareq Ramadan طارق رمضان is professor of philosophy and Islamic studies and one of the leading writers on the future of Islam and Muslims in the West, particularly Europe.

Ramadan رمضان is a leading scholar and public intellectual whose writings and statements make clear his opposition to violence and terrorism. Indeed, the basic concern that motivates much of his work is one of reconciliation and interfaith coexistence.

His views on Islam reflect a reformist perspective. He advocates the study and

interpretation of Islamic texts, and emphasizes the heterogeneous nature of Western Muslims. He believes that Muslims in Europe have established a new "European Islam", distinct from Euroislam, and emphasizes the necessity for their contribution to European society.

Ramadan works primarily on Islamic theology and the position of Muslims in Europe. In general he believes in constantly reinterpreting the Qur'an in order to correctly understand Islamic philosophy. He also emphasizes the difference between religion and culture, which he believes are too often confused. Relatedly, he thinks that citizenship and religion are two separate concepts which should not be mixed. He claims that there is no conflict between being a Muslim and a European at the same time; a Muslim must accept the laws of his country, except in rare circumstances.

He believes that European Muslims must create a `European Islam` just as there is a separate `Asian Islam` and `African Islam`, which take into account cultural differences. By this he means that European Muslims must re-examine the fundamental texts of Islam (primarily the Qur'an) and interpret them in light of their own cultural background, influenced by European society.[8]

He rejects a binary separation of the world into dar al-Islam دار الإسلام (the abode of Islam) and dar al-harb دار الحرب (the abode of war), since such separation was never mentioned in the Qur'an. He been known to cite favorably Dar al-Da'wa دار الدعوة (Abode of Proselytizing), in some senses. However, Ramadan has articulated both the `ideological geography` of the West and the duty of da'wa دعوة in an original fashion and one that is starkly more pro-integration than the more conservative loyal resident alienage. For Ramadan, the West is neither the Abode of War nor the Abode of da'wa but dar al-shahada, دار الشهادة the Abode of Testimony [to the Islamic Message]. argues favorably that Muslims are `witnesses before mankind` and are forced to consider the fundamental principles of Islam and take responsibility for their faith.[9]

Importantly, for him the `Islamic message` to which Muslims are expected to bear witness is not primarily the particularistic, socially conservative code of traditionalist jurists, but a commitment to universalism and the welfare of non-Muslims; it is also an injunction not merely to make demands on non-Islam societies but to express solidarity with them.

The fact remains that despite fundamentalist movements that do not represent the majority of Muslims today, Islam has always accommodated a pragmatic humanitarianism, in keeping with the Quranic promise that God intends every facility for you; he does not want to put you to difficulties.[10]

Hence, puritanical inflexibility is atypical of the Islamic tradition, which has appeared capable of adapting to human needs. Such pragmatism has shaped *Sha'ria* from its very beginning. Therefore, some reconciliation between the traditional *Sha'ria* and the modern idea of human rights could be conceivably accomplished in accordance with this well-established Islamic pragmatism.

**In this respect it is necessary to mention three aspects:**

**First:** Islam accords Judaism and Christianity special status, as each of them is a religion of God. To believe in these religions, in the revelations they have brought, is integral to the very faith of Islam. To disbelieve in them, nay to discriminate among them, is apostasy. The Qur'an says "Our Lord and your Lord is indeed God, the One and Only God".[11] God described His Prophet Muhammad and his followers as "believing all that has been revealed from God; as believing in God, in His angels, in His revelations and Prophets; as not-distinguishing among the Prophets of God".[12]

**Second:** Warning Muslims against arguing, especially with the people of the other Holy Books, except in a polite and positive manner. God Almighty says : "And argue not with the People of the Scripture unless it be in (a way) that is better, save with such of them as do wrong; and say : We believe in that which hath been revealed unto us and revealed unto you; our God and your God is one, and unto Him we surrender"[13] This is undoubtedly a rigorous attitude on the basis of the sensitive aspects concerning the issues of faith. These issues have been raised and are still being raised at the level of the Muslim-Christian dialog especially concerning the notions of idolatry and unbelief and the issue of Christ. This attitude is not in contradiction with the necessity to spread the word and to continue to transmit it.

The same is also true for the necessity to "enjoin right conduct and forbid indecency"as both necessities are considered pillars in the preservation of society and in putting it on the path of development, progress and improvement. Islam, as has already been mentioned, is a religion which concerns the individual as well as the group and endeavors to set up a brotherly and compassionate society where freedom and tolerance prevail and where each member takes it upon himself as his responsibility to develop it and to preserve it.

**Third:** Allowing marriage with peoples of the Books and the eating of their foods. "This day are (all) good things made lawful for you. The food of those who have received the Scripture is lawful for you, and your food is lawful for them. And so are the virtuous women of the believers and the virtuous women of those who received the Scripture before you (lawful for you)".[14]

What is meant here is the food of Jews and Christians including all what they slaughter and what they cook. Originally, all this was not allowed because of the slaughtering rites and other conditions in Islam. Afterwards, God allowed this after they established themselves and after they lived with other peoples. The meaning of this refinement resides in the respect that Islam has for the peoples of the Books, on account that they follow a heavenly religion which requires rites of cleanliness and the avoidance of uncleanness. This does not, in any way, mean allowing Muslims to do what is originally disallowed for Muslims such as the consumption of pork and alcohol.

As to the issue of marriage and the possibility of the Muslim man to marry a woman who has adopted the religion of another Holy Book, it is because his religion recognizes hers and allows her to keep it and to observe it freely. The man of the Holy Book can marry a Muslim woman only if he adopts Islam. This is because societies agree that children belong to their father's lineage. Therefore, if this condition is not

observed, the child would belong to another religion than that of the innate, that is Islam, because he cannot do otherwise. Muslim society has reached far in achieving coexistence while safeguarding its Islamic pillars.

## **5.2 Islam and non-Muslim communities**

As for the non-Muslim communities, which constitute minorities in the Muslim society, Islam has shown such an extent of tolerance that allows a coexistence which not only ensures their freedom of faith and worship but also makes of them full-fledged citizens. Such citizens who are very well integrated in this society with all the due freedom and respect and with no feeling of loneliness or marginality.

Islam provides the non-Muslim in a Muslim society with an integrative presence within which he can preserve all the components of his personality. The first one among these components is the religious element, with all the related rites, rituals and traditions which allow him to express his religious, cultural and psychological characteristics.

With these he can also confirm the characteristics of his identity, within the general framework of the characteristics which make up the notion of citizenship. All this allows one to belong to that Muslim society. Belonging to this society also gives one the right to acquire the nationality of the country. It may allow him more than that, since nationality is the legal framework which gives the individual his political identity, and gives him also the citizenship and the membership within the state which has given him the nationality. This individual becomes a member of its people, and he becomes a national or even a patriot in opposition to the foreigner who does not enjoy this citizenship. Evidently, this citizenship can also be acquired through other means, such as birth, lineage, residency and all the other possibilities which are provided for by the citizenship laws in the different countries.

### **In this issue I want to mention three aspects:**

**First:** Islam also ensures the freedom of worship for non-Muslims of their religion in its rites and rituals and in its different celebrations and seasons, with the observation of the holidays and fêtes. Non-Muslims are also allowed to establish their own places of worship and to preserve them and ensure their maintenance and their organization, along with the respect of the traditions and the customs, beginning with the observation of the rites of birth and those of marriage and divorce and all other customs.

Among the facilities that ensure the freedom of worship these minorities are given the right to establish and organize the supervisory bodies in charge of their religious affairs. These include the justice issues related to family and individual law and the resolution of disputes over contractual situations. All this has been witnessed in the experience of the Islamic nation and it is still being witnessed in its treatment of non-Muslims. Islam insists upon the freedom of faith and worship without any coercion to interrupt or alter worship, even where the possibilities of pressure were present. Further, if a non-Muslim asks a Muslim to protect him and provide him with security, the Muslim has to accept and to make sure that no harm reaches his protegee, until he reaches the place where he feels secure, i.e. his own house or the location of his

people.[15]

**Second:** The nomination of non-Muslims to posts of responsibility within a Muslim nation, especially in the political, diplomatic, financial and administrative domains. Both in the remote and near periods of Islamic history there is evidence that non-Muslims used to be and are still in very crucial positions of responsibility and help with the most important decisions. "It used to be said that it is allowed that a minister may be from non-Muslim citizens.[16] It is well known that Omar Ibn Khattab employed some prisoners from Caesurae in the services of the state. Among the examples during the Umayyad Dynasty we can mention "Antinaach Arrahaoui" who headed the administration of Alexandria and who used to be referred to in official correspondence as "The Great Secretary".[17]

**Third:** The use of the term "People of the Books" and "Book People" by Islam to refer to non-Muslims who live with Muslims in the same society proves that Muslims recognize the Books and the Messengers upon whom they were revealed. They are also called the people of protection , i.e. the people of the covenant, peace and security. This is a name that has a wider meaning than the People of the Books, because it includes the religions of the Books as well as other religions and which were known and recognized, as the Magians, Samaritans and Sabians. It is related that some Muslims told Omar Ibn Khattab *عمر بن الخطاب* about some people who worshiped fire and they were neither Jews, nor Christian nor Peoples of the Books. This caused a problem for Omar. Then Abdurrahman Ben `Auf *عبد الرحمن بن عوف* said : "I was witness to the Messenger of God when he said 'Deal with them as you deal with the Peoples of the Books'[18].

It is also related that the Prophet accepted the tribute (Jizyah) from the Magians of Hajar without allowing the consumption of the meats they had slaughtered or marriage with their women. Then when Khalid Bin Walid was Abu Bakr's Governor, he required it from the people of Iraq, who were Persian, in a correspondence to their provincial governor. Afterwards, Omar Ibn Khattab accepted it from them, and after him, Othman Ibn Affan also accepted it, and also from the Berbers, who were Magians.[19]

Tolerance resides in the fact that different creeds were respected and people were given the right to practice their own religions. The extent of the tolerance resides in the practice and application within the society as a whole, on the basis of the Prophet's instructions.

And if it is necessary to reinforce these pillars in all eras, it seems even more pressing to do so nowadays, because of the misunderstanding of the real meaning of the notion of coexistence, be it for Muslims or for others, and also because of its consequences in terms of negligence in religious matters and straying away from religion in many walks of life, and the deviance in the behavior of the individuals and groups and all that has resulted from that in terms of the crucial conditions within which both the Muslims and whoever lives with them suffer from, and all this because of internal and external factors. This necessitates that one should start by self-correction and resolving one's problems which should result in the strengthening of the society and all the Muslim societies in their internal structures and to make them capable of facing up to all the challenges and aggressions.

From this point of view, it is clear that the non-Muslims live with the Muslims within Muslim societies, while enjoying total equality, and differ from them only in that they pay the tribute. They pay this tribute and in return their safety and security are ensured, and in exchange of their waiver from observing two obligations that all capable Muslims have to honor.

The relation of Islam to the other religions has been established by God in His revelation, the Qur'an. No Muslim therefore may deny it. Islam does not present its principles dogmatically; it does so rationally, critically. It comes with logical and coherent arguments, and expects human beings' rational acquiescence.[20]

For the non-Muslim communities, which constitute minorities in the Muslim society, Islam has shown such an extent of tolerance that allows a coexistence which not only ensures their freedom of faith and worship but also makes of them full-fledged citizens. Such citizens who are very well integrated in this society with all the due freedom and respect and with no feeling of loneliness or marginality. Warning Muslims against polemicising, especially with the people of the other Holy Books, except in a polite and positive manner.[21]

It is in this way that the Muslims lived with people who do not share their religion but with whom they shared social life. They lived in a humane relationship, which is inspired from Islamic principles, and which has no objection to accepting religions which believe in the principle of monotheism.[22]

Islam stresses the submission of the individual to Allah, and human freedom is understood as surrender to the divine will. Only God has rights, not people. Authority is likewise derived from Allah, rather than any popular mandate. Islam elevated the status of the individual and stressed his/her dignity by introducing the idea that he is the vicegerent of Allah on earth. His/her relationship with Allah would be direct, without intermediaries. Because of the belief that all believers are equal, the Islamic belief system is strongly egalitarian (within the community).

The best situation, for a religious mindset, would be that the conditions allowing pluralism and freedom of thought exist under a religious framework. Unless that begins to take some shape. it may not resolve intellectual inquiries by any means, but it will help in creating a culture of peace, an essential end to the culture of human rights and also an important precondition for intellectual freedom.

Although Islamic teachings may be set up anywhere on earth, Islam does not seek to restrict human rights or privileges to the boundaries of such community. Islam has laid down universal fundamental rights for humanity which are to be observed and respected in all circumstances. For example, human blood is sacred and may not be spilled without strong justification; it is not permissible to oppress women, children, old people, the sick or the wounded; women's honor and chastity must be respected; the hungry must be fed, the naked clothed and the wounded or diseased treated medically irrespective of whether they belong to the Islamic community or are from amongst its enemies. These, and other provisions have been laid down by Islam as fundamental rights for every man by virtue of his status as a human being.[23]

Islam has also laid down rights for non-Muslims who may be living within the areas of an Islamic community and these rights necessarily form part of the Islamic teachings. In Islamic terminology, such non-Muslims, implying that the Islamic law has entered into a covenant with them and guaranteed their protection. The life, property and honor of a non-Muslims is to be respected and protected in exactly the same way as that of a Muslim citizen. Nor is there difference between a Muslim and a non-Muslim citizen in respect of civil or criminal law.

### **Contemporary situation of societies:**

Comprehensive guidelines are provided in the Quran and the Hadith concerning the relationship with non-Muslims. The attacks and the deaths of thousand of innocent people considered as a black pictures for humanity.

The repercussions of hate and anger and even death threats are only human reactions to such catastrophes and tragedies. The perpetrators and planners of such dastardly acts are bigoted, mentally deranged and fanatical people who continually distort and violate the noble teachings of Islam.

The Islamic world can do without persons bent on bringing destruction and causing the suffering of poor innocent Muslims in the name of jihad. Even in an Islamic state non-Muslim residents are entitled to enjoy equal rights and freedom to practice their own faiths.

The Islamic rule may not interfere with the personal rights of non-Muslims, who have full freedom of conscience and belief and are at liberty to perform their religious rites and ceremonies in their own way. Not only may they propagate their religion, they are even entitled to criticize Islam within the limits laid down by law and decency.[24]

The idea of human rights offers an opportunity for accomplishing a basic consensus across ethnic, cultural, and religious boundaries. In this view, the universality of human rights does not mean the global imposition of a particular set of values, but instead, aims at the universal recognition of pluralism and different religions, cultures, political convictions, ways of life; differences which should express human dignity.[25]

Like all religions, Islam has been lived and understood in different ways through time and space. Interpretations of Islam have been as variable as the societies which have adopted it through its long history and the world. However, there is a common - albeit disputed - body of religious precepts and beliefs which form the basis of Islam and from which discussion can commence.

The extent of the coexistence of Muslims with non-Muslims who belong to other societies remains clear in the peaceful relations that they develop, in the friendly relations that they have, in the security that they share, and in the fact that they are against wars. The expression occurs in the Qur'an in several places and with its different derivations. Qur'an says : "O ye who believe! Come all of you, into submission (unto Him) and follow not the footsteps of the devil. Lo! he is an open

enemy for you".[26]

Outlined the thoughts on the rights of non-Muslims in Muslim society; it is based on Qur'anic verses, God's command of justice, the doing of good, and liberality to kith and kin. The first four sermons deal with an understanding of justice. This foundation enters into a detailed discussion of the rights of non-Muslims, where the key Qur'anic verses are "O people, We created you male and female, and made you peoples and tribes, that you might know each other".[27]

There needs to be a basis for the common brotherhood of man, and Islam can provide this basis, Morality is lacking in today's world, replaced by political and economic powers. Islam provides socially relevant behavior that can raise the moral standards of society.[28]

**I conclude this chapter with the following principles which show how Muslims should deal with others:**

Islam rejects the notion that God is biased or partial to a particular race or tribe, and that His Mercy is locked up to a certain group.

Islam preaches unity of mankind.

There is no monopoly in God's message.

Islam abhors coercion and intolerance.

The Qur'an accepts the reality of difference and diversity within humanity. It gives the impression that diversity is part of the divine plan.

The Qur'an recognizes the legitimate multiplicity of religious convictions and laws.

## Footnotes

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- [13] Qur'an 29: 46.
- [14] Qur'an 5:5.
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## **Chapter Six**

### **6. Islamic Declarations of Human Rights**

## Chapter Six

### 6. Islamic Declarations of Human Rights

In this chapter I will review the recent Declarations of Human Rights by Muslim scholars and intellectuals as well as by Islamic Institutes. I will also describe in detail the general support by Islam of the main principles of the Universal Declaration of Human Rights,

The relation between the sacred, as announced in the Qur'an, and the political systems in the world nowadays is one of the ongoing, controversial debates within the Islamic conception of human rights. Today there are a wide range of views as to what is covered by the *Shari'a*, the nature of the legal system, the nature of the authority and its legal codes, the nature of these codes themselves, and the modalities for modifying them. There have been increasingly frequent appeals by Islamic scholars to authorities review the *Shari'a*.

Currently, the debate surrounding the situation of human rights in the Muslim World is taking on increased significance in various domestic and international settings. The reasons spurring the rise of attention to human rights issues in the Muslim world are numerous, multi-faceted, and complex.

Compared to other parts of the world, states- both religious and secular- have been unsuccessful in contending with authoritarian tendencies and rampant civil and political rights violations. Further, the increased relevance of movements advocating political Islam and its legal institutionalization has posed various questions about the compatibility of Islamic agendas and international human rights norms. Related, yet more widespread and significant, have been discussions stirring in governments, civil societies, academia and religious institutions throughout the Muslim world about the ways in which sundry other interpretations of Islam and Islamic law can conform and/or contribute to global human rights discourses.

This chapter is an attempt to establish whether Islamic Law is compatible with universal human rights as they are defined in the International Bill of Human Rights. After briefly describing the history of universal human rights, the concept of cultural relativism and introducing the early history of Islam as well as the concept of Sharia, the analysis focuses on a selection of human rights documents produced in an Islamic environment. Some of the documents are created on an intergovernmental level, such as the Cairo Declaration of Human Rights, while some are simply created by private institutions, but have had a prominent position in the doctrine. The aim is to highlight which areas these documents have difficulties corresponding with international human rights standards due to clashing religious or cultural values.

The emphasis will be on the equality between sexes, the rights of religious minorities and freedom of religion, since these are the three main areas in which differences traditionally arise.

Over a billion humans in the world today are Muslims. As Muslims, they believe in human rights, but their bill of human rights is not one composed by a committee of

scholars or leaders, resolved and promulgated by a government, a parliament, or a representative assembly. What humans compose can only be tentative; and what they resolve can only be temporary. With their partial knowledge and passing interests, humans are known always to contend with one another, to agree and disagree and to keep on changing. human rights cannot be subject to such vicissitudes.[1]

The Islamic bill of human rights is a system of axiological principles or values. The deontological applications of them, or the duties and oughts deriving from them have been elaborated on in the *shari'a*. Hence, Islam's human rights are not merely ethical desiderata, or ideals of administrative policy which cannot be invoked in legal processes. Except in a few cases, the letter of the prescriptive elaborations of human rights in Islam is not sacrosanct and hence absolutely unalterable.

The qualities of eternity and immutability belong to the principles behind the prescriptive elaboration, not to their digitization, i.e. to the legal form given them by translation of the purposes of the law into legislative prescriptions. Eternity and absoluteness belong to the main axiological postulates. With the exception of these postulates and directions, all deontological elaborations, whether legal or methodological, and other prescriptive particularizations of the *Shari'a* are ever-open to reinterpretation by humans. This openness is dictated by the ever-changing conditions and situations of human life which demand in turn a readiness on the part of the law to meet them in pursuit of its eternal objectives.

In short, the universal declaration of Human Rights of 1948 states with principles such as the right of all beings to possess the same dignity (Article 1) and forbids all discrimination due to race, color, sex, language, religion or political conviction (Article 2). Because all men have the same right to life and liberty (Article 3), both slavery (Article 4) and torture (Article 5) are prohibited. All are equal before the law and may be condemned only according to established law, only after being heard in a court of law (Articles 7-11). All are free to emigrate and to choose their place of residence (Article 13), and to request asylum in other countries (Article 14). Every human being is free to choose his spouse, and the family, as the “natural and basic unit in society”, must be protected by the state and by society (Articles 16, 26). The Declaration also demands the right of private property (Article 17), the right to liberty of conscience and religion, which includes the individual's right to change his faith (Article 18), the right of opinion and information (Article 19), the right to congregate and to form associations (Article 20), and the right to vote (Article 21). Everyone has the right to security in social matters (Articles 22, 25, 28), to labor with just remuneration (Article 23) and to education (Article 26).

## **6.1 Islamic Principles and the Universal Declaration on Human Rights: General Grounds**

Several basic principles in Islam that are commensurate with the universal declaration of human rights can be found in the classical literature on religious laws *al-kutub al-fiqhiyyah* *الكتب الفقهية*. They consist of five principles:  
protection from physical abuses outside the law;  
religious freedom, including non-coercion in religion;  
protection of the family and offspring;

protection of private property; and  
protection of one's profession.

*The first* principle means that the existence of a government based on the rule of law, which guarantees equal treatments to the citizens along with their rights, is necessary. Also, Islam acknowledges the importance of impartiality in law enforcement and the centrality of justice as the foundation of a good society. This principle is undoubtedly similar to the universal declaration of human rights, which regards justice, equality and democracy as the fundamental norms in a democratic polity.

*The second* principle is commensurate with the universal declaration's idea of religious tolerance. At the heart of Islam is the idea of the Unity of God (*at-tawhid*) التوحيد, the term "tawhid" can be interpreted as the affirmation of human freedom without any oppression, human equality free from racism, and human justice exempt of social injustice. In Wahid's understanding, this particular freedom should encompass even the realm of faith because Islam respects different religions and acknowledges neither compulsion nor coercion in religious matters, including religious conversion.

*The third* principle is a moral and ethical foundation upon which, according to Islam, a good society can be established. In Islam, the sanctity of the family is the foundation for community life and, therefore, it should be free from manipulation by outside forces including society and the state.

*The fourth* principle is very crucial in relation to the modern formation of society. Modernization inevitably brings about differentiation of roles and functions, as well as the process of individuation in society. The protection of individual rights vis-a-vis societal rights gradually becomes a demand in modern life. A clear distinction between the public and the private is needed. Otherwise the violation of individual rights, in the name of public interests, will be prevalent. One solution is to acknowledge the notion of private property. It is through this right that an individual can exercise personal freedom and develop his/her potentiality. Yet, his/her actions are still within the boundaries set by members of the larger society.

*The fifth* principle is closely related to the fourth. It implies that in respecting individual freedom, Islam opens the door for an individual member of society to choose alternatives relevant to one's life. The principle clearly respects the right to pursue one's goals as a means for self-expression. This also means that Islam regards individual responsibility as one of the most valuable elements in social relations. There is clearly room for the Muslims to work with others to promote human rights, particularly in the areas discussed above. If the Muslims develop programs and actions from these principles, they will be able to grapple with the most pressing problems in the field of human rights in many Islamic countries.[2]

## **6.2 Islamic Declarations of Human Rights**

These Declarations of Human Rights in Islam are declarations from Islamic point of view, which provides an overview on the Islamic perspective on human rights, and affirms Islamic *Shari'a* as its main source, also these Declarations declares its purpose to be general guidance for Muslims in the field of human rights. These declarations are

usually seen as an Islamic counterpart of and a response to the Universal Declaration of Human Rights.

### 6.3 Universal Islamic Declaration of Human Rights of 1981

The Universal Islamic Declaration of Human Rights (الإعلان الإسلامي العالمي لحقوق الإنسان) (UIDHR) was first proclaimed in the 1980s by the Islamic Council at the International Conference on the Prophet Mohammad and His Message. The document was rooted in the belief that Allah alone is the law giver and the source of all laws. It espoused that the state has an obligation to establish an Islamic order, and that all laws must be based on the Qur'an and the Sunna, as compiled by Muslim scholars, jurists, and representatives of various Islamic movements.

The Islamic Council of Europe, inaugurated in London in 1973, established groups of Islamic thinkers and statesmen who came together in a series of conferences and seminars held in London in the late 70s and 80s of the last century to formulate and articulate the Islamic position on a range of contemporary issues. Following a conference held in London in 1980 on the theme 'the Message of Prophet Muhammad', a smaller group worked on a response to the UN Declaration of Human Rights, and evolved in many discussions on different occasions. The outcomes were two seminal papers that capture Muslim thinking of the period: 'A model of an Islamic Constitution', published in 1983, and the 'Universal Islamic Declaration Human Rights' published two years earlier.[3]

The Document articulates, in simple form, what Islam has to say on human rights and duties. It is wide-ranging and comprehensive, including clauses on human freedom, privacy, the rights of children, the right to protection against abuse of power, the right to protection against torture, and even rights after death – the deceased's body is to be handled with due solemnity. These rights aim at conferring honor and dignity on mankind and eliminating exploitation, oppression and injustice. Human rights are firmly rooted in the belief that God is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered.

The Document affirms that "There is no compulsion in religion" and that in matters of personal law, the minorities shall be governed by their own laws and traditions.

The Declaration is an example of competent minds' exercising *Ijtihad* إجتهد or independent opinion, while maintaining their allegiance to the principle of an immutable Law of *Sharia*. It also demonstrates the important role played by institutions such as the ICE in offering an intellectual and physical space in which thinkers were able to discuss Islamic norms, thus providing a benchmark for the reform needed within the Muslim world.

The Declaration begins on a presumptuous note with the Quranic Verse "This is a declaration for mankind, a guidance and an admonition unto those who ward off (evil)". which declares the Qur'an is declaration for mankind, a guidance and instruction to those who fear God' as if this human Declaration was comparable to the Qur'an.

There are two ways to examine and analyze this Declaration; as an Islamic Declaration for Muslims in Islamic States and for those in non-Islamic Muslim or non-Muslim States, but essentially for Muslims; or as a model for mankind, as universal and applicable to all human beings, living in Muslim or non-Muslim States, under Islamic or non-Islamic Governments.[4]

It is also obvious from the text that the word 'Law' frequently used in the Declaration refers to the *Sharia*, based on the Quran and the *Sunna* and, extended to man-made laws, rules and regulations which are in consonance with the *Shari'a*.

The Declaration in its explanatory note at the end confirms that the term 'Law' means the *Sharia* which is defined as the totality of ordinances derived from the Qur'an and the *Sunna* and any other laws that are deduced from these two sources by methods considered valid in Islamic jurisprudence.

It is interesting to note the definition of Islamic order in the Declaration which presages non-discrimination among human beings on the basis of race, color, sex, origin, language or religious denomination.

The other important aspect is the invocation of the principle of *Shura* الشورى or consultation for conduct of public business and exercise of administrative authority but it limits the *Shura* to 'among the believers qualified under the *Shari'a*.

Article VI point out to the Right to Protection against Abuse of Power but defines abuses of power as administrative and legal harassment by official agencies.

Article X defines the Right of Minorities, obliquely grants freedom of religion by referring to the Quranic Verse "There is no compulsion in religion", secondly, minorities are given the right to choose whether to be governed by their own laws or by Islamic law in civil and personal matters.

Article XI grants the right to participate in the conduct and management of public affairs to the *umma* أمة or national or world.

Article XII subjects Freedom of Belief, Thought and Speech to limits prescribed by the Law. It also subjects Freedom of Information to security of the society or the State and of the Government; also article XII adds respect for religious beliefs and feelings of non-Muslims and their protection against public hostility.

Article XIII grants freedom of conscience and worship.

Article XIV on Freedom of Association is limited to establishment of institutions and agencies which enjoin what is *Ma'roof* معروف or good deed and prevents what is *Munkar* منكر or bad deed.

Article XV relates to Economic Order, and reiterates the entitlement of every person to the benefit of natural resources but subjects vocation and profession to accord with the spirit of the Law, also this article bars usury and finally all economic activities are subject to the interest of the *Umma* or national and to the laws and values of the

*Sharia*. It is understood that the obligations of the *'umma* are to be fulfilled through the State and its agencies.

Article XIX envisages a patriarchal society which obliges the husband to maintain his wife and children and in which men and women share their obligation according to their sex.

The next Article XX defines the Right of a Married Woman to live in her husband's house to be maintained by the husband during marriage and during *Iddah* عدة or a short period after divorce. However, the wife has also the right to seek and obtain dissolution of marriage *khula* خلع in accordance with the *Shari'a* or through the Courts.

Article XXI speaks of the rights of all persons i.e. man or woman, Muslim or non-Muslim, to education.

Finally, Article XXIII of the Declaration grants all Muslims freedom to move in and out of any Muslim country.

#### **6.4 The Cairo Declaration on Human Rights in Islam of 1990**

The Cairo Declaration on Human Rights in Islam ( إعلان القاهرة لحقوق الإنسان في الإسلام لعام 1990) CDHRI was adopted in Cairo on 5 August 1990 by the 19th Islamic Conference of Foreign Ministers of the Member States of the Organization of the Islamic Conference ( منظمة المؤتمر الإسلامي) OIC .

The Cairo Declaration of Human Rights in Islam CDHRI is a declaration of the member states of the Organization of the Islamic Conference, which provides an overview on the Islamic perspective on human rights, and affirms Islamic *Shari'a* as its sole source. CDHRI declares its purpose to be general guidance for Member States [of the OIC] in the Field of human rights. This declaration is usually seen as an Islamic counterpart of and a response to the post-World War II United Nations' Universal Declaration of Human Rights UDHR of 1948.

Predominantly Muslim countries, like Iran, Libya, Sudan and Saudi Arabia, frequently criticized the Universal Declaration of Human Rights for its perceived failure to take into account the cultural and religious context of non-Western countries.[5]

The Declaration starts by forbidding any discrimination on the basis of race, color, language, belief, sex, religion, political affiliation, social status or other considerations. It continues on to proclaim the sanctity of life, and declares the preservation of human life, as a duty prescribed by the *Shari'a*. In addition the CDHRI guarantees "non-belligerents such as old men, women and children, wounded and the sick" and "prisoners of war, the right to be fed, sheltered and access to safety and medical treatment in times of war.

The CDHRI gives men and women the right to marriage regardless of their race, color or nationality, but not religion. In addition women are given equal human dignity, their own rights to enjoy, duties to perform, their own civil entity, financial independence, and the right to retain their name and lineage, though not equal rights in general. The

Declaration makes the husband responsible for the social and financial protection of the family.

The Declaration gives both parents the rights over their children, and makes it incumbent upon both of them to protect the child, before and after birth. The Declaration also entitles every family the right to privacy. It also forbids the demolition, confiscation and eviction of any family from their residence. Furthermore, should the family get separated in times of war, it is the responsibility of the State to "arrange visits or reunions of families".

The Declaration protects each individual from arbitrary arrest, torture, maltreatment and/or indignity. Furthermore, no individual is to be used for medical or scientific experiments. It also prohibits the taking of hostages of any individual for any purpose whatsoever. Moreover, the CDHRI guarantees the presumption of innocence; guilt is only to be proven through a trial in which he [the defendant] shall be given all the guarantees of defense. The Declaration also forbids the promulgation of emergency laws that would provide executive authority for such actions.

Article XIX stipulates that there are no other crimes or punishments than those mentioned in the *Shari'a*, which include corporal punishment (whippings, amputations) and capital punishment. The right to hold public office can only be exercised in accordance with the *Shari'a*, which forbids Muslims to submit to the rule of non-Muslims.

The Declaration also emphasizes the "full right to freedom and self-determination", and its opposition to enslavement, oppression, exploitation and colonialism. The CDHRI declares the rule of law, establishing equality and justice for all. The CDHRI also guarantees all individuals the "right to participate, directly or indirectly in the administration of his country's public affairs". The CDHRI also forbids any abuse of authority 'subject to the Islamic *Shari'a*.

The Declaration grants individuals the right to express their opinion freely. It encourages them to propagate that which is right and good. However, it forbids the misuse of this right in order to violate sanctities and the dignity of Prophets, "undermine moral and ethical values or disintegrate, arouse nationalistic or doctrinal hatred or commit an incitement to any form of racial discrimination".

The CDHRI concludes in article XXIV and XXV that all rights and freedoms mentioned are subject to the Islamic *Shari'a*, which is the declaration's sole source.[6]

## **6.5 Criticism of the Universal Declarations of Human Rights in Islam**

Many Islamic scholars contend that the classical human rights approaches are ineffective since they neglect, significantly, a number of decisive realities of Islam and Muslims in general.[7]

The most influencing reality that may render the efforts futile relates to the divine weight of the Hudud punishments. Muslims perceived Hudud punishments as divine, evolved from Godly wisdom, which they believed to be beyond mortal intelligence of the limited human mind. Mohamed Salim El-Awa محمد سليم العوا pointed out that while the considerations of social utility form the basis of the theories of punishment in

Muslim jurists hold that the harshness of the Hadd penalties can never be questioned. Hence any attempt to abolish them directly, apart from being highly offensive, could easily be translated into trying to eliminate a part of the religion altogether.

Abdullahi Ahmed An-Na'im correctly stated that religion has a strong influence on human belief systems and behavior, regardless of the formal characterization of the relationship between religion and the state in any society.[10] This is especially true with Islam, being a religion that governs almost every aspect of life of its followers.

An-Na'im further explained that while it is true that the behavior of believers is not always motivated by total fidelity to their faith, religious considerations have always been perceived too important for the majority of people for human rights scholars and advocates to continue to dismiss them simply as irrelevant, insignificant, or problematic. Thus, the idea that human judgment alone could determine the appropriateness or cruelty of a punishment decreed by God is simply out of the question. Questioning the Hudud punishments is considered as questioning the divine wisdom underlying them and impugning the divinity of the Quran and the theocentric nature of Islamic law.

Abu-l Ala Mawdudi argued that where an explicit command of God or His Prophet already exists, not even all the Muslims of the world put together have any right to make the least alteration in it.[11]

Thus, neither Islamic re-interpretation nor cross cultural dialog is likely to lead to their total abolition as a matter of Islamic law. The steadfastness of Muslims in adhering to this belief is especially reflected in the provisions of the Universal Islamic Declaration of Human Rights (UIDHR), which states that the basis of all law is the Shari'a, and divine revelation has priority over human reason in determining human rights limitations in an Islamic state.[12]

Based on the above discussion, it is obvious that human rights advocates have a very limited prospect of success in pressuring the governments of offending countries to put an end to the practice of Hudud laws, by solely relying on the universal norms of International Human Rights Laws, which have little influence among the Muslims, especially in conservative Muslim countries where Hudud punishments are most widely practiced.

Another reason why an approach purely based on international human rights law will fail is because Muslims have extremely high confidence in the deterrent impact of the Hudud punishments. They believe that although the punishments are harsh, the implementation of such punishments is mainly necessary to deter future crimes from

occurring. This contention is very much related to the first reason i.e. divine weight attached by the Muslims to Hudud punishments. The simple, but unshakable understanding that these punishments were originally derived from divine wisdom had cultivated an even soaring faith among the Muslims, in the deterrent influence that the penalties may have on any potential perpetrator of the crime.

In fact, even certain Muslim writers who are in favor of human rights have been charged as being internationally biased. Foster gave the example of An-Na'im, whose approach is to try and reach common ground with international norms on some issues by a plausible reading of local texts i.e. a theory based on international norms. Due to his slightly liberal approach in dealing with the issues of Islamic law and human rights, he is at times claimed by many conservative Muslims as offending local culture, and labeled as dangerous neo-colonialist.[13]

Although An-Na'im advocates a cross-cultural dialog to define rights, he actually adopts as 'rights' those already considered the norm in international law and advocates that the Shari'a be reformed to meet these standards. If a distinguished Muslim writer such as An-Na'im could easily be labeled as a deviant Muslim and a neo-colonialist simply because he tries to fit Islam into the framework of human rights, imagine the conservative Muslims' reactions towards any human rights activists or organizations (especially the non-Muslim activists), directly advocating to abolish the Islamic instructions in some fields of human rights simply because it contradicts the International Human Rights Law

Another reason why conservative Muslim countries would find the argument of human rights groups unpersuasive relates to the issue of universalism in international human rights law. By exclusively relying on international human rights law as the universal standards that offending Muslim countries have to abide with, human rights advocates will unnecessarily provoke the problematical dispute of whether human rights are universal in the first place. This debate has for so long been one of the most obstructive barriers to any attempts of reconciling Islam (in general) and the international human rights law.

As much as human rights advocates would like to think that the rights prescribed by international human instruments are the universal norms, unanimously recognized by the global community as a whole, regardless of the diverse origins and backgrounds of people, the reality is very much to the contrary.

Muslims, are not entirely receptive to this philosophy. Instead, many Muslims, especially those living in the conservative Muslim states where Islamic criminal punishments are more inclined to be practiced, believe that the international human rights law today has sorely neglected a substantial fraction of the Islamic perspectives on human rights, when formulating the core ideals of International Human Rights law. Hence, Muslim states tend to view international human rights instruments as unapologetically Western documents that reflect neither Islamic culture nor Islamic notions of human rights.

In fact, it is reported that the main reason why some Muslim states had abstained from voting for the UDHR when it was ratified by the UN was because they sensed a

palpable lack of Islamic ingredients and aspirations in the “western legal traditions” that permeated these international documents.

Abul-A’la Mawdudi, a well-known Pakistani author for example, writes: “The people in the west have the habit of attributing every good thing to themselves and try to prove that it is because of them that the world got this blessing, otherwise the world was steeped in ignorance and completely unaware of all these benefits.”[14] This sort of way of thinking in the mind of the Muslims will prevent genuine compliance towards the universal provisions of International Human Rights Law.

**The main reason why the typical human rights approach will not work as expected relates to the frequent doubts in this area that would usually raise too many ‘faith-related’ questions such as:**

Is it really a religious obligation upon all Muslims to implement these punishments?

Is it a sin not to implement these punishments?

If it is, should it then be enforced regardless of whatever circumstances prevailing in the community at present?

What are the actual rules of exercising these laws?

Could the traditional rules be eliminated, altered or modified to suit the current needs of the society?

In resolving these troubling thoughts in their minds, Muslims would definitely prefer the safer ‘more Islamic’ option of implementing the divine teachings rather than the abolishing them.

## **6.6 Rights in Islamic Thought**

Majority Muslim writers who subscribe to this premise argued that the very principle of human rights today was originally derived from the West, its legislative instruments, firmly rooted in Western fundamental principle, with its cradle in the early British and French philosophers like Locke and Rousseau. It is argued that the concept of individual rights, which forms the root to the overall idea of human rights, had expanded most rapidly from the era of European Renaissance where the initial emphasis had been on rationalism and humanism, to Enlightenment, when these theories developed into the political arena, and became the central theme of Western civilization. Based on this belief, many leaders of conservative Muslims countries reject not only the notion of international human rights law, but any forms of Western influences which in their view run counter to Islamic viewpoint on any particular issues.

Iran's Ayatollah Ali Khamenei for instance, asserted that when we want to find out what is right and what is wrong, we do not go to the United Nations; we go to the Holy Qur’an.[15]

With the current (and rapid) resurrections and re-establishments of Islamic law in many Muslim states today, certain writers have argued that perhaps a more feasible approach would be to seek a more subtle method of prevention, indirectly through legal procedural shields under Islamic law as is currently the practice of some Muslim States that apply Islamic law as State law.

As Ann Elizabeth Mayer wrote; in a casual reading, the English version of the UIDHR seems to be closely modeled after the UDHR, but upon closer examination many of the similarities turn out to be misleading. In addition, the English version diverges from the Arabic version at many points.[16]

Also the question arises of whether it is an Islamic Declaration or a Universal Declaration. To begin with, many economists would question whether mankind has at its dispersal, the 'superabundant means of economic sustenance' which the Declaration attributes to Divine Mercy. To say the least, all regions of the earth are not equally endowed in the economic sense or even in a geographic sense.[17]

The Declaration cites Islamic belief as inclusive of an obligation to establish an Islamic order' without qualifying as to where the Muslims or the Muslim community lives, what its political circumstances are, because even in Muslim States this obligation can take the form of open rebellion or a conspiracy to undermine the existing order and disturb public order and visit sufferings and misery upon their people.[18]

It is interesting to note the definition of Islamic order in the Declaration which presages non-discrimination among human beings on the basis of race, color, sex, origin, language or religious denomination. This raises the question of whether human rights in Islam applies only to the believers or whether the Declaration envisages a world which is wholly Muslim. But even if that happens, there are many sects and denominations in Islam which freely declare some others as nonbelievers.

The CDHRI has been criticized for falling short of the international human rights standards by not upholding the fundamentality of equality of rights for all. Whereas the Universal declaration states: 'Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status', CDHRI does not guarantee equal rights, merely equal dignity: 'All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, color, language, belief, sex, religion, political affiliation, social status or other considerations'. In particular, CDHRI has been criticized for failing to guarantee freedom of religion.[19]

In a joint written statement submitted by the International Humanist and Ethical Union IHEU, that the CDHRI limits Human Rights, Religious Freedom and Freedom of Expression. It concludes: "The Cairo Declaration of Human Rights in Islam is clearly an attempt to limit the rights enshrined in the UDHR and the International Covenants. It can in no sense be seen as complementary to the Universal Declaration". Also the Centre for Inquiry in September 2000, in an article to the United Nations wrote that the CDHRI: "undermines equality of persons and freedom of expression and religion by imposing restrictions on nearly every human right based on *Shari'a*".[20]

## 6.7 Islamic Human Rights normes in International Context

A review of Muslim history and culture brings to light many areas in which - Qur'anic teaching notwithstanding - women continue to be subjected to diverse forms of oppression and injustice, often in the name of Islam, while the Qur'an because of its protective attitude toward all downtrodden and oppressed classes of people, appears to be weighted in many ways in favor of women, many of its women-related teachings have been used in patriarchal Muslim societies against, rather than for, women. Muslim societies, in general, appear to be far more concerned with trying to control women's bodies and sexuality than with their human rights. Many Muslims when they speak of human rights, either do not speak of women's rights at all, or are mainly concerned with how a women's chastity may be protected.

Women are the targets of the most serious violations of human rights which occur in Muslim societies in general.[21] Muslims say with great pride that Islam abolished female infanticide; true, but, it must also be mentioned that one of the most common crimes in a number of Muslim societies is the murder of women by their husbands. These so-called "honor-killings" are, in fact, extremely dishonorable and are frequently used to camouflage other kinds of crimes.

Also, we find in some Islamic societies the female children are discriminated against from the moment of birth, for it is customary in Muslim societies to regard a son as a gift, and a daughter as a trial, from God. Therefore, the birth of a son is an occasion for celebration while the birth of a daughter calls for commiseration if not lamentation. Some girls are married when they are still minors, even though marriage in Islam is a contract and presupposes that the contracting parties are both consenting adults.

Even though so much Qur'anic legislation is aimed at protecting the rights of women in the context of marriage. Also in some societies women cannot claim equality with their husbands. The husband, in fact, is regarded as his wife's gateway to heaven or hell and the arbiter of her final destiny.

Although the Qur'an presents the idea of what we today call a "no-fault" divorce and does not make any adverse judgments about divorce, Muslim societies have made divorce extremely difficult for women, both legally and through social penalties. Although the Qur'an states clearly that the divorced parents of a minor child must decide by mutual consultation how the child is to be raised and that they must not use the child to hurt or exploit each other, in some Muslim societies, women are deprived both of their sons and daughters.

It is difficult to imagine an act of greater cruelty than depriving a mother of her children simply because she is divorced. Although the Qur'an gave women the right to receive an inheritance not only on the death of a close relative, but also to receive other bequests or gifts during the lifetime of a benevolent caretaker, some Muslim societies have disapproved greatly of the idea of giving wealth to a woman in preference to a man, even when her need or circumstances warrant it. Although the purpose of the Qur'anic legislation dealing with women's dress and conduct, was to make it safe for women to go about their daily business (since they have the right to engage in gainful activity as witnessed by Surah 4:32 without fear of sexual

harassment or molestation, some Muslim societies have put many of them behind veils and shrouds and locked doors on the pretext of protecting their chastity, forgetting that according to the Qur'an, confinement to their homes was not a normal way of life for chaste women but a punishment for "unchastity".

Woman and man, created equal by God and standing equal in the sight of God, have become very unequal in Muslim societies. The Qur'anic description of man and woman in marriage: "They are your garments and you are their garments"[22] implies closeness, mutuality, and equality.

However, despite something that has gone wrong with the lives of countless Muslim women down the ages due to patriarchal culture, there are indications from across the world of Islam that a growing number of Muslims are beginning to reflect seriously upon the teachings of the Qur'an .

As this reflection deepens, it is likely to lead to the realization that the supreme task entrusted to human beings by God, of being God's deputies on earth, can only be accomplished by establishing justice which the Qur'an regards as a prerequisite for authentic peace. Without the elimination of the inequities, inequalities, and injustices that pervade the personal and collective lives of human beings, it is not possible to talk about peace in Qur'anic terms. Here, it is of importance to note that there is more Qur'anic legislation pertaining to the establishment of justice in the context of family relationships than on any other subject.

This points to the assumption implicit in much Qur'anic learning, namely, that if human beings can learn to order their homes justly so that the human rights of all within its jurisdiction - children, women, and men - are safeguarded, then they can also order their society and the world at large, justly. In other words, the Qur'an regards the home as a microcosm of *the ummah* الأمة and the world community, and emphasizes the importance of making it "the abode of peace" through just living.

Ann Elizabeth Meyer in her classic analysis of Islam and human rights describes the declaration as not so much a statement of human rights as a statement of man's responsibilities towards God. According to Meyer, International law does not accept that fundamental human rights may be restricted – much less permanently curtailed – by reference to the requirements of any particular religion. International law does not provide any warrant for depriving Muslims of human rights by according primacy to Islamic criteria.[23]

The Universal Islamic Declaration of Human Rights of 1981 and compares its provisions with those of the UDHR. The UIDHR has been published in two versions: in Arabic and in English. We are told in the English version that the Arabic text is definitive. What is not at all evident is that the Arabic version is actually different from the English in several respects, with the Arabic version being substantially more conservative in tone. In no sense would the English version be acceptable as a certified translation of the Arabic. One is left with the impression that the wording of the English version has been watered down for western consumption.

In other articles we compare the rights of women as they exist in Islamic countries with the rights supposedly guaranteed under the UDHR; show how the rights of non-

Muslims are limited in many Islamic states; how freedom of expression is severely curtailed and how freedom of religion and belief are practically nonexistent.

This Declaration -according to some critics- drew little criticism, as it was rife with ambiguous language and had an English translation that masked many of its overt religious references. In its original Arabic, the UDHR often requires Islamic considerations that limit rather than enshrine human rights as outlined by international norms. For example, compare the English and Arabic versions of Article 12, which outlines the “Right to Freedom of Belief, Thought and Speech”:

English: Every person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the Law. No one, however, is entitled to disseminate falsehoods or to circulate reports that may outrage public decency, or to indulge in slander, innuendo, or to cast defamatory aspersions on other persons.

Arabic: Everyone may think, believe and express his ideas and beliefs without interference or opposition from anyone as long as he obeys the limits [hudud] set by the shari’ah. It is not permitted to spread falsehood *al-batil* الباطل or disseminate that which involves encouraging abomination *الفاحشة* al-fahisha or forsaking the Islamic community.

The English version reads as an innocuous restatement of well-established norms, embracing rights to speech and generally accepted limits involving slander and libel. In its original Arabic, however, this article demonstrates a clear religious test for speech: one may not express oneself where limits are set by Islamic law, and one must not “encourage abomination” or “forsake” the Islamic community. The concepts of “falsehood,” “encouraging abomination,” and “forsaking” are unclear in this case.[24]

While particular representatives from Muslim states expressed discomfort with various articles involving marriage, family law, and freedom of religion, such opposition was no more pronounced than the resistance from some non-Islamic nations. Further, the universality of human rights was not an object of great concern for Muslim states during the drafting process; most showed general support for the motivations and prescriptions therein, and none cast a vote against the resulting document (Saudi Arabia was alone among Muslim states in abstaining. Contemporary leaders who would denounce the UDHR as an exclusively “Western project” therefore fail to acknowledge the important contributions of Islamic states to its creation. In their ignorance of history, they reveal the harmful political dimension of their cause—the appropriation, rigidification, and politicization of Islam as an obstacle to international human rights law.

Why are many of the original supporters of the UDHR (such as Egypt, Iran, Lebanon, Libya and Syria) now contesting its universality and core principles? One critical factor has been the rise of Islamist thought and politics. The Islamist ideology prevalent in Muslim societies today is not an intractable relic that has survived through modernity, but in an important sense it is a reaction to modernity, forged in the fires of political and economic strife and fueled by a painful struggle for identity.

Even a casual inspection of the Cairo Declaration, the IDHR, and other IHR literature shows that in general, IHR schemes “have consistently used distinctive Islamic criteria

to cut back on the rights and freedoms guaranteed by international law, as if the latter were excessive”.[25] For instance, Article 22 of the Cairo Declaration states “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.” This Article permits limitations on freedom of expression that clearly are not permitted by the UDHR, whose Article 19 simply states, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” The Cairo Declaration mentions shari’ah fifteen times, mostly in order to qualify various rights by stipulating that they must be exercised within the limits of shari’ah.

A central tenet of international human rights law is that persons are equal in dignity and rights. By citing shari’ah as the source of law and a constraint on individual freedom and rights, the IHR literature makes a presumption of inequality in rights, for under classical shari’ah, there is no equality in rights for women, non-Muslims, and apostates. The IHR literature does nothing to remove this presumption. As a result, the only plausible way to understand the IHR movement, despite public statements regarding its compatibility with international standards, is that it seeks to use the instrument of Islamic law to curtail the equality in rights accorded to women and non-Muslims by those standards.[26] In the classical interpretation of shari’ah, when a woman commits apostasy she may be coerced through imprisonment and beatings to return to the fold, unlike male apostates, for whom the punishment is death. With regard to courtroom testimony and inheritance, she is counted as half a man.[27]

The Cairo Declaration contains no endorsement of equality of rights, and instead says in Article 1 that all human beings “are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, color, language, sex, religious belief, political affiliation, social status, or other considerations.” As Ann Elizabeth Mayer observes, equality in “dignity” and “obligations” does not necessarily signify equality in rights...in Article 19, the Declaration states that “All individuals are equal before the law, without distinction between the ruler and the ruled.” According to Mayer, “this might seem to be an affirmation of equal rights, but in the context of a document that carefully avoids guaranteeing equal rights or equal protection of the law for women and non-Muslims, it should be read as meaning only that the law applies equally to rulers and ruled—that is, that rulers are not above the law.”[28]

The question of equality of rights is in the UDHR. In Article 3.c, the English version of the “Right to Equality and Prohibition Against Impermissible Discrimination” reads: “No person shall be denied the opportunity to work or be discriminated against in any manner or exposed to greater physical risk by reason of religious belief, color, race, origin, sex or language.”

In the Arabic version under the rubric “Right of Equality,” the corresponding section, Article 3.b, says that all people are equal in terms of their human values (al-qaima al-insaniya) القيم الإنسانية, that they are distinguished in merit (in the afterlife by God) according to their works (bi hasab ‘amali him) بحسب أعمالهم, that no one is to be exposed to greater danger or harm than others are, and that any thought, law or rule (wad’) that permits discrimination between people on the basis of jins (which can

It is clear from other provisions of the IHR documents that they were not intended to challenge the basic inequality in rights accorded to women under classical shari'a. For example, the UIDHR contains a section on the "Rights of Married Women." There is no corresponding treatment of the rights of unmarried women, or the rights of married (or unmarried) men.

Since the modern notion of human rights, Muslim women in particular, find themselves in a quandary when they initiate, or participate in, a discussion on human rights whether out or in Muslim societies. Based on their life experience, most Muslim women who become human rights advocates or activists feel strongly that virtually all Muslim societies discriminate against women. This leads many of them to become deeply alienated from Muslim culture in a number of ways. This bitter sense of alienation oftentimes leads to anger and bitterness toward the patriarchal systems of thought and social structures which dominate most Muslim societies. Muslim women often find much support and sympathy from other societies so long as they are seen as rebels and deviants within the world of Islam. But many of them begin to realize, that while they have serious difficulties with Muslim culture, they are also not able, for many reasons to identify with other society or secular culture. This realization leads them to feel - at least for a time - isolated and alone. Much attention has been focused, in the media and literature, on the sorry plight of Muslim women who are "poor and oppressed" in visible or tangible ways. Hardly any notice has been taken, however, of the profound tragedy and trauma suffered by the self-aware Muslim women of today who are struggling to maintain their religious identity and personal autonomy in the face of the intransigence of social culture, on the one hand, and the secular culture, on the other hand.[29]

I would like to say that the violations of human rights (in relation to Islamic law such as Hudud حدود), should actually be dealt with by diverting our emphasis from discussing the severity of the punishments to exploring the various procedural safeguards provided by Islamic criminal law for accused in Hudud trials. This is because by closer examination one would discover that some of them are basically the same as those enshrined in the international human rights instruments. In fact, it is safe to say that some of these procedural safeguards are even more protective towards accused persons in criminal trials. The typical approach of demanding conservative Muslim states to uncompromisingly stop the practice of Hudud punishments on the grounds of International Human Rights law, must be diverted to demanding from the Muslim states to adhere to strictly to procedural rules and evidentiary requirements required by Islam before Hudud penalties can be imposed.

## 6.8 Modern notion of human rights in Islam

Human rights will be better served by a new thinking that is progressive and free from ideological commitments. Clearly, human rights activists have fallen in the trap of making human rights causes into an ideology: the materials in the declarations and covenants are in the minds of many activists a creed.

By setting the terms of these treaties as rigid standards, great many people have been marginalized. Surely the upholding of the humanitarian law amounts to promoting the rule of international law, but one must remember that the first generation of human rights pioneers had to break many national and international laws in order to break through and launch the human rights campaigns. Human rights are rooted in the moral discourse, and demoting it to the bare skeleton of the international law may do more harm than good.

The major proposition is concerning the state of human rights in the Muslim world; from the materials introduced thus far, we are left with two important questions: why is Islam perceived as resistant to the adoption of some of the human rights principles?, and why should we expect Islam to conform to the modern paradigms of human rights given that it is a private discourse, let alone an ancient one?

One of the simple and obvious answers is that Islam is a religion, and religious traditions are generally immune to change; and in case a change is forced, a new tradition is born rather than the old one being reformed. If we are to accept this view, the answer to the second question becomes a moot matter.[30]

Human rights controls are needed to curb violence and abuse. The abuse and violence are perpetrated by state agencies, by groups, and even by individuals. This violence and abuse amount to human rights violations when they are carried out in a systematic way and in a coercive manner. Human rights activism is not intended to make people “happier” or “richer”. It is intended to end institutionalized violence against individuals and communities. In all the cases involving human rights matters, the notion of identity is always at play. Identity is either the cause or the purpose. Sometimes, states carry out violence in order to protect its “identity” as a nation. In other times, Individuals and peoples are victimized because of who they are. The UDHR recognized this reality and thus tried to formulate a definition within the line of rights to a “nationality.”

What we wish to underscore here is that the formulation of human rights must be done with sound understanding of the elements that make the identity of a state that we are asking to conform to human rights norms.

Undoubtedly, the human rights discourse is in the final analysis, a moral one. When we call for the respect of the human lives and dignity anywhere in the world, we are in fact appealing to the sense of morality and fairness. However, the universality of these sentiments has been challenged times and again, and establishing a common ground for all has proven to be a very elusive goal.

For the Muslim world, it is insisted that the accommodation of human rights ought to be within the framework of religion not without. There are not that many options:

either religion is declared the antidote of human rights; hence, working out a formulation of human rights principles in the secular discourse; or promote the human rights principles within the religious discourse. While the first approach may seem simplistic and practical given its success elsewhere; the latter option, notwithstanding its complexity, presents itself as the one favored by Muslims regardless of their denominational inclinations.

Currently, however, none of the approaches has led to the fulfillment and realization of the world's expectations in regards to the normalization and implementation of protective and remedial mechanism in the area of human rights law. While the secular governments, despite their declared commitment to human rights principles, had to be selective in choosing whose rights they should protect; the religious establishment continued to press on with their own vision of a model for human rights. What is so obvious however, is the fact that there appears to be no hope for full integration of the universal declarations on human rights without the full participation of the people.

We live in a multi-religious world. The Qura'n clearly indicates that Allah willed it to be so. States, whatever their religious demography, to be recognized as equal members of the international community, cannot discriminate against or persecute a section of their people on grounds of religion. A Muslim-majority State may declare itself as an Islamic State, as several have done, but they are obliged to measure up to internationally accepted norms and standards in their treatment of their non-Muslim citizens. The world has become so interdependent that no State can live by itself, or collectively in association only with other like-minded States, and isolate itself from the rest of the world.

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**Chapter seven**  
***7. Reconciliation, Tolerance, Coexistence***  
***‘The Islamic Perspective’***

## **Chapter seven**

### ***7. Reconciliation, Tolerance, Coexistenc***

#### ***‘The Islamic Perspective’***

Tolerance is a very important value in Islam; it is an overall feature of Islam which characterizes the aspects of worship, jurisprudence and behavior.

Islam -as a religion- considers that religion is a personal matter, on the basis of the fact that it concerns the individual, in that religion is a relationship between the individual and His Creator, with all the necessary obedience, awe and contemplation that such a relationship obviously presumes. At the same time, Islam is concerned with societal life in the sense that it advocates the setting up of a legitimate society which has its own legislation, regulations and principles which govern the different matters of its life.[1]

Islam advocates making acquaintance with others. In other words it calls upon people to meet each other, to live together and to give and take whatever is useful according to the needs of each other. Thus it advocates coexistence, with all the giving and taking that it involves and also the lasting mutual influence, avoiding all racial chauvinism, regional discrimination and cultural arrogance. Thus, Islam does not recognize any reason why one may be considered superior to the other, except in faith.[2]

#### **7. 1 The value of life as a main principle in Islam**

##### **“Reconciliation”**

Life is the highest asset for Islam. This is why it demands absolute protection independently from ethnic background, religious confession, ideology, material or intellectual property. " If anyone killed a person not in retaliation of murder, or (and) spread mischief in the land – it would be as if he killed all mankind, and if anyone saved a life, it would be as if he saved the life of all mankind".[3]

In this context we must keep in mind that there are four important principles when talking about reconciliation in Islam:

1. Rights are given by God, the rights in Islam are not just human conventions, they are God’s orders.[4] They should be considered permanent values; universal standards. They should not be given only to those who shout most or who lobby most, but they should be given even to those who are not yet empowered to speak for themselves, or who are not even aware due to social circumstances to know what rights they should have. The rights are rights even when no one asks for them.

2. There are rights and there are duties. Muslim scholars have debated whether the rights come first or the duties come first. Some have emphasized duties and some have emphasized rights. However, both of them are important. It is not possible to have rights without duties. There is mutuality between rights and duties. Someone's right is another person's duty and someone's duty is another person's right. In Islam the Human person has absolute value.[5]
  
3. Islam has a detailed scheme in its priorities. All people have rights but no one has a right above God's rights. Among the people there are rights of parents, rights of spouses, rights of children, rights of other relatives. There are rights of neighbors. There are rights of employers and employees. There are rights of Muslims and there are rights of other human beings. There are rights of animals etc... . Sometimes there are conflicts between one right and another right and so the question comes what is the first duty? It is for this reason the issue of rights becomes very complex and difficult. The most important thing is to have the fear of God in all relations.

Muslims scholars have mentioned five basic objectives of the Shari'a, which have come to be preserved:

- Religion.
- Life.
- Progeny.
- Intellect.
- Wealth.

Within the *Shari'a* there are some rules that are called necessities and some that are called needs, and some that are called ease and facilities. Preservation of Religion is at the top. Life is the second most important thing and so on and so forth. Similarly there are things that are obligatory, there are things that are recommended and there are those that permissible. The same is true in modern interpretations of the rights; there are certain rights that are at the forefront and then other rights come after them.[6]

It is in this way that the Muslims lived with people who do not share their religion but with whom they shared social life. They lived in a humane relationship, which is inspired from Islamic principles, and which has no objection to accepting any other religions. It is also from this principle that this relationship can draw all the elements which relate the nation's parts to each other and which continuously enriches its personality in a firm symbiosis between nation and religion.

Man is the basic element in this humane relationship, in his quality as a set of capabilities and energies, which constitute the features of his humanness. This instills in him the feeling of existence within himself and with the others, and provides him with the possibility to work and to produce, as it also provides him with the means of efficacy and influence.

There is no doubt that among those capabilities and especially among the most important ones, there is what is inherent in man's nature, as he is an individual in a given land where he moves, consciously or unconsciously, and on that basis, he tries to preserve himself and develop his personality.

If the innate nature of man enables him to live on earth with a horizontal and superficial dimension, the spiritual element intervenes to allow man to transcend earthly matters through faith and religion. The spiritual element gives him a celestial dimension which allows him to achieve the necessary balance for a true human life with all the necessary values and the individual and group behavioral principles. It also gives all the requirements of a behavior which preserves the relationship between the individual, the universe and the creator.

Along with innate elements and the spirit, the mind intervenes at the levels of consciousness, feeling, will and intellect in order to guide, plan, execute and monitor man's movements. And this is what gives citizenship its real meaning, i.e. as it is supposed to be in the mind of Muslims and others who live in a Muslim nation.

Allegiance to this country resides in all what it represents in terms of land, faith, history, civilization, culture, present and future. In other words, this allegiance resides in a set of principles and values which everyone believes in and shares and which imbibes everyone's mind, spirit and psyche. Thus it becomes the engine which incites one to militate and endeavor to develop the society in the direction of progress and evolution.

Islam provides the non-Muslim in a Muslim society with an integrative presence within which he can preserve all the components of his personality. The first one among these components is the religious element, with all the related rites, rituals and traditions which allow him to express his religious, cultural and psychological characteristics. With these he can also confirm the characteristics of his identity, within the general framework of the characteristics which make up the notion of citizenship. All this allows one to belong to that Muslim society. Belonging to this society also gives one the right to acquire the nationality of the country. It may allow him more than that, since nationality is the legal framework which gives the individual his political identity, and gives him also the citizenship and the membership within the state which has given him the nationality. This individual becomes a member of its people, and he becomes a national or even a patriot in opposition to the foreigner who does not enjoy this citizenship. Evidently, this citizenship can also be acquired through other means, such as birth, lineage, residency and all the other possibilities which are provided for by the citizenship laws in the different countries.

The extent of the coexistence of Muslims with non-Muslims who belong to other societies remains clear in the peaceful relations that they develop, in the friendly relations that they have, in the security that they share, and in the fact that they are against wars. The expression occurs in the Qur'an in several places and with its different derivations.

## **7.2 Islam and tolerance:**

Tolerance literally means `to bear` As a concept it means respect, acceptance and appreciation of the rich diversity of the world's cultures, forms of expression and ways of being human.

Tolerance is a basic principle of Islam. It is a religious moral duty. It does not mean `concession, condescension or indulgence` It does not mean lack of principles, or lack of seriousness about one's principles.

The concept of compassion and care for others is a central Islamic belief, and all humans are considered to be equal.

Qur'an considers tolerant and comprehensive belief a sign of being well guided and a proof thereof. If this is otherwise, then such a belief is only a false appearance leading to ignorance and conflict.

Muslims believe in a chain of prophets beginning with Adam and including Noah, Abraham, Ishmael, Isaac, Jacob Joseph, Job, Moses, David, Solomon and Jesus. God's message was reaffirmed and finalized by the Prophet Muhammad.

In the Bible, human beings were made "In God's image"[7], and since love is the most outstanding aspect of God, The Bible reveals God as "The God of love"[8], also The Bible sums up human being's obligation in these words:"You must love your God with your whole heart and with your whole soul and with your whole mind, 'This is the greatest and first commandments. The second, like it, is this, 'You must love your neighbour as your self.' On these two commandments the whole Law hangs".[9] And besides loving God and neighbour, love one another. In this context -which mean the same idea- Muslims believe that human being was created by a transcendental God who doesn't favour one human over another except in terms of piety and good conduct. In a bid to defend Islam or to promote it, several contemporary Islamic scholars and thinkers have sought to show that Islam has from the outset laid the foundations for human rights by asserting the supremacy of the value of justice and of the principle of human dignity.

### **Tolerance comes from recognition of:**

1. The dignity of the human beings.
2. The basic equality of all human beings.
3. Fundamental freedom of thought, conscience and belief.

The Qur'an speaks about the basic dignity of all human beings. The Prophet Muhammad spoke about the equality of all human beings, regardless of their race, color, language or ethnic background. *Shari`a* recognizes the rights of all people to life, property, family, honor and conscience.

Islam emphasizes the establishment of equality and justice, both of which cannot be established without some degree of tolerance. Islam has recognized from the very beginning the principles of freedom of belief or freedom of religion. It said very clearly that coercion is not allowed in the matters of faith and belief.[10]

If in the matters of religion, coercion is not permissible, then by implication one can say that in matters of cultures and other worldly practices it is also not acceptable.

In the Qur'an, Allah says to the Prophet Muhammad, "But If they turn away, We have not sent you as a *Hafiz* (watcher, protector) over them (i.e. to take care of their needs and to recompense them). Your duty is but to convey (the Message)".[11] In another place the Qur'an says, "Invite (mankind) to the Way of your Lord with wisdom and fair preaching; and argue with them in way that is better"[12], the Qur'an also says "Say: 'Obey Allah, and obey the Messenger: but if you turn away, he is only responsible for the duty placed on him and you for that placed on you. If you obey him, you shall be guided rightly. The Messenger's duty is only to convey in a clear way (i.e. to preach a plain way)".[13]

All these verses give note that Muslims do not coerce people; they must present the message to them in the most cogent and clear way, invite them to the truth and do their best in presenting and conveying the message of God to humanity, and it is up to people to accept or not to accept.

We can say that there are many levels of tolerance in many angles, between family members, between husband and wife, between parents and children, and between siblings..There is also tolerance between the members of the community, tolerance in views and opinions, tolerance between the juristic schools, and tolerance between Muslims and the people of other faiths within interfaith relations, dialog and cooperation.

Muslims have been generally a very tolerant people. Scholars and educated Muslims must emphasize this virtue among Muslim communities and in the world today. Tolerance is needed in Muslim communities: Muslims must foster tolerance through deliberate policies and efforts. Islamic institutions should be multi-ethnic and should teach respect for each other and should not generalize about other races and cultures. Institutions should exchange opinions and meetings with each other, and have dialogs and good relations with non-Muslims, which should inform non-Muslims about what is acceptable and what is not and why they cannot accept things which are contrary to the religion. With more knowledge, the respect will develop and more cooperation will develop.[14]

In all respects and from all angles, it's unfair to judge the few that give a bad name to the many. The role of scholars, writers and intellects, as well as leaders of religions

and political communities is to guide people to right path. Those who should be speaking out about values and aren't are tacitly agreeing with and encouraging extremism. Some of the actions carried out in the name of religion or ideology or philosophy are indeed against the principles or goals of it. In the case of Islam, which has a population over of billion, Muslims strive to live by Islamic teachings of love, peace, and forgiveness. Those teachings, which have become universal values, remind us that Jews, Christians, Muslims and all others have more in common than we think.

Tolerance is a basic principle of Islam. It is a religious moral duty. Muslims are tolerant with their enemies as well as their fellow Muslims. Islam teaches tolerance on individual and group levels. It should be a political and legal requirement. Tolerance is the mechanism that upholds human rights, pluralism, including cultural pluralism, and the rule of law.

In the past century, 170 million people were killed in politically motivated slaughter, many of them civilians. We, Muslims and non-Muslims, are not immune to this from happening again. We must work hard as a human family to prevent any more slaughter from happening in this new century. Islam has a history of tolerance and co-existence that we must bring back and build on to restore the balance and have a better future.

From behavioral side and all aspects which derive therefrom and which are related to Islam in its whole, the notion of tolerance appears as a distinctive feature which characterizes the society which Islam advocates and where people are called upon to coexist. It is a religion of magnanimity, in which there should be neither discomfort nor chauvinism, neither exaggeration nor extremism, neither violence nor terrorism, be it towards oneself or the others.[15]

We refer here to all those who live in the society, be they Muslims or otherwise, and even those who belong to other societies as they also have their rights, those we refer to today as human rights. These rights concern the civil, political, economic, social and cultural aspects of the life of the individual and that of the group. These rights focus on one central aspect which is that of freedom. And as we know, freedom is a natural right for all individuals. These individuals cannot survive without tolerance, i.e. without the right to differ.

It still remains that the issue of tolerance examined from this wide perspective needs clarification, albeit from a brief discussion of the morphology of the word tolerance. The word *tasaamuh* تسامح (meaning tolerance) has the same form as that of *ta'aayush* تعايش (meaning coexistence) already referred to, and coined on the basis of the form *tafaa`ul* نفاعل. It is closer in meaning to the verb of origin which is that of forgiving, or to the meaning of spontaneous compliance resulting from the tolerance of the religion itself and its call to all Moslems to be tolerant. All this in spite of the fact that we do not discard the form of *tafaa`ul* which refers to the notion of participating in efficacy and reciprocity. This obviously points to the positive stand of Islam towards mutual forgiveness, if the other party is capable of doing so also. This is what makes the reality of tolerance in Islam and the resulting coexistence thereof point to three

dimensions:

The first is internal to Islam and concerns Muslim society;

the second is also internal to Islam but concerns the non-Muslims living in a Muslim society;

the third is external to Islam and concerns the relationships between the Muslim society and the other non-Muslim societies.

Before dealing with these three dimensions, we should point out that Islam - as a religion - considers that religion is a personal matter, on the basis of the fact that it concerns the individual, in that religion is a relationship between the individual and his creator, with all the necessary obedience, awe and contemplation that such a relationship obviously presumes. At the same time, Islam is concerned with societal life in the sense that it advocates the setting up of a legitimate society which has its own legislation, regulations and principles which govern the different matters of its life.

As such, Islam is a religion which concerns at the same time the individual and the society. It takes the individual as a starting point to encompass the group. It looks at individuality in its philosophical and psychological meaning which is synonymous with personality. It also looks at it in its social dimension making of individuality the state of the individual which considers him a component unit amongst all the units which make up society. Individuality is also looked at from the point of view of a unit having its own features and faculties which make it capable of living within that society, and which make it free of all the kinds of behavior which might lead the individual to be selfish and solitary, considering only his own interests with the exclusion of the others.[16]

It is in this perspective that Islam is concerned with the individual in the utmost manner and that is reflected in several areas, the most important of which are the following:

**First** : Allowing him to enjoy his rights in order for him to live freely with the due respect, honor and equality with others.

**Second** : Entrusting him with a number of duties, which define his role, and make him a responsible individual within society, who undertakes a number of duties which enable him to gain his rank and importance and above all which make him perform useful duties within that society.

**Third** : Educating him in an appropriate manner that allows him to benefit from his rights and to perform his duties. Such an education is achieved only through the

adequate and complete upbringing which takes into consideration the two factors which make up the individual : his body and his soul.

Such attention which is paid to the individual is, by extension, the basis of the attention that the society as a whole enjoys. All that concerns the individual, be it positive or negative, is eventually reflected upon society. Society is nothing but

this individual who constitutes the basis and the seed which bears the fruit. As a result, the upbringing of upright individuals is the basis of the constitution of a sound and healthy society. The extent of these individuals spreads little by little in units and families which grow gradually until we reach such a society.

Islam intended such a society to be tolerant with itself and the others and coexisting with them. Such intention has many reasons and motivations which we will summarize in the following three aspects :

**First** : Islam discredits all kinds of chauvinism, be it racial or religious, because such chauvinism is based on nothing but selfish and idiosyncratic tendencies in the exclusion and lack of respect for others. Islam also insists on the individual being honored. God has honored the human beings by making them respectful and not lowly. They were preferred over all other creatures and were given a distinct position in this world. God thus gave them faculties to be civilized, to acquire different kinds of knowledge and to achieve development. God also made opportunities for them on earth and entrusted them with responsibilities that were beyond the capability of other creatures.

This honor was provided since birth, as God created man from earth and breathed into him of His spirit, then ordered the angels to prostrate to him in honor and respect. Then, soon after that God provided man with the knowledge to allow him to make his life and existence according to the way God willed them to be as a human.

**Second** : Islam advocates making acquaintance with others. In other words it calls upon people to meet each other, to live together and to give and take whatever is useful according to the needs of each other. Thus it advocates coexistence, with all the giving and taking that it involves and also the lasting mutual influence, avoiding all racial chauvinism, regional discrimination and cultural arrogance. Thus, Islam does not recognize any reason why one may be considered superior to the other, except in faith. Knowing people presumes being able to do so, including the capability to accept difference in opinion and difference in creed.

**Third** : Islam assumes that difference is an inherent part of the essence of life and of the natural disposition of man. God created the universe and all the things and creatures that live on it on the basis of obvious difference both in terms of variety and quantity. This is clear in all aspects and appearances. God stresses this truth which cannot be subject to change.[17]

In other words, God's rule on earth is based upon the differences between human beings, be they race, language or religious differences or any other difference in any one of the components of civilization and culture. Islam thus considers the matter to be under God's will and the underlying motivation which is inherent in it. God emphasizes this will and what it engenders concerning the absence of coercion upon people to adopt Islam. This meaning expresses the fact that if God had willed it, he would have made all people have the same levels of understanding and comprehension that would lead them to Islam.

For all this, and especially from the perspective of difference, Islam does not oblige or coerce anybody to adopt it. In the same verse, God responds to whoever might wonder about the reason for this lack of coercion. This is a motivating response, which also means that God promises the tolerant Muslims, who have faith that they are safe and successful, like the man who holds unto a sturdy rope cannot fear that he will collapse or fall.

I would like to insist that tolerance is a very important value in Islam. It is an overall feature of Islam which characterizes all its aspects of worship, jurisprudence and behavior.

### **7.3 Islam and Coexistence**

It is quite obvious that the concept of coexistence arose with the emergence of societies, and grew out of the affinities between its members, but soon afterwards coexistence evolved to the point of arising as a result of necessity. Consequently, it is clear that whenever the number of members of any human society grows larger, the element of resemblance becomes weaker, in spite of its importance, and the element of necessity becomes stronger and leads to a situation whereby coexistence becomes imperative.

While this notion of coexistence in its general linguistic meaning and according to the requirements of the Arabic grammatical stem tafaa'ul, refers to the fact that one (group) has to live with the others, in its modern conventional meaning, this notion refers to the idea that such a coexistence has to be founded on peacefulness and quietude. This is confirmed by the fact that the word coexistence most often collocates with the attribute peaceful.

When one ponders over the depth of the meaning of the expression peaceful coexistence, as well as its morphology and syntax in various languages, one reaches the conclusion that the expression reflects somewhat an uneasy position, fluctuating between peace in its clear and straightforward meaning and war in its traditional and well-known meaning.

To trace the contours of the principle of coexistence and its dimensions, in the Islamic sense, nothing is more eloquent and relevant than the Qur'an : "Say : 'O People of the Scripture, come to a word that is just between us and you'".[18] The common denominator between Muslims and other Peoples of the Book is vast. Since Islam has

instilled in the hearts of Muslims the seeds of a predisposition for coexistence with the entire humankind, it is inclined to foster coexistence among the believers in God, but coexistence, from this perspective, does not mean a mandatory agreement on all matters.

The importance of these issues and their great influence on events and the outbreak of conflicts and wars is obvious, as is the importance of the way peoples and nations look at each other's culture.

If it is impossible to imagine the likelihood of eliminating the conflicts which arise from these factors and the characteristics they provide each society and each group with, therefore it is likely that the reduction of the gap between countries and communities on the basis of complementarity and on the strengthening of communication and exchange will lead to rapprochement or to some kind of solidarity. This will allow the two sides to realize the value of what the other has and the possibility of self-advancement by inspiration from it. This might even lead to mutual attraction and otherwise competing in case there is a big difference, without this leading, however, to tension then to conflict. And this will only be possible through tolerance.

From the very start, we would like to insist that tolerance is a very important value in Islam and that in Arabic etymology it originates from the word meaning indulgence. It is an overall feature of Islam which characterizes all its aspects of worship, jurisprudence and behavior.

Coexistence in Islam is grounded in an ideological basis, taking root in the faith. Muslims believe that the divine guidance was relayed through a long series of messages and prophecies, the last of which were Judaism, then Christianity and finally Islam. It is, therefore, only natural that the three religions should be nearer to one another than to the rest of religions. The Qur'an refers to the Christians and the Jews as the 'People of the Book' because God had revealed The Torah to Moses and The Gospel to Jesus before Prophet Muhammad received the integral Message giving credence to the former messages.[19]

Muslims in their prayers and when they starts acts mentions God's mercy many times everyday when they says : "In the Name of Allah, the Most Gracious, the Most Merciful" by this mean Islam emphasizes the concept of God's mercy and in the same time inter-human mercy.

The concept of God's mercy is essential in Islam, when God is the merciful, human beings must be merciful. Human beings must be merciful to others regardless of race, religion, color etc, which gives the person a feeling of safety, because mercy is something a person gives to others and the others reciprocate. We find this meaning in the Bible when Jesus Christ said: "There is more happiness in giving than there in receiving".[20]

Therefore it is simple to conclude that anything which conflicts with mercy does not run parallel with the mission of the Prophet Muhammad.

The Prophet Muhammad described himself as the mercy presented by Allah to mankind. All his life, he was the best example of mercy. His was a mercy on far and near, friend and enemy. That was the psychology of Prophet Muhammad.

Mercy always leads to happiness and happiness is the main factor of coexistence.

The notion of "monotheism" has been advocated by the different heavenly religions, has been adopted and completed by Islam. Islam has thus transcended all factors of difference, quarrels and fighting, thanks to its forgiveness and open-mindedness, as well as its outstanding capacity of assimilation and absorption and unification of all its people, even those who are not Muslims.

These people look at themselves and at others and to the world around them with a comprehensive and clear look which allows them to coexist within that context of forgiveness and living together and a lasting exchange of giving and taking and of interests. This situation is possible only if we start from a context of multiplicity and variety, and the resulting distinctive characteristics which lead to interaction, unity, integration, and social equality among all human beings. All these characteristics have been epitomized in the Qur'an.[21]

From aspects which derive therefrom and which are related to Islam in its whole, the notion of tolerance appears as a distinctive feature which characterizes the society which Islam advocates and where people are called upon to coexist. We refer here to all those who live in this society, be they Muslims or otherwise, and even those who belong to other societies as they also have their rights, those we refer to today as human rights. These rights concern the civil, political, economic, social and cultural aspects of the life of the individual and that of the group. These rights focus on one central aspect which is that of freedom. And as we know, freedom is a natural right for all individuals. These individuals cannot survive without tolerance, i.e. without the right to differ.

**Let us prove these ideas by a short examples:**

1. Islam in Spain, which is often retrospectively idealized as a golden age of peaceful Jewish, Christian and Muslim coexistence.
2. In the Vatican Council of 1962-1965 the Church defined its attitude towards Islam in the formula which echoed the terminology of the Qur'an itself.[22]
3. Many times each day Muslims recite an important chapter of Qur'an in their prayers as well as in all their actions, and if everyone understood this verse, we could reach real coexistence and tolerance, i. e., " Guide us [Our God] to the Straight Way".[23]
4. When Prophet Muhammad won great victory and he returned to his homeland, Mecca. He asked the captured people "what do you think I will do with you?" They said: "a merciful brother and nephew." he replied in simply, "Go wherever, all of you are free".

It is because of such lofty notions of diversity and tolerance that the Islamic civilization was pluralistic and unusually tolerant of various social and religious

denominations.

Today we stand on the carcass of religion. Many religious leaders have become the vultures who devour our corpse. They breed hatred and intolerance. And then there are the secular fundamentalists who would only have it their way.

Naturally, there is a debate today what is worse: a secular fundamentalist or a religious fanatic? In my opinion, both are bad. As much as the former needs to respect religious sensibility of others, the latter needs to inculcate God-consciousness that helps him to tolerate other human beings.

History told us that some non-Muslims of Macca neither embraced Islam nor did they have any enmity and hatred against Muslims. They did not fight against them about the faith of Islam and did not help others torturing and ousting them. Islam does not permit Muslims to behave towards non-believers with cruelty and malice but it commands them to behave them with kindness and affection. Islam does not permit Muslims to consider both non-Muslims in war and those not involved in war against them with the same yardstick. To treat both in an equal fashion is against common sense, wisdom and justice. The Islamic principle of co-operation advises Muslims to extend their best help and assistance to the people of other faiths in common social and national issues as far as they are not against sharia and Islamic teachings.[24]

## **7.5 Case studies as examples of Coexistence in Islam**

I want to try to outline some of the presuppositions of the growing dialog between persons of different faiths and the implications that arise from this dialog for the study of religion.

What does "dialog" mean? In short it means an emphasis on mutual understanding and coexistence within nations, regionally and internationally. It means that we accept others.

This dialog between the followers of Religion aims to form a deep understanding of the others, to support of culture of dialog, and to revise the heritage of negative aspects which create obstacles in common understanding between sons of Abraham. This chance of agreement is, itself, a victory.

In the living dialog of people of different faiths, one is not only led to deepen one's understanding of the other, but only truly transformed, we are transformed in a number of different ways and at different levels.

### **7.5 1 The Presence of Judaism and Christianity in Libya**

This part is an attempt to treat in a concise and objective manner the dominant religious aspects of contemporary Libyan society. Sources of information have included scholarly journals and monographs, official reports of Libyan government and some organizations, as well as newspapers, and numerous periodicals.

Jews, Christians and Muslims are invited to revise their standard ideas about each other, through reconsidering religious, cultural, media images of each other. This can begin building common ground between religions' followers, challenge hate cultures, and stunt attempts to dominate unique cultures or enslave all humankind in thought and material slavery.

In The Torah we read: "You shall not hate your kinsfolk in your heart. Reprove your kinsman but incur no guilt because of him. You shall not take vengeance or bear a grudge against your countrymen. Love your fellow as yourself: I am the Lord".[25] In The Gospel we also read: "But I say to you who are listening, continue to love your enemies, to do good to those hating you, and your reward will be great, and you will be sons of the Most High, because he is kind toward the ungrateful and wicked".[26] The Qur'an states a similar principle: "It may be that Allah will bring about friendship between you and those of them whom you hold as enemies. And Allah is Powerful; and Allah is Forgiving, Merciful".[27]

It is our duty, whether we are academics, experts, or common folk, to promote and engage in a dialog in our societies in order to put pressure on those in our societies who might not move in that direction. We cannot just talk, we must act.

### **7.5.1.I Religion in Libya**

During the seventh century, Islam reached Libya, and by the eighth century most Libyans had become Muslims. The urban centers soon became substantially Islamic.

The Arabs formed urban elite in North Africa, where they had come as conquerors and missionaries, not as colonists. Their armies had traveled without women and married among the indigenous population, transmitting Arab culture and Islamic religion over a period of time to the townspeople and farmers. Although the nomadic tribes of the hinterland had stoutly resisted Arab political domination, they rapidly accepted Islam. [28]

The Libyans traditionally are subject to the Shari'a, or religious law, which covers most aspects of life. The Shari'a, which was developed by jurists from the Qur'an and from the traditions of the Prophet Muhammad, provides a complete pattern for human conduct.

The role of Islam in Libyan life has become progressively more important. Nearly all Libyans adhere to the principles of Islam, which provides both a spiritual guide for individuals and a keystone for the country, and even those Muslims who have ceased to believe fully in Islam retain Islamic habits and attitudes.

For example, although proscription of alcohol is irregularly enforced in most Muslim countries, the Libyan government has been strict in ensuring that its prohibition be effective, even in the households of foreign diplomats.

Libyan society for nearly four decades was in a state of transition from one set of structures and values to another, while the country transformed into modern state compatible with the dictates of the Qur'an and the heritage of Islam. The Libyan Government is tolerant of other faiths; there is a respect for religious freedom and members of minority religions are allowed to conduct services. Christian churches operate openly and are tolerated by the authorities; the government routinely grants visas and residence papers to religious staff from other nations. [29]

In 1971 Libyan government established the Islamic Call Society which is responsible for relations with other religions. One of the main purposes is to promote a moderate form of Islam that reflects the religious views of the government. [30]

Religion in Libya permeates all facets of life. It is important to see the reasonableness and the lack of blind fanaticism when Libya adopts the positive side of Islam by explaining to the entire world the message of Islam of reconciliation and tolerance with all human beings.

A basis for some degree of religious freedom is provided in the Great Green Charter on Human Rights in Libya, dated June 12, 1988 which states: The members of Libyan Society...proclaim that religion is absolute faith in the Divinity, and that it is a sacred spiritual value. Religion is personal to each one and common to all. It is a direct relationship with the Creator, without any intermediary. Libyan Society proscribes the monopoly of religion as well as its exploitation for purposes of subversion, fanaticism, sectarianism, partisan spirit and fratricidal wars. [31]

Just a few years ago the government regulated the number of places of worship allowed for each Cult present in each city, which is a great step for freedom of religion in Libya.

### **7.5.1.II The Presence of Judaism in Libya**

Jews have had a presence in Libya at least since the time of Hellenistic rule in 323 BC in Cyrene.

Some historical sources point out that the presence of Jews in Libya goes back 3200 years, and these sources state that the Jews was lived in Silesia (Benghazi)

in the east of Libya since 6<sup>th</sup> century BC, where the Jewish community made up the majority of minorities in Libya and lived in good relations with Libyan people.[32] The presence of Jews later was a result of the waves of Jewish refugees from Spain after religious persecution from the Spanish. It also contained all the followers of what are called inspector courts in the end of 15<sup>th</sup> century.

During the Italian occupation of Libya in 1911, there were about 21,000 Jews in the country, the majority in Tripoli and Benghazi.[33]

In 1969, some 500 Jews remained in Libya. By 1974 there were no more than 20 Jews, and now the Jewish presence has passed out of existence.

Jewish Life in Libya combines historical and anthropological perspectives in depicting the changing relations between Muslims and Jews in Libya from the early nineteenth century up to the middle of the twentieth century.[34]

The cultural and religious worlds of the Jewish and Muslim communities in Libya were deeply intertwined in daily life and largely remained so despite political and social changes under successive Ottoman and Italian rule. The intricate symbolic linkages of Jews and Muslims in different periods and in a variety of settings. Traditional Jewish weddings, and of the profession of street peddling demonstrate that Jews were also an essential and familiar part of the local Islamic society.[35]

From 31st May to 1st June 2007 originally Libyan Jews organized a conference held in London by the United Association - Jews of Libya, called Devoting the Past for a Better Future. A number of speakers and guests attended this conference including some people who had come from Libya, and there was an exhibition and even musical and theatrical performances by Libyan Jews.[36] The event celebrated the rich and deep-rooted culture of Libyan Jewry and will hopefully rebuild the confidence to generate goodwill and friendship towards reconciliation. The information and historical facts provided will serve as tools to learn and plan for a better future between Jews and Muslims.[37]

I am excited and looking forward such conferences and meetings to improve the relations from both the people and the state; this conference was seen as a very significant beginning in the promotion of dialog, and what makes me more optimistic is that the Libyan government has been rehabilitating the old city in Tripoli and has renovated the synagogues and the Jewish community center that currently serves as a city archive.

### 7.5.2. III The Presence of Christianity in Libya

A discussion of a history of Christianity in Libya cannot be separated from a history of Christianity in Egypt which dates back verily to the beginnings of Christianity itself. Many Christians hold that Christianity was brought to Egypt by the Apostle Saint Mark in the early part of the first century AD.[38]

The earliest document that mentioned Christianity in Libya was the Holy Bible itself, in the *The Acts of the Apostles* where it describes the gathering of the believers from all over the world, among which were people from "The regions of Libya near *Cyrene*".[39]

Also, recent explorations near *Wadi-Murcus* وادي مرقص in the Green Mountain in the east of Libya, conducted by a Libyan team, led to the discovery of the Sanctuary of St. *Murcus* or Mark in 1987. This archaeological discovery was endorsed by Father Bakhumeus, the Bishop of Alexandria and the *Pentapolis*, when he visited the Sanctuary in February 1990, and he concluded that somewhere between *Wadi-Murcus* and *Wadi-al Ingeal*, 10 kilometers to the east, was the birthplace of St. Mark. In the 7th century, Muslim rulers took control of the North Africa. This resulted in a centuries-long relationship that would alternate between mild and strong persecution on the one hand, and fruitful coexistence on the other hand. Over the next couple of centuries, many Christians converted to Islam.

From the 15th to 18th centuries, the Ottoman Empire encouraged some to rejoin the Christian Church and were allowed to keep their identity, organization, special rights, and a liturgy performed in their own languages. None of the churches were forced to introduce celibacy for their clergy against their own will.

In the early 20th century, Libya was colonized by Italy, and experienced a large immigration of Italian Christians.

In 1951 Libya became an independent state, and many Christians returned to their families' original home countries and now only a few Christians remain.[40]

In 1997 diplomatic relations were re-established between Libya and Vatican. Following this restoration, the Libyan government signed a protocol allowing the Church to meet and visit people of Christian faith all over Libya, wherever they are. What the Church has always been looking for is simply the right and freedom to exist. The Libyan government and its people understand that the goal of Church is making the dialog live and building bridges between different cultures and religions. The Church in Libya has regained its standing with this act.

Nowadays there are small Christian communities, composed almost exclusively of foreigners. A small Anglican community comprised of one resident priest and mostly African immigrant workers in Tripoli is part of the Egyptian Diocese; the Anglican Bishop of Libya is resident in Cairo, there are Union churches in Tripoli and Benghazi, there are an estimated 40,000 Roman Catholics served by two Bishops, one in Tripoli and one in Benghazi, both multi-national communities. Catholic priests and nuns serve in all the main coastal cities, and there is one priest in the southern city of Sebha. Most of them work in hospitals; they enjoy good relations with the Government.

The Catholic bishop, priests and nuns wear religious dress freely in public and report virtually no discrimination, also the Coptic and Greek Orthodox priests.[41]

## **7.6 Muslim Minorities in Czech Lands**

The Constitution of Czech Republic provides for freedom of religion, and the government generally respects this right in practice. Religious affairs are the responsibility at the Ministry of Culture. All religious groups officially registered with the Ministry of Culture are eligible to receive subsidies from the State, although some decline state financial support as a matter of principle and as an expression of their independence.[42]

According to statistics by Czech statistical bureau, in 2001 the Religions in Czech were 59% Atheistic, 32,2% Theistic, with 8% not answering.[43]

The 2002 law (Religious Freedom and the Position of Churches and Religious Associations) created a two-tiered system of registration for religious organizations. To register at the first tier, a religious group must have at least 300 adult members permanently residing in the country. First-tier registration conveys limited tax benefits and imposes annual reporting requirements. To register at the second tier, a religious group must have membership equal to at least 0.1 percent of the country's population (approximately 10,000 persons) and have been registered at the first tier for at least 10 years. Second-tier registration entitles the organization to a share of state funding.

Religion is not taught in public schools, although a few private religious schools exist. Religious broadcasters are free to operate without hindrance from the Government or other parties.

### **7.6.1 Muslim Minorities in Czech Lands**

Though the Muslim minority in Czech Lands is small, many Muslims come to live and study in the Czech Republic. There are also some Czechs who convert to Islam.

The estimated number of Muslims in the Czech Republic is over 10,000, of which 2,000 are active. The number jumped during the 1990s and has remained stable since then.[44]

Historically the first documented visit of a person with knowledge of Islam was made by years 964-965 by Ibrahim ibn Jaqub, a Jewish merchant from Muslim Spain. His memoirs were later published to become one of the first accounts about Central Europe in Islamic world.[45]

Czech Law from 1912 recognized Islam as a religion and officially allowed its presence in the region. The first community (Moslimské náboženské obce pro Československo) was established in 1934. In 1949 previous registration was abolished, because the communist regime revoked Islam's official status after World War II. An

attempt to set up new community in 1968 failed. In 1991 Center of Muslim communities (Ústředí muslimských náboženských obcí) was established. In 1998 a Mosque was opened in Brno and year later in Prague. Attempts to open mosques in some of other cities were stopped by local citizens.

In 2004 Islam was officially registered: the community is thus eligible to obtain funds from the state.

Most of the Muslims are refugees from Bosnia in early 1990s and Russia in late 1990s. The most significant and influential numbers are people from Middle Eastern countries; typically those who studied in Czech and decided to stay, as well as the Czechs who convert to Islam.

The Muslim minority in the Czech Republic is not large, far smaller than Germany or Britain or France which have long traditions with Muslims because of immigration.[46]

## **7.6.2 Muslim Minorities in Czech Lands and the Society**

The Islamic centers in Prague and Brno publish some booklets from time to time to present real Islam. The Islamic center in Prague published a booklet under the title (Lidská Práva v Islámu), which includes some principles about Human Rights in Islam from the point of view of famous scholars in this field such as Abu al-'Ala Maududi and Sajjid Sabig.[47]

One example of how of some Czechs look at Islam is that there was intent to build a Mosque in the north-Bohemian spa town Teplice. However, some of the inhabitants didn't like the idea and wrote a petition against it. Teplice has a tiny Muslim minority, yet - because of the town's spas - there are many visitors coming from Islamic countries, who would embrace an Islamic place of worship.

The reason for the initiative is obvious, the largest number of spa visitors have been coming from Islamic countries. Some clients bought a farmhouse here, which they use as a prayer room. They would like to renovate it as a hotel, part of which would be a Mosque.

Czech people are somewhat tolerant. Their problem for the moment is that they are not used to it, so they are afraid of something unknown. When they get to know it, they will likely embrace it.

Particularly people from rural areas, who do not meet foreigners very often, have had the greatest difficulty in getting used different cultures. But there is a good chance that, with growing mobility, and as more Czechs move outside and more foreigners come into the Czech Republic, the situation will change.

There is a special situation in the Czech Republic because in the Czech Lands religion was so suppressed by the communist government, that even now churches are not very present in public life. Many people have no experience with a living religion, and they have got some prejudices against religion as such. So, if they meet some interesting religious people, they are open to conversion.[48]

Arrival of Muslims to Europe in the colonial period brought about a major religious demographic change. As far as the presence of religious communities is concerned, Muslims form the second largest religious group in many countries. In France, Belgium and Spain they are second to the Roman Catholics; and in Norway and Sweden to the Lutherans. Muslims also form the second largest religious group, in both Bulgaria and Russia after Orthodox Christians.

Muslims formed significant minorities in some countries on the threshold of the 1980s, but current Muslim presence in Europe is essentially the result of migration. The changing image of European countries, the challenges facing them, and the migration of cultural and religious minorities is a phenomenon which affects the self-image of these societies culturally, ethnically, and religiously. At the same time, an ordinary European know little about *Shari'a*, and even a European scholar concerned the Muslim countries usually does not know *Shari'a* in detail.[49]

There are practical advantages linked to the status of recognition of Islam in the Czech Republic, like the right to practice religion freely and openly, The moderate and open attitude towards Muslims in Czech society creates a positive atmosphere of cooperation with the whole society. The culture of dialogue enables the building of bridges and taking up topics of general interest in an objective way instead of closing oneself up in ignorance and retreat.

Every liberal democracy which acknowledges freedom of speech and of confession must offer the rights to newcomers as well as the citizens. At the same time, it must respect the contribution the peaceful Muslims can bring. On the other hand, the community has to take the problem of Islam extremists seriously. Democracy is at risk, for extremists know very well how to exploit its advantages.

Muslim minorities everywhere have the responsibility to provide the highest possible transparency and to bring the focus again on the overwhelming majority of Muslims who, in living up to present their religion, stand for mutual respect and understanding and reject terrorism as disdainful for human beings. Multipliers of a peace-loving and rational Islam are key players in this process. The theologians and intellectuals need to reach Muslims. They are in close contact with the people and can achieve a lot. The best thing against hatred and intolerance is knowledge.

Diversity is a phenomenon common to all European societies. A key to dealing with this diversity in a useful way lies in the recognition that this is a common good, the biggest common denominator between Muslims and people of other religions or ideologies. Common goods like the above reveal the universal character of values which ensure the quality of human coexistence.

### **7.6.3 Muslims in European Societies**

Let us focus the position of Islam in Europe. This is an important part of a process which, in an increasingly concrete inter-Muslim discourse dealing with practical questions, should strengthen the identity of Muslims in Europe.

Islam in Europe is wider, deeper and more diverse than ever in its history, and

Muslims are poised to bring their faith, politics and culture into the mainstream of national life.

Between 1989 and 1998 the Islamic population in Europe grew by over 100 percent, to 14 million, approximately 2 percent of the population, according to United Nations statistics.

The compatibility of the Muslim way of life with the European one needs to be made visible inside as much as outside Europe

Muslims suffer increasingly from an unacceptable equation between Islam and terrorism which generates a constantly growing attitude of rejection in the public opinion. Muslims are confronted with a strong pressure for justification. Within the global war against terror, the concentration on a very small and narrow segment of radicals, which is omnipresent in every debate about Islam, has led to a fatal impression.**[50]**

In this situation, Muslims themselves have the responsibility, even the obligation, to provide the highest possible transparency and to bring the focus on the overwhelming majority of Muslims who, in living up to the teachings of their religion, stand for mutual respect and understanding and reject terrorism as disdainful for human beings. Multipliers of a peace-loving and rational Islam are key players in this process.

The voices of the scholars, theologians and intellectuals need to reach Muslims as well as the non-Muslims; they are in close contact with the people and can achieve a great deal. The clear position of Islam concerning freedom and human dignity needs to become common knowledge. The best medicine against hatred and intolerance is knowledge.

Diversity is a phenomenon common to all European societies. A key to acknowledging this diversity in a useful way lies in the recognition that it is a common good, the biggest common denominator between Muslims and people of other religions or ideologies as diversity common goods like the above reveal the universal character of values which ensure the quality of human coexistence.**[51]**

The belief of Muslims in an equal and common origin of all mankind forms the basis of the school of thought which, in the same way as the humanistic tradition, defines humanity as the central value. The sense of mutual responsibility among humans and the responsibility for the Creation can only become effective if human beings are considered equal without application of different measures.

This principle can only be translated into reality if values are not jealously claimed by single groups. The search for freedom, justice and human dignity is what we have in common with other religions, ideologies and world views. Opposed to this are poverty, oppression, discrimination, racism and occupation.**[52]**

There are practical advantages linked to Islam's recognition in Europe, like the right to practice religion freely and openly. The moderate and open attitude towards Muslims in Europe creates a positive atmosphere of cooperation with the whole society. The culture of dialog enables the building of bridges, taking up topics of general interest in an objective way instead of closing oneself up in ignorance and retreat. The negative consequences of isolation in some kind of parallel society are recognized by the Muslims of Europe ; thus, segregation models are rejected.

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# **Conclusion**

## Conclusion

In my opinion, the main question about Islam is how it is compatible with modern interpretations of human rights. For various reasons, some Islamic communities do not wish to offer or accept an interpretation of Islam that would be compatible with human rights. Thus, the culture that prevails in some Islamic communities, including the political culture, demands a transformation, a metamorphosis. So, with open eyes, it can revisit social realities and offer laws based on the needs of the time that would be compatible with both the spirit of Islam and fulfill the needs of people in that specific time period, and offer answers for them.

The most important step that can be taken for a cultural transformation is education about Islamic principles in a correct manner for Muslims. True Islam has to be taught to Muslims, and they have to learn that one can be a Muslim and live better, and that one can remain a Muslim and respect human rights.

Islamic intellectuals must resort to every means available to them to touch the hearts of the Islamic masses, to represent true Islam and then seek to examine the performance on the basis of true Islam. They must engage in political criticism and constructive criticism so that they may have a wider audience. Political criticism that claims it is representing Islam will be insufficient if it is not based on a true understanding of Islamic principles. It will fail to attract the Islamic masses. Muslims should be made aware that the key to heaven does not lie in the hands of force. Every act of the force in the name of Islam is not true Islam.

This is a solution for over a billion humans, or one sixth of the people of this planet today who are Muslims, people who seek to safeguard their religion but also feel that they deserve to live under better conditions. On the other hand, those who seek to resort to war as a means to attain their group interests will prioritize and underline certain weaknesses that have nothing to do with the religion of Islam but rather are misinterpretations of Islam, and as such they seek to theorize war.

They claim that Eastern civilization, particularly Islamic civilization, is essentially incompatible with Western civilization, and that this difference is inevitable. These groups seek to attribute the wrongful deeds and actions of a few individuals or a groups of Muslims to Islam, so that they can prove more easily that Islamic civilization is incompatible with Western civilization.

Islam is not a religion of terror or violence. If someone is killed in the name of Islam, the name of Islam has been taken advantage of. Every wrongful act committed by an individual or a group cannot be recorded as that of an Islamic act-- it should not be recorded under the name of Islam.

The wrongful deeds of human beings should be separated from the religion and civilization to which they belong.

Civilizations do not clash. More importantly, any civilization can and must have many commonalities. Let us talk about those commonalities, not our differences. Let us not justify war. No one will come up victorious from war.

I have tried to compare and contrast various points of Human Rights and Islam, by reinforcing my arguments both with theoretical accounts and historical evidence. The tension between human rights and any religion is inherent and permanent, though not entirely harmful for the parties involved. I do not favor modern Muslim jurists trying to adapt the script to prove human rights in Islam only by the history. Re-interpretation is a welcome sign and it should be continued.

Islam has encouraged two ideas for the promotion of human rights and human dignity: the principles of compassion and mercy. It is on their basis that the Islamic law presents a universal approach to human rights which is much broader than the list of enumerated modern human rights' standards. Therefore, for Muslims human rights issues are fundamental to the quality of their lives.

According to the Qur'an, true Islamic faith cannot be achieved unless Human Rights are secured for every individual and group in a community. The Qur'an itself includes many basic Human Rights such as the right of life, dignity and freedom of human beings, and protection against harassment or social security.

Muslims are animated by the teachings of Islam and seek to assert their own identity. Despite the presence of nationalism and various ideologies in their midst, Muslims wish to live in the modern world but without blindly imitating the ways set by others. The Muslim wishes to live at peace with all, but at the same time not to be dominated by that. He wishes to devote his resources and energies to building a better life for his people on the basis of the teachings of Islam. He seeks to create better understanding with all human beings, and to have better mutual understanding.

The destinies of the Human beings cannot be totally separated and therefore it is only in understanding each other better that they can serve their own people more successfully and also contribute towards a better life for the whole of humanity.

It's possible to apply modern international interpretations and accept standards of human rights norms without removing the Muslim faith and values from those societies. An effort to implement modern norms and values even in view of controversial issues such as religious tolerance, women's rights and other rights can be achieved if it comes from within and appeals to those who will have to live within it.

The most effective weapon and the symbol of today's glory are science and technology. Many Muslims societies need a system that opens the gate to science and culture, that manages the problem of environmental pollution, provides clean water, and reduces the spread of diseases. Technology is the only answer to those matters.

I think, resisting any sort of hegemony should start by fighting corrupted the societies. Preparing to fight the enemy in the Qur'an, nowadays means preparation of knowledge and technology. Anyone who masters knowledge and technology will control the world.

Islam recognizes basic human rights; almost fourteen centuries ago it set up guarantees and safeguards that have only recently been incorporated in universal declarations of human rights.

We can note that Islam was safeguarding personal rights and freedoms for religious minorities, and human rights and freedoms are not attributed to nature but are considered to be gifts of God in accordance with the Islamic faith. Moreover, Islam's codification of human rights constitutes a solid foundation for an effective exercise of human rights and freedoms and protection against any infringement.

Many countries in the world do not agree on common standards concerning human rights, such the dispute over the death penalty between most countries and the United States . Therefore, some views are at least partly biased and do not always fully understand the legal practice in the Muslim world.

In Islam a violation of human rights would not be forgiven except by the concerned man, while violation of the rights of God will be taken care of by God himself. In Islam, God is very capable of protecting His personal rights. Therefore, we have to be more careful not to violate human rights. In Islam, God will not forgive a violation of human rights, except if the man concerned forgives. A ruler should not abolish anyone's rights, except if those individuals have violated others' rights.

According to Islam The God is well capable of defending His rights in the hereafter, while humans have to defend their own rights. Referring on such an understanding, I will defend whoever oppressed, whether Muslim, Christian, or Hindus. Since every kind of oppression and occupation are forms of tyranny and no Muslim should be silent while witnessing tyranny.

We have to read Islamic history comprehensively. I would like to quote Ali bin Abi Talib's علي بن أبي طالب words in this case: "There are two kind of humans: your brother in religion and your brother in ethics" I would like to ask, where is that enlightened spirit of Ali in today's life? I think we neglect verses on tolerance and do not want to speak about it, nor do we want to disseminate it. Yet, this is the strength of Islamic morality.

Religious reformation is necessary, religious reformation must be based on remembering God. This is not a simple point. Many consider that progress will be achieved by increasing the number of legal restrictions and the enforcement of Islamic law part of the Islamic school of thought. The foundation and principle of religion are about remembering God, which is very personal and moral. Human beings must be accustomed to living with moral ideals. No civilization can be based on pragmatism. Every civilization is primarily established upon idealism or dreams. That moralist dream puts society in a noble position.

I have tried to show the various points of convergence and divergence between Human Rights and Islam, by reinforcing my arguments both with theoretical accounts and historical evidence. The relationship between the two remains highly complicated: where the apparently religious idea of sacredness may become non-religious, the apparently secular assertion of freedom of religion or belief may become highly religious. Similarly, one may note that the UDHR, with all its prose colored with nobility and exhortation, almost speaks like a religious doctrine. Thus in my view, the tension between human rights and Islam is inherent and permanent, though not entirely harmful for the parties involved. I do not favor the arm-twisting efforts of some modern Muslim jurists who try to adapt the script to prove human rights in

Islam. Re-interpretation is a welcome sign and it should be continued at all risks. Hence, to hook divine injunctions with human rights is inherently unstable and is also liable to change. Similarly, I do not favor the apparent prophetic language of UDHR, as if these universal claims shall hold forever, and for everybody, everywhere.

The ideal situation, for a religious mindset, would be that the conditions allowing pluralism and freedom of thought exist under a religious framework once again in Muslim history, but unless that begins to take some shape, the call for synergy is realistic and desirable. It may not resolve intellectual inquiries by any means, but it will help in creating a culture of peace -- an essential end to the culture of human Rights and also an important precondition for intellectual freedom.

It is hardly surprising that there is always a certain degree of ambiguity when we talk about the possibility of Islam being utilized to promote human rights. This, in turn, makes it hard, if not impossible, to provide satisfactory answers and workable recommendations. Such ambiguity is discernible primarily in the wide gap between the ideal and the reality. Thus, those who hold that Islam could strengthen efforts to promote human rights will base their arguments on the fact that Islam, as a world religion, contains many principles compatible with the universal declaration of human rights. This is because Islam not only provides comprehensive teachings in matters related to religious laws *fiqh* فقه, dogmas *tauhid* and ethics *akhlaq* أخلاق, but also in matters related to human relations *mu'amalat* معاملات and world affairs.

In Islamic teachings, human and social dimensions *insaniyyah* إنسانية are considered paramount. The ulama علماء *Islamic scholars*, who occupy an important position in Islam because of their knowledge, have always played pivotal roles in elaborating religious teachings to anticipate and adjust to changing circumstances. From this perspective, Islam can contribute to the discourse and practice of human rights through the continuous elaboration and reinterpretation of its teachings by its scholars and experts.

However, those who are skeptical about the compatibility of Islam with modern universal human rights will point to the condition of human rights in many Islamic countries as evidence that the religion itself is partly responsible for some violations of human rights. For instance, many authoritarian regimes have maintained their power for a long time in the name of Islam. In doing so, they have appropriated religious teachings and co-opted many religious leaders to legitimize their repressive power. As a result, prohibitions of political dissent and free speech, harassment of opposition groups, arrest and imprisonment without warrants, etc. are common practices and often occur with the blessing of some religious leaders.

Outside the political realm, violations of human rights, such as abuses of women and children, discrimination against non-Muslim minorities, and in some areas, the practice of female genital mutilation, are frequently conducted based upon religious decrees *fatwa* فتوى. Islam is frequently singled out for violations of women's rights because these acts rely on religious arguments by religious scholars.

Although there are some Islamic principles which may be compatible with the promotion of human rights and democracy, there are also principles which contradict,

or are inimical, to the very idea. For instance, the sharp bifurcation between the House of Islam *dar-al Islam* دار الإسلام and the House of War *dar-al Harb* دار الحرب and between the community of believers *ummah* الأمة and the so-called people under protection *ahl-Dzimmah* أهل الذمة could pose serious problems to the development of a modern, democratic polity based upon citizenship.

This tension between the ideal and reality will always be present and should be addressed openly. Additionally, to better understand Islam and its potential contributions to the struggles for human rights, one should put the question in particular historical and structural conjunctures within an Islamic community or country. This approach will enable us to grasp existing tensions between the ideal and reality and avoid the pitfall of over-generalization.

Muslims are facing the underlying tension between religious tenets and the existing social, political and economic realities which are not always conducive to the realization of those beliefs.

Also, the dynamics of modern Islamic movements in the past thirty years have left an indelible mark in Islam, namely in the plurality of organizations, ideas and strategies. Consequently, the issue of human rights and its implementations have incited different responses among Islamic groups in the country.

Some Islamic scholars argue that the role played by Islam in the field of human rights is determined by the dynamic tensions among three interconnected poles.

The first pole is Islam as a religion whose universal claims encompass the realm of human rights; the second pole is the modern, secular-based concept of universal human rights; and the third pole is the state's own interpretation of human rights principles in accordance with national interests.

The fact that Islam contains universal principles which may or may not be compatible with the secular-based universal principles of human rights is beyond dispute. Because of this, tensions between the first two poles are influenced by the ways in which Islamic groups and leaders interpret such universal principles. They are also influenced by the responses from advocates of the secular-based human rights principles to certain Islamic principles.

Thus, coming to grips with the diversity of opinions and interpretations on basic principles advocated by different groups within the Islamic community is important. For instance, the Islamists maintain that Islamic teachings will never be reconciled with ideas and practices based upon secularist foundations. Yet, for the moderate strands within Islamic movements, such reconciliation and cooperation between the two are, at least, theoretically possible and worth trying in the real world.

Some Islamic group advocate legal formalistic strategies in implementing their ideas, while moderates advocate transformative and gradual approaches through inculcating Islamic ethics in society. The first approach is based on the idea that formalization of Islam in all dimensions of life, through laws and supported by the state, is the only option to fully implement Islamic teachings. The necessity of establishing an Islamic

state or developing an Islamic society based on Islamic laws Shari'a as a prerequisite is indispensable.

On the contrary, the second approach maintains that the formalization of Islamic teachings by imposing Shari'a is not the only option, and it could be even dangerous in some Islamic societies. Developing a modern society in which Islam will attempt to influence its moral and ethical bases without using legal formalistic means is important. Islam, in this view, is but one among many valuable systems that exist in society.

Advocates of conventional orthodox Muslim societies that resist the adaptation to Western lifestyle and values attribute a high priority to the implementation of legal principles as represented in the Shari'a. According to them, only a true Islamic set of laws that is based upon and inspired by the sources of Muslim faith can guarantee the maintenance of Muslim societies and prevent their gradual westernization.

On the other side, it is the reform camp within the Muslim world as well as advocates of reform from outside that spearhead the movement aimed at changing the conventional legal proceedings as exercised in many Muslim countries. They argue that only a modern judicial practice can bring about change, modernization and progress in all important fields of life. Therefore, the debate on the Sharia is of paramount importance to the Muslim world and outranks all debated issues in view of a safe, stable and prosperous Islamic world. It is in the center of the cultural battlefield and therefore draws much attention in and outside the Islamic world.

However, the debate on the Sharia issue often is superficial and marked by political intentions and religious prejudices. As a consequence, several of the key elements of such a debate are either neglected or circumvented. In other words, an honest scholarly-led debate based on facts and focused on the real needs of the Islamic world, as necessary as it is, has not yet taken place.

Those facts which are to serve as points of orientation are easy to enlist, as present work has shown. They should be taken into consideration from both sides - Muslim scholars as well as representatives from outside the Islamic world.

Many countries already apply modern law codes and accept standards set by human rights conventions and the United Nations. Those examples show what is possible without removing the Muslim faith and values from those societies. An effort to implement modern norms and values even in view of controversial issues such as religious tolerance, women's rights and others can be successful if it comes from within and not outside and looks promising to those that have to accept and live with it.

By the beginning of the 20<sup>th</sup> century there was a consensus among liberal Islamic thinkers about the necessity of reformation and of meeting modern legal standards without totally abandoning Islamic restrictions. Their reflection resulted in several legal constitutions within the Islamic world that are still in place and could lead the way to reform.

What those thinkers basically did was to go back to the original sources of Islamic jurisprudence and reinterpreted them in the light of a changed world. They had to overcome strong resistance among more conservative scholars which is why it took about half a century to implement many of their suggestions.

The 1953 Syrian Law of Personal Status, for instance, enacts that the permission to a man already married to take a second wife could be refused on the grounds that he could not support them both. The 1957 Tunisian Law of Personal Status even goes a step further, completely outlawing polygamy. Also the 1984 Libyan Law of Personal Status, does not allowed the husband to marry the second wife unless get a permission from the first wife. It is argued that although the Qura'n and the Prophet Muhammad has permitted the taking of more than one wife in principle, he has also declared that a husband should treat his wives equally and with complete impartiality. The Tunisian law makers argued that this was not possible under today's circumstances and therefore outlawed polygamy.

The cited examples give an idea of the nature of change and the methodology employed to implement the necessary changes without rejecting Islamic principles. Those modernist reforms have helped to abandon polygamous marriages, taken away much of the husband's power over his wife, enabled wives to seek judicial dissolution of their marriages on certain, well-defined grounds, restricted child-marriages and softened the rigors of inheritance laws. The modern Islamic Personal Statute laws of Syria, Libya, Egypt, Jordon, Kuwait and Tunisia imply similar measures aimed at protecting and asserting a woman's right and at preventing some of the most unfair injustices. Those are significant gains that have enabled Muslims to adapt to the needs of a modern system of laws without losing the link to tradition and faith. Furthermore, they have helped to lessen tensions implied by the impact of universal ideas and values.

There remains, however, the reproach of legal opportunism because modern liberal legal scholars in the Islamic world heavily rely on picking and choosing aspects of Islamic legal sources that fit their needs. On the other side, one could respond to those accusations by stating that orthodox or even fundamental advocates of a more conservative interpretations of Shari'a measures do exactly the same.

Finally, studies on Islamic teachings and perspectives on human rights are still lacking nowadays, while there has been abundant literature on Islam and politics, the area of human rights is different. Therefore, it is important to support research activities concerning Islam and human rights. This will contribute to a better understanding of the Islamic world, its complexities, heterogeneity, and differences. Islam is represented by various strands within the field of human rights. Recognizing those that are more appreciative and supportive to the universal values of human rights is crucial to overcoming prejudices and stereotypes.

# **Appendixes**

## Appendix 1

# Glossary of some Islamic Terms related to the Dissertation

Al- Khulafa Al-Rashidun الخلفاء الراشدون	The rightly guided khalifahs; the first four successors to the leadership role of the Prophet Muhammad. They were Abu Baker, Omar, Othman and Ali.
Al-Madina المدينة	Madinatu'n-Nabi (The city of the Prophet). The name given to Yathrib after the Prophet Muhammad migrated there in 622 CE and founded the first Islamic community.
'Ageeda عقيدة	Literally means belief. In Islamic terms, it means the following six articles of faith: 1. Belief in Allah, the One God. 2. Belief in Allah's angels. 3. Belief in His revealed Books. 4. Belief in His messengers. 5. Belief in the Day of Judgment. 6. Belief in Fate and the Divine Decree.
Ahl ul-Kitab أهل الكتاب	"People of the Book", followers of pre-Islamic monotheistic religions which were mentioned in Qur'an: Jews, Christians, also, Sabians, Zoroastrians
Akhlaq أخلاق	The practice of virtue. Morals
Allah الله	The Islamic name for God in Arabic language. Used in preference to the word God, this Arabic term is singular, has no plural, nor is associated with masculine, feminine or neuter characteristics.
As-Salamu 'Alykum السلام عليكم	Peace be upon you. (An Islamic Greeting).
Ayah آية	A unit within a Surah of the Qur'an. (verse)
Bismillah Arahman Arrahim بسم الله الرحمن الرحيم	In the name of Allah the most Gracious the most merciful. The preface to all Surah of the Qur'an except the ninth one. It's usually said by Muslims before eating or beginning any act.
Din – ul-Fitrah دين الفطرة	A description Islam as the natural way of life.
Faqeeh فقيه	An Islamic scholar who can give a legal opinion or judgment.
Fatwa فتوى	A legal verdict given on a religious basis. The sources on which a fatwa is based are the Holy Qur'an, and the Sunnah of the Prophet.
Fiqh فقه	Understanding, Islamic jurisprudence.
Hadith حديث	Saying, report, account. The sayings of the Prophet Muhammad, as recounted by his household, progeny and companions. These are a major source of Islamic law. Some Hadith are referred to as Hadith Qudsi (sacred Hadith) having been divinely communicated to the Prophet Muhammad.

Hijj حج	Annual pilgrimage to Makkah, which each Muslim must undertake at least once in a lifetime if he or she has the health and the wealth. A Muslim male who has
Halal حلال	Any action or thing which is permitted or lawful.
Haram حرام	Anything unlawful or not permitted.
Hijab حجاب	<b>Veil.</b> Often used to describe the head scarf or modest dress worn by women, who are required to cover everything except face and hands in the sight of anyone other than the immediate family.
`Ibadah عبادة	All acts of worship. Any permissible action performed with the intention to obey Allah.
Ibrahim ابراهيم	<b>Abraham.</b> A Prophet of Allah to whom the 'scrolls' were given.
Ijma' إجماع	General consensus of scholars, expressed or tacit, on matters of law and practice.
Imam إمام	Leader. A person who leads the communal prayer, or a founder of an Islamic school of jurisprudence.
Iman إيمان	Faith.
Injil إنجيل	<b>Gospel.</b> A book given to the Prophet <b>Isa</b> .
Isa عيسى	Jesus. A prophet of Allah, born of the virgin Mary.
Islam إسلام	Peace attained through willing obedience to Allah's divine guidance.
Isma'il إسماعيل	<b>Ishmael.</b> A prophet of Allah. Son of the Prophet Ibrahim and Hajar.
Isnad إسناد	Chain of transmission of each Hadith.
Jibril جبريل	<b>Gabriel.</b> The angel who delivered Allah's messages to His Prophets.
Jihad جهاد	Personal individual struggle against evil in the way of Allah. It can also be collective defense of the Muslim community.
Ka'bah كعبة	A cube-shaped structure in the center of the grand mosque in Makkah. The first house built for the worship of the One True God
Khadija خديجة	First wife of the Prophet Muhammad.
Khallifah خليفة	Successor; inheritor; custodian; vice-regent.
Khilafah خلافة	Caliphate means a human being who is God's viceregent or the institution of the Khalifah.
Ma'ruf معروف	Ma'ruf refers to the conduct which is reckoned fair and equitable by the generality of disinterested people.
Makkah مكة	<b>Mecca</b> City where the Prophet Muhammad was born, and where the Ka'bah is located.
Maryam	Mary. The virgin mother of the Prophet Isa (Jesus).

مريم	
Masjid مسجد	<b>Place of prostration.</b> The Mosque.
Mihrab محراب	Niche or alcove in a mosque wall, indicating the Qiblah - the direction of, Makkah, towards which all Muslims face to perform salah.
Muhammad محمد	Praised. Name of the Prophet of Islam.
Musa موسى	Moses. A Prophet of Allah to whom the Tawrah (Torah) was given.
Mumin مؤمن	Faithful. A believer, a practicing Muslim who wholeheartedly yields to Allah's 's guiding wisdom and is thus harmony with His will and at peace with himself and fellow creatures.
Muslim مسلم	One who claims to have accepted Islam by professing the Shahadah.
Nabi نبي	Prophet of Allah.
Qader قادر	Allah's complete and final control over the fulfillment of events or destiny.
Qiblah قبلة	Direction which Muslims face when performing salah - towards the Ka'bah.
Qur'an القرآن	That which is read or recited. The Divine Book revealed to the Prophet Muhammad. Allah's final revelation to humankind.
Rahim رحيم	Rahim is from the root rhm (rahm) which denotes mercy. In the Qur'an this attribute of God has been used side by side with Rahman (which is also from the same root rhm). As such Rahim signifies God's mercy and beneficence towards His creatures. Moreover, according to several scholars, the word Rahim signifies the dimension of permanence in God's mercy
Rahman رحيم	Rahman (literally 'merciful') is one of the personal names of God. According to scholars of the Arabic language and some commentators of the Qur'an, the word has the nuance of intensity regarding Divine Mercy. Thus the word does not just signify the One Who has mercy; it rather denotes the One Who is exceedingly merciful; the One Who is overflowing with mercy for all.
Ramadan رمضان	The ninth month of the Islamic calendar, during which fasting is required from just before dawn until sunset, as ordered by Allah in the Qur'an.
Rasul رسول	Messenger of Allah.
Sahih Al-Bukhari صحيح البخاري	The title of the books of Hadith compiled by Muhammad ibn Isma'il al-Bukhari, a Sunni scholar. The collection is described as Sahih (authentic).
Sahih Muslim صحيح مسلم	The title of the books of Hadith compiled by Abul Husayn Muslim ibn al-Hajjaj, a Sunni scholar. The collection is described as Sahih (authentic).
Salah صلاة	Prescribed communication with, and worship of, Allah, performed under specific conditions, in the manner taught by the Prophet

	Muhammad, and recited in the Arabic language. The five daily times of salah are fixed by Allah.
Sawm صوم	Fasting from just before dawn until sunset. Abstinence is required from all food and drink (including water) as well as smoking and conjugal relations.
Shahadah شهادة	Declaration of faith, which consists of the statement, "There is no god except Allah, Muhammad is the Messenger of Allah".
Shari'a شريعة	Islamic teachings based upon the Qur'an and Sunna.
Shytan شيطان	Satan, The devil , Rebellious, proud..
Shura شورى	Consultation of the people in the management of religious and worldly affairs. A duty prescribed in the Qur'an to leaders at all levels, from family to government.
Sirah سيرة	Biographical writings about the conduct and example of the Prophet Muhammad.
Sunna سنة	Model practices, customs and traditions of the Prophet Muhammad. This is found in both Hadith and Sirah.
Sura سورة	Division of the Qur'an (114 in all).
Tawhid توحيد	Belief in the Oneness of Allah - absolute monotheism as practices in Islam.
Tawrah التوراة	<b>The Torah.</b> The book given to the Prophet Musa (Moses).
'ulamma علماء	Scholars of Islamic law and jurisprudence (singular Alim)
Wa 'alaikum Assalam و عليكم السلام	"And on you be peace." The reply to the Muslim greeting of "assalamu alaikum." (peace be on you).
Yethrib يثرب	Town to which the Prophet Muhammad migrated from Makkah.
Zakah زكاة	Purification of wealth by payment of annual welfare due. An obligatory act of worship.
Zulm ظلم	Zulm literally means placing a thing where it does not belong. Technically, it refers to exceeding the right and hence committing wrong or injustice.

## Appendix 2

# Universal Islamic Declaration of Human Rights

19 September 1981

### *Preamble*

*WHEREAS* the age-old human aspiration for a just world order wherein people could live, develop and prosper in an environment free from fear, oppression, exploitation and deprivation, remains largely unfulfilled;

*WHEREAS* the Divine Mercy unto mankind reflected in its having been endowed with super-abundant economic sustenance is being wasted, or unfairly or unjustly withheld from the inhabitants of the earth;

*WHEREAS* Allah (God) has given mankind through His revelations in the Holy Qur'an and the Sunnah of His Blessed Prophet Muhammad an abiding legal and moral framework within which to establish and regulate human institutions and relationships;

*WHEREAS* the human rights decreed by the Divine Law aim at conferring dignity and honour on mankind and are designed to eliminate oppression and injustice;

*WHEREAS* by virtue of their Divine source and sanction these rights can neither be curtailed, abrogated or disregarded by authorities, assemblies or other institutions, nor can they be surrendered or alienated;

*Therefore we, as Muslims, who believe*

a) in God, the Beneficent and Merciful, the Creator, the Sustainer, the Sovereign, the sole Guide of mankind and the Source of all Law;

b) in the Vicegerency (Khilafah) of man who has been created to fulfill the Will of God on earth;

c) in the wisdom of Divine guidance brought by the Prophets, whose mission found its culmination in the final Divine message that was conveyed by the Prophet Muhammad (Peace be upon him) to all mankind;

d) that rationality by itself without the light of revelation from God can neither be a sure guide in the affairs of mankind nor provide spiritual nourishment to the human soul, and, knowing that the teachings of Islam represent the quintessence of Divine guidance in its final and perfect form, feel duty-bound to remind man of the high status and dignity bestowed on him by God;

e) in inviting all mankind to the message of Islam;

f) that by the terms of our primeval covenant with God our duties and obligations have priority over our rights, and that each one of us is under a bounden duty to spread the teachings of Islam by word, deed, and indeed in all gentle ways, and to make them effective not only in our individual lives but also in the society around us;

g) in our obligation to establish an Islamic order:

i) wherein all human beings shall be equal and none shall enjoy a privilege or suffer a disadvantage or discrimination by reason of race, colour, sex, origin or language;

ii) wherein all human beings are born free;

iii) wherein slavery and forced labour are abhorred;

iv) wherein conditions shall be established such that the institution of family shall be preserved, protected and honoured as the basis of all social life;

v) wherein the rulers and the ruled alike are subject to, and equal before, the Law;

vi) wherein obedience shall be rendered only to those commands that are in consonance with the Law;

vii) wherein all worldly power shall be considered as a sacred trust, to be exercised within the limits prescribed by the Law and in a manner approved by it, and with due regard for the priorities fixed by it;

viii) wherein all economic resources shall be treated as Divine blessings bestowed upon mankind, to be enjoyed by all in accordance with the rules and the values set out in the Qur'an and the Sunnah;

ix) wherein all public affairs shall be determined and conducted, and the authority to administer them shall be exercised after mutual consultation (*Shura*) between the believers qualified to contribute to a decision which would accord well with the Law and the public good;

x) wherein everyone shall undertake obligations proportionate to his capacity and shall be held responsible pro rata for his deeds;

xi) wherein everyone shall, in case of an infringement of his rights, be assured of appropriate remedial measures in accordance with the Law;

xii) wherein no one shall be deprived of the rights assured to him by the Law except by its authority and to the extent permitted by it;

xiii) wherein every individual shall have the right to bring legal action against anyone who commits a crime against society as a whole or against any of its members;

xiv) wherein every effort shall be made to

(a) secure unto mankind deliverance from every type of exploitation, injustice and oppression,

(b) ensure to everyone security, dignity and liberty in terms set out and by methods approved and within the limits set by the Law;

*Do hereby, as servants of Allah and as members of the Universal Brotherhood of Islam, at the beginning of the Fifteenth Century of the Islamic Era, affirm our commitment to uphold the following inviolable and inalienable human rights that we consider are enjoined by Islam.*

### ***I Right to Life***

a) Human life is sacred and inviolable and every effort shall be made to protect it. In particular no one shall be exposed to injury or death, except under the authority of the Law.

b) Just as in life, so also after death, the sanctity of a person's body shall be inviolable. It is the obligation of believers to see that a deceased person's body is handled with due solemnity.

### ***II Right to Freedom***

a) Man is born free. No inroads shall be made on his right to liberty except under the authority and in due process of the Law.

b) Every individual and every people has the inalienable right to freedom in all its forms— physical, cultural, economic and political — and shall be entitled to struggle by all available means against any infringement or abrogation of this right; and every oppressed individual or people has a legitimate claim to the support of other individuals and/or peoples in such a struggle.

### ***III Right to Equality and Prohibition Against Impermissible Discrimination***

a) All persons are equal before the Law and are entitled to equal opportunities and protection of the Law.

b) All persons shall be entitled to equal wage for equal work.

c) No person shall be denied the opportunity to work or be discriminated against in any manner or exposed to greater physical risk by reason of religious belief, colour, race, origin, sex or language.

### ***IV Right to Justice***

a) Every person has the right to be treated in accordance with the Law, and only in accordance with the Law.

- b) Every person has not only the right but also the obligation to protest against injustice; to recourse to remedies provided by the Law in respect of any unwarranted personal injury or loss; to self-defence against any charges that are preferred against him and to obtain fair adjudication before an independent judicial tribunal in any dispute with public authorities or any other person.
- c) It is the right and duty of every person to defend the rights of any other person and the community in general (*Hisbah*).
- d) No person shall be discriminated against while seeking to defend private and public rights.
- e) It is the right and duty of every Muslim to refuse to obey any command which is contrary to the Law, no matter by whom it may be issued.

#### ***V Right to Fair Trial***

- a) No person shall be adjudged guilty of an offence and made liable to punishment except after proof of his guilt before an independent judicial tribunal.
- b) No person shall be adjudged guilty except after a fair trial and after reasonable opportunity for defence has been provided to him.
- c) Punishment shall be awarded in accordance with the Law, in proportion to the seriousness of the offence and with due consideration of the circumstances under which it was committed.
- d) No act shall be considered a crime unless it is stipulated as such in the clear wording of the Law.
- e) Every individual is responsible for his actions. Responsibility for a crime cannot be vicariously extended to other members of his family or group, who are not otherwise directly or indirectly involved in the commission of the crime in question.

#### ***VI Right to Protection Against Abuse of Power***

Every person has the right to protection against harassment by official agencies. He is not liable to account for himself except for making a defence to the charges made against him or where he is found in a situation wherein a question regarding suspicion of his involvement in a crime could be *reasonably* raised

#### ***VII Right to Protection Against Torture***

No person shall be subjected to torture in mind or body, or degraded, or threatened with injury either to himself or to anyone related to or held dear by him, or forcibly made to confess to the commission of a crime, or forced to consent to an act which is injurious to his interests.

#### ***VIII Right to Protection of Honour and Reputation***

Every person has the right to protect his honour and reputation against calumnies, groundless charges or deliberate attempts at defamation and blackmail.

### ***IX Right to Asylum***

- a) Every persecuted or oppressed person has the right to seek refuge and asylum. This right is guaranteed to every human being irrespective of race, religion, colour and sex.
- b) Al Masjid Al Haram (the sacred house of Allah) in Mecca is a sanctuary for all Muslims.

### ***X Rights of Minorities***

- a) The Qur'anic principle "There is no compulsion in religion" shall govern the religious rights of non-Muslim minorities.
- b) In a Muslim country religious minorities shall have the choice to be governed in respect of their civil and personal matters by Islamic Law, or by their own laws.

### ***XI Right and Obligation to Participate in the Conduct and Management of Public Affairs***

- a) Subject to the Law, every individual in the community (*Ummah*) is entitled to assume public office.
- b) Process of free consultation (*Shura*) is the basis of the administrative relationship between the government and the people. People also have the right to choose and remove their rulers in accordance with this principle.

### ***XII Right to Freedom of Belief, Thought and Speech***

- a) Every person has the right to express his thoughts and beliefs so long as he remains within the limits prescribed by the Law. No one, however, is entitled to disseminate falsehood or to circulate reports which may outrage public decency, or to indulge in slander, innuendo or to cast defamatory aspersions on other persons.
- b) Pursuit of knowledge and search after truth is not only a right but a duty of every Muslim.
- c) It is the right and duty of every Muslim to protest and strive (within the limits set out by the Law) against oppression even if it involves challenging the highest authority in the state.
- d) There shall be no bar on the dissemination of information provided it does not endanger the security of the society or the state and is confined within the limits imposed by the Law.

e) No one shall hold in contempt or ridicule the religious beliefs of others or incite public hostility against them; respect for the religious feelings of others is obligatory on all Muslims.

### ***XIII Right to Freedom of Religion***

Every person has the right to freedom of conscience and worship in accordance with his religious beliefs.

### ***XIV Right to Free Association***

a) Every person is entitled to participate individually and collectively in the religious, social, cultural and political life of his community and to establish institutions and agencies meant to enjoin what is right (*ma'roof*) and to prevent what is wrong (*munkar*).

b) Every person is entitled to strive for the establishment of institutions whereunder an enjoyment of these rights would be made possible. Collectively, the community is obliged to establish conditions so as to allow its members full development of their personalities.

### ***XV The Economic Order and the Rights Evolving Therefrom***

a) In their economic pursuits, all persons are entitled to the full benefits of nature and all its resources. These are blessings bestowed by God for the benefit of mankind as a whole.

b) All human beings are entitled to earn their living according to the Law.

c) Every person is entitled to own property individually or in association with others. State ownership of certain economic resources in the public interest is legitimate.

d) The poor have the right to a prescribed share in the wealth of the rich, as fixed by Zakah, levied and collected in accordance with the Law.

e) All means of production shall be utilised in the interest of the community (*Ummah*) as a whole, and may not be neglected or misused.

f) In order to promote the development of a balanced economy and to protect society from exploitation, Islamic Law forbids monopolies, unreasonable restrictive trade practices, usury, the use of coercion in the making of contracts and the publication of misleading advertisements.

g) All economic activities are permitted provided they are not detrimental to the interests of the community (*Ummah*) and do not violate Islamic laws and values.

### ***XVI Right to Protection of Property***

No property may be expropriated except in the public interest and on payment of fair and adequate compensation.

### ***XVII Status and Dignity of Workers***

Islam honours work and the worker and enjoins Muslims not only to treat the worker justly but also generously. He is not only to be paid his earned wages promptly, but is also entitled to adequate rest and leisure.

### ***XVIII Right to Social Security***

Every person has the right to food, shelter, clothing, education and medical care consistent with the resources of the community. This obligation of the community extends in particular to all individuals who cannot take care of themselves due to some temporary or permanent disability.

### ***XIX Right to Found a Family and Related Matters***

a) Every person is entitled to marry, to found a family and to bring up children in conformity with his religion, traditions and culture. Every spouse is entitled to such rights and privileges and carries such obligations as are stipulated by the Law.

b) Each of the partners in a marriage is entitled to respect and consideration from the other.

c) Every husband is obligated to maintain his wife and children according to his means.

d) Every child has the right to be maintained and properly brought up by its parents, it being forbidden that children are made to work at an early age or that any burden is put on them which would arrest or harm their natural development.

e) If parents are for some reason unable to discharge their obligations towards a child it becomes the responsibility of the community to fulfill these obligations at public expense.

f) Every person is entitled to material support, as well as care and protection, from his family during his childhood, old age or incapacity. Parents are entitled to material support as well as care and protection from their children.

g) Motherhood is entitled to special respect, care and assistance on the part of the family and the public organs of the community (*Ummah*).

h) Within the family, men and women are to share in their obligations and responsibilities according to their sex, their natural endowments, talents and inclinations, bearing in mind their common responsibilities toward their progeny and their relatives.

i) No person may be married against his or her will, or lose or suffer diminution of legal personality on account of marriage.

### ***XX Rights of Married Women***

Every married woman is entitled to:

- a) live in the house in which her husband lives;
- b) receive the means necessary for maintaining a standard of living which is not inferior to that of her spouse, and, in the event of divorce, receive during the statutory period of waiting (*iddah*) means of maintenance commensurate with her husband's resources, for herself as well as for the children she nurses or keeps, irrespective of her own financial status, earnings, or property that she may hold in her own rights;
- c) seek and obtain dissolution of marriage (*Khul'a*) in accordance with the terms of the Law. This right is in addition to her right to seek divorce through the courts.
- d) inherit from her husband, her parents, her children and other relatives according to the Law;
- e) strict confidentiality from her spouse, or ex-spouse if divorced, with regard to any information that he may have obtained about her, the disclosure of which could prove detrimental to her interests. A similar responsibility rests upon her in respect of her spouse or ex-spouse.

#### ***XXI Right to Education***

- a) Every person is entitled to receive education in accordance with his natural capabilities.
- b) Every person is entitled to a free choice of profession and career and to the opportunity for the full development of his natural endowments.

#### ***XXII Right of Privacy***

Every person is entitled to the protection of his privacy.

#### ***XXIII Right to Freedom of Movement and Residence***

- a) In view of the fact that the World of Islam is veritably *Ummah Islamia*, every Muslim shall have the right to freely move in and out of any Muslim country.
- b) No one shall be forced to leave the country of his residence, or be arbitrarily deported therefrom without recourse to due process of Law.

#### ***Explanatory Notes***

1 In the above formulation of Human Rights, unless the context provides otherwise:

- a) the term 'person' refers to both the male and female sexes.
- b) the term 'Law' denotes the *Shari'ah*, i.e. the totality of ordinances derived from the Qur'an and the Sunnah and any other laws that are deduced from these two sources by methods considered valid in Islamic jurisprudence.

2 Each one of the Human Rights enunciated in this declaration carries a corresponding duty.

3 In the exercise and enjoyment of the rights referred to above every person shall be subject only to such limitations as are enjoined by the Law for the purpose of securing the due recognition of, and respect for, the rights and the freedom of others and of meeting the just requirements of morality, public order and the general welfare of the Community (*Ummah*).

The Arabic text of this *Declaration* is the original.

### **Appendix 3**

## **The Cairo Declaration on Human Rights in Islam**

The Member States of the Organization of the Islamic Conference,

Reaffirming the civilizing and historical role of the Islamic Ummah which God 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 and knowledge is combined with faith; and the role that this Ummah should play to guide a humanity confused by competing trends and ideologies and to provide solutions to the chronic problems of this materialistic civilization.

Wishing to contribute 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 and of a self-motivating force to guard its rights;

Believing that fundamental rights and universal freedoms in Islam are an integral part of the Islamic religion and that no one as a matter of principle has the right to suspend them in whole or in part or violate or ignore them in as much as they are binding divine commandments, which are contained in the Revealed Books of God and were sent through the last of His Prophets to complete the preceding divine messages thereby making their observance an act of worship and their neglect or violation an abominable sin, and accordingly every person is individually responsible — and the Ummah collectively responsible — for their safeguard.

Proceeding from the above-mentioned principles,

Declare the following:

#### ***Article 1***

(a) All human beings form one family whose members are united by submission 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, colour, language, sex, religious belief, political affiliation, social status or other considerations. True faith is the guarantee for enhancing such dignity along the path to human perfection.

(b) All human beings are God's subjects, and the most loved by him are those who are most useful to the rest of 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 protect this right from any violation, and it is prohibited to take away life except for a Shari'ah-prescribed reason.

(b) It is forbidden to resort to such means as may result in the genocidal annihilation of mankind.

- (c) The preservation of human life throughout the term of time willed by God 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 dead bodies. It is a duty to exchange prisoners of war and to arrange visits or reunions of the families separated by the circumstances of war.
- (b) It is prohibited to fell trees, to damage crops or livestock, and to destroy the enemy's civilian buildings and installations by shelling, blasting or any other means.

### ***Article 4***

Every human being is entitled to inviolability and the protection of his good name and honour during his life and after his death. The state and society shall protect his remains and burial place.

### ***Article 5***

- (a) The family is the foundation of society, and marriage is the basis of its formation. Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from enjoying this right.
- (b) Society and the State shall remove all obstacles to marriage and shall facilitate marital procedure. They shall ensure family protection and welfare.

### ***Article 6***

- (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 lineage.
- (b) The husband is responsible for the support and welfare of the family.

### ***Article 7***

- (a) As of the moment of birth, every child has rights due from the parents, society and the state to be accorded proper nursing, education and material, hygienic and moral care. Both the fetus and the mother must be protected 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 his legal capacity in terms of both obligation and commitment. Should this capacity be lost or impaired, he shall be represented by his guardian.

### ***Article 9***

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

(b) Every human being has the right to receive both religious and worldly education from the various institutions of education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner as to develop his personality, strengthen his faith in God and promote his respect for and defence of both rights and obligations.

### ***Article 10***

Islam is the religion of unspoiled nature. It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him 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 God the Most-High.

(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 and peoples to support the struggle of colonized peoples for the liquidation of all forms of colonialism and occupation, and all States and peoples have the right to preserve their independent identity and exercise control over their wealth and natural resources.

### ***Article 12***

Every man shall have the right, within the framework of Shari'ah, to free movement and to select his place of residence whether inside or outside his country and, if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure his protection until he reaches safety, unless asylum is motivated by an act which Shari'ah regards as a crime.

### ***Article 13***

Work is a right guaranteed by the State and Society for each person able to work. Everyone shall be free to choose the work that suits him best and which serves his interests and those of society. The employee shall have the right to safety and security as well as to all other social guarantees. He may neither be assigned work beyond his capacity nor 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. For 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 legitimate gains without monopolization, deceit or harm to oneself or to others. Usury (riba) is absolutely 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 to society in general. Expropriation is not permissible except for the requirements of public interest and upon payment of immediate 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 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.

***Article 17***

(a) Everyone shall have the right to live in a clean environment, away from vice and moral corruption, an environment that would foster his self-development; 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 State shall ensure the right of the individual to a decent living which will enable him to meet all 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 fair 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 humiliation, cruelty or indignity. Nor is it permitted to subject an individual to medical or scientific experimentation 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.

***Article21***

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

***Article22***

- (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.
- (b) 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 arouse nationalistic or doctrinal hatred or to do anything that may be an incitement to any form of racial discrimination.

***Article23***

- (a) Authority is a trust; and abuse or malicious exploitation thereof is absolutely prohibited, so that fundamental human rights may be guaranteed.
- (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.

***Article24***

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

***Article25***

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

**Cairo,5 August 1990**

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Bachelor of Law from Faculty of Law Gar-Younis University in 1987 (Benghazi-Libya).

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Master degree in Islamic Studies from Institute of Oriental Studies Warsaw University in 1997 (Warsaw- Poland). <http://www.orient.uw.edu.pl/en/arabistyka/index.html>

From October 2005 as a Ph. D. candidate in field of Human Rights in Islam at Department of Comparative Study of Religions, Protestant Theological Faculty, Charles University (Prague - Czech Republic) <http://web.etf.cuni.cz/ETFENG-1.html> .

## **(Languages)**

Native language: Arabic.

Second language: English.

Understood languages: Czech, Polish and Hebrew

## **(Work)**

1987 – 1988 as a lawyer in Legal Department at senate board Gar-Younis University (Benghazi – Libya). <http://www.garyounis.edu/>

1988 – 1994 as a lawyer in Legal Section at National Investment Company (Sebha- Libya).

1998 – 2000 as a lawyer in Legal Section at National Investment Company (Sebha- Libya).

2000 - 2004 as an advocate at Libyan Courts (Libya).

## **(Academic activities)**

From 1998 to 2004 worked as external lecturer at:

Faculty of Law Sebha University, Libya. <http://www.sebhau.edu.ly/>

Faculty of Economy Sebha University, Libya. <http://www.sebhau.edu.ly/>

High Institute of Multi Professionals at Sebha, Libya.

National Institute of Administration at Sebha – Libya.

## **(Papers & Articles)**

1 - Reconciliation, Tolerance, Coexistence “Islamic Perspective” (in English), paper submitted to The 6th Annual International Conference on an Inter-faith Perspective on Globalization for the Common Good., Istanbul - Turkey 5-9 July 2007, and published in Journal of Globalization for Common Good, full 2007. (<http://lass.calumet.purdue.edu/cca/jgcg/2007/fa07/jgcg-fa07-ahmed.htm>)

2 - The Presence of Judaism and Christianity in Libya (In English), Paper submitted to the Conference took place at Hussite Theological Faculty, Charles University,25-26 October 2007, Prague, Czech Republic.

3 - Sources and Prospects for Human Rights Ideas "Islamic Perspective" (In English) paper submitted to Peace and Conflict Resolution Conference 7 – 9 December 2007, Sarajevo – Bosnia and Herzegovina.

4 - Muslim Minority in Czech Republic (in English), Prague – Czech Republic, 2008.

5 - Popular Administration in Libya. ( In Arabic), Sebha – Libya, 2002.

6 - Introduction to Law ( In Arabic), Sebha – Libya, 1999.

7 - Administration systems in Islam in time of Caliphate. ( In English and translated into Polish), Warsaw – Poland, 1997.

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