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Criticism And Study Of Cairo Declaration Of Human Rights In Islam

Dr Husayn Mihrpur

The principles and contents of the Universal Declaration of Human Rights

The Universal Declaration of Human Rights is largely influenced by the principles set forth in the Declaration of Rights of Man and of Citizen of France. In this Declaration, much emphasis is laid on the inherent dignity of man and his fundamental freedoms without tracing their origins back to God or divine inspiration. If there is a mention of the Supreme Being in the Declaration of Rights of Man and of Citizen of France, there is no mention of His supreme name in the Universal Declaration of Human Rights.

Brazil suggested that instead of stating that everyone is endowed with the faculty of conscience and reason and should act towards one another in a spirit of brotherhood, it should be stated that God created everyone equal, endowing them with conscience and reason. However, the representatives of some other countries objected, declaring that there must be no mention of God or divine decree in the United Nations documents; therefore, the name of God was removed from the bill.1

Human rights in the Universal Declaration are not derived from divine decree but from the will of the General Assembly of United Nations based on the general interests. The formulators of the human rights seek to provide conditions for a standard social life at international level and respect for human rights is recognized as a necessary means to prohibit man from resorting to force to ward off pressure and tyranny. In the preamble of the Universal Declaration, it says, "Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law, ..."

From a philosophical point of view, the Universal Declaration of Human Rights is based upon the fact

that man is free in everything as long as it does not hurt others as described in the Declaration of Rights of Man and of Citizens of France. From a practical point of view, it is based on the fact that it aims to provide a suitable social life at international level, for in the course of the destructive World Wars I and II, the violation of these rights led to riots and revolutions which jeopardized the peace of international community. The Declaration has practical aims, having nothing to do with providing eternal bliss. The rights and freedoms set forth in the Universal Declaration are aimed at providing the international community with peace, and man with his inherent rights and to prevent riot or force.

The Declaration falls under three parts: in articles 1 to 21 of part one, political and civil rights are explained; the right to life, liberty, and the security of the person; freedom from slavery or involuntary servitude; freedom from torture and from cruel, inhuman, or degrading treatment or punishment; freedom from arbitrary arrest, detention, or exile; the right to a fair and public trial; freedom from interference in privacy and correspondence; freedom of movement and residence; the right to asylum from persecution; freedom of thought, conscience, and religion; freedom of opinion and expression; freedom of peaceful assembly and association; and the right to participate in government, directly or through free elections.

The important point is that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind due to race, sex, color, language, religion or political or other opinion, national or social origin, property, birth or other status. In other words, men and women have equal rights as to the choice of residence, nationality, spouse and the right to property.

Also, the atheists and the deists, the Muslims and the non Muslims, the God-worshipers and the idolaters and all people regardless of their religion or political opinion have equal rights as to the freedom of expression, occupation and participation in all governments ... and if some limitation is perforce fixed, it must be for all and sundry, but not for a certain religious group or sect.

The second part of the Declaration from article 22 to 27 is related to economic, social and cultural rights, described in the International Covenant on Economic, Social and Cultural Rights approved in 1966 by the United Nations General Assembly.

In part three, the Declaration deals with the order and the limitations of exercising these rights. Article 29 states that "The exercise of rights and freedoms is subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respects for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

Although the Declaration mentions many fundamental rights and freedoms, main rights such as the right to independence and development are not included therein. Besides, it is recognized as the accepted bill of concepts and principles shared by all in the hope that it shall one day turn into a universal culture.

At all events, the Universal Declaration found a special place, became the basis for many international bills, and brought forth many hopes. Rene Cassin, one of the formulators of the Bill, states, "The bill is

the most important document ever acquired by man. It has opened a new chapter in the history of man. The bill is the freedom of all the victims of tyranny. It defines the limits that every powerful State should take into account in relation to its subjects. Most importantly, the Declaration states that human rights should be protected and guaranteed by a legal regime."3

International Covenants on Human Rights

With the approval of the Universal Declaration of Human Rights in 1948, the General Assembly of the United Nations pleaded with the Commission on Human Rights to include a draft of the covenant on human rights in their instructions. After a long controversy, two covenants were concluded; the International Covenant on Political and Civil Rights and the International Covenant on Economic, Social and Cultural rights, both of which were approved by the General Assembly on 16 December 1966. In fact the content of part one of the International Covenant on Political and Civil Rights was included in part two of the International Covenant on Economic, Social, Cultural Rights with some revisions or additions such as the right to self–independence, the right to ruling system and the right to utilizing the natural resources.

The Covenant on Political and Civil Rights consists of a preamble, 53 articles, 27 of which primarily deal with rights, freedoms, and others with organizational issues. The Covenant on Economic, Social and Cultural Rights consists of 31 articles and the States that approved it should apply the principles set forth in the Covenants and give in a report every three years. 5 Iran approved these two Covenants in 1975 and should give in the report.

The Universal Declaration of Human Rights and the two Covenants are called the International Bill of Human Rights.

Human Rights From a Religious Perspective

It is no exaggeration in saying that the fundamental concepts of human rights such as the inherent dignity of man, his natural freedoms and equal rights before the law and non-discrimintion, find their origins in divine religions and prophets' words. Religion deals with the human person, his destiny corruption and correction regardless of the relationships he conducts in relation to others; it aims to increase the spiritual qualities of every individual in the society: it is not indifferent to the perverse behaviors or beliefs of others: it seeks man's eternal bliss with the help of monotheism, the observance of divine laws and religious duties and proper social conduct and observance of others' rights.

According to the school of human rights, if a person does not believe in God, and worships stone, wood, or any other thing and does any indecent act which does not hurt others is not blameworthy. However, from a religious perspective, such a person should not be left to himself, but be guided to the right path. From a religious view, the virtuous and the infidels are not looked upon equally although they are of one essence. According to the Holy Qur'an, those who cast off God's signs and follow Satan and their

caprice are perverts; they are likened to dogs and those who have eyes, but do not see the divine truths are likened to cattle but rather further astray.6

One of the main missions of the holy prophets was to guide people and purify their spirits. This of course does not mean that we should interfere in others' affairs and compel them to accept monotheism. At all events, religion has high regard for the private aspects of individuals' life.

The Social Aspect of Religious Vision

Another mission laid on divine prophets concerns the material and the social aspects of life, such mission being the best harbinger of justice, freedom, equal rights, indiscrimination, and divine teachings. In the Holy Qur'an the prophets are all envisaged as proponents of freedom of thought, upholders of justice and rights, and preventers of oppression and tyranny, and their adversaries depicted as selfish, illogical, and tyrannical rulers, proponents of discrimination and class privileges. Basically, idolatry which is so much reproved in divine religions, and particularly in Islam is largely due to the fact that idols are symbols of ignorance, blind prejudices, class privileges and tyranny. Concerning the appointment of prophets, the Holy Qur'an states,

"Indeed, We sent Our Messenger with clear signs, and We sent down with them the Book and the Balance so that men might uphold justice." (Surah al-Hadid, 57:25)

The Holy Qur'an recalls Pharaoh as one who extolled himself in the earth, divided its inhabitants into sects, and oppressed people:

"Now Pharaoh had exalted himself in the land and had divided its inhabitants into sects, abasing one party of them, slaughtering their sons and sparing their women." (Surah al-Qasas 28:4)

Moses is appointed by divine decree to eradicate tyranny and save the downtrodden people. In Surah of Ta Ha, God addresses Moses and Aaron,

"Go therefore, thou and thy brother, with My signs, and neglect not to remember me. Go to Pharaoh, for he has waxed insolent; yet, speak gently to him, that haply he may be mindful, or perchance fear." (Surah Surah Ta Ha 20:43–44)

The main mission of Jesus Christ was to combat the corruption of the rabbis who used religion as a means to fill their pockets, conceal the truth, and rule over people with deceit. In scolding them, the Holy Qur'an states.

"O believers, many of the rabbis and monks indeed consume the goods of the people in vanity and bar from God's way. Those who treasure up gold and silver, and do not expend them in the way of God –give them the good tidings of a painful chastisement." (Surah at-Tawbah, 9:34)

Although all religions, and Islamin particular, claim to be universal and tend to dominate all cultures, the main social aim of Islam is to establish justice, eradicate discrimination of any kind, and oppression against man. The aim was never to establish a chosen religious class.

"It is He who has sent His Messenger with the guidance and the religion of truth that he may uplift it above every religion, though the unbelievers be averse." (Surah at-Tawbah, 9:33)

"And He made the word of the unbelievers the lowest; and God's word is the uppermost; God is All-mighty, All-wise." (Surah at-Tawbah, 9:40)

In many of the Qur'anic verses, much emphasis is laid on upholding justice, speaking the truth, and administering justice even if it is to their loss.

"O believers, be you securers of justice, witnesses for God, let not detestation for a people move you not to be equitable: be equitable; that is nearer to god fearing." (Surah al-Ma'idah, 5:8)

"O believers, be you securers of justice, witnesses for God, even though it be against you or your parents and kinsmen, whether they may be rich or poor; God stands closest to either; then follow not caprice, so as to swerve; for if you twist or turn, God is aware of the things you do." (Surah an-Nisa, 4:135)

Although the religious government is guided by the prophet, imam or religious sages, the most democratic government is the one properly governed by religion in which people have freedom of choice, opinion, thought and ideas and participation in the government. The most striking characteristic mentioned by the Holy Qur'an for the Islamic Ummah (the Islamic community) distinguishing them from other communities is the act of bidding to goodness and forbidding the evil which allows people to bid the government to goodness or forbidding it the evil,

"Some of the people of the Book are a nation upstanding, that recite God's signs in the watches of the night, bowing, therefore, believing in God and in the Last Day, bidding to goodness and forbidding the evil, vying one with the other in good works; those are of the righteous." (Surah Aale Imran 3:110)

The prophets, Imams, or rulers remind people of their shortcomings instead of boasting of their innocence or efficiency. The most striking instance in this regard is implied by Imam Ali's statement, "Treat me not like the tyrants: flatter me not: avoid not speaking the truth, for fear it may be grievous to me: therefore tell me your opinions and criticisms; after all, I am a human being and human beings are prone to err." 7

In the time of the holy prophet and the orthodox caliphs particularly at the time of Imam Ali's rulership when religious government was completely dominant, the most democratic government was dominant and people were free in all spheres of human activities, had effective roles in the government, freely

expressed their comments and criticisms and neither the great power nor the sublime spiritual station of prophecy, Imamate and caliphate did not prevent them from freely expressing their views; of course they were extremely upbraided when they acted otherwise.

Unfortunately, the Islamic State was soon entrusted to the power of tyrannical rulers; not only did they use force but they used caliphate and authority as a taboo that the members of the Islamic Ummah did not allow themselves to do but obey them and did not dare to give any opinion. Thus, the despotic religious regime was instituted, for the dictatorship took the shape of religion whereas this government was not religious but despotic. In fact, it was this tyrannical regime ruled under the cover of religion and with the misinterpretation of religion and religious concepts.

With a glance at the policy of Imam Ali (peace be upon him) and especially the order that he gave in a letter addressed to Malik Ashtar, his chosen governor of a region in Egypt, one can see how human rights and freedoms are treated; even the rights of nonMuslims are esteemed. Meanwhile, Imam Ali bids his governor observe the rights of his citizens and says, "Never set upon them like a ferocious wolf, for either they are your brothers or your fellow–human beings." In other words, they are your fellow–human beings and human beings are to be respected.

Regardless of the guiding mission of religion, there are not many differences as to practical and social aspects between the standards set forth by religious teachings and what the social thinkers reached at the dawn of enlightenment and the end of the murky era of the Middle Ages. If we carefully study the goal of the prophet's mission and the practical ways of the holy prophet and Imam Ali, and at the Qur'anic verses especially those which bid people to the common points such as,

"Surely they that believe, those of Jewry, and the Christians, and those Sabaeans, whoso believes in God and the Last Day, and work righteousness-their wage awaits them with their lord, and no fear shall be on them, neither shall they sorrow." (Surah al-Baqarah, 2:62)

We shall realize the principles set forth in the Declaration of Rights of Man and of Citizens in France and the Universal Declaration of Human Rights are not very different from religious principles. Perhaps the emphasis on religious freedom was not due to enmity against religion but a reaction against creating sects, and the avoidance of prejudice.

The Muslim World Vis-a-vis Human Rights

The Muslim World has undergone three phases as to the human rights formulated in the Declaration of Rights of Man and of Citizens of France and later in the International Bill of Human Rights which were extremely influenced by the Western political thought particularly in freedom of thought and organizing parties: the first phase tried to nullify them for the freedoms set forth in the Universal Declaration of Human Rights, especially religious freedom and propagating any kind of sect or religion are contradictory to Islamic Shari'ah which recognizes Islam as the true religion and does not regard any other religion as

true and regards the change of religion as apostasy. In holy Qur'an God states:

"The true religion with God is Islam." (Surah Aale Imran 3:19)

And also states:

"whoso desires another religion than Islam, it shall not be accepted of him: in the next world he shall be among the losers." (Surah Aale Imran, 3:85)

In another verse we read;

"...and whosoever of you turns from religion and dies disbelieving – their works have failed in this world and the next: those are the inhabitants of the Fire: therein they shall dwell forever." (Surah al-Baqarah, 2:217)

The second phase tried to adapt and justify the Bill of Human Rights. Some Muslim thinkers accepted the Bill of Human Rights, trying to adapt the rights mentioned therein to Muslim principles and endeavored to demonstrate that these rights were better explained in Islam.

In the third phase, the Muslim thinkers thought of using the Universal Declaration of Human Rights as a paradigm for formulating the human rights as accepted by Islam. So far more than seven declarations have been issued as to the human rights in Islam by the Muslim Assembly in Europe, the Kuwait Conference and the Organization of Islamic International Conference and more than five Islamic constitutions have been published; the Islamic Constitution of the Assembly of Islamic Thoughts in al-Azhar in 1978 is an example of this case. Most of these bills are relevant to the last twenty years from 1978.

Three bills on human rights were published by the Organization of Islamic Conference; one was published in Mecca in 1979 on the fundamental rights and duties in Islam; the second was approved and issued by the Summits Conference in 1981 on the human rights in Islam and the third one was the Cairo Bill of Human Rights in Islam approved in 1990 in the nineteenth conference of the foreign ministers of the Member States. In fact, it was the most comprehensive and official bill ever approved and issued. We shall be discussing it later in this article.

Study of the Cairo Bill of Human Rights in Islam

Its Approval And Its Contents

With emphasis on the existing backgrounds of Islamic human rights, the experts on jurisprudential and legal issues of the Islamic Conference set forth a plan and the last draft was approved in Tehran (26–28 December 1989). It was agreed that the aforementioned draft be proposed and approved in the nineteenth assembly of the foreign ministers of the Islamic Conference members.

The assembly was held from 31 July to 5 August 1990 in Cairo and was subsequently approved via resolution no. p. 49/19. The aforesaid resolution states, "The nineteenth summit of the Islamic Foreign Ministers Conference, with the knowledge of man's position in Islam as God's viceroy in the earth and the importance of a bill of human rights in guiding the Member States in all aspects of life and with a study of the aforesaid document and the report of the experts in legal issues in Tehran, agrees to the bill of human rights in Islam in order that the document may be used by the member states in human rights."

As is seen, the Islamic Conference Organization approved the Declaration of Human Rights in Islam as introducing the common interpretation of human rights and not a committing contract of convention, made a few emendations and additions, rendering it more similar to an international declaration of human rights. So far, several meetings and work groups have been held with a view to studying the bill and putting its rights to effect. However, it has not gone beyond a declaration.

The declaration consists of 25 articles and a preamble which begins with these words, "The Member States of the Organization of the Islamic Conference reaffirming the civilizing and historical role of the Muslim Ummah which made the best nation that has given mankind a universal and well-balanced civilization in which harmony is established between this life and the hereafter.... all Arabic, English, and French versions of the declaration were studied, the English version, in particular starts the same way. Only the Farsi version including the Arabic, English and French version published by the Conference Organization has a longer preamble which begins with the glorious verse

"O mankind! We have created you male and female and appointed you races and tribes that you may know each other. Surely the noblest in the sight of God is the most god-fearing of you." (Surah al-Hujurat 49: 13)

And the statement that all the Member States of the Islamic Conference trusting God, the Creator of all ... and it is not clear why such additions are included. At all events, we shall use the English version received from the bureau in Geneva which was included with the resolution p. 49/19.

The General Features Of Cairo Declaration Of Human Rights In Islam

Basically, the Cairo Declaration of Human Rights in Islam like the Universal Declaration of Human Rights places stress on human dignity and enumerates the rights, which should be exercised. Some of the principles mentioned in the Universal Declaration of Human Rights are also mentioned therein with a few additions and emendations. Some others mentioned in the Covenant on Civil, Political and Social, Rights or in conventions such as the Convention on Children's Rights and the Convention on the Right to Development are mentioned therein. Some rights are especially emphasized like the banning of exploitation, the right to resist it or the right to resist aggression, and the right to life in a clean atmosphere free from moral corruption. Besides the security of life and family, the respect for man even after his death, the respect for his corpse, and the banning of hostage.

Equality Of Responsibilities Or Equality Of Rights

The fundamental difference between the Universal Declaration of Human Rights and the Declaration of Human Rights in Islam is that in the former, the attitude towards religion is unconditional. It only enumerates a few rights particular to man in any society. The Universal Declaration of Human Rights is practical and if it refers in the preamble and article one to the philosophical principle of the inherent dignity of man and that God created everyone equal is because it seeks to exercise these rights without distinction of any kind in order that no one might have any cause to revolt and that it might ensure peace and security. Thus, it has nothing to do with elevating the spirituality of people and does not enumerate duties for man, for consciously or unconsciously, the man living in the society and under a government is obligated to obey the binding rules of the State.

However, what has induced the formulators of human rights to formulate such rights is that human rights were violated. Hence, they felt obligated to enlarge on them. The comparison between article two of the Universal Declaration of Human Rights and article 1 of the Cairo Declaration of Human Rights in Islam clarifies this point. Article two of the Universal Declaration of Human Rights states,

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

However, article one of the Cairo Declaration of Human Rights in Islam emphasizes the equality of human dignity for all, and equality in basic obligations and responsibilities. Paragraph one of the article states. "All human beings form one family whose members are united by submission to God and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, color, language, sex or religious belief, political affiliation, social status or other considerations." Then it adds: "True faith is the guarantee for enhancing such dignity along the path to human perfection."

In other words, all human beings are equal in that they are the best creatures in the earth; however, those who earn proper religious belief gain more dignity and outdo in the acquired dignity. The Universal Declaration of Human Rights has nothing to do with this and offers no repudiation or acceptance of this but insists that we should have equal treatment in insurance of the right of life and ownership of properties and contribution in the management of the affairs of the country and the right to accomplish position and occupation to people with different beliefs and opinions. This is not understood from article one of the Universal Declaration of Human Rights although we can see the difference when we consider article 24 of the Cairo Declaration of Human Rights in Islam that states, "All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah."

Freedom Of Choice And Change Of Religion

Another important feature of the bill is the freedom and change of religion. The Universal Declaration of Human Rights places stress on the freedom of belief, and religion. Article eighteen states, "Everyone has the right to freedom of thought, conscience and religion and this right includes freedom to change his religion or belief either alone or in community with others in public or private to manifest his religion or belief."

Likewise, article eighteen of the International Covenant on Civil and Political Rights states the same idea with a little difference. "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private to manifest his religion or belief in worship, observance, practice and teaching." And paragraph two of the same article states, "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."

The same idea is mentioned in article one of the Declaration of Elimination of Inequality and Religious Discrimination approved by the General Assembly on 25 November 1981. 10 Now let us see how the Cairo Declaration of Human Rights in Islam treats this. Is this right officially recognized that gives man the freedom of belief, religion, and the freedom to change his religion without fear of punishment or of being deprived of certain rights? Unfortunately, the bill does not explicitly state this.

Article ten of the Cairo Declaration of Human Rights in Islam recognizes Islam as an inherent religion and states, "The use of poverty or ignorance to change a religion is not allowed." However, this leaves a dark point. Is personal urge to change religion to Islam allowed? Does a Muslim have the right to change his religion? As we know, apostasy is severely condemned by the Qur'an and according to the current fatwa (Islamic decree), the apostate is doomed to death and some civil and social rights are denied him. For instance, if a Muslim man becomes apostate, his wife is immediately divorced from him, and his properties are distributed among his beneficiaries. 11

Of course, article ten and article one are expressed in such a way that they arouse this ambiguity that it is not allowed to change one's religion of Islam to another religion or to turn to apostasy: however, the criticism that tends to express fundamental freedoms and rights of man in Islam and shows the Muslim's stance on the rights set forth in the Universal Declaration of Human Rights is valid. Why has it not explicitly expressed such an important matter? It was incumbent on the Muslim jurisprudents and experts of different Islamic schools to make an exhaustive study in this area and elucidate the point whether from an Islamic point of view the state can interfere in people's affairs, punish some for the crime of changing their religion or deprive them of certain rights. After all, the Holy Qur'an states that there is no compulsion in religion 12 and that it opposes blind imitation in religion. Even the Holy Prophet said that one could not compel people to accept religion. 13 The only thing one can do is to enlighten people's minds. This should have been proved or rejected after long reflection.

The Source Of The Government Authority

Another different point lies in the matter of the government and the source of government authority in the two declarations. Paragraph three of article 21 of the Universal Declaration of Human Rights explicitly asserts, "The will of people shall be the basis of the authority of government: this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures."

The theme of this article is dependent on a socio-philosophical basis, implying that man is the master of his social destiny and does not have any authority over others. However, since man is by nature a civil and social being, he has to administer his life in harmony with others. Hence, the members of the society should participate in the government by going to the polls and vote for a person or persons who act in their stead. Naturally, any time people take back their vote, those elected no longer have the authority to govern.

The constitution of the Islamic republic of Iran accepts this notion in absence of the Innocent Imam Mahdi (Peace be upon him). Article 56 states, "God is the supreme authority over man and world; it is He who has made man the master of his fate; no one can deprive man of this right or direct it in his own favor: the nation exercises this right as described in the following provisions." And the procedures will be conducted through the Islamic Assembly consisting of the elected representatives of the people, and the approval of the laws may be secured by recourse to referendum and direct referral to the votes of people. (See articles, 58, 59, 60, 62, 100, 197, 198, and 114 of the Constitution of the Islamic Republic of Iran.)

The Cairo Declaration of Human Rights in Islam compares the government authority to a deposit entrusted to the care of the ruler. The nature of a deposit is that it should not be taken advantage of. Hence, tyranny, trust or any other misuse of power is regarded as a betrayal of trust. Hence, the one the deposit is entrusted to and betrays the deposit has no longer valid authority.

Paragraph A of article 23 of the Declaration of Human Rights in Islam states, "Authority is a deposit; and abuse or malicious exploitation thereof is absolutely prohibited, so that fundamental human rights may be guaranteed." In this article, it is not obvious from whom to whom this deposit is shifted. Does God grant it? Is it granted to a ruler by people's vote? It seems that it is due to the difference of opinions between the Shi'ah and the Sunni regarding the caliphate after the holy prophet. In the first draft of the Declaration, this has been much more extensive. Paragraph A of the same article continues, whether this deposit is granted by God as the Shi'ah believes or granted by people's vote as the Sunnis believe or by both and in the end, the ways of interrogation are discussed.

Prohibition Of Slavery

Another noteworthy point here is that slavery is explicitly prohibited. Paragraph A of Article 11 states,

"Man is born free and no one shall be held in captivity or servitude; no one shall be humiliated or exploited. Servitude belongs to God alone."

As we know, slavery is stated as prohibited in article 4 of the Universal Declaration of Human Rights. However, what matters is that first, the Cairo Declaration of Human Rights in Islam has prohibited slavery and all forms of exploitations as stated in the International Covenants on Civil and Political Rights and secondly, slavery has been legal in Islam and even today some religious leaders regard the slavery of the pagan prisoners of war as legal and defend it. 14 Slavery is explicitly prohibited and this is commendable.

Recognition Of The Right To Literary Works

Another right officially accepted by the Cairo Declaration of Human Rights in Islam is the right to literary, scientific, artistic and technological products. Of course, this is expressed in paragraph two of article 27 of the Universal Declaration of Human Rights as well. "Everyone is entitled to the protection of moral or material interests of the scientific, cultural or artistic productions of which he is the author."

However, the recognition of such a right in Islam is of great controversy. Some of the jurisprudents such as Imam Khomeini believe, "What is known as copyright is not a legal right. Hence, the inclusion of the word copyright in a book does not create any right. So, others can get it published, copy from it and no one can deprive them of these rights." 15 Some have questioned the legality of it simply because such a right does not exist in religious Shari'ah. There must have been literary or artistic products but there were no rights for them and the legislators did not allocate any right for them. 16

Still, some other jurisprudents regard such rights as definite rights, considering respect for them and for their observance. 17 At all events, there is controversy over its legality in Islamic circles. This declaration has adopted a positive step in this regard, considering the aforementioned right as one of the rights officially accepted by Islam. Article 16 states, "Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical production and the right to protect the moral and material interests stemming therefrom, provided that such production is not contrary to the principles of Shari'ah."

Equality Of Men And Women

One of the important issues of human rights is the equality of men and women or the elimination of sex discrimination. As mentioned earlier, Article 2 of the Universal Declaration of Human Rights solemnly states that everyone has to enjoy the rights and freedoms set forth in the declaration and then in the International Covenant on Civil and Political Rights and the Convention on the Elimination of all Forms of Discrimination against Women and the fourth document of the World Conference of Women in Beijing and tens of other bills and resolutions emphasize that sex discrimination should not deprive some of the enjoyment of rights, namely that a woman for being a woman may have fewer rights than men and this equality is shown through freedom of choice of a spouse, the enjoyment of equal rights with men for

marriage, the duties during married life, and equal provision of education and gaining jobs in the government, the equal and independent right to property and the likes.

Paragraph one of article 16 of the Universal Declaration of Human Rights states, "Men and women of full age, without any limitation due to race, nationality and religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution."

The Declaration of Human Rights in Islam places stress on the equal station of men and women as human persons. However, it says that women have fixed duties at home. Therefore, they have fewer responsibilities and duties. And this should not be attributed to inferiority of women in respect to men. To what extent this can justify the distinctions between men and women such as the rejection of women's testimony in some affairs, and their blood money being half of that of men, and their incapability of taking custody of their own children deserves due contemplation.

At all events, article six of the Declaration of Human Rights in Islam states, "A) Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence and the right to retain her name and her lineage. B) The husband is responsible for the support and welfare of the family."

Article 5 regards marriage as equal right for men and women, adding that marriage cannot be prevented by any restrictions stemming from race, color or nationality but there is no mention of religion, for the marriage of Muslims with the non–Muslims is not allowed and especially a non–Muslim woman cannot marry an infidel under any circumstances.

The Condition Of Accordance With The Islamic Principles

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

Hence, considering the differences of opinions between the Shi'ah and the Sunni, the elucidation of this article in this way is open to criticism for many of the rights and freedoms set forth in the declaration might not accord with the Islamic Shari'ah. For instance, some may regard the right to literary product as opposed with the Islamic Shari'ah. As mentioned earlier, the complete elimination of slavery may oppose Islamic Shari'ah. Therefore, how can one regard the rights mentioned in the declaration the recognized rights of man according to Islam? We can regard these rights as human rights when they accord with Islam. Of course, one's interpretation of them should not contradict the Islamic principles.

The Innovations Of The Cairo Declaration Of Human Rights In Islam

Some rights set forth in the Islamic Declaration are missing in the Universal Declaration. Some of these innovations are also mentioned in the International Covenant on Civil and Political, Cultural and Social

Rights and the Convention on Children's Rights and the Convention on Elimination of all Forms of Discrimination against Women, friendly International Relations or the international laws of the red cross. These examples can be observed in articles 3, 7, 12, and 20.

However, one of these rights which is not mentioned in other universal bills of human rights is paragraph B of article 11 when the battle against exploitation is stressed. The article states. "Colonialism of all types being one of the most evil forms of enslavement is totally prohibited. Peoples suffering from colonialism have the full right to freedom and self-determination; it is the duty of all States and peoples to support the struggle of colonized peoples for the liquidation of all forms of colonialism and occupation."

Another one is paragraph A of article 17 and paragraph A of article 18. Article 17 states, "Everyone shall have the right to live in a clean environment, away from vice and moral corruption, an environment that would foster his self-development and it is incumbent upon the State and society in general to afford that right." And paragraph A of article 18 states, "Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships."

It must be noted that the other rights stipulated in the Cairo Declaration of Human Rights in Islam are in one way or another mentioned in the Universal Declaration of Human Rights. The characteristic feature of the Cairo Declaration of Human Rights in Islam is that it relates the articles to the Qur'an or to Islamic Shari'ah. In other aspects, it is the same as the Universal Declaration of Human Rights.

Conclusion

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

The most important difference between the two declarations lies in the relation to the role of religion. The Universal Declaration of Human Rights has nothing to do with religion, it neither rejects nor accepts it but gives the individuals the freedom to choose any religion. The implication is that everyone has the freedom to choose any religion they like and no one can compel others to accept a religion, for there is no compulsion in religion. In fact, this right is considered as one of the most fundamental rights. It suggests that everyone should have the right to freedom of the choice of religion and that there is no compulsion in religion whatsoever. The attachment to a certain religion should not deprive one of the rights set forth in the Declaration. The only limitation mentioned for the exercise of rights and freedoms is law and within each democratic community based on the observance of human rights, the public order and the observance of religious belief, one can exercise limitations.

However, article 29 in the Islamic Declaration, Islam plays an essential role. The rights and freedoms mentioned in the declaration should accord with Islam. If they accord with it, they should be officially accepted. Having proper Islamic belief is an important right for which proper atmosphere should be provided. However, changing one's religion, that is, Islam is not allowed.

Also, while everyone is equal in dignity, and religion does not have any role in recognizing this right, everyone is obligated to exercise these rights and this is one of the most important differences in the two declarations. The Cairo Declaration of Human Rights in Islam should express its stance towards the one stated earlier so that the stance of Islam may be clearly shown.

The human rights deriving from the Universal Declaration with complete disregard of religion has itself turned into a universal religion. The human rights deriving from the Islamic declaration should express its stance and prove its potentiality for universality and this requires great effort in which the Universal Declaration has not been successful and has failed in preventing discrimination and the violations of human rights and freedoms. Even the Western States, which upheld the declaration, refused to exercise the rights and freedoms in relation to the Third World Countries.

However, this does not suggest that the Cairo Declaration of Human Rights in Islam was a success. In this regard, a strong need for knowledge and colossal effort is felt. At any rate, a great achievement will be reached if the ways to the exercise of those rights and freedoms are made possible with the help of executive committees especially in relation to civil and social rights and the right to participate in the government.

- 1. Les Musulman Face Aux Droit De l'Homme, Sammie Adib, 1994, p.35
- 2. Ibid., p.35
- 3. Droite De l'Homme, Ibid., p.87
- 4. Human Rights, Fact Sheet No.2, p.4; The Blue Books of United Nations and Human Rights, pp.38, 229
- 5. For further information, see Human Rights in International Documents, p.323 onwards
- 6. And recite to them the tidings to whom We gave Our signs; but he cast them off, And Satan followed after him, and he became one of the perverts. And had We willed, We would have raised him up thereby; but he inclined towards the earth and followed his lust. So the likeness of him is as the likeness of a dog; if thou attackest it, it lolls its tongue out, or if thou leavest it, it lolls its tongue out; that is that people's likeness who cried lies to our signs. (Surah al–A'raf 7:176); We have created for Gehenna many jinn and men; they have hearts, but understand not with them; they have eyes, but perceive not with them; they have ears, but hear not with them. They are like cattle; nay, rather they are further astray. (Surah al–A'raf 7:179).
- 7. Fayz al-Islam Nahj al-Balaghah, p.687
- 8. Ibid, p.993
- 9. Antonio Cassese, Human Rights in an UN-united World, translated by Dr. Kalantariyan, p.337
- 10. See Blue Books: United Nations and Human Rights, p. 291. It must be noted that the freedom to adopt a religion has always heen controversial in the declarations of human rights. Discussing article 18, which mentions the freedom of religion, the Lebanese ambassador to the United Nations suggested that the freedom to change one's religion be added. He reasoned that his country served as an asylum to those who had changed their religion. The Muslim countries showed severe reactions, especially the ambassadors of Saudi Arabia, Iraq, and Syria. The ambassador of Saudi Arabia mentioned the advantages the religious missionaries took of people and their situation and suggested that the phrase: freedom of religion be mentioned. The Egyptian ambassador emboldened many religious missionaries who tried to turn the Muslims to

apostasy. The same discussions were brought up about article 18 of the covenant on Civil and Political Rights. The ambassadors of Arab countries and Egypt insisted that the phrase "freedom to change one's religion" be changed, however, ultimately with the suggestion of the ambassadors of the Philippines and Brazil, they decided that instead of "to change one's religion", "to adopt a religion" be used. When the declaration of religious intolerance was brought up in 1981, the same discussion took place. This time the ambassador of Iran also disagreed with this suggestion. The Iraqi ambassador representing the Organization of Islamic Conference declared the right to reservation to any rules, which contradicted Islam. The ambassador of Egypt declared that the spirit governing this declaration is religious forbearance and that no one can interfere in Egyptian affairs under the pretext of this declaration and the freedom of religion. See Le Musulman Face/Aux Droit De l'Homme, p. 194.

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- 11. Sharh-I Lum'ah, Vol.5, p.230.
- **12.** Surah al–Baqarah (2:256)
- 13. For instance, see Surah Yunus, (10:99), "And if thy Lord has willed, whoever is in the earth would have believed, all of them, all together. Wouldst thou then constrain the people, until they are believers?" And verse 108 of the very surah, "Say: 'Oh men, the truth has come to you from your Lord. Whosoever is guided is guided only to his own gain, and whosoever goes astry, it is only to his own loss. I am not guardian over you."
- <u>14.</u> For further information see 'Islam and Human Rights" by the present writer, Majallah Siyasat-i Khariji, Vizarat-i Umur-i Khariji, Tenth Year, No. 1, Spring of 1965.
- 15. Imam Khumaini, Tahrir al-Wasilah, Vol. 2, p. 625, quoted by Ayatullah Safi.
- 16. Hamid Ayati, The rights of Artistic Creation, p.71, quotedby Ayatullah Muntazari and Ayatullah Makarim Shirazi.
- 17. Ibid, p.70

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