

Human Rights and Their Conceptual Development

In order to avoid ambiguity, definitions of all terms employed in the text must be clearly explained. This basic requirement acquires deeper meaning when the discussion deals with legal terminology, and certainly gains added significance when its application is considered at a universal level encompassing international legalities.

Inter-Relation between Philosophic and Social Questions

It is paradoxical that when one considers issues related to the Universal Declaration of Human Rights, one notices so many terms used without any clear explanation of their intended meanings, For instance:

What does "Right" mean?

Who is the "Human" being talked about?

What is man's intrinsic dignity?

What is meant by the human family, brother hood, equity, friendly relations, humanistic spirit and the like?

The ambiguity becomes more acute when we realize that this Universal Declaration was intended to remain apart from the question of ideology, say from "The philosophic question" i.e. the question of defining attitudes towards the Universe, life and man.

This is a consequence and influence of capitalist views which impose its social ideas, removed from the philosophic question declaring that there was no relation between them, whereas we positively believe that a logical connection exists between them.

Whatever an ideology, it stems from reality, otherwise, man would not know what ought to be unless he

knows what is and what is the demand of reality.

This concept is reaffirmed when man, for example, holds faith in the divinity of Allah, the Exalted and Most High, and that He the Most High, had sent His messenger with guidance and hearing true faith, Islam, to direct and organize all aspects of life. Holding such beliefs, a faithful person has a choice between two options, no more. He is either to follow an Islamic Ideology, and organize his conduct logically or to reject his previously held perceptions renouncing all old beliefs.

Positively if a person held a materialistic conception of the world, he would have before him substitute ideologies and multiple gods, each drawing him to his way:

"Allah sets forth an example: a man owned by several partners quarreling and a man owned by a single man. Are the both equal in similitude?"¹ He will have no right to turn to one particular ideology"²

In the words of Martyr Mutahhari (may his spirit be sanctified):

"Basically ideology is founded on one's overall view...Ideology is a kind of practical wisdom, whereas conception is a kind of theoretic wisdom."³

Learned teacher, Martyr Sadr (may Allah sanctify his Spirit) says:

"The question of social existence is related to the reality of life, and it would not take its correct shape unless it is based on its central set of beliefs explaining existence, its reality and limits. But the capitalist system lacks such a foundation, and it involves deceit and misleading, or haste and impatience, when the real question of existence is put in a freeze separating it from the social issue which is separately studied."⁴

Referring to the text of the Universal Declaration of Human Rights, we find that it entirely ignores this vital question, despite the fact that it is related to same issues.

We shall, Cod willing, return to this subject again. For the present, it is important for us to perceive correctly what is meant by "Right" and "Humanity", so that we could logically proceed to comprehend the stages of the development of human rights.

The Right

Going back to the root of this term, we find that it implies fixed, permanent and unchangeable, at least this is how it is applied.

In these terms, Allah, the Most High, is Right. No alteration is conceivable concerning Almighty Allah. A piece of news is right if it conforms to reality at the time of reporting, and there can be no basis for imagining and alteration in facts, in spite of the unfounded claims of the "relativists". This is the real implication neither imagined nor derived. Yet, in this manner a nominal concept and view has been

formulated and called by this word, and brought to use I respect of social relations and individual conduct, such as: The Right to Freedom.

Consequently, social rights must cover two elements:

Firstly, Growing from a real condition (genetic composition, real interest...), and

Secondly, conforming to legal or conventional standards in order to organize Social life.

It may be argued: The first criterion alone would suffice to prove the right, but the social reaction naturally requires constant need, which convention has turned into it legal condition.

The Human Being

As to man, we cannot regard him as merely it material being formed by nature and shaped on the whole by social environment. Whatever is implied by the meaning of humanity is anything but the social reflections its Durkheim says, or the contractual form, as Freud insists or the social – economical principle as portrayed by Marx, or the mental product of Berkeley, and other materialistic concepts.

Such it being cannot claim any rights. Could one possibly talk about the rights of iron, wood, or water?

Consequently, we have to imagine. Before everything, that man is it being quite distinct from all others, endowed with special values and particular intrinsic drives which demand, in themselves, a particular course and conditions, and require evolutionary stages based on a prearranged plan. Then, it would be possible to conceive certain fixed conditions (rights) for such it being.

In a nutshell, primarily we have to believe in the theory of the “fitrat” (human nature), only then could we proceed to discuss human rights, justice, freedom, dignity, equity, human soul and the like.

Otherwise, what is the use of talking about these conceptual values if we do not believe in the innateness and the supreme Islamic meaning governing these perceptions, practical moral direction and evolutionary motives?

"So, there must be a natural direction and a frame-work for man. If he trespasses he would no longer be of mankind, unless there is education and until the well-known expression: 'Man's alienation from his essence'⁵ comes true."

Therefore, the man who in our view should have any rights is the being who possesses natural qualities which are innately with him and remain with him. They warrant a particular course any deviation front which would be deviating from the human characteristics.

“And be not like those who forsook Allah, so He made them forsake their own selves, they are the very evil-doers.”⁶

".... They are like cattle, nay, they are even worse."[7](#)

If man were to be treated contrary to his essential nature it would be inhuman.

Thus, when Pharaoh suppressed his people and deprived them of their rights, he was condemned by entire humanity.

"He incited them to impetuosity and they obeyed him, they were an evil-doing people."[8](#)

Thus, he must have his natural status, and his natural rights; any disrespect to them would be an inhuman practice.

This is the man we know, and no hill and no logical Declaration may claim to speak of his rights unless they accept this definition of him.

Rights Unknown to Materialistic Concepts

In the light of what has been said, it is clear that human rights provide the natural conditions necessary for natural human existence so that man stay proceeds along the natural course of his perfection.

On this basis we believe that human rights predominate all that has been said and written in relation to other related matters, such as "the right of worship and belief, the right of moral cart, or even the right of holding the true faith", and so on.

This right forms the basis of the important religious discussion concerning the need for Prophet, and that religion is a blessing for man, and that Allah, the Exalted is the source of grace and beneficence – a fact which admits the necessity of sending prophets of mercy. We shall not go into details, leaving those to the relevant subjects.

Nevertheless, it is worth referring to certain natural conditions needed by man's nature to proceed along his evolutionary course. We may summarize them as the material, intellectual, ethical and civil legislative needs.

The Material Needs

These cover the natural human needs such as the need for food, security, clothing, health, lodgings and all that keep man active and lively within the society. It also covers satisfaction of man's sexual needs, mother and child care, and similar needs which let the human generation survive and struggle.

The Intellectual Needs

These cover the need for intellectual freedom, mental development, and freedom of contemplation of the universe, cultivating man's philosophic concepts and strengthening the logical method of comprehending things – all of which are undeniable human needs.

The Ethical Needs

These are natural needs and tendencies in man which need to be suitably satisfied, such as the need for proper education, preparing the suitable atmosphere for the development of aesthetic and moral senses, rejecting all that is not in conformity with natural purity, providing for an environment of compassion and sympathy, that is, providing for whatever is considered to be a natural and original need, among which, undoubtedly, the inclination towards worshipping his only Creator holds a Fundamental place.

The Civil Legislative needs

These refer to man's need to establish the society, and what such a society needs offer to get a temporary and permanent civil legislation, and thus man's need attain the most Formalized codes of implementing his innate drive to achieve happiness. This requires that his legislative needs should be satisfied in the best way.

The Criteria for Recognizing Human Rights

In this respect, certain criteria have been, or are in the process of being presented, such as custom, wise people, law and religion, interest and evil, pleasure and pain, sentiment and intellect, the requirements of justice and the like.

These can either be the sources of right or means of discovering it, or of its requisites and so on. At any rate, before assigning the criterion for telling whether such a thing constitutes a human right or not, we must observe the following two points:

First: That which we referred to as the meaning of right, the meaning of man, and his original motives and needs.

Second: To turn to a criterion which possesses without regard to its being clouded with the social forms and temperaments, otherwise, which are characteristics of nature of the right being merely humanistic.

What is, then, this criterion which uncovers the fixed natural need of the human bring perfected in the course of natural progress?

There is nothing before us but the conscience which everybody possesses within himself, with its general meaning donating intellectual conscience, and ethical conscience.

Yet, if we only satisfy ourselves with only the ethical conscience commonly possessed by all we can discern the general principle of human rights, no matter if there be differences in evidence and applications. We shall see that conscience itself leads us to a means of making sure of the correctness of those evidences, giving us an elaborate picture of these rights. If we forsake conscience we will find no criterion for recognizing the rights, let alone any human knowledge.

So, we take man to be imprisoned within himself in the way wanted by Berkeley. Man without conscience (in the general sense) loses every human color, and will be nothing but a piece of wood, and there are no right for wood!

But what is conscience, anyhow? Probably we cannot define it, not because of its ambiguity, but because of its obviousness. It is the truth which we are dealing with, and we cannot prove it except by itself. The one who denies conscience and its governing role can never be persuaded at all.

It is through conscience that we reach decisive intellectual judgments which form the basis of all our knowledge, and through it we get to what we believe in of the beautiful and the ugly, upon which all the moral and social institutions are founded.

Probably those who trusted the Universal Declaration had unknowingly started from the natural conscience basis, despite the fact that they separated the question of the rights from the question of believing in conscience and its requirements it is conscience that confirms the goodness of justice and evils of injustice. It is conscience that confirms life, freedom and human dignity. It is that which confirm racial equality on a humane basis, similarly the right to maternity, to nationality and the rest.

As regards how to reach the positive proofs of these rights, there are only two possible ways:

First: Complete induction of human behavior studying all incidents and discovering common ideas despite difference in circumstances, which make incomplete syllogism and probably cannot be carried out as a research study, nor many conclusions be obtained even if it could be applied.

Second: Religion, which guides conscience to mark its imaginary foundations through the intellectual power which leads man to discover the secret of this wonderful cosmic order and the Absolute Perfect Existence who created this cosmos – the Existence who is self-sufficient, all-knowing, all-living, all-affectionate. He, owing to His grace, sends His messengers with His religion to explain to human beings the complete framework of their individual and social rights, and to show the best plan for proceeding along the road to perfection.

So, either one believes in religion, or is satisfied with that incomplete general picture, which, in its turn, is the product of belief in the theory of basic human nature. Should anyone deny this, logically he cannot speak of human rights and the creation of man, as has formerly been stated.

Humanistic Jurist Marks in History

We can rightly confirm in that human conscience, in the first place, and the extensive dimensions of the religious factor in the historical perspective in the second place, have their influence upon the course of human rights, even on the level of legends.

Allama Ja'fari, in his note-worthy book on this subject, says:

"It is natural that the objective of the amendment of human relations...constitute a continual practical respect to the Universal Declaration of Human Rights in the minds of modern intellectuals... As a result we notice some different expressions and articles, taken to be natural dispositions, rights or educations elements among diverse peoples and nations."[9](#)

George Sabine says: *"Generally speaking, the Greeks, in the fifth century BC, said that the natural rights were everlasting and unchangeable. So, if we could discover this constant and unchangeable law, and if we could harmonize it with human life, human life would become logical and rational, to some extent. It would decrease evil and mischief. Thus, the human course to perfection is to follow the fixed natural law. The aim of this philosophy can be summarized in the following expression: Looking for the constant among the variables, and for the unity among the various."*[10](#)

Following up the opinions of the philosophers, historians and poets along history, we would meet many expressions referring to this general conscious effect.

Here, the philosopher Cicero (106–43 BC), confirms that the rights are not based on imagining and guessing, but the natural, used and necessary justice is based on the human conscience.[11](#)

Here we are reminded that the historians concerned with rights and their developments passed over the Islamic era in long strides to reach the eighteenth century, when the French Universal Declaration of Human Rights was issued on the 28th of August. 1789, and was later incorporated in the French Constitution, on the 3rd of December 1791, ignoring, knowingly, or unknowingly, that Islam had presented the most comprehensive bill on human rights, through the guidance of the Glorious Qur'an and the noble prophetic traditions, which provided the legal hoists for all forms of Islamic humanistic practices in the course of history.

As to the recently issued Islamic Declaration, it is a worthy attempt to publish these rights announced in their conventional format current in these days. Otherwise, the following Qur'anic verses, for example, form the historical legal declaration of fixed human rights:

"And surely we have honored the children of Adam."[12](#)

"O' Mankind! We have created you from a male and a female and have made you nations and tribes that you may know one another. Surely, the noblest of you with Allah is the one who fears Allah this most."[13](#)

"...whoever kills a human being not for a human being or not for causing corruption in the earth is as if he has killed all mankind, and whoever enlivens it, is as if he has enlivened all mankind."[14](#)

And many other illustrating texts quoted from the Holy Prophet (s.a.w) and his noble progeny (a.s) altogether caused a wondrous effect on Islamic beliefs.[15](#)

But if we wanted to study the course recent thinking concerned with rights, the French Declaration—despite the fact that it made use of the British Declaration of Rights issued in the same year, and the Independence Declaration of thirteen American colonies issued 13 years earlier – could present a comprehensive bill on this subject.

In its Article 1, it describes the rights of freedom and equality. In the second article it offers the right of freedom of possession, security, and defense against injustice. The third article explains people's rights in government. The fourth stresses personal freedom which does not transgress other's freedom. The fifth article specifies law providing the right to prevent harm. The sixth article confirms the right of all persons to participate in framing the law. The seventh assures equality before the law and access to posts. The eighth decides that there should be no punishment outside the law.

The ninth confirms the idea of “The accused is innocent until he is proven guilty.” The tenth refers to freedom of belief. The eleventh announces freedom of expression. The twelfth guarantees the right to formation of armed forces. The thirteenth allows levying taxes to provide for armed forces. The fourteenth gives the people the right to supervise taxation. The fifteenth affords the society the right to supervise employment. The sixteenth regards the societies which do not accept the human rights to the unconstitutional societies. The last Article No.17 prohibits the seizure of property except in public interest.

In this way, this important Declaration became a law gradually recognized by other states. Changes in text continued until the United Nations ratified the Universal Declaration of Human Rights on the 10th of December, 1948, following the end of the Second World War. It was signed by 48 members, with the abstention of communist countries (Russia, Belorussia. Ukraine, Czechoslovakia, Yugoslavia and Poland), South Africa and Saudi Arabia, of course with entirely different motives.

- [1.](#) The Holy Qur'an, Surah 39 Az-Zumar, Verse 29.
- [2.](#) Towards the Islamic Constitution, by the same author, pg. 15.
- [3.](#) Revelation and Prohethood, by Martyr Mutahhari.
- [4.](#) Our Philosophy, Martyr Sadr, pg. 18 and 19.
- [5.](#) In Allah's path, by the same author, pg. 19
- [6.](#) The Holy Qur'an, Surah 59 Al Hashr, Verse 119
- [7.](#) The Holy Qur'an, Surah 7 Al A'raf , Verse 179
- [8.](#) The Holy Qur'an, Surah 43 Az-Zukhruf , Verse 5
- [9.](#) “The Universal Human Rights” pg. 16
- [10.](#) “The History of Political Philosophy” pg. 177
- [11.](#) “On the History of Philosophy of Rights” pg.67
- [12.](#) The Holy Qur'an, Surah 17 Al Isra, Verse 70
- [13.](#) The Holy Qur'an, Surah 49 Al Hujurat, Verse 13
- [14.](#) The Holy Qur'an, Surah 5 Al Ma'idah , Verse 32
- [15.](#) Risalatal Huquq by Imam Ali ibn Hussain(a.s) which covers all the mutual rights

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