

**Paper Presented at  
The AMSS 33<sup>rd</sup> Annual Conference  
George Mason University  
Arlington Campus – Virginia**

**Sept. 24 - 26, 2004**

**“Human Rights in Islamic Legal Shari'ah Perspective”  
By Isma'il Bin Mat, Ph. D.  
(University of Brunei, Darussalam)**

**Introduction:**

The issue of human rights and the protection of them remain to be one of the major themes of political, philosophical and legal discourse.<sup>1</sup> Instead of being comprehensively criticized, the idea of human rights retains considerable popularity and growing importance. A substantial body of opinions acknowledges that there are such things as human rights and advocates that they ought to have legal protection. This view has from time to time, received expression in the form of general declarations of human rights which persons are supposed to have. However, in order to address the issue of human rights effectively, it requires both the rhetorical affirmation as well as the best means of actual protection. This paper attempt to substantiate the idea of protection of human rights which constitutes a natural corollary of the doctrine of constitutional government of Islam, and in fact the protection of human dignity is divinely ordained. Thus, *Shari'ah*, as James Dudley puts it, provides a basis for analysis of Islamic rights practice as it traditionally defines many aspects of Islamic criminal, property, and family law.<sup>2</sup> Furthermore, it also attempts to describe the substance of Islamic human rights and their significance in the context of cultural relativism.

At the outset it needs to be mentioned that in the first place Islam is a belief system established fully upon *al-Haqq*, which is the *Qur'anic* term for right.<sup>3</sup> In

---

\* Ismail bin Mat (Dr.) is a Visiting Associate Professor at Research Department of Madhhab al-Shaff'i, Sultan Haji Omar 'Ali Saifuddin Institute of Islamic Studies, University of Brunei Darussalam.

<sup>1</sup> The term “human rights” is a twentieth century name for what has been traditionally known as natural rights or the rights of man. It replaces the phrase “natural rights”, which fell into disfavor in part because the concept of natural law, to which the expression of “natural rights” ultimately linked, had become a matter of great controversy. The political theory of Medieval Christendom put even greater stress on natural law which was understood as being part of the law of God; and it was only after the Renaissance that natural law was restated in Secular, modern, individualistic terms by such theorists as Grotius, Pufendorf and Locke. J.E.S. Fawcett, “The International Protection of Human Rights”, in D.D Raphael,(ed.), *Political Theory and The Rights of Man* (London:MacMillan,1967),p.139; Gaius Ezejiolor, *Protection of Human Rights Under Law*,(London: Butterworths,1964),p.3; Maurice Cranston, *What Are Human Rights?* (London: The Bodley Head, 1973), pp. 1-11.

<sup>2</sup> James Dudley, “Human Rights Practices in The Arab States: the Modern Impact of Shari'ah Values”, *Georgia Journal of International and Comparative Law*, Vol.12, No.1 (1981), p.55.

<sup>3</sup> The Jurists have classified *al-haqq* (pl.*huquq*) in relation to al-mahkum fih, i.e., that which is related to the ruling regulating the conduct of *mukallaf*, in accordance with the Divine legislation. It has been classified into two main categories: the rights of God ( *huquq Allah* ) which refer to those that concern public interest or the community at large, hence , these rights are also known as “public rights”. The

addition *al-Haqq* also denotes one of the God's most beautiful names or of His qualities, the *Qur'an*, antonym of false, Islam, *fait accompli*, truth, justice, property, ownership, everlasting existence (God) , death and determination.<sup>4</sup> The essential characteristics of human rights in Islam are that they constitute obligations connected with the Divine and derive their force from this connection. Human rights, as Abdul Aziz Sa'id asserts, are parts of one whole, namely , a universal dialogue of a unity of being separated by time, environment and experience. The present global system, however, he argues, is dominated by a Western attitude of cultural superiority that views human rights in its own theological and ideological context. What is right for the West is right for others. This Western moral and philosophical posture projects a parochial view of human rights exclusive of the cultural realities.<sup>5</sup> What hinders the developments of a universal conception of human rights, according to Said, may be ascribed to the lack of agreement of the sources of human rights, the absence of a philosophical common core as well as uncertainty about the content of the doctrine of human rights.<sup>6</sup>

In fact, the very conception of the organization of society differs from one culture to another. The West emphasizes individualism, the philosophy which views the individual as autonomous and possessed of rights above and prior the society. The modern Western tradition posits freedom in order to avoid the outcome of a despotic system. On the other hand, some of the third World traditions place more emphasis on obligations, and individual is conceived as an integral part of greater whole of a "group" within which one's role and status are defined.<sup>7</sup>

S.Prakash Sinha delineates three elements which reflect Western values in the current formulation of human rights namely, the individual, not the family, is the fundamental unit of the society; the primary basis for securing human existence in society is through rights, not duties; and the primary method for securing rights is through legalism in which rights are claimed and adjudicated upon, not reconciliation, repentance, or education.<sup>8</sup> Thus, according to Donnelly, one of the key differences between the modern Western and the non-Western approaches to human dignity is that the Western human rights approach puts more emphasis on individualism.<sup>9</sup>

---

second category is the rights of man ( *huquq al-'Ibad* or *huquq al-nas* ) or "private rights" which refer to those that concern the interest of the individual as a member of the society, see Ibn Malik, *Sharh Manar al-Anwar fi Usul al-Fiqh* ( Istanbul: al-Matba'ah al-Nafisah al-Uthmaniyyah, 1308H),pp.313-315.

<sup>4</sup> Majd al-din Muhammad b.Ya'qub al-Fayruuzabadi, *al-Qamus alMuhit*, Vol.3 ( Cairo: Mu'assasat al-Halabi, n.d.), p.221; Abdul Aziz Said, "Precept and Practice of Human Rights in Islam", *Universal Human Rights*, Vol.1 ( 1979),p.63.

<sup>5</sup> Abdul Aziz Said, "Precept....",p.63.

<sup>6</sup> Abdul Aziz Said, "Pursuing human Dignity", in his, (ed.), *Human Rights and World Order* ( New York: Praeger Publishers, 1978), p.2.

<sup>7</sup> Admantia Pollis and Petter Schwab, 'Human Rights: A Western Construct with Limited Applicability,' in theirs, eds., *Human Rights: Cultural and Ideological Perspective* ( New York: Praeger Publishers, 1979 ) ,p.8.

<sup>8</sup> Cited in Alison Dundes Renteln, " The Unanswered Challenge of Relativism and the Consequences for Human Rights," *Human Rights Quarterly*, Vol.7,No.4 ( 1985),p.517.

<sup>9</sup> Jack Donnelly, " Human Rights..." , p.311-314.

In view of the philosophical foundation on which the human rights are predicted and the selective use of them, the concept of human rights invites an intensive discussion among the intellectuals of different cultural affiliations. In the Muslim world many attempts have been made at individuals and organizational levels to determine and declare what an Islamic content of the concept of human rights should be.<sup>10</sup> In other words, such attempts are to advocate that in Islam, it takes different approach to human rights.

## **2.The Basis of Modern Human Rights**

Since modern conception of human rights constitutes an integral part of modern constitutionalism and it is claimed to be a culmination of Western thought on the natural rights of man, it will not be out of place to have a brief discussion about the antecedents of modern human rights and the philosophy which underlies them. Human rights are a manifestation of human dignity. Constitutional proclamation of human rights of the citizen is a way of upholding the dignity and worth of human person. It is generally accepted that constitutionalism in modern Western sense rooted in certain basic beliefs, that is, the belief in the dignity of man, and the belief in the possibility of man to abuse power. This belief implies that power must be restrained and limited and the dignity of man as individual should be respected. Hence, the natural outcome of constitutionalism is the protection of human rights. When constitutionalism is understood as limiting the exercise of power and rule, it also limits the power of any group regardless of the majority or the minority. Even though, from the democratic point of view, the people are the source of all power in the last analysis, in adopting a constitution they limit their own power.<sup>11</sup> In the words of Michael Curtis: constitutions provide limits on the exercise of power for a number of reasons: to impose restraints on rulers, to protect individuals, groups and minorities, to safeguard human rights and to preserve the regime”.<sup>12</sup>

Western advocates and most students of human rights trace the principal model for the content and style of Bills of Rights to the historic statutes and declaration of the English Petition of Rights of 1628, the Habeas Corpus Act of 1679, the Bill of Rights of 1689, the Virginia Constitution of June 1776, the American Declaration of Independence of July 1776, the French Declaration of the Rights of Man and Citizen of 1779, and the American Bill of Rights of 1791. These English, French, and American bills of rights have their antecedent and model going back to the English *Magna Carta* of 1215. It was a charter of baronial rights and liberties, which were expanded to include the commoners and even the despised peasants.<sup>13</sup> The fundamental rights claimed in the *Magna Carta* of 1215

---

<sup>10</sup> Jan Hjarpe, “ The Contemporary Debate in the Muslim World on the definition of ‘Human Rights’ , in Klaus Ferdinand and Mehdi Mozaffari, eds. *Islam: State and Society*,( London: Curzon Press, 1988),p.26.

<sup>11</sup> Carl Joachin Friedrich, *Limited Government*.....,p.124-125.

<sup>12</sup> Michael Curtis, *Comparative Government and Politics: an Introductory Essay in Political Science* ( New York: Harper and Row,1968), p.82.

<sup>13</sup> Peter H. Merkl, *Modern Comparative Politics* ( Illinois: The Dryden Press, 1970 ),pp.451-457; Ivo D.Duchacek, *Rights & Liberties in the World Today: Constitutional Promise & Reality* (Santa Barbara: American Bibliographical Center –Clip Press, Inc.,1973),pp.16-19.

by the noblemen were those associated with justice and property. In addition, the English church insisted on freedom from royal interference. Above all, however, the Magna Carta of 1215 established the general principle that a rule must govern not arbitrarily but according to the law. While the *Magna Carta* and the English Bill of Rights represent lists of concessions obtained from hereditary rulers, the French Declaration of the Rights of Man and Citizen, the American Declaration of Independence and the Bill of Rights of 1791, reflect the theory that men have inalienable rights given to them by nature.<sup>14</sup> The process of formulation of bill of rights has reached its culmination in the contemporary expression of “human rights” which has received its connotations and its concrete meaning from the United Nations Universal Declaration of Human Rights of 10 December 1948.<sup>15</sup> This briefly indicated that “the Declaration” and the content of the prevailing concept of “Human Rights” stem from the European history and its conceptual categories, implications and assumptions. These categories and premises are often regarded as self-evident and they are rooted in European legal tradition and its development in history.<sup>16</sup> In view of such Eurocentric background, Jack Donnelly draws his conclusion that the concept of human rights is an artifact of modern Western civilization. This view, however, is considered by Alison Dundes Renteln as cultural biases and implicitly implies to prove that the concept of human rights is a Western concept and, in effect, other nations should adopt it.<sup>17</sup>

Since the concept human rights has evolved in culture-specific of the West, to take it as having a universal implication would, perhaps, invite certain disagreements. The problems would appear when the human rights of modern western civilization are to be adapted to a different geographical milieu where indigenous civilization could rival them. In Muslim countries of Asia and Africa in particular there has been a vast population already established with forms of culture and civilization which could not be considered inferior to that of the West. The teachings of Islam have offered its adherents specific world-view which could, to some extent, enlighten them to be critical in the process of adoption of Western laws and legal concepts.<sup>18</sup>

Referring to the Western concept of human rights, Seyyed Hussein Nasr asserts that any value of this kind develops from a particular philosophy, it is not universal, but it is culturally and philosophically bound.<sup>19</sup> Modern Western advocates of human rights believe in man as independent of God, and human

---

<sup>14</sup> Ivo Duchacek, *Rights & Liberties*...p.17.

<sup>15</sup> Jan Hjarpe, “ *The Contemporary Debate*...”p.26; Maurice Cranston, “Human Rights, Real and Supposed”, in D.D. Raphael, ed., *Political Theory and the Rights of Man* ( London: MacMillan, 1967),p.45. This Declaration of Human Rights consists of thirty articles, dealing with civil and political freedoms as well as economic, social and cultural rights. For the full text of the United Nations declaration of Human Rights of 1948, see , for instance, Ian Brownlie, ed., *Basic Documents on Human Rights* ( Oxford: Clarendon Press, 1971 ),pp.,106-112.

<sup>16</sup> Jan Hjarpe, *the Contemporary debate*....,”p.26.

<sup>17</sup> Alison Dundes Renteln, “ The Unanswered Challenge of Relativism and the Consequences for Human Rights,” *Human Rights Quarterly*, Vol.7.,No.4 ( 1985),pp.526-529.

<sup>18</sup> Rede David and John E.C.Brierley, *Major Legal Systems in the world today: An Introduction to the Comparative Study of Law* ( London: Stevens & Sons, 1968 ),p.384.

<sup>19</sup> Seyyed Hussein Nasr, *Islam and the Challenge of the 21<sup>st</sup> Century* ( Kuala Lumpur: Dewan Bahasa dan Pustaka,1993 ),p.35.

nature has been conceived to be the generator of human rights.<sup>20</sup> According to Renteln this perception of human rights is narrow. Although the term human rights is derived from the Western tradition of natural rights, the substantive meaning of the rights one holds by virtue of being human would seem to be unlimited. Nevertheless, Donnelly insists upon particular meaning taken from historical context.<sup>21</sup> It also appears that the notion of human rights in the modern sense is secular in perception since they are conceived to be inherent in human nature independent from Divine values. In fact, secularism is the implicit premise on which the United Nations Declaration of Human Rights is built.<sup>22</sup>

The western perspective of human rights, according to A.K.Brohi, may be termed as “anthropocentric” in the sense that man is regarded as constituting the measure of everything since he is the starting point of all thinking and action. Here, the emphasis of right is on human rights within the framework of an “anthropocentric “ perspective of human dignity.<sup>23</sup> The perspective of Islam, on the other hand, is “Theo-centric” namely God conscious.<sup>24</sup> It is God who has invested the people with all their rights and prerogatives. Human nature is not the generator of human rights, but a vehicle that carries all the rights and obligations that God has bestowed upon mankind; and it is by virtue of this divine investment that every individual has all the rights and prerogatives that are specified in the revealed sources of Islam. Hence, the idea of natural or innate rights independent from God has no meaning within the context of Islam as all values come from God.

### **3. Human Rights in Islamic Legal ( *Shari'ah* ) perspective**

It should be noted that the teachings of Islam view human life as an integrated whole and admits of no dichotomy between civil and political rights, economic and social rights, and that man finds his freedom within the limits of social responsibility which effectively integrate the individual with his environment. In Islam, human dignity assumes fundamental question for its way of life. Human dignity is perceived as the foundation of all form of human rights in Islamic legal( *Shari'ah* ) perspective. Human dignity is, in fact, the prize creation of God as it is stated in the Qur'an: “ Verily We have honored the children of Adam. We carry them on the land and the sea, and have made provision of good things from them, and have preferred them above many of those whom We created with a marked preferment”.<sup>25</sup> This verse reflects that all the children of

---

<sup>20</sup> As Jack Donnelly puts it:” human rights are conceived as naturally inhering in human person. They are neither granted by the state nor are they the result of one’s actions. To have human rights one does not have to be anything other than human being. Neither must one do anything other than be born as a human being ...., in Islam, in the realms of human rights ( read human dignity ), what really matters is duty rather than rights, and whatever rights do exist are a consequences of one's status or actions, not one's nature.” Jack Donnelly, “ Human Rights..”,pp.35-36.

<sup>21</sup> Alison Dundes Renteln, “ The Unanswered Challenge..”, p.526.

<sup>22</sup> Jan Hjarpe, “ The Contemporary Debate...”,p.28.

<sup>23</sup> A.K.Brohi, “Islam and Human Rights”, in Altaf Gauhar,ed.. *The Challenge of Islam* ( London: Islamic Council of Europe, 1978 ), pp.178-180.

<sup>24</sup> *Ibid.*, p.180.

<sup>25</sup> The Qur'an, 17:70

Adam, whatever their race, ethnicity, gender, age, social status and beliefs may be, have been granted “dignity” by their Creator without any differences, and this human dignity has to be secured and maintained by His guidance and law through the Muslims teachers and authorities, and should never be subject to pressure.<sup>26</sup>

Generally the decree of human rights by the *Shari'ah* law aims at conferring dignity and honor on mankind and are designed to eliminate oppression and injustice. The human dignity, according to Mohamed Fathi Othman, is comprehensive; it encompasses all aspects of human dimensions: spiritual, moral, intellectual and physical. The human dignity comprises the fulfillment of obligations as well as the security of rights.<sup>27</sup> The purpose of dignity in mankind or the glorification of man is not for what he is, but because of who created him and the role assigned to him on earth.<sup>28</sup> This implies that the title of *Khalifah* which God has designated on him would be meaningful when man admitted himself to become the servant of God. This means that human beings have certain God-granted rights and duties of exercise of power. Thus, the *Shari'ah* constitutes the basis of rights for it sets limits within which the conduct of behavior of individuals and society are defined.<sup>29</sup> Since the *Shari'ah* is the *raison d'être* of the Islamic state then it is the state's duty to enhance human dignity and elevate conditions that hinder individuals in their efforts to achieve happiness. Furthermore, the implementation of the *Shari'ah* implies *inter alia* that the state must create an environment in the territory under its jurisdiction that is conducive to the socio-religious needs of the people.<sup>30</sup>

The content of human rights in Islam is wide enough covering all departments of life; consequently the number of such rights is fairly large.<sup>31</sup> Human rights of Islam are therefore not only the rights of the individual but also the rights of parents, of children, of husband and wife, of relatives, neighbors, teachers and their pupils, the guest and the host, orphans, servants, friends and the poor and also of the rights of the state and society.<sup>32</sup> Thus, the concept of human rights in Islam covers a wide range of rights more comprehensive than what have been conventionally classified as political, civil, economic and social rights.<sup>33</sup> In contradiction to modern Western perspective of human rights, the belief in the sovereignty of God implies in effect that human beings are not entitled to claim to have absolute power and

---

<sup>26</sup> Mohamed Fathi Othman, "Modern Democracy and the Concept of Shura," in Syed Othman al-Habshi and Nik Mustapha Nik Hassan, eds., *Islam and Tolerance*, (Kuala Lumpur: IKIM, 1994), p., 100.

<sup>27</sup> *Ibid.*

<sup>28</sup> M.C. Bassiouni, "Islam: Concept of Law and World *Habeas Corpus*," *Rutgers-Camden Law Journal*, Vol. 1 (1969), p. 180

<sup>29</sup> Abdul Aziz said, "Persuing.....," p. 11; Fathi al-Durayni, al-Haqq.....", p. 71; Jamal al-Din Muhammad Mahmud, *Qadiyyat al-'Awdah 'Ila al-Islam fi al-Dawlah wa al-Mujtama'*, (Cairo: Cairo: Dar al-Nahdah al-'Arabiyyah, n.d.), p. 110

<sup>30</sup> *Ibid.*, pp. 11-12.

<sup>31</sup> Syed Muzaffaruddin Nadvi, *Human Rights and Obligations* (Lahore: Sh. Muhammad Ashraf, n.d.), pp. 4-5.

<sup>32</sup> Ahmad Ibrahim, "Human Rights in Islam: Judicial Safeguards," paper presented at Regional Conference on Human Rights, organized by IKD and National University of Malaysia, Petaling Jaya, July 27-29, 1989, p. 1; see also Sayed Hassan Amin, *Islamic Law*...., p. 30

<sup>33</sup> Ahmad hafiz Najm, *Huquq al-Insan byna al-Qur'an wa al-I'lan* (Cairo: Dar al-Fikr al-'Arabi, n.d.), pp. 103-141.

rights in the name of natural rights or whatever since these qualities is exclusively belong to God. Thus, God is the source and the Legislator of the bill of human rights of Islam which is crystallized in the Qur'an, the revelation came to the Prophet Muhammad *Sallallahu 'Alaibi Wasallam*. Here, the Islamic bill of human rights, according to al-Faruqi; " is a system of exiological principles or values. The deontological applications of them, or the duties and ought's deriving there from, have been elaborated in the *Shari'ah*. Hence, Islam's human rights are not merely ideas of administrative policy which cannot be invoked in legal processes. In fact, they have full force of established law".<sup>34</sup>

It can be categorically stated that the recognition of human rights and the protection of the interests of mankind are in complete harmony with *Shari'ah*. Indeed the divine and eternal principles of the *Shari'ah* are directly aimed at protection and promotion of human rights. Philosophically the issue of human rights in Islam can be perceived from two perspectives. Firstly, it can be conceived from a positive dimension of human rights to which man is the Vicegerent of God. This implies that man is free, being his own master, capable of ruling himself and entitled to freedom and choice. Secondly, there may be a negative interpretation to which man is required to accomplish the will of God on this worldly life. As such, man is the slave of the will of God.<sup>35</sup> *Ipsa facto*, what needs to be stressed in Islam is that man possesses not only the rights but also the duties, namely the duties to God and the duties to mankind. Human rights are complementary to the duties which a person owes to God and to other human beings.<sup>36</sup>

#### **a) Antecedent of Islamic Bill of Rights**

It needs to emphasize here that the Islamic conception of human rights is concerned with those rights which are to be considered as gifts of God in accordance with Islamic faith. They are contained in the *Qur'an* and explained and exemplified in the *Sunnah* of the Prophet. The law of human rights is based on revelation and it therefore is not subject to repeal and amendment but only to interpretation and application. Advocates of human rights in Islam conventionally trace the antecedents of bill of human rights to the declaration made by the Prophet. The first pledge of 'Aqabah may be considered, in one aspect, as indirectly regulating certain aspects of personal and civil rights that must be protected and mutually respected. It stipulated in the first place the principle of the oneness of God on which other rights are established. It was followed, thereafter, by the principles of inviolability of the right to property, inviolability of the honor, inviolability of the blood, inviolability of the right to privacy or personal security and ensuring the prevalence of social confidence or mutual trust among individuals.<sup>37</sup>

It is worth mentioning here that the essence and aims of the promulgation of the Constitution of Madinah by the Prophet were primarily to protect human

---

<sup>34</sup> Isma'il R al-Faruqi, "Islam and Human Rights," *The Islamic Quarterly*, Vol.27.,No.1 ( 1983 ),p.12.

<sup>35</sup> Sayed Hassan Amin, *Islamic Law* . . .,pp.30-31.

<sup>36</sup> Ahmad Ibrahim, " Human Rights in Islam . . .," p.1.

<sup>37</sup> Ibn Hisham, *Sirah al-Nabi*, Vol.2.,p.42. The pledge was made to the Prophet by twelve men representatives from Madinah at a place named "Aqabah".

dignity as well as human rights. The constitution set a remarkable antecedent for an Islamic constitution which its provisions incorporated the guarantee and the protection of fundamental human rights to all its citizens, irrespective of one's caste, creed, color or social status. In fact, the Constitution of Madinah has made provisions which guaranteed protection of the rights to personal liberty including the rights to safety of life, inviolability of the dignity, the rights to property and privacy, and the right to freedom of mobility. Furthermore, the rights to freedom of belief, equality, justice, equity, fraternity, freedom of expression, the right to naturalization was firmly guaranteed and strictly protected.

For the Christians of Najran, the Prophet had granted them specific bill of rights which represented a landmark for the Prophet's adherence to the principles of tolerance. Upon their fulfillment of the terms of the treaty, the safety of their life, the right to practice their religion, and the right to their property were protected.<sup>38</sup>

The most important declaration of the bill of rights in Islam which can be referred to as the Magna Carta of Islam<sup>39</sup> was the sermon which the Prophet had delivered during the Farewell Pilgrimage in the 10 of Hijrah. In this occasion the Prophet laid down the following fundamental rights: life, property and honor, the three elementary rights of every man that have to be respected. Deposits and Just debts are to be returned and repaid. The pre-Islamic custom of usury is abolished and the amounts actually due on this basis cannot be recovered, not even those of 'Abbas, the uncle of the Prophet. The pre-Islamic bloodshed is to be forgiven and forgotten: the Prophet himself disclaims the blood of his cousin. All pre-Islamic dignities are naught except the offices of superintending the shrine of Ka'abah and providing drinking water to the pilgrims. There will be retaliation for all murders; in cases of homicide the blood-money is fined at 100 camels. The leap-year system is abolished and the purely lunar calendar is introduced consisting of twelve months. Husband and wife have rights upon each other. It is the right of the husband that his wife remains chaste and does not admit into the house people disliked by her husband. And it is the right of the wife that her husband feed and clothes her properly. Women are trust (*amanah*): they ought to be treated in a befitting manner, with fear of God. All Muslims are brethren: no body should take others' property without the owner's consent, nor should they quarrel with each other. The Messenger of God leaves two things with you, the *Qur'an* and his *Sunnah*, so long as you follow it, your will never err. The Lord of all men is one, and the father of all men is also one. You are from Adam, and Adam was made of clay. The most honored of you with God is the one who fears Him most, otherwise no Arab has pre-eminence over a non-Arab. God has fixed the shares of the inheritors of the deceased person, and will is not valid if it gives more than a third of the property to others than these. An illegitimate child belongs to his

---

<sup>38</sup> For full text of the treaty, see, Abu Hasan Ahmad b. Jabir al-Baladhuri, *Futuh al-Buldan (The origins of the Islamic State)*, Eng. Tran. by Philip Khuri Hitti, Vol.1 (New York: AMS Press, Inc., 1968), pp.100-101.

<sup>39</sup> Muhammad Hamidullah, "The Government of the Holy Prophet: Its Establishment and Administration," *The Islamic Review*, Vol., 30, N0.7 (1942), p.,244; Mohammad Ahmad Hasan Khan, "Islamic Concept of Human Rights," in S.M.Haider, ed., *Islamic Concept of Human Rights* (Lahore: The Book House, 1978), p.95.

mother, and the adulterer will get nothing except stones. It is strictly forbidden to make a false claim in blood and in client-master relations.<sup>40</sup>

Thus, it may be argued that this bill of human rights was issued not merely as pious wishes for the future, but evidently the Prophet ( *Sallallabu 'Alaihi Wasallam* <sup>41</sup>) declared it after he had successfully established everything in practice. It was at 'Arafah of this Farewell Pilgrimage where the declaration of bill of rights took place which followed with the following verse: "*This day have I perfected your religion for you, and have chosen you al-Islam as religion.*"( The Qur'an 5:3 ).

### **b).Some Legal Aspects of Human Rights**

The principles which provide the protection of human rights constitute an integral part of the *Shari'ah* law. The rulings ( *abkam* ) related to the conduct of human behavior include the provisions of fundamental rights.<sup>42</sup> This means that the *Qur'an* and the *Sunnah* have provided the recognition of human rights and other principles for the welfare and protection of interests of mankind. All positive and negative injunctions which are frequently expressed in the *Qur'an* revolve around certain aspects of human rights philosophy.<sup>43</sup> As it is held that the *Qur'an* entrusts man with dual responsibilities to discharge: his duty owed to God ( *buquq al-Allah* ) and the other owed to his fellow human beings ( *buquq al-'Ibad* or *buquq al-nas* ). Thus, human rights may be classified into two broad categories, namely private and public rights. Private rights are those that concern the individual as a member of the community such as the rights to personal safety, respect of personal reputation, equality, justice and brotherhood. Whereas public rights are those concern the community at large.<sup>44</sup> This classification of rights, however, should not be conceived as being exclusive from each other since all of them are interwoven and ultimately relate to God.<sup>45</sup>

It is generally admitted that there are no categorical pronouncements in the *Qur'an* and the *Sunnah* which would identify fundamental rights as a separate category. However, for identification of the fundamental rights in Islam, Hashim Kamali suggests three methods to be followed. Firstly, it can be made by referring to the *Qur'an* itself. Certain right which founded on clear *Qur'anic* injunctions, such as life , property, privacy, movement, justice, personal dignity, honor, equality before the law, and the right of parents over children might be classified

---

<sup>40</sup> Muhammad Hamidullah, "Administration of Justice....",p.171. For the full text of the sermon, see, for instance, his *Majmu'at al-Watha'iq al-Siyasiyyah*....pp.360-362: Ibn Hisham, *Sirat al-Nabi*, vol.4.,pp.275-277.

<sup>41</sup> The Qur'an, 5:3; see also, Jala al-Din al-Sayuti, *al-'Itqan fi 'Ulum al-Qur'an*, Vol.1 ( Cairo: Dar al-Fikr,n.d.(,p.29.

<sup>42</sup> Farooq Hassan, *The Concept of State and Law in Islam* ( Lanham: University Press of America, 1981),p.116.

<sup>43</sup> *Ibid.*,p.115.

<sup>44</sup> Majid Khadduri, "Human Rights in Islam," *The Annals of the American Academy of Political and Social Science*, Vol.243( 1946 (,pp.77-78.

<sup>45</sup> Muhammad Diya' al-Din al-Ris, *al-Nazariyyat al-Siyasiyyah al-Islamiyyah* ( Cairo: dar al-Ma'arif,1967), p.261.

as fundamental legal rights.<sup>46</sup> The *Qur'an* also expounds certain legal norms and principles that give the *Shari'ah* law its distinctive identity and contributed a remarkable influence on its rules and doctrines. Thus, the *Qur'anic* principles of *Hisbah*, the promotion of good and prevention of evil, of trust ( *amanah* ) , cooperation in good work ( *ta'awun* ) and the like, may well provide textual authority for the identification of certain fundamental rights whether concerning an individual, the community, the environment, and whether it be within or beyond a nation's territorial boundaries. In numerous instances, the *Qur'an* is also expressive of such principles as "removal of hardship"( *raf' al-haraj* ) which is in turn substantiated by the *Sunnah*. Furthermore the *Sunnah* elaborates on a variety of other themes in almost every legal aspects of *Shari'ah* law. These, however, may or may not directly embody a fundamental right, but they may well provide authority for the identification of a particular right as basic or fundamental. In fact, the *Qur'an* and the *Sunnah* provide authority on all the five essential values of life( *al-nafs*), religion ( *al-Din* ), intellect ( *'aql* ), property ( *al-mal* ) and progeny or lineage ( *al-nasl* ). Many of these norms and principles have been identified and articulated by *fiqh* scholars in the form legal maxims ( *qawa'id al-fiqhiyyah* ) which express the objectives of the Shari'ah ( *maqasid al-shari'ah* ) on variety of themes . These maxims could be used as guidelines for an Islamic theory of fundamental rights.<sup>47</sup>

Another method which can be utilized for classification of fundamental rights, is based on consideration of public interest ( *maslahah*, pl.*masalih* ). The *fiqh* scholars have classified *maslahah* into three categories, namely necessities( *daruriyyat* ), the needs ( *hajiyyat* ) and the beautifying or embellishments ( *tahsiniiyyat* ). The essential interests or the necessities are defined as essential interests of life and disregarded this lead to the collapse of normal order in society. According to the Majority of *fiqh* scholars, there are five essential values to be preserved, namely life, religion, intellect, property and lineage. These interests must be preserved and protected at all costs, and furthermore, to promote and develop them is considered the basic duties of an Islamic government.

Next in order of importance comes the complementary interest that is the beautifying or embellishments ( *tahsiniiyyat* ).<sup>48</sup> All the three categories are interrelated and open to judgment, and they vary in reference to the circumstances in which they are evaluated. The methods of protecting the above five essential values ( *al-daruriyyat al-khamsah* ) may differ according to circumstances, but the basic structure of these values is not changeable.<sup>49</sup> This classification of values can be utilized for determination some of the fundamental rights and liberties in Islam.

Human dignity constitutes the foundation of all human rights in Islamic legal perspective. Thus, the purpose of the decree of human rights by the *Shari'ah*

---

<sup>46</sup> Muhammad Hashim Kamali, *Freedom of Expression in Islam* ( Kuala Lumpur: Berita Publishing Sdn.Bhd,1994 ), p.21.

<sup>47</sup> *Ibid.*

<sup>48</sup> Abu Ishak al-Shatibi, *al-Muwafaqat fi 'Usul al-Shari'ah*,ed. 'Abd Allah Darraz, vol.2 ( Cairo: al-Maktabah al-Tijarah al-Kubra, 1975 ).pp.8-13.

<sup>49</sup> Muhammad Hashim Kamali, *Freedom of Expression...*,p.23.

is mainly to confer the dignity and honor of mankind and to eliminate oppression and injustice.<sup>50</sup> The foremost among the fundamental rights of man that are granted by Islam is the right to life and its safety. Thus, the right to life constitutes a basic human right in Islamic legal (*Shari'ah*) perspective. As an extension of the right to life and its security, the *Shari'ah* law also recognizes the right to personal freedom which includes the freedom of religion, conscience, expression, movement, economic, education and etc. The freedom given to man is mainly related to the establishment of right and justice and admittedly that in the absence of freedom, the life of man would become meaningless. As for the notion of justice, the *Shari'ah* law binds a Muslim not only to God, but also to his fellow men including non-Muslims. The following discussion will be focused on the right to life and its security, the right to personal freedom and liberty equity and justice which constitute some of the basic fundamental rights granted to man by the *Shari'ah* with specific reference to some of the *Qur'anic* provisions.

### **D) Right to Life and its Safety**

In *Shari'ah* life is considered to be a gift of God, therewith, it is sacred, and the protection of life constitutes an expression of glorification of the Giver of life. Hence, the right to life is regarded as a fundamental core of rights, and the preservation of the safety of life has become a basic object of the whole Islamic legal systems such as the laws of transactions (*al-mu'amalat*), *budud* and punishment (*al-jinayat*), administration of justice (*al-aqdiyah*) and legal proceedings (*al-da'wa*).<sup>51</sup> Przetacznik argues that the right to life is considered to be a basic human right because only through it, a human being can enjoy other rights. In fact the enjoyment of the right to life constitutes a necessary consideration of the enjoyment of all other human rights, for a person who is deprived of his right to life is automatically also deprived of all other form human rights.<sup>52</sup>

As the basic source of *Shari'ah* law, the *Qur'an* stipulates that, “*And slay not the life which Allah hath forbidden save with right*”.<sup>53</sup> “*And kill not one another*”.<sup>54</sup> In another place the *Qur'an* stipulates: “*For that cause We decreed for the Children of Israel that whosoever killeth a human being for other than manslaughter or corruption in the earth, it shall be as if he had killed all mankind, and whoso saveth the life of one, it shall be as if he had saved the life of all mankind*”.<sup>55</sup> These verses explicitly provide the principles that life is made sacred by God, hence, it is forbidden to take one's life unless on the grounds specified by the *Shari'ah*, such as the punishment of retaliation against intentional murder, apostasy, highway robbery, warfare, and so on and so forth. Therefore, the

<sup>50</sup> Islamic Council of Europe, “Universal Islamic declaration of Human Rights,” *The Muslim World League Journal*, Vol.9.,No.2.( 1981), p.25.

<sup>51</sup> ‘Abd al-Salam al-Tirmanini, *Huquq al-Insan fi Nazar al-Shari'ah al-Islamiyyah* ( Beirut: Dar al-Kitab al-Jadid, 1976 ),p.22.

<sup>52</sup> Richard B.Lillich, “ Civil Rights,” in Theodore Meron, ed., *Human Rights in International Law: Legal and Policy Issues*, Vol.1 ( Oxford: Clarendon Press, 1984 ), p.120.

<sup>53</sup> *The Qur'an*,17 :33.

<sup>54</sup> *Ibid.*,4: 29.

<sup>55</sup> *Ibid.*, 5:32.

*Shari'ah* law forbids against willful murder, suicide ( *intibar* ), consent for murder ( *al-rida bi al-qatl* ), duel ( *al-mubarazab* ), abortion and infanticide<sup>56</sup> Since the life is a gift from Allah *Subhanahu Wata'ala* , He alone has the absolute power over the fate of human beings. Because the idea of the immortality of the soul, based on man's divine origin, to destroy one's life is "like killing all humanity".

The sacredness of life is further substantiated by the Prophet as follows:" *The blood ( life ) of a Muslim who utters 'there is no God save Allah and I am the Messenger of Allah is not lawful except in three cases: a married person who commits adultery, life for life (murder), and one who has forsaken his religion and separated himself from his community'*".<sup>57</sup> In another place the Prophet has said : " *It is forbidden for every Muslim to ( transgress ) another Muslim, his blood, his property and his honour*"<sup>58</sup> It is for the same reason that suicide is forbidden, and aggression is repeatedly denounced in the Qur'an. Fighting, which is only means of Jihad, is permitted only in self-defense.<sup>59</sup> The right to protect the life is so fundamental, thus the Prophet in his sermon during the Farewell Pilgrimage said that: " *Verily your blood and your property are as sacred and inviolable as the sacredness of this day.*"<sup>60</sup>

In Islamic legal ( *Shari'ah* ) perspective, no individual has any right by himself to take human life in retaliation or for causing mischief in this worldly life. The persecution of punishment for such a case and the like should be decided only by a proper and competent court of law.<sup>61</sup> This implies that the protection of life and its safety is a state duty, and in the case of transgression against one's life and its safety, the decision of punishment has to go through the due process of law. Thus, the state particularly the judicial organ including those who are responsible for administration of justice such as judges, arbitrators, mediators or councilors must scrupulously abide the principles of justice since the right to justice and fair trial constitute the basic criteria of human rights.<sup>62</sup>

The *Shari'ah* law which deduced its ruling from the *Qur'an* has clearly stipulated that death penalty would be executed only when a person kills another though blood-money may be paid to the family of the deceased.<sup>63</sup> According to al-Kasani, the punishment of retaliation would be persecuted indiscriminately, regardless of equivalence of the murdered to the murderer in terms of social position, sex, age and religious affiliation. Thus, the death penalty would be

<sup>56</sup> 'Abd al-Qadir 'Audah, *al-Tashri' al-Jina'i al-Islami muqaran bi al-Qanun al-Wad'i*, Vol.1,9<sup>th</sup>.ed..(Beirut: Mu'assasat al-Ria'asah,1987),pp.441-448.

<sup>57</sup> Al-Bukhari, *Sahih* ....Vol.4, "Kitab al-Diyat," p.188

<sup>58</sup> Ibn Majah, *Sunan*, Vol.2,"Bab Hurmah Damm al-Mu'min wa Malih,"p.1298.

<sup>59</sup> The Qur'an , 22:39-40; 2:217, 190-194. The idea of *Jihad* has been misconstrued in the West, as a result of misconceptions carried over from the Christian attitudes towards Muslims in the Middle Ages. Literally, Jihad means striving, and is implicitly understood as striving in the way of Allah. It is a duty incumbent on all Muslims, men and women in time of peace and war. It includes any activity carried out with the aim of furthering the good life: teaching, learning, upholding justice,etc. It also includes fighting in self-defense.

<sup>60</sup> Muslim, *Sahih*, Vol.1, "Bab Hujjat al-Nabi ( s. 'a.w.s. ),"p.511.

<sup>61</sup> Abu A'la Mawdudi, *Human Rights in Islam* ( London: The Islamic Foundation, 1976 ),p.17

<sup>62</sup> Tahir Mahmood, " The Islamic Law on human Rights," *Islamic and Comparative Law Quarterly*,Vol.4.,Nos,1-2(1984),p.39.

<sup>63</sup> *The Qur'an*, 2:178

persecuted against the learned for killing the ignorant, the noble for killing the layman, the sane in mind for killing the mad, the adult for killing the minor, the male for killing the female, the freeman for killing the slave, and the Muslim for killing the *dhimmi* who pays the *jizyah*.<sup>64</sup>

In Islamic system of judicial procedure there are no “secret trials” or proceedings in camera since all trials have to be in the open court. Thus the accused must be given hearing and chance of defense and no punishment or award can be given except on the basis of the proven facts. It was on the purpose of protecting this basic right, the principles of “the presumption of innocence” is adopted in the Islamic legal procedure. The *Qur’an* and the *Sunnah* of the Prophet prescribed a number of principles and guidelines upon which Islamic judicial norms are founded. It is clearly prescribed that every individual would be rewarded or punished for what he or she has done. In the same manner, the right to protest against tyranny and injustice is provided to all human beings.<sup>65</sup> Obviously the *Qur’an* endorses the basic rights of man to safety and security of life in a comprehensive manner. That is why the *Qur’anic* injunctions severely condemn murder, robbery and physical aggression against the safety of life of others as well as slander and backbiting, for in Islam, a person’s reputation is as much a part of his being a corporeal body.

The protection of right to life and its security as envisaged by the *Shari’ah* also implies the preservation of right of every human being to have a decent living. Perhaps, it is among the most essential rights after the right to life itself. Hence, every individual is essentially entitled to the rights to the minimal material conditions that will sustain the life, namely food, clothing, and shelter.<sup>66</sup> This includes man’s right to live where he wants<sup>67</sup> and as he likes within the limits set up by the rights of others and provided the social ethics of the community are respected. In addition it also includes the right to choose his work or function in society, and to marry whom he likes; no social or racial limitations are permitted, although intermarriage is limited to the people of the Books. The right of the individual to the privacy of their homes is strictly protected against invasion. In fact, the privacy starts from home is stated in the *Qur’an*: “*it is not righteousness that ye go to houses by the backs thereof, but the righteous man is he who warded off (evil), So go to houses by the gates thereof, and observe your duty to Allah, that ye may be successful*”<sup>68</sup> Thus, the *Qur’an* ordains that permission to enter the house must be acquired first.<sup>69</sup>

## **ii) The Right to Personal freedom and Safety.**

---

<sup>64</sup> ‘Ala’ al-Din Abi Bakr b.Mas’ud al-Kasani, *Bada’i’ al-Sana’i’ fi Tartib al-Shara’i’*, Vol.10.,( Cairo: Matba’ah al-Imam. N.d.),pp.4624-4625.

<sup>65</sup> *The Qur’an*, 6:164; 35:18. See al-Tirmidhi, *Sunan*, Vol.2,”Abwab al-Hudud.”pp.438-439; Vol.3,”Abwab al-Fitan,”pp.318-319.

<sup>66</sup> *The Qur’an*,2:184;6:89;14:80-81.

<sup>67</sup> *The Qur’an*,29:56.

<sup>68</sup> *The Qur’an*,2:189.

<sup>69</sup> *The Qur’an*,18:27.

An extension of the right to life and security is the right to personal freedom and safety. This is the first right that all men possess as equals. Freedom is the inborn right of every man, slavery being an abnormal situation, to be gradually wiped out. The rules of the *Shari'ah* provide for the freedom of religion, conscience, expression, speech, avocation, movement, education, and etc. Hence, the scope of freedom as recognized by the *Shari'ah* is much wider than what is commonly known. With regard to the freedom of religion as a matter of personal faith, any limitation on the exercise of the basic right of individual to worship as he please constitutes a transgression upon his basic natural rights for it touches what is specifically human in man and his right to self-fulfillment. Islam categorically established the principle of freedom of worship in the verse: "there is no compulsion in religion"<sup>70</sup> Thus, non-Muslims are given the right to practice the teachings of their religions and they cannot be forced to embrace Islam.

The rule of the *Shari'ah* regulates a comprehensive protection for liberty of the body and mind as well. According to al-Qurashi, the liberty of mind in *Shari'ah* terminology means the freedom of conscience and belief which implies also the freedom of speech, of press, of debate and discussion which lead to the freedom to criticize, to question, to challenge, and to express one's convictions in a peaceful atmosphere without fear of reprisal by governmental agencies or otherwise.<sup>71</sup> It should be mentioned that the right to freedom which is implicit in the *Qur'an* is that the right to be free from subordination to other than Allah. *Ipsa facto*, Islam may be referred to as the religion of great liberation, since man as Allah's slave, owes homage and obedience to Him alone.<sup>72</sup> In addition, freedom as it is conceived in the light of the *Shari'ah* is not merely for the sake of freedom in itself; it is a means for promoting social stability and eradicating corruption in the society, i.e., freedom with responsibility.

The basis for the right to freedom of expression may be referred to the verses: "Ye are the best community that hath been raised up for mankind. Ye enjoin right conduct and forbid indecency; and ye believe in Allah,"<sup>73</sup> Therefore, expressing one's opinion, particularly in matters concerning the interests of the community, is the right or rather a duty of every Muslim. The prime concern of the right to freedom of expression is to help redress errors and indicate the right path. Thus, the teachings of Islam make the distinction between right and wrong, proper and improper, addressing the Muslims to hold the duty to promote all that is good and eliminate all that is bad and evil. Related to freedom of expression is the right to freedom of association and assembly which is clearly prescribed in the *Qur'an*.<sup>74</sup>

Furthermore, the freedom given to man is related to establishment of right and justice, and admittedly that in the absence of freedom, the life of man would become less meaningful. The *Qur'an* makes it the duty of individual to speak the truth without any fear. However, this freedom is given through limitation set up in

---

<sup>70</sup> *The Qur'an*,3:256; 18:30; 27:92.

<sup>71</sup> Baqir Sharif al-Qurashi, *al-Nizam al-Siyasi fi al-Islam*(Beirut:Dar al-Ta'aruf li al-Matbu'at, 1982),pp.188-189 ).

<sup>72</sup> *The Qur'an*,3:64.

<sup>73</sup> *The Qur'an*,3:110;22:41.

<sup>74</sup> *The Qur'an*,3:104;26:38.

public interest, and anything which disturbs the public in general is not permitted. The freedom of speech must observe the constitutional means for expression.

### iii) Liberty, Equality and Justice.

The right to liberty is inseparable from the right to life since it is necessary for the preservation of life itself. The term liberty rather than freedom is used here adversely, for justice presupposed the obligation to obey the law and therefore constitutes a limitation on man's natural philosophical freedom.<sup>75</sup> If the premise is accepted that the seeds of natural law are embedded in man's nature, the idea of unlimited human freedom, even at the philosophical level, is non-existent.<sup>76</sup> As regards the *Shari'ah* law the right to liberty of a person means that no one would be arrested or imprisoned without showing cause for that and after going through due process of law. The *Sharia'h* law is claimed to be moral and ethical in spirit, and the expression of this conclusion is found in the *Qur'anic* principles of the Divine limits ( *Hudud al-Allah* ). The Divine limits are precisely placed on freedom to secure a scheme or ordered liberty and to prevent arbitrary and despotic limitations on human freedom. Hence, the personal rights of individuals to life, liberty and property shall not be abridged without due process of law and that the rulers shall be subjected to the rule of law which shall prevent their tyranny.<sup>77</sup>

The application of the principles of liberty and equality means treating individuals a simple collection of equal and independent units. Islam seeks to achieve a balance between the liberty of the individual and equality of all. It could be said that the idea of equality is considered essential for the achievement of liberty in Islamic perspective. The equality of all men is stressed both in the *Qur'an* and the *Sunnah*, and has always been recognized as an undeniable

---

<sup>75</sup> Although twentieth century philosophers have attempted to distinguish between the two concepts, there has not yet been general agreement on the meaning of either concept. Whatever a distinction has been made, the results have often been contradictory. Some view liberty connotes more specifically absence of restraint and freedom, more specifically existence of opportunity, Henry Pratt Fairchild, *The Anatomy of Freedom* ( New York: Philosophical Library, 1957),p.4. Whereas others defined liberty in a more positive condition, involving a measure of personal choice which is less inherent in freedom. It is a condition of the mind rather than the body. It implies a form of restraint See Felix Molley, *Freedom and Federalism* (Chicago: H.Regner,1959 ),pp.228-229; Shwikar Ibrahim Elwan, *Constitutional Democracy and Islam: A Comparative Study* ( Unpublished Ph.D Dissertation, Emory University, 1971),pp.69-70.

<sup>76</sup> This is related to the idea of absolute authority that has been accepted in monotheistic religions, namely Judaism, Christianity and Islam. Sir Iasiah Berlin points out that Jewish, Christian and Muslim belief in an absolute authority of a higher law governing man's action, precludes a notion of freedom whereby men would live as they please, Berlin, Sir Iasiah, *The Concept of Liberty*,( Oxford: Clarendon Press, 1958 ),p.3

<sup>77</sup> M.Sherif Bassioni,"Islam: Concept of Law and World Habeas Corpus," *Ruggers-Camdaen Law Journal*,vol. 1( 1969 ).

principle in the *Shari'ah* law. All men are equal before the law regardless of color, sex, or nationality.<sup>78</sup>

It has been generally accepted that Islam recognizes that men differ in natural intelligence, talent, energy and competence. These variations are necessary for human progress and civilization.<sup>79</sup> They differ in their ability and natural characteristics. The only criteria for distinction among them are virtue and knowledge. The discussion of equality in the Shania's law raises two issues. One relates to the fact that the Qur'an prescribed some rulings regarding slavery. The other relates to the status of women.

With regard to slavery, it must be noted that Islamic considers it as an abnormal condition and thus the *Shari'ah* law provided for its gradual elimination by all means. Concerning the issue of equality of women, the Qur'an clearly prescribed that women have the same personal responsibilities and rights as men<sup>80</sup>, but in a lesser degree, as men have "a standing above them" because of the greater responsibility that they bear. In brief, it could be said that in Islam, women are equally entitled to enjoy all the rights: civil, political, social, cultural and economic except in certain areas whereby the differences are specified by *the Shari'ah* such as the right to initiate divorce proceedings, the *wali* (guardianship) in marriage contract, to take leadership in spiritual matters and religious office such as the head of state and the imam of congregational prayer in the presence of man, and the share of inheritance in which male has double of female's. In this case it would be possible to say that the Islamic teachings have granted to women the full measure of freedom that is suitable to the constitutional elements of her creation and chastity.

It is the law of life that in any organized human society men need one another and should serve each other according to their special talents and ability. For those who can perform certain functions toward the realization of the common good should be enabled to perform such functions, and if they do, they expect to be rewarded. This legitimate claim constitutes the basis for an equitable recognition of a structure of social stratification based on merits.<sup>81</sup>

Hence, the concept of justice in the *Shari'ah* actually binds a Muslim not only to God, but also to his fellow men including to non-Muslims. This principle is applied not only to private matters but also in public transactions and in international relations. It is a sacred duty to administer justice without any fear or prejudice, and the history of Islam has many remarkable examples in the dispensation of justice. The principles of justice in the *Shari'ah* incorporate perfect observation of equality before law and equal protection thereof without any kind of discrimination whatsoever.<sup>82</sup>

---

<sup>78</sup> *The Qur'an*,4:1; 15:45; 26:106.

<sup>79</sup> *The Qur'an*, 6:165; 17:21.

<sup>80</sup> *The Qur'an*,4:32.

<sup>81</sup> *The Qur'an* 6:165.

<sup>82</sup> *The Qur'an*,4:58.

#### iv) The Right to Property

Related to privacy is the right to have private property which is another significant principle of human rights. It is stated clearly in the Qur'an which says: "and covet not the thing in which Allah hath made some of you excel others. Unto men a fortune from that which they have earned, and unto women a fortune from that which they have earned. And ask Allah of His bounty."<sup>83</sup> In order to protect the right to private ownership, the Shari'ah forbids as well as regulates severe punishment against the actions that violate the right to personal ownership such as theft, robbery, cheating, corruption, and usury. The sacredness of the right to private property is prescribed clearly in the *Shari'ah* with regards the laws of inheritance, bequest( *wasiyyah*), and contract of ownership ( *al-milkiyyah* ).

Property , however, is not an end in itself, but a means to a higher end which is the welfare of mankind. Therefore, the right of man to own property as the result of his work is limited not only by the right of other men, but also by the absolute right of each man to a minimum standard of living, even if he is incapable of earning it. The Qur'an speaks of the right of the poor in the property of the rich.<sup>84</sup> This does not include those who are poor put of laziness. Work is honored, no matter how lowly the job may be. It is more honorable for the able person to earn his living in this way that to live on charity. Therefore, the *Shari'ah* recognized all legitimate kinds of labor, whether manual, intellectual, and administrative and so on so forth.<sup>84</sup> In this connection , the Prophet said: " *Nobody has ever eaten a better meal than that which he has earned by working with his own hands. The Prophet of Allah, David ( 'Alaibisalatun Wassalam )* , used to eat from earnings of his manual labor."<sup>85</sup> Based on these divine injunctions, Islam sanctifies the right of worker to enjoy the fruit of his labor, and the possession of his wages. With regard to the right of work, reward and punishment for one's actions, Islam places man and woman on the same footing, and permits woman to undertake such legitimate jobs and works which are suited to the capability and appropriate to the nature of the individual.

#### 4. Feasibility of Islamic human Rights

In view of the Western philosophy of individualism in which modern human rights are developed some studies deny the existence of human rights as such in Islam.<sup>86</sup> Therefore, in order to establish human rights in Islam as individual rights, Hassan Tibi proposes, it is tantamount to introducing the concept of rights and to shift from the concept of duties. To achieve this, he suggests that drastic religious-cultural reforms are required. This implies to change the cosmological view in the cultural system of Islam and to reform the law.<sup>87</sup> This view, however, reflects a typical and conventional perception of the advocates of modern human rights who

---

<sup>83</sup> *The Qur'an*, 4:32.

<sup>84</sup> *The Qur'an*,9:103.

<sup>84</sup> *The Qur'an*, 27:39-41.

<sup>85</sup> al-Bukhari, *Sahih...*, Vol.2, "Bab Kasb al-rajul wa 'Amalih bi Yadih," p.6.

<sup>86</sup> Ann Elizabeth Mayer, *Islam and Human Rights Tradition and Politics*,(London:Pinter Publishers,Ltd. 1991).

<sup>87</sup> Bassam Tibi, "Islam and Individual Human Rights," *Universitas*, Vol.35,No.1( 1993),pp.22-25.

appear to believe that such rights set universal moral standard applicable to all cultures. Being a strict adherence to such a belief, lead them to be lack of tolerance towards the presence of different approaches to human rights, and perhaps, lack of balanced account of the contribution of Islam to the precept of human rights.

The proposal change the cosmological worldview of human rights in Islam to the liberal individualism in which modern human rights are rooted is not a simple issue. Islamic science of jurisprudence ( *usul al-fiqh* ) provides a clear distinction between the Rights of Allah and the Rights of man. The Rights of Allah as defined by postclassical jurists constitute as one that is for the benefit and interest of all human race without being exclusive to any particular individual. Whereas the rights of man are related to the interest of the individuals.<sup>88</sup> Thus, the distinction between the Rights of Allah and the rights of man can be relatively compared to the distinction between public law and private law though it does not reflect the same meaning. In the Shari'ah rights and duties are the subject matter of the *Shari'ah* rulings ( *al-ahkam* ). In this case the exercise of a right can be considered as the fulfillment of a duty. This means that the idea of human rights is inherent in the teachings of Islam but it takes different approach. In Islam, Weeramantry argues, the question is not how man asserts his rights against man but how man discharges his duties towards God. It is not preoccupied with the horizontal relationship between man and his fellow man but with the vertical relationship that subsists between each man and his Creator. If the vertical relationship is properly tended, all human rights problems fall automatically into place. Therefore, the concept of Islamic human rights deals primarily with God and man and is theocentric, and it emphasizes both the concept of duty and rights.

Based on the above discussion it can be asserted that the *Shari'ah* as the reflection of human nature, provides distinctive approach to human rights. Since Islam is the religion of *fitrah* , the stipulations of the provisions for the guarantee and protection of human rights constitute a natural outcome of constitutional government of Islam that its main feature in adherence to the principle of the rules of the *Shari'ah*.<sup>89</sup> While claiming the existence of distinctive conception of human rights for the Muslim, it does not imply total rejection of the so called "modern human rights" which are rooted in its source of human reason. The respect for the role of reason in Islam is well accepted and no need for a debate. However, the claim that the formulation of modern human rights standards is based on universal legal norms and ethical values and therefore, the whole world should adopt them literally and unconditionally, is a debatable question. In the Shari'ah the exercise of human rights and individual freedom is bound in a broad term of hukm which restrains human actions within certain limits, forbidding some acts and enjoining others, so as to make it beneficial as possible to the individual or society at large.

---

<sup>88</sup> Mohammad Tahir Haji Mohammad, *Rights and Duties in Shari'ah and Common Law*,( Kuala Lumpur: Ilmiah Publishers, 2003),p.69.

<sup>89</sup> C.G. Weeramantry, *Islamic Jurisprudence: An International Perspective* ( London: McMillan,1988),pp.116-117.

## 5. Conclusion

A perusal of Islamic teachings on human rights illustrates that the *Shari'ah's* principles provide the protection of human rights in a most comprehensive manner. Human rights as envisaged by Islam are not merely mundane, but they are rooted in the divine sources of the *Qur'an* and the *Sunnah* and, hence constituting an integral part of the religion. The *Shari'ah* provides a double protection of human rights. The rules of law apply not only for the prevention of injurious conduct towards others but they are directly related to internal conscience. It is not only an offence but it is considered to be a sin to injure and damage the rights of other individuals. This implies that the sphere of the operational principles of the *Shari'ah* include both temporal and spiritual dimensions. Therefore, the forms of remedy provided by the *Shari'ah* for the infringement of human rights are dual in nature: worldly that is to be conducted by the state machinery and the court, and the next world that is to be accountable in the Hereafter. Obviously the *Shari'ah* rulings are considered to be important instruments for the protection of human rights for the reason that the whole Islamic criminal justice system is designed towards protection of human rights that comprise individual rights and collective rights.

In order to preserve human dignity and hence to protect human rights, the *Shari'ah* provides the principles of punishment against the crimes of violation of private and public rights. The objectives of such punishment are to seek justice for the victims of crimes, to serve as the deterrent function to the public, i.e., to warn them not to commit crimes, to forbid them from imitating the criminal and to guarantee the safety for those who refrain themselves from committing crimes, and to serve as a means for the rehabilitation and reeducation of the criminal. An assertion can be made that by virtue of being human beings, the most superior creation of Allah, man enjoys the rights granted by the *Shari'ah* and the state is responsible for protecting them through the implementation of it. A substantial body of opinions seems to have agreed that there are such things as human rights in Islam. Islamic approach to human rights is theocentric which conceives the rights as the gift of God to man. Therefore, the ultimate possessor of all rights belongs to God. This is precisely in line with the foundation of Islamic faith which provides the belief in the unity of God. It is compatible with the supreme political tenet of Islam, namely adherence to the principle of Sovereignty of *Allah Subhanahu Wata'ala*. Hence, human beings are duty-bound to enjoy and exercise the rights within the limits prescribed by the *Shari'ah* law.

## References

- Abdul Aziz Said, "Precept and Practice of Human Rights in Islam", *Universal Human Rights*, Vol.1 (1979)
- ....., "Pursuing human Dignity", in his, (ed.), *Human Rights and World Order* ( New York: Praeger Publishers, 1978).
- Ala' al-Din Abi Bakr b.Mas'ud al-Kasani, *Bada'i' al-Sana'i' fi Tartib al-Shara'i'*,Vol.10.,( Cairo: Matba'ah al-Imam. n.d.).
- Abd al-Qadir 'Audah, *al-Tashri' al-Jina'i' al-Islami muqaran bi al-Qanun al-Wad'i*, Vol.1,9<sup>th</sup>.ed..(Beirut: Mu'assasat al-Ria'asah,1987).

Ahmad Ibrahim, "Human Rights in Islam: Judicial Safeguards," paper presented at *Regional Conference on Human Rights*, organized by IKD and National University of Malaysia, Petaling Jaya, July 27-29, 1989.

Admantia Pollis and Petter Schwab, 'Human Rights: A Western Construct with Limited Applicability,' in theirs, eds., *Human Rights: Cultural and Ideological Perspective* ( New York: Praeger Publishers, 1979 ).

Alison Dundes Renteln, " The Unanswered Challenge of Relativism and the Consequences for Human Rights," *Human Rights Quarterly*, Vol.7.,No.4 ( 1985).

A.K.Brohi, "Islam and Human Rights", in Altaf Gauhar,ed.. *The Challenge of Islam* ( London: Islamic Council of Europe, 1978 ).

Abu Ishak al-Shatibi, *al-Muwafaqat fi 'Usul al-Shari'ah*,ed. 'Abd Allah Darraz, vol.2 ( Cairo: al-Maktabah al-Tijarah al-Kubra, 1975 ).

Ahmad Hafiz Najm, *Huquq al-Insan byna al-Qur'an wa al-I'lan* ( Cairo: Dar al-Fikr al-'Arabi, n.d.).

Isma'il R al-Faruqi, " Islam and Human Rights," *The Islamic Quarterly*, Vol.27.,No.1 ( 1983 ).

Baqir Sharif al-Qurashi, *al-Nizam al-Siyasi fi al-Islam*,(Beirut:Dar al-Ta'aruf li al-Matbu'at, 1982).

Abu A'la Mawdudi, *Human Rights in Islam* ( London: The Islamic Foundation, 1976 ).

'Abd al-Salam al-Tirmanini, *Huquq al-Insan fi Nazar al-Shari'ah al-Islamiyyah* ( Beirut: Dar al-Kitab al-Jadid, 1976 ).

Abu Hasan Ahmad b.Jabir al-Baladhuri, *Futub al-Buldan ( The origins of the Islamic State )*,Eng.Tran. by Philip Khuri Hitti, Vol.1 ( New York: AMS Press, Inc.,1968 ).

Baqir Sharif al-Qurashi, *al-Nizam al-Siyasi fi al-Islam* ( Beirut: Dar al-Ta'aruf li al-Matbu'ah,1982).

Bassam Tibi, "Islam and Individual Human Rights," *Universitas*, Vol.35,No.1( 1993).

J.E.S. Fawcett, "The International Protection of Human Rights", in D.D Raphael,(ed.), *Political Theory and The Rights of Man* (London:MacMillan,1967).

C.G. Weeramantry, *Islamic Jurisprudence: An International Perspective* ( London: McMillan,1988 ).

Gaius Ezejiakor, *Protection of Human Rights Under Law*,(London: Butterworths,1964).

Maurice Cranston, *What Are Human Rights?* ( London: The Bodley Head, 1973).

James Dudley, " Human Rights Practices in The Arab States: the Modern Impact of Shari'ah Values", *Georgia Journal of International and Comparative Law*, Vol.12,No.1 (1981).

Ibn Malik, *Sharb Manar al-Anwar fi Usul al-Fiqh* ( Istanbul: al-Matba'ah al-Nafisah al-Uthmaniyyah, 1308H).

Jala al-Din al-Sayuti, *al-'Itqan fi 'Uhum al-Qur'an*, Vol.1 ( Cairo: Dar al-Fikr,n.d.).

Majd al-Din Muhammad b.Ya'qub al-Fayruuzabadi, *al-Qamus alMubit*, Vol.3 9 Cairo: Mu'assasat al-Halabi, n.d.).

Muhammad Diya' al-Din al-Ris, *al-Nazariyyat al-Siyasiyyah al-Islamiyyah* ( Cairo: dar al-Ma'arif,1967).

Jack Donnelly,"Human Rights and Human Dignity: An Analytic Critique of Non-western Conceptions of Human Rights," *The American Political Science Review*, Vol.76,No.2,(1982).

Jan Hjarpe, " The Contemporary Debate in the Muslim World on the definition of 'Human Rights' ", in Klaus Ferdinand and Mehdi Mozaffari, eds. *Islam: State and Society*,( London: Curzon Press, 1988).

Michael Curtis, *Comparative Government and Politics: An Introductory Essay in Political Science* ( New York: Harper and Row,1968).

Mohammad Tahir Haji Mohammad, *Rights and Duties in Shari'ah and Common Law*,Kuala Lumpur: Ilmiah Publishers, 2003).

Peter H. Merkl, *Modern Comparative Politics* ( Illinois: The Dryden Press, 1970 ).

Ivo D.Duchacek, *Rights & Liberties in the World Today: Constitutional Promise & Reality* (Santa Barbara: American Bibliographical Center –Clio Press, Inc.,1973).

Maurice Cranston, "Human Rights, Real and Supposed", in D.D. Raphael,ed., *Political Theory and the Rights of Man* ( London: MacMillan, 1967).

M.Sherif Bassioni,"Islam: Concept of Law and World Habeas Corpus," *Ruggers-Camdaen Law Journal*,vol. 1( 1969 ).

Ian Brownlie, ed., *Basic Documents on Human Rights* ( Oxford: Clarendon Press, 1971 ).

Rede David and John E.C.Brierley, *Major Legal Systems in the world Today: An Introduction to the Comparative Study of Law* ( London: Stevens & Sons, 1968 ).

Seyyed Hussein Nasr, *Islam and the Challenge of the 21<sup>st</sup> Century* ( Kuala Lumpur: Dewan Bahasa dan Pustaka,1993 ).

Mohamed Fathi Othman," Modern Democracy and the Concept of Shura," in Syed Othman al-Habshi and Nik Mustapha Nik Hassan,eds., *Islam and Tolerance*,( Kuala Lumpur: IKIM,1994 ).

M.C.Bassiouni,"Islam: Concept of Law and World *Hobes Corpus*," *Rutgers-Camden Law Journal*,Vol.1 (1969 )

Jamal al-Din Muhammad Mahmud, *Qadiyyat al-'Awdah 'Ila al-Islam fi al-Dawlah wa al-Mujtama'*(Cairo: Dar al-Nahdah al-'Arabiyyah, n.d.).

Syed Muzaffaruddin Nadvi, *Human Rights and Obligations* ( Lahore: Sh. Muhammad Ashraf, n.d.).

Muhammad Hamidullah, "The Government of the Holy Prophet: Its Establishment and Administration," *The Islamic Review*, Vol., 30,N0.7 (1942)

....., "Administration of Justice in Early Islam," *Islamic Culture*,Vol.11,No.2(1937).

Mohammad Ahmad Hasan Khan, "Islamic Concept of Human Rights," in S.M.Haider,ed., *Islamic Concept of Human Rights* ( Lahore: The Book House, 1978 ).

Jala al-Din al-Sayuti, *al-'Itqan fi 'Ulum al-Qur'an*, Vol.1 ( Cairo: dar al-Fikr,n.d.)

Farooq Hassan, *The Concept of State and Law in Islam* ( Lanham: University Press of America, 1981)

Majid Khadduri, "Human Rights in Islam," *The Annals of the American Academy of Political and Social Science*, Vol.243( 1946 ).

Muhammad Hashim Kamali,*Freedom of Expression in Islam* ( Kuala Lumpur: Berita Publishing Sdn.Bhd.,1994 ), p.21.

Islamic Council of Europe, "Universal Islamic Declaration of Human Rights," *The Muslim World League Journal*, Vol.9.,No.2.( 1981)

Richard B.Lillich, " Civil Rights," in Theodore Meron, ed., *Human Rights in International Law: Legal and Policy Issues*, Vol.1 ( Oxford: Clarendon Press, 1984 ).

Al-Bukhari, *Sahih* ....Vol.4, "Kitab al-Diyyat,"

Ibn Majah, *Sunan*, Vol.2.

Muslim, *Sahih*, Vol.1.

Tahir Mahmood,"The Islamic Law on human Rights," *Islamic and Comparative Law Quarterly*,Vol.4.,Nos,1-2(1984).

Al-Tirmidhi, *Sunan*,Vol.2,"Abwab al-Hudud."

M.I. Patrawi," Human Rights in Islamic Law and International Law: Comparison," *Islamic and Comparative Law Quarterly*, Vols. 10&11 ( 1990-1991).

Henry Pratt Fairchild, *The Anatomy of Freedom* ( New York: Philosophical Library, 1957).

Felix Molley, *Freedom and Federalism* (Chicago: H.Regner,1959 ).

Berlin, Sir Iasiah, *The Concept of Liberty*,( Oxford: Clarendom Press, 1958 ).

Shwikar Ibrahim Elwan, *Constitutional Democracy and Islam: A Comparative Study* ( Unpublished Ph.D Dissertation, Emory University, 1971),pp.69-70.

