

HUMAN RIGHTS: AN ISLAMIC PERSPECTIVE*

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Abstrak

Objektif undang-undang Islam adalah untuk membawa kebaikan dan mengelakkan kejahatan dalam masyarakat. Ia digunakan untuk melindungi agama, nyawa, akal, keturunan dan harta (maqasid al-Syariah). Setiap individu wajib mempertahankan hak-hak tersebut daripada dicabar dan dicabuli. Oleh itu, artikel ini membincangkan konsep hak asasi manusia dalam Islam termasuk skop dan pemakaiannya serta perbezaan antara International Bill of Human Rights dengan hak asasi manusia dalam Islam. Artikel ini juga memfokuskan kepada dua isu penting iaitu perlindungan nyawa dan harta.

INTRODUCTION

Does the concept of human rights exist in the Islamic Law? If it does, what are the relevant laws or provisions, if any, that can be found in its legal texts? What were the practice of the Muslim rulers, jurists, and judges throughout history, on human rights issues? This paper would attempt to address those questions and their pertinent issues.

It is common knowledge among Muslims that the Islamic law is a final revelation of God to the Prophet Muhammad (PBUH). As a final revelation to human beings, naturally, the Islamic teachings cater to all aspects of human's need whether the mundane or the Hereafter, and the relationship with God, fellow human beings and the state. As for worldly matters, the Islamic law attempts to govern and guide the conduct of a Muslims daily activities, starting from the kitchen to the affairs of the state, encompassing domestic and external affairs. It is a complete, and comprehensive way of life *par excellence*.

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According to Joseph Schacht: "Islamic law is the epitome of Islamic thought, which underlies the Islamic way of life. It is the core of Islam itself!"¹ Similarly, Anderson states that "For centuries the law has held a paramount place in the civilization and structure of the Muslim world, at least in the Islamic ideal. The prestige it has enjoyed may indeed be regarded as without parallel in history, for this civilization was uniquely based on religion, and the religion of Islam has always accorded a pre-eminent place to law."² It is for those reasons that the Muslim jurists have concluded that the Islamic law is good and suitable for all times and all places.

HUMAN RIGHTS AND ISLAMIC LAW

As for the concept of human rights in Islam, Muslim jurists argued that it can be found and rooted with the inception of Islam itself since fourteen centuries ago. It began with the first revelation to the Prophet Muhammad (PBUH) when he was in Mecca.³ The revelation goes to the affect that man was asked to read and to seek knowledge. This is what is now known as the "right to education". Hence, education in Islam is a state matter. It should be provided to all citizens, at all levels of education, with minimum cost, and within the reach of all citizens. It follows that any attempt to disregard this right or discriminate it would be clearly a violation and infringement the basic teachings of Islam.

In fact, the concept of human rights in Islam originated from a broader concept of human dignity enshrined in the Islamic primary texts, i.e. the *Qur'an* and the *Sunnah*. To mention a few for instance, the *Qur'an* says:

*"Verily We have honoured the children of Adam. We carry them on the land and the sea, and have made provision of good things for them, and have preferred them above many of those whom We created with a mark of preferment."*⁴

(al-Isra':70)

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- ¹ See Schacht, Joseph (1964), *An Introduction to Islamic Law*. Oxford: The Clarendon Press, p.1.
² Anderson, J.N.D. (1975), "Law as a Social Force in Islamic Culture and History", In Liebesny, Herbert J. (ed.), *Treatise in The Law of the Near and Middle East*. Albany: State University of New York Press, p.3.
³ The first revelation commands the Prophet Muhammad (PBUH) to read. See the *Qur'an*, al-'Alaq (96): 1-5.
⁴ For other similar messages but of different version see the *Qur'an*, al-Hujurat (49): 13 and al-Tin (95): 4.

The verse clearly recognizes the supremacy of mankind over all other creatures and every human being, irrespective of his religion, race or colour should be respected and protected. This is the major principle on the subject adopted by Islam fourteen centuries ago. However, it is undeniable that throughout its long history, let alone during the peak of its civilization around 8-9th centuries, there would have been some sporadic abuse of power, hence human rights, by some authorities, as what can be found from the practice of other societies.

From the second source of the Islamic law, the Tradition of the Prophet Muhammad (PBUH), we find a similar message. Bukhari narrated from Jabir ibn 'Abd Allah that the Prophet stood up when a funeral procession was passing in front of him. A man said to him: "The dead man was a Jew". He said: "Was not he a human being?" The man said: "Yes". Then the Prophet said: "Every human being in Islam has a place and dignity (which should be respected)."⁵ This Tradition clearly shows that the Prophet has demonstrated personally, by his action, that every human being regardless of his religious background should be respected not only when living but also when dead. That is why according to the Islamic law of *jihad*, it is prohibited for Muslim soldiers to disfigure, mutilate, or show any act of disrespect to the dead bodies of enemy soldiers.⁶

It is worth noting here that the concept of human dignity stems from the concept of the unity of mankind in Islam. This is because Islam considers that all human beings came from the same origin, i.e. Adam and Eve.⁷ It is also the subject of all revealed religions.⁸ The fact that all men came from the same origin implies that they should be treated equally. Thus, men are in reality, on equal footing in the context of the reality of mankind. There is no reason whatsoever to discriminate, enslave in whatever form, and restrict their liberties let alone to mistreat mankind on the basis of race, religion, or social background.⁹ For, the noblest and honoured man in the eyes of God is the one that is the best in his conduct.¹⁰

⁵ See, Mālik Ibn Anas (1982), *al-Muwatta'*. 'Aishah 'Abd. Al-Rahman al-Tarjumana and Ya'qub Johnson (tr.). Norwich: Diwan Press, p. 114; Ibn Hajar (1406 A.H), *Fath al-Bari*, vol. III. Beirut. pp. 179-80.

⁶ A. R. Awang (n.d), *The Status of the Dhimmi in Islamic Law*. International Law Book Services, Kuala Lumpur, p.71.

⁷ The *Qur'an*, al-A'rāf (7): 35; and Maryam (19): 58.

⁸ Eaton, Gai (1985), *Islam and The Destiny of Men*. London: George Allan and Unwin, pp. 181-82.

⁹ A. R. Awang (n.d), *op.cit.*, p. 72.

¹⁰ The *Qur'an*, al-Hujurat (49): 13

It must be borne in mind that since mankind came from the same origin, it should have one standard of unified values, as they happen, which must be able to suit all peoples at all times, in all places regardless of religion, colour, or social background. These common values such as honesty, sincerity, justice and the like are the subjects of the common good of mankind. Therefore, they have become the common principles of all revealed religions for the interest of man and has become a common heritage for all mankind.¹¹

Let us now look at some fundamental rights in Islam as envisaged by the Muslim jurists. These rights are, *inter alia*, the right to life, property, freedom, equality, justice, employment, as well as the freedom for assemblies, expression, the press, and the like. These rights were concluded by the Muslim jurist as five essential values of Islam; namely, religion, life, mind, offspring and property.

In view of the limited space and time given to the writer during the presentation, the scope of discussion in this paper shall be confined to the rights to life, and property.

RIGHT TO LIFE

Life is considered as the most important basic human right. As mentioned above God has honoured mankind and has placed all other creatures subservient under man. This is in order to facilitate men so he can obtain all his basic needs and live a quality life. The right to life also includes the right for a secure life for every individual without fear and threat to his life. It follows that since this is a basic right, all other rights related to it such as the right to privacy, to protect his life, honour and reputation, to have a fair trial, to disobey the authority on vice activity, and to establish his family, should also be provided and guaranteed. All these rights have become and are incorporated as constitutional rights and enshrined in almost all the constitutions of the world today including the constitutions of the Muslim countries.¹²

As Islam treats life as sanctity and sacred, any violation to it would be considered as a crime and would entail some punishment. Thus, blood and life are inviolable in Islam. Who ever kills an innocent person, it is as if he had killed all mankind. The *Qur'an* illustrates it as follows:

¹¹ A. R. Awang (n.d), *op.cit.*

¹² S.H. Shahin (1993), *Huqūq al-Insān fī al-Islām*. al-Riyād, pp. 69–70 ; Zubir Ahmad (1414 A.H.), *Islamic vs. Western Approach Towards Human Rights: A Comparative Study*. Um al-Qura University, pp. 37–38.

“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 anyone saved a life, it would be as if he saved the life of the whole people.”¹³
(al-Ma'idah: 32)

To support the above injunction, the Prophet is reported to have said in his last farewell pilgrimage sermon that the blood, the property and the honour are sacred and cannot be violated, as sacred as the sacredness of this day, this city and this month.¹⁴

The message of the above texts is very decisive as to the sanctity of the individual's the Islamic law is trying to protect in order to safeguard the security and well-being in the society. For crime and violence, as we are aware, would upset the stability/peace, and order in the society. It is for this reason, perhaps, that the Islamic law introduces a severe punishment in order to uproot the criminal and deter a potential criminal from carrying his act.

The Islamic law introduces the concept of *qisas*¹⁵ or just retaliation for the case of homicide or injury to limb or part thereof. *Qisas* means to inflict, by the authority, on the criminal the same and exact as he had committed on the victim. Moreover, the Islamic law introduces three options to the heir or the nearest family of the victim, namely: the right to demand the execution of *qisas* against the murderer; the right to pardon the murderer in return for his paying a fixed amount of blood-money (*diyat*) ; and the right to pardon him for the sake of God.¹⁶ It is worth noting at this point that the Islamic law has given the right to pardon the murderer to the heir of the victim not to the head of the state as has been practiced in most contemporary penal law systems. The rationale for this practice is that it is the nearest heir, wife and children, that had suffered directly from the lost of their bread winner, not the state or its representative. As for the blood-money, in the past, the amount to be paid was the equivalent of 100 camels. That amount of money is quite sufficient for the family of the victim to plan and invest for their future needs. This scheme of compensation offered by the Islamic law is a very practical solution to overcome the dilemma and agony of the victim's family. On the contrary, in most modern panel law systems, the power to pardon is

¹³ See also, al-*Qur'an*, al-An'ām (6): 151.

¹⁴ al-Bukhari, *Kitāb al-Haj*, vol. 3, *Hadith* no: 1739, p. 573.

¹⁵ See the *Qur'an*, al-Baqarah (2): 179.

¹⁶ For the details analysis of the Islamic law of retaliation, see A.R. Awang (t.t.), *op. cit.*, pp. 108–114.

given to the state. As a result, the victim's family will not receive anything, while their suffering continues unabated.

Another feature that is different to the modern legal system is that the Islamic law prohibited the act of suicide and deemed the act as a crime. One is also not allowed to cut or injure any of his limb or organ even though it belongs to him and he, in fact, commits no crime against anyone. But, Islamic law considers life and limb as belonging to God alone; it is a trust to him that he should take due care of. Thus, he has no right to take his life which does not belong to him.¹⁷

RIGHT TO PROPERTY

Property is essential for a living. Islam encourages the Muslims to engage in honest and lawful means to own property. To that end, he can do all sorts of transactions and enjoys his wealth within the boundaries prescribed by the Islamic law. The *Qur'an* suggests to the Muslim that there is no limit for property ownership; he can use his property for whatever purpose, no one, agency or even the state can restrain him from the enjoyment of his property.¹⁸ On the other hand, there are certain rules and regulations that the Muslim has to follow in business transaction as well as in his daily life activities. For instance, cheating, stealing, business involving alcoholic beverages, prostitution, fortune-telling, and pigs are not allowed in Islam.

Furthermore, the Islamic law protects private property from any aggression and threatens the culprit with severe punishments. It also prohibits the act of confiscation except with lawful means and justification. The owner of the property is also given the right to defend his property, akin to defending himself and his dignity against the aggressor.¹⁹ All these measures are provided in order to protect one's property, hence human rights, and there is no difference in the treatment between Muslims and non-Muslims on this regard. Therefore, there is absolute equality, accorded by the Islamic law, between Muslims and non-Muslims with regards to the protection of religion, life, mind, offspring and property. It is worth mentioning here that there is no difference, in the right for property and ownership, between a man and a woman in Islam. She can independently own property, engage in business activity, become a guarantor, make a will, and be involved in litigation and the like.

¹⁷ S. H. Shahin, *op. cit.*, pp. 23-24.

¹⁸ The *Qur'an*, al-A'raf (7): 32.

¹⁹ S.H. Shahin, *op. cit.*, pp. 59-60.

In the field of economic activity, we have mentioned earlier that the Muslims are not allowed to engage in some activities such as business in liquor, pig, gambling and all related activity to those commodities. However, those restrictions are not applicable to non-Muslims since some of its prohibition are related to their religion, hence it falls under personal affairs, and some are prohibited exclusively for Muslims only. Because of those reasons and others, we can say that the non-Muslims may enjoy more rights and a wider opportunity in business and trade than the Muslims. In other words, the non-Muslims will not be prohibited in the fields of industry, trade, agriculture and all other professions. As a result, the non-Muslims, at any epoch, have always contributed more than the Muslims in their share of the gross national product.²⁰ In short, the right to property is guaranteed by Islam, in its primary texts, to all human beings regardless of religion, gender, race, ethnic groups or the like.

Now let us make a quick survey on some provisions pertaining to human rights, freedom, and fundamental rights, from the constitutions of some Muslim countries.

*Draft Constitution of al-Azhar*²¹

The Islamic Research Academy of Cairo, which is affiliated with al-Azhar University, the most internationally prestigious institution of higher education in *Sunni* Islam, and a centre of Islamic thought and reference pertaining to Islam and Islamic affairs has published the above draft constitution in volume 51 of the Azhar journal, *Majjallah al-Azhar*, in 1979.²²

In the Azhar draft constitution, Article 7 provides that the family is the basis of society and that the family's foundations are religion and morality (*al-dīn wa al-akhlāq*), and Article 8 says that safeguarding the family is a state duty.²³ These two articles reflect the philosophy and *weltanschauung* of Islamic teachings where the basic structure of the society is based on an individual, the family, society and the state. If the family is well structured, based on good quality of individuals, then surely that family will

²⁰ A. R. Awang (n.d), *op. cit.* , pp. 199–200.

²¹ Al-Azhar was established by Fatimid Dynasty in 972 A.D. as an institution of Islamic learning based on endowment. Later especially in the sixties, it was developed as a full-fledged University, research centre, mosque (place for worship), and a centre for reference for Islamic affairs and fatwa (Islamic rulings, opinions for current legal issues). Al-Azhar also has been sending teachers, preachers, Imam/directors of Islamic centres throughout the world. The source of finance is from its endowment fund.

²² Mayer, A. E. (1991), *Islam and Human Rights: Traditional and Politics*. San Francisco: West view press, p. 27.

²³ *Ibid.*

form a good foundation of society and finally it would be reflected at the state level. The criteria here, of course, should be in accordance with Islamic norms and values. This interpretation is supported by the wording of the Article 7 itself when it says “the family’s foundations are religion and morality”, unlike other societies, the Islamic society should be based on Islam and its morality. But the degrees of Islamicity in a society as required by Islam, however, varies from place to place and from time to time depending on the conviction and commitment of its followers. Needless to say that the state must bear the responsibility of safeguarding the society and it may enact rules and regulations for that purpose.

Speaking about freedom of religion, Article 29 provides that “within the limits of the Islamic Shariah (law), the Government provides for the natural basic rights of religious and intellectual beliefs.”²⁴ This Article expressly demonstrates that religious and intellectual beliefs are considered as basic rights which are guaranteed by the Constitution and no government, at any particular time, can simply undermine and violate it. This article strengthens and documents the meaning of the *Qur’an* which says:

*“Let there be no compulsion in religion for truth stands out clear from error.”*²⁵

(al-Baqarah: 25)

The *Qur’an* purports that it prohibits the Muslims from making all sorts of compulsion in matters of religion. Let a man has his/her own free will, without interference, free to opt the set of beliefs, norms, values in his/her life.

The Iranian Constitution

The Constitution of the Islamic Republic of Iran, 1979, issued after the Islamic revolution, provides some provisions on the subject. For instance, Article 23 forbids interrogating or attacking people because of their beliefs.²⁶ Although the article does not expressly speak on the religious freedom, it purports that interrogating let alone attacking a citizen, by the state, the individual, or any other agency, because of religion or beliefs is unlawful, hence against the Constitution. This guarantee has numerous implications:

²⁴ *Ibid.*, pp.175–76.

²⁵ Yunus (16): 99; al-Kahf (18): 29.

²⁶ Mayer, A. E., *op. cit.*, pp. 177–78.

- a) freedom of religion and beliefs;
- b) it is really an Islamic-inspired document, drafted after the Islamic revolution; and
- c) it has been approved by the highest religious authority.

Article 168 reads: The definition of a political crime, the manner in which the jury will be selected, their qualifications and the limits of their authority shall be determined by law, based upon Islamic principles (*mawāzin al Islāmī*).²⁷ The term “based upon Islamic principles”, is natural and understandable since the document was drafted by the Islamic government where all laws enacted must be based on, and shall not contravene with, the Islamic law- the supreme law of the land. To date, Iran is the only country to have completely rewritten its constitution with the aim of bringing it into conformity with the requirements of the Islamic law.²⁸

UDHR AND ISLAMIC VIEWS

The International Bill of Human Rights consists of the Universal Declaration of Human Rights (UDHR), 1948,²⁹ the International Covenant on Economic, Social, and Cultural Rights (ICESCR), 1966,³⁰ and the International Covenant on Civil and Political Rights (ICCPR), 1966.³¹ The universal declaration has, since its adoption by the UN General Assembly, achieved international recognition as an authoritative statement of the modern standards of human rights protection and is the single most influential statement of international human rights principles.³²

On the other hand in 1981, the Islamic Council of Europe, a private and international, nongovernmental, London based organization, issued the Universal Islamic Declaration of Human Rights (UIDHR).³³

Taking a close look at the UDHR provisions such as Articles 1-3 and 17, we can safely say that the contents of those provisions are in conformity and in line with the requirements of the Islamic law and its philosophy. For instance, Article 1 says that

²⁷ *Ibid.*, p.179.

²⁸ *Ibid.*, p.27.

²⁹ For full text of the document see Brownlie, I. (ed.) (1971), *Basic Documents on Human Rights*. Oxford: Clarendon Press, pp. 107-12; Sohn, L. B. and Buergenthal, T. (1973), *Basic Documents on International Protection of Human Rights*. New York: The Bobbs-Merrill Co., pp.30-34.

³⁰ Brownlie, I., *op. cit.*, pp. 199-210; Sohn, L. B. *et al.*, *op. cit.*, pp. 35-44.

³¹ Brownlie, I., *op. cit.*, pp. 211-231; Sohn, L. B. *et al.*, *op. cit.*, pp. 44-62.

³² Mayer, A. E., *op. cit.*, p.23.

³³ *Ibid.*, p. 27.

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” This Article is in complete harmony with the Islamic teachings as Islam considers that all human beings came from the same origin, i.e. ‘Adam and Eve.’³⁴ Hence, they are all brothers. Since they are brothers, they should be treated equally, with no reasons for discrimination.

As for Article 3 it says that “Everyone has the right to life, liberty and security of persons.” This provision falls within the scope of the general objective of the Islamic law, i.e. the five essential values of human beings.³⁵ The same goes to Article 17 which purports that everyone has the right to own property alone as well as in association with others.

It seems that since the drafters of those documents came from the Western traditions based on the Abrahamic religions, Judaism and Christian thoughts, where at some points, it meets with the basic teachings of Islam, so the central ideas of human rights as perceived by those three Ibrahamic religions are not at variance, but to some extent, the basic biblical concepts and teachings are in harmony rather than discord. This, perhaps, may help to explain as to why many of the UDHR documents are in line with the Islamic concept of human rights.

On the other hand, many of the Western scholars and researchers, as it appears in their writings, tend to look, explain, analyse, and judge, on Islam and its affairs, in accordance with their own perspective and standards, whereas we know that every nation and people has its own values, norms, philosophies, and their own ways on how to judge and value things. As a result, they (Western scholars) fail to see and evaluate the subject objectively. Some even try to put the flavour in accordance with their own tastes. Some even force others to follow their own standards and would wish others to “become like them”.

Finally, for the purpose of comparison between UDHR and Islamic human rights (IHR) concepts, there are several factors which should be observed:

- a) Source: The source of IHR is divine in nature and its scope whereas UDHR is from the human mind and experiences;
- b) Validity: The IHR is good for all times and places, it remains immutable and can not be altered by human mind. On the other hand, UDHR is probably

³⁴ See p.4. and note 7. *supra*.

³⁵ See p.4. *supra*.

good for a certain time, it may be changed in accordance with the exigency of the time and human need; and

- c) Freedom: In IHR freedom is not absolute and always restricted by the principles of Islamic law which is divine. In the case of UDHR, the idea of freedom is changing in accordance with the need or the majority's will, such as the issue of abortion, adultery and lately marriage between the same sex is legal in some Western countries.

HUMAN RIGHTS IN MALAYSIA

In 1999, the Government of Malaysia issued an act No 597 for the establishment of the Human Rights Commission of Malaysia. This move was initiated in response to the call by many quarters especially from the international bodies. Among the functions and powers of the Commission are:

- a) to promote awareness and provide education on human rights;
- b) to inquire into complaints regarding infringements of human rights;
- c) to conduct research on the subject;
- d) to visit places of detention; and
- e) to issue public statement on human rights.³⁶

Since its inception, the public, especially the opposition parties have found an official venue to lodge their complaints and dissatisfaction on some issues or the actions of the government. Issues like freedom of assembly, association, and press have always been reported to the Commission for its further action. There were occasions when the Commission was able to assert its position and functions. The authorities like the police were uneasy and restless when allegations on human rights violations by them were investigated by the Commission.³⁷

On the other hand, there are various laws passed by the Malaysian parliament which has had the effect of curtailing the rights provided for by the constitution. Some of them are the Internal Security Act 1960, the University and University Colleges Act 1971, Official Secrets Act 1971, Printing Presses and Publication Act 1984 and Police Act 1967. It is to be observed that some of the limitations to be found in the above statutes, are absolute in nature and not subject to review by the courts. This means that the citizens are practically at the mercy of the authorities which by itself is not in

³⁶ See Laws of Malaysia, Act 597, *Human Rights Commission of Malaysia Act, 1999*.

³⁷ Abdul Aziz Bari (2003), *Malaysian Constitution: A Critical Introduction*. Kuala Lumpur: The Other Press, p. 161.

line with the notions of freedom, democracy and human rights.³⁸ This situation has been the subject of criticism by many quarters especially the NGOs, human rights groups and opposition parties. However, the government argues that those measures have to be taken to safeguard the public security, peace, and stability of the country.

CONCLUSION

As a conclusion, we can say that Islam has guaranteed the rights to life, property, ownership, professions, trade and industry to all human beings regardless of religion, gender, or minority groups, except in some areas related to Muslim faith. All those guarantees do in fact fall under the domain of the general objective of Islamic law which seeks to protect five essential values of a human being, namely; religion, life, mind, offspring and property.

These protections and guarantees are not at variance with the Western concept of the UDHR as elaborated above. However, it is not proper to use or rather impose one's yardstick on others, as every nation and civilisation has its own values, norms and standards. We can live and build our future together through understanding, respect of each other's values, and working together in the spirit of "brotherhood".

The Muslims are now totalling 1.2 billion spread all over the world. Some of them have been denied their basic human rights. This is a common problem that all of us must work together to solve, not only for the Muslims, but for all mankind.

³⁸ *Ibid.*, pp.145–46.