Islamic Views On Human Rights: Viewpoints of Iranian Scholars

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Today's world, plagued by war and greed, and media are inundated by the issues pertaining to human rights. What is the position of the Islamic Sharia regarding The Human Rights, as they are understood internationally? Does the Islamic law adhere to The Human Rights? does it respect some of the decrees and reject others?Why? Does Islamic law reject The Human rights altogether? The present book does a magnificent job at offering a comprehensive, lengthy and thorough investigation to answer all the above questions.

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This work would have not been possible if Dr. Husayn Salimi and Dr. Humayra Mushirzadih were not in the core of the scientific activities resulting to academic papers presented in a conference with the same title "Islamic Views on Human Rights". The academic board consisting of Dr. Sayyid Mustafa Muhaqqiq

Damad, Dr. Husayn Mihrpur, Dr. Husayn Salimi, Dr. Hadi Simati, Dr. Humayra Mushirzadih, and Dr. Nasrin Musaffa made close observation on the process of research and the management of the conference, which were finalized by Dr. Salimi and Dr. Mushirzadih.This work would have not been possible if Dr. Husayn Salimi and Dr. Humayra Mushirzadih were not in the core of the scientific activities resulting to academic papers presented in a conference with the same title “Islamic Views on Human Rights". The academic board consisting of Dr. Sayyid Mustafa Muhaqqiq Damad, Dr. Husayn Mihrpur, Dr. Husayn Salimi, Dr. Hadi Simati, Dr. Humayra Mushirzadih, and Dr. Nasrin Musaffa made close observation on the process of research and the management of the conference, which were finalized by Dr. Salimi and Dr. Mushirzadih.

Assuredly, human rights are the most complicated human issue in the twentieth century and a great challenge for the beginning of the twenty first century. Human rights are the ideology of modern man and suggestive of his identity and status in the modern world. Today, many acts, conducts, decisions, and plans are weighed with the touchstone of human rights, and even the adversaries in the final analysis try to avoid laying bare their contrary views. At all events, human rights have turned into a dominant discourse within the universal system. And the terms arising from them such as self-determination, fundamental freedoms, humanitarian conducts even in the case of the guilty ones, women’s rights etc. have more or less been instrumental in different policies.

The discussions arising from human rights have determining effect both on the current functions and policies of the countries and on the formation of the different political and judicial systems. Hence, human rights may not be regarded as the paradigm of the function of the United Nations Organisation or the institutes safeguarding human rights.

In addition, human rights cannot be counted absurd with the proving of their unsuccessful function. It is true that in more cases the function of the institutes safeguarding human rights has not been effectual and human rights have been used as an instrument in the hands of the superpowers and an ideological cover for their policy of expansion, but it does not mean that the concepts arising from human rights should be discarded.

Human rights are the manifestation of a concept and a new status which modern man has found for himself. The Universal Declaration of Human Rights of 1948 states: “Human rights are to be regarded as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind.” In addition, human rights are “the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

With this view and as to the universalisation of the concepts of human rights, no thoughts or policies can remain silent to them, as shown by the scientific studies made by the Muslim Iranian scholars in this

respect. Although the fundamental principles of analysis of human rights have common concepts and principles among Muslim Iranian thinkers, their analysis and conclusions are different.

Iranian Muslim Thinkers and Human Rights

As is seen in the articles compiled herein, there is no single interpretation of human rights by Iranian scholars. Although the literature of human rights is not so vast in Iran, one can find three general views in this regard by the Iranian writers. For the three groups, the fundamental question is how far the concepts of human rights can be effective.

Does what modern man found in the period of secularism accord with the Islamic insight? Concerning theoretical and practical problems common in the concept of Muslim human rights, can they take a step for a better interpretation of human rights? Each one of the three groups provides a different answer to this question.

The first group considers human rights outside the realm of Islamic thought. These writers regard human rights as belonging to the secular sphere of human thought and as an issue independent of religious sphere. Even if they find any crisis or contradiction within it, this act is not arrived at through religious principles but through scientific and practical parameters. As an example, in a book entitled Human Rights in International Assemblies, written by a board of writers under the supervision of Muhammad Riza Dabiri, human rights have been discussed not from a religious view-point but in the light of the international assemblies and man's attempts for achieving rights and justice.

Mahmud Masa'ili writes a few lines at the beginning of the book, "The thought of protecting human rights has been of special attention for resisting against tyranny. The aim of these attempts has been to provide the minimum set of rights for individuals . Hence, human rights are as old as history. In other words, from the time when man's rights were ignored, the struggle for human rights commenced. Therefore, history has constantly been an arena for two opposite forces, the advocates of human rights and the inheritors of the claim to tyranny."[1]

In another book entitled *Principles of Human Rights* by Dr Mahdi Abusa'idi, there are views of this kind. In the introduction, he writes, "Since the beginning of history, some people have been deprived of their inherent rights, suffered tyranny at the hands of the powers-that-be, but they have struggled to redeem their rights, they have given sacrifice and they have enjoyed the moral and religious instructions and the support of humanitarian philosophers and scientists. These attempts have not proved abortive and throughout history, they have caused great victories for humanity and they have achieved success in disseminating the ethical principles and human rights. The greatest success so far achieved in approving human rights is the Universal Declaration of Human Rights."[2]

The obvious point is that human rights are regarded as inherent rights inspired by divine religions and by the ideas of modern theoreticians. In this view, there is no contradiction between religion and human

rights but human rights are based on the natural rights of man definitely approved by religion. In his book *Public Freedoms and Human Rights* Dr Manuchihr Tabataba'i Mo'tameni regards human rights as inherent rights and states, "What the formulators of the Universal Declaration of Human Rights meant by dignity is the inherent value and dignity of man which are beyond his rights. In other words, people are equal in two things, in their inherent values and in their rights, which are particular to them in the society. It is said that these rights arise from man's value and dignity. for the nature of all human beings is one and the same and no one can transfer them, for these rights are not separate from him."3

Writings of this nature bespeak the ideas of the Iranian writers who regard the issue of human rights to be beyond religious discussions. In these writings, for better recognising the inherent rights of man, one should consider the sources, which show man's attempts to redeem these rights. The international declarations and assemblies and the conventions on human rights are the manifest common attempts of man throughout history, which are attracted by these people. In this regard, there is not much difference between the views of Iranian scholars and scientific attempts made by nonMuslim thinkers, for many of them discuss human rights outside the realm of religious thought.

Hence, their criticisms on human rights do not arise from religious thoughts, but due to the fact that some of the articles set forth in the Universal Declaration of Human Rights do not accord with the realities and do not have executive force or the views of small groups of people on human rights. The criticisms based on these concepts are not derived from Islam but made by lawyers or sociologists who try to obliterate contradictions and ambiguities from human rights. Some of the articles here are written with this view. In these articles, attempts have been made to discuss human rights themselves but not from an Islamic viewpoint. Some of the issues discussed by Iranian scholars are not written with the purpose of offering an Iranic Islamic view on human rights but with the purpose of investigating the issues relating to human rights.

However, the views of the second group are totally different. Among these writers are some distinguished Shi"ite theologians who regard Islamic stance on human rights different from the humanitarian stance on human rights. Of course, among the university scholars there are some like Sayyid Ahmad Fardid who believe that human rights are the manifestation of the rebellious self-centred man of the modern century. In his eye, modern man has turned into a creature that regards himself the viceroy of God in the universe and organised himself by adapting himself to physical pleasures. That man finds himself in the position to create rights based on desires and reject whatever God has commanded, is an unpleasant event in the age of humanism. This great perversion in the thoughts of man as the symbol of rebellion against the Almighty is manifested in the modem humanitarian thoughts. Human rights and a glance at socio-political issues arise from this great perversion. (Conference on Zionism-Faculty of Law, Tehran University)

In his book *Philosophy of Human Rights*, Ayatullah Javadi Amuli believes in the difference in principle of human rights seen in Islam and by the West. He believes that defining human rights depends on

people's world vision. As a Muslim scholar and thinker regards God as the source of everything and the manifestation of the Almighty, he cannot consider rights for man outside the Divine realm.

In his view, the ultimate goal of man's life is the reaching of the Almighty and man possessed of knowledge desires to realise God's will and act and find way to reach Him. Hence, there are no rights for man except those arising from God's will. Stressing that human rights cannot be formulated through agreements or traditions and customs, he states, "some people may think they can formulate human rights without considering the world-vision and the bond between man and the world. The advocates of this thought formulated the bill of human rights, calling it the Universal Declaration of Human Rights.

Without consciously or unconsciously desiring it, they neglected the fact that the signing of such a bill would not be to the gain of some or the majority of the world. Rights are not a national issue like traditions and customs, which might be different to different people. The function of a true religion is not that it commands people what to wear or what to eat, for these things vary in varying cultures and places. What a true religion states includes all the facets of life without regarding the differences."[4]

Ayatullah Javadi Amuli believes that man cannot gain a common and universal source, which can determine human rights. In other words, man cannot detennine human rights, for man has to break the chains of nature to achieve solidarity.[5] He holds that one cannot content himself with the knowledge of the sages in religious matters and in matters of world-vision, for the knowledge of the sages is not sufficient.[6]

Meanwhile, the Divine nature is the most important common point with everyone. Hence, by using this Divine nature and law, people can achieve the true source of human rights. Therefore, Ayatullah Javadi Amuli holds that self-determination is only particular to God, and the systems which are not based on this thought, shall contain a degree of paganism. That is why he states the democratic systems and other secular systems are based on paganism.[7] In addition, the formulation of laws requires the complete recognition of the world and this recognition is only possible by God who is capable of making laws and this is the advantage of Divine rights and laws over the non-divine ones.

Therefore, only by referring to religious sources, one can determine human rights. This is what the writer does after proving the necessity of divinity of human rights. Quoting the Holy Qur'an, he discusses the fundamental rights such as dignity, the right to life, freedom, and justice and so on from an Islamic perspective. However, the interpretations are substantially different from those in the Universal Declaration of Human Rights.

This is a striking example of the thoughts of the intellectuals who regard differently the relation between Islam and human rights. This difference is evident in the writings of Zain al-'Abidin Qurbani. In his book entitled *Islam and Human Rights*, he states that there is no need to refer to the declarations of the international assemblies considering the sublime Islamic laws. In the introduction, he states, "Reading this book, the esteemed readers shall ratify that these bills and declarations are valid for those who do

not have a bright civilisation or divine laws. However, for nation with a bright civilisation and a glorious religion like Islam and a sacred book like the Qur'an which determines its ideological, ethical and legal fate, they are not only invalid but with the study of the principles between the Universal Declaration of Human Rights and the Muslim laws the readers shall utter, "They talk through their hats."[8]

Qurbani holds that the laws promulgated by man are doomed to a large multitude of problems, for although the reasoning power of man is instrumental in some cases, one cannot satisfy oneself with them due to the limitations of reason and conscience. Man has very limited knowledge about himself and the society and their knowledge in many cases is mixed with personal interests, selfishness, emotions and thoughts.[9]

Quoting a few Western thinkers and a few misfortunes arising from man-made rules leads to the conclusion that it is only God that can determine original rules for man. In his view, what is expressed in Islam is much deeper than what is set forth in the Universal Declaration of Human Rights.

As to the right to life, freedom, the abolition of slavery, resistance against racial discrimination, Islam offers more sublime laws than the Universal Declaration of Human Rights. For instance, regarding freedom, Zain al-'Abidin Qurbani holds that true freedom is in Islamic laws and what is called freedom in the Western systems of human rights, is but perversion and following amoral principles and physical desires. He states, "Islam is the greatest pioneer of freedom and certainly, in no other religion, freedom has been so advocated. But this fact is noteworthy: most of the unpleasant events that have blackened history were due to this democratic spirit, and were done in the holy name of freedom."[10]

He holds that the superpowers of the world violate the rights of the downtrodden classes of the society in the name of freedom and regard women's perversion as moral traits.

Ayatullah Sayyid Muhammad Khamini 'i, in an article included herein, discusses the fundamental difference between the Islamic and the humanitarian views on freedom, and states what is called freedom in the current views on human rights contradicts the sublime concept of freedom whose goal is to elevate the human soul and not the human desires. In his view, freedom in the West is more the unleashing of the carnal soul, which is per se the forestalling of true freedom, which is the freedom of soul and the elevation of truth within man.

In general, in the second groups view, there is a fundamental difference between Islamic thought and the concept of contemporary human rights. Of course this group of thinkers does not deny some of the concepts set forth in the Universal Declaration of Human Rights. However, their definition and interpretation of concepts such as right, freedom, and equality are different from those commonly advocated. They define these concepts from a religious viewpoint and regard them limited within the realm of religious laws and insight.

However, there is a third group among the Iranian thinkers and writers who do not find substantial differences between some of the fundamental principles set forth in the Universal Declaration of Human

Rights and the Islamic thought, but believe that in some cases, Islam cannot agree to some of the principles in these Declarations. In other words, the Islamic thought conditionally approves some contemporary human rights.

In a book entitled *Study of the Two Systems of International Human Rights in the West and Islam*, the late Ayatullah Muhammad Taqi Ja'fari discusses the two systems of human rights in the West and the human rights in Islam due to the existence of two declarations of human rights, that is the Universal Declaration of Human Rights and the Cairo Declaration of Human Rights in Islam. In practice, he believes in the existence of the two systems but does not see any fundamental difference between them.

In his opinion, man's awareness of his natural rights has caused the emergence of the concept of human rights. This is what the divine religions are based on. The divine religions are based on human nature, which is the nature of man. He states, "Since man acquired knowledge of the common aspects of life among his fellow-beings and realised the necessity of social life, he has understood the first principles of his inherent rights (inherent rights in the true sense of the word)."

The criterion for the first natural rights includes the protection and organisation of human life in their two fundamental dimensions, absolute natural life and good life. The first principle that man has as an inherent right, is the right to life officially accepted by all religions, laws and regulations. Good life has four fundamental principles, which include the right to dignity, education, freedom and equality before the law. These principles are based on the most original Islamic sources which complete all other divine religions.[11]

The writer brings different historical evidence, implying that human rights exist in the very nature of man and throughout the history the principles of the natural rights of man have entered into the minds of the intellectuals, laws and human culture.[12] In his opinion, the foundation of what takes shape in divine religions does not contradict man's inherent rights. Man's dignity is so vast that only a supernatural law can describe it. He holds that the universities of the world have not yet succeeded in taking a proper step in proving the dignity of man and this is what a divine religion like Islam can achieve with its sublime utterances. He states, "The basis for human rights in the West is compromising coexistence with peace, freedom and justice in human societies and of course, no one can question the idealistic aspect of these affairs.

However as we shall see, the claim to the necessity of these principles with the help of inherent feelings of man, has not satisfied the very basic human need for creating a world in which everyone may consider themselves as members of one family, for such a claim should be based on a more sublime basis which is God.[13]

As we see, the late Ayatullah Ja'fari does not question the inherent nature of human rights. but believes that these rights are so sublime and fundamental that man's attempts for proving them have not been enough and only the divine utterance can achieve this goal.

In his different books and articles, Dr Husain Mihrpur in one way or another discusses such a viewpoint. He holds that Islam officially recognises man's inherent value and dignity and accords special attention to his equality and freedom. In his book *Human Rights in International Documents and the Position of the Islamic Republic of Iran*, he states, "Man's freedom and respect for his dignity and rights without any limitation such as race, language, colour, nationality etc have been accorded much attention in Islam and that the main mission of the prophets especially the holy Prophet of Islam has been to emancipate man of these bonds and induce him to consider his dignity and value.[14]

Therefore, gaining back man's dignity and the fundamental rights and freedoms is not only the principle but also the goal of Islam and the Qur'anic verses testify to this fact. Ergo, there are not fundamental differences between the officially recognised rights in the Universal Declaration and the Islamic thought. In this regard, Dr Mihrpur states, "It can be explicitly claimed that almost all the fundamental rights set forth in the Universal Declaration of Human Rights exist in the Islamic system and in most cases, have been excellently done.

However, there are two salient points:

1. Islam accords considerable attention to the proper guidance and growth of man's morality. Hence, for those who commit tyranny, imprison the oppressed servants of God, prevent the spread of the concept of monotheism, and commit corruption or dissension, Islam does not accept the negligence of religion. Islam regards religious prejudice contradictory to the inherent dignity of man. Hence, it does not encourage it but forbids it through logical ways.

2. As to women's rights and the equality of men and women, Islam states that men and women are equal in dignity. However, they are from the same essence who have different duties and responsibilities due to their physiognomy.[15]

On this basis, the Islamic thought conditionally accepts the rights set forth in the Universal Declaration. Mihrpur holds that human rights are accepted in Islam and there are no fundamental differences between them. However, there is an additional emphasis or tendency in Islam based on which some of the principles, which ignore religious aspects, are rejected.

Such an interpretation is well observed in Dr Husayn Safai's article entitled *Fundamental Freedoms in Islam*. Quoting a few verses from the Holy Qur'an, he tries to show there are no fundamental differences between the rights set forth in the Universal Declaration of Human Rights and those in Islam.

In addition, Hujjat al-Islam Muhaqqiq Damad has an identical interpretation of humanitarian laws. Citing a few approved points and the observance of humanitarian rights especially in time of war, he tries to compare the common views between the Islamic thought and the ideas expressed in the Universal Declaration of Human Rights although in his opinion there are some differences between the two.

With a brief survey, we realise that there are three different views on human rights among the Iranian

scholars. Of course in all these three views, these scholars look differently at the concept of religion, human rights and their philosophical interpretation of the relation between religious concept and the human findings. The interpretation of the first group from the viewpoint of religion in the society, man's dignity in knowing himself and his inherent rights differ from those of the second group. The third group tries to offer a viewpoint in which man's dignity in recognising his rights and advantages is recognised and the current views in religious concepts get mingled with it.

Of course, in the views of the third group, when they discuss a certain contradiction between Islamic utterance and man's interpretation of human rights, naturally Islamic thought is preferred. At any rate, discussing human rights from an Iranian-Islamic perspective has not yet ended. In the Holy Qur'an and the religious sources there are diverse points, which can be discussed at this point. On the inherent value and dignity of man, there are clear utterances, which no Muslim thinker can reject. In the following, you will find some of them:

1. ***"And surely we have honoured the children of Adam ."*** (***Surah al-Isra 17:70***)

In this verse, God places emphasis on the inherent dignity of man .

2. ***"O Mankind, We have created you male and female, and appointed you races and tribes that you may know one another."*** (***Surah al-Hujuraat 49:13***)

In this verse, the Holy Quran verifies the equal rights of people without regard for their race.

3. ***"And when thy Lord said to the angels "I am setting in the earth a viceroy." They said, "What, wilt Thou set therein one who will do corruption there and shed blood while we proclaim Thy praise and call Thee holy?"*** (***Surah al-Baqarah, 2:30***)

Here, man is the viceroy of God in the earth and has the highest station of being, for God commanded all His angels to bow down before Adam.[16]

4. On the freedom of man, Imam 'Ali states, "Do not be servant to anyone, for God has created everyone free."[17]

5. Man has the spirit of God. The Holy Qur'an states,

"See, I am creating a mortal of a clay. When I have shaped him, and breathed My spirit into him, fall you down, bowing before him." (***Surah as-Sad, 38:71-72***)

Based on these pieces of evidence and many more, man has a sublime dignity in Islam. The way Islam regards human nature is such that one may make varying interpretations of it. Assuredly, the Islamic interpretation of the goal of life and man's creation is such that it can influence the concept of human rights. With a brief glance at the Qur'anic verses, we realise that the goal of life is not to enjoy the worldly pleasures although they are not prohibited. Man has been created to worship the Almighty and

attain Him. The main goal of creation is to reach the station of divine servitude.

"I have not created jinn and mankind except to serve me." (***Surah ad-Dhariyat, 51:56***)

In addition, the creation of man in Islam is to experience divine visitation. Does man tread on the path of divine servitude with the power of choice and freedom?

"We create man of a sperm-drop, a mingling, trying him: and We made him hearing and seeing." (***Surah al-Insan 76:2***)

Hence, the goal of man's creation is trying him and causing him to reach divine propinquity. The existence of Resurrection Day shows that this world is not the end of his life. "The world is the farm of the afterworld." Based on this insight, man's life is not eternal and begins with this world and continues until the visit of the Almighty is made possible.

"O Man Thou art labouring into your Lord laboriously, and thou shall encounter Him." (***Surah al-Inshiqaq 84:6***)

Therefore, the progressive movement is towards God.

Therefore, the meaning of man's life is different and so is man's station in life. From a religious point of view, everything taken from security, life, freedom and equality is for attaining inner truth of man and divine propinquity. Hence, the Islamic stance on these fundamental rights is influenced by this general impression. When the goal of man's life is reaching divine servitude, it is obvious that his interpretation of his rights and duties shall be influenced by fundamental goals.

From an anthropological glance at Islamic sources, man despite his sublime station and dignity has fundamental weak points. Terms such as weak, and the poor used in the Qur'an in relation to man shows that man has weaknesses, which can be obliterated only by God though he has the highest place in the chain of being. The Qur'anic verse,

"Man is created weak" (***Surah an-Nisa 4:28***)

shows the limitations of man's existence. These limitations are reparable by attaining to the Almighty and His guidance. Men need the guidance of God.

"O People, you are poor before God." (***Surah al-Fatir 35:15***)

The goal of every religion is to guide man and lead him to perfection.

The purpose for stating these instances has not been to reveal the complete Islamic view of man and its influence on human rights, but that in Islamic sources, there are discussions on the true nature of man, and the goal of his life different interpretations of which can have a determining effect on offering human rights. What is man's dignity? What is divine propinquity? What are man's existential limitations? Does it

mean the description of natural characteristics of the being? These are the questions, which are proposed by seeing the present sources, and different answers to these questions can follow different views on human rights.

In these articles, attempts have been made to discuss human rights from different perspectives. Each one of these writers may belong to the aforementioned groups and for this reason, one cannot find a single style in these articles. Varying views on human rights suggest the varying options of Iranian scholars. It is hoped that in this first step, issues relating to this field are properly discussed, though finding final answers may not be possible in the modern atmosphere of Islamic thought and in ordinary man's thought.

Offering sufficient discussions on human rights calls for a bulky volume, which is possible with the assistance of all Muslim scholars and their continuous attempts. Assuredly, what is discussed in these articles is a small part of the vast discussions on human rights. It is hoped that this first move will be the basis for future attempts for more extensive volumes on human rights.

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16. Surah al-Baqarah (2:34), "And when He said to the Angels, "Bow yourselves to Adam".
17. Nahj al-Balaghah

Ayatullah 'Abdullah Javadi Amuli

Man is in essence valuable and worthy

The holy Qur'an regards man as one endowed with dignity.

"We have honoured the children of Adam." (***Surah al-Isra 17:70***)

This dignity is a theoretical value, which may find a practical aspect. However, it must not be imagined that this theoretical value exists in the considerations. Man's dignity is the same as the dignity of the angels and the Qur'an, which is the manifestation of God's dignity. Of course, the Holy Spirit is in essence great. Man's dignity shows that he has advantages. In other words, man's dignity implies that he has sublime traits. By virtue of the same reason, after the creation of this great essence, God thus addressed Iblis (Satan),

"Why did you not bow down before what I created with my own hands?" (***Surah Sad 38:75***)

This statement, namely the creation of Adam by God's two hands shows that man is in essence valuable and worthy, for this statement is used when we regard especial respect for something. For instance, if someone prays for something with open hands, it shows his special favor, as God is such when granting something.

“O you who grant things with two open hands.”1

This explanation elucidates the point that the implications of such statements are not that God has physical body or hand but the idea is that all divine essence has played a part in the creation of Adam; hence, man can be the manifestation of all divine qualities and consequently, God’s viceroy.

This theoretical dignity may contain much practical greatness. Due to this dignity, all legal and ethical teachings must be designed in accordance with this theoretical principle. When we admit that man is in essence valuable and worthy, we are consciously or unconsciously induced to believe that neither freedom, security and so on is his right but they should be designed in such a way which might correspond with his dignity.

Man is a God-seeking being

Man innately tends to seek God, for he sees Him, not with his physical eyes but with the eyes of his heart. This God-seeking attitude is not unconscious, as it is not deterministic. It must not be assumed that man seeks after someone lost but after a God whom he loves. On the basis of reason, man does not have an independent entity but his existence is constantly dependent. However, this dependence has nothing to do with another dependent being but it is dependent upon an independent soul. Man is nothing but a dependent being. It is not such that man has perfect relation to God but that the relation between Man and God is like spiritual poverty and perfect need for Him;

“O people! You are poor before God.” (***Surah al-Fatir 35: 15***)

In this verse, there are two realities: firstly, man does not have an independent soul; secondly, his relationship is only with God and he has no other relationship whatsoever .

Thus, any kind of formulating rights should correspond with this Godseeking spirit. The set of rights considering for man an independent soul or considering man independent of God does not spring from a divine source. Of course, those who do not accept this source generally fall into the pitfall of comparing things while everyone knows that man is a dependent soul. The atheists have pinned their hopes on something or someone. The difference is that they do not consider God as the independent soul. .

Man is eternal

From other sources in Islam, it is understood that man is eternal. This is perceived both by reason and by the holy sayings. The holy Qur'an regards that man has an eternal soul who will step into another world after this world and will enjoy eternity there. According to reason, man has an incorporeal soul and that this soul is not exposed to destruction. According to reason, death includes the separation of the soul from the body. And once more this separation is obliterated at the command of God, the body becomes fit for the hereafter.

Everyone accepts this and the existing differences arise from the mistakes in comparison. All human beings long for a longer life and strive to live longer. This implies that man innately seeks after eternity; however, in comparison, some think that belongs to the hereafter.

However, one must know that man is a traveler on the path of life; of course, man comes to middle abode in the minor apocalypse, then he enters the major apocalypse but the world comes to destination in the minor apocalypse. The holy Qur'an holds that all cosmic order moves towards God. This cosmic order goes towards resurrection to testify what its travelers have done or complains of what they have done to redeem them. According to authoritative *hadiths*, this cosmos and all its parts complain of, testify to or redeem deeds of man.2

Thus, all human beings seek after eternity but some others think that the world is eternal and do not know that eternity is particular to the spirituality. This ignorant way of thinking has taken hold of people from the very beginning. People accumulate wealth to achieve eternity or to destroy death. On different occasions, the holy Qur'an views this way of thinking to be vain and elucidates the real eternity:

"What is with you comes to an end but what is with God abides." (***Surah an-Nahl 16:96***)

Man reaches the abode of stability

It might be imagined that eternity means reaching the abode of stability. However, it must be noted that these two are separate from each other for we can imagine a being to be eternal but he will never reach the destination but wander for all the time to come. The holy Qur'an uses delicate statements to show that the cosmic order is purposeful.

"They will question thee concerning the Hour, when it (***world***) ***shall berth."*** (***Surah al-A'raf 7:187 and Surah an-Naziat 79:42***)

According to this statement, the cosmic order sails like a ship in the ocean of the Being. It is impossible that this ship may keep sailing but it must someday berth. From this one gathers that the world will stand still somewhere and reach its abode of stability. Besides, the abode of stability in this world is resurrection when man comes to meet the Almighty. For the same reason, one of the names for paradise is Eden. Eden means place of rest. In resurrection, man reaches his real place of rest.

Man has Genetic Relationship with the Cosmos

Man – this eternal incorporeal essence that comes to meet the Almighty has inseparable relationship with the Cosmos. Hence, nothing happens in man unless it affects his soul. Any movement, speech and writing issuing from man affect his temperament; it begets either light or darkness. Hence, all the issues including the legal principles are associated with man's nature. With the acceptance of this principle, it may no longer be concurred that man is free in everything. Eating, dressing and the likes affect man.

Lawful (halal) food does not exercise the same effect that unlawful (haram) food does. Truth does not have the same effect that untruth does. All these have special functions. For example, sin blackens the heart and removes purity from it:

"What they have done has blackened their hearts." (***Surah al-Mutaffifin 83: 14***)

Upon committing a sin, some dust settles upon the heart and if man does not remove the dust, the heart gradually becomes blocked and real blindness begins. Even any good or bad memory affects the heart and the mind. With an ugly glance, the dust of sin settles on the heart. Then, it seems that the ears and the eyes are functioning properly but they are out of their proper function. Although the Holy Qur'an has stated the same thing about the eyes, but it is clear that this is allegorical, not particular to the eyes only.

"It is not the eyes that are blind, but blind are the hearts within the breasts." (***Surah al-Haj 22:46***)

By virtue of the same reason, although the Almighty transmitted His message to mankind, there are some people that do not understand it. This verse also suggested the same thing as implied in other verses that regards this group as deaf and dumb.3 Thus, according to Islamic doctrine, every human act exercises a deep impact upon the soul and the mind.

Man has two Dignities: Social and Individual

To explain this, we have to talk in brief about the dignity of man.

That it is man that has originality or the society is to be dealt in the realm of philosophy, for originality means true human being; and it is the philosopher who can determine what really exists. Thus, the researchers in this field are indebted to the philosophers, for as long as the principle of social life has not yet been detennined, it is impossible to provide proofs. It is clear that as the present article does not deal with a philosophical topic, we should suffice ourselves with brief explanations.

The real existence of the society is always questioned; however, there is no doubt that many people are really existent and each one of them has a special entity, their special attitudes and functions and understand their being by intuitive knowledge. It has not occurred to anyone that the existence of others is hypostatized, for anyone can perceive that their fellow beings exist and that many of the traditions and customs are according to their nature. In some aspects, they satisfy his needs and in some other aspects, they are in need of him. So, neither the existence of a large multitude of people nor the mutual effects are rejected.

If a society has real entity, it has real single effects. However, if its existence is hypostatized, it has no single effect. However, whatever comes from it, belongs to the members of the society. In the present discussion, the topic will be dealt with in two parts: firstly, does the individual have originality in the active system or the society? Secondly, which one of them is original in the ultimate system?

On discussing the originality in active system, we shall discus whether the individual has effect on the society and that the individual has the power to cause his ascent or descent. Of course if a society has an independent entity, the discussion is clear; but if the individual himself does not have independent entity, then the implication is that anyone who enters a group consciously or unconsciously is affected by it and will follow the laws and the traditions.

What can be said in the first part is that ordinary persons are usually influenced by the traditions and ways of others, for although the society has no separate entity from the individuals, it is mightier than a single person for it is made up of many individuals. In contrast, the geniuses who are endowed with exceptional talents and can distinguish right from wrong, have the courage to break from the false traditions and customs. Some of them have the power to understand the truth in the society and put aside the untruth and repair the shortcomings for themselves and not for others.

However some others have the power to correct others. Among them are exceptional people who embark on correcting the whole society and attempt to enliven the truth and bury the untruth and withhold no sacrifice in this regard. Regarding them, one can say that originality belongs to them, for their power exceeds that of the society. In other words, in the present system, originality is stronger than that. If the power of the society is greater than the individual, the originality belongs to him; and if the individual is more powerful than the society, it is he who leaves influence on the society.

All these explanations were, in fact, about the geniuses save the prophets and the divine authorities. The manifestation of prophecy and the rise of esoteric guidance is far greater than the genius of man and basically, one cannot compare them with each other.

"This is Allah's grace; He shall give it to whom He pleases." (***Surah al-Maidah 5:54***)

The Almighty chooses these people with certain criteria and assigns them to transmit the holy message:

"Allah best knows where to place His message." (***Surah al-An'am 6:124***)

Such people are a society in themselves and have the power to change the society;

"Surely Abraham was a nation." (***Surah an-Nahl 16:120***)

The study of manners of these great people implies how they could make the monotheism echo in the pagan atmosphere of the society and even sometimes, they struggled long for their goal;

"And certainly We sent Noah to people, so he remained among them a thousand years save fifty." (***Surah al-Ankabut 29:14***)

Now that these principles are elucidated, it might be said that originality belongs to the individual; for any wise individual leaves effect on others and this influence extends to the far stretches of the society. Where the society leaves effect on the society, it influences several people for when the rights of

individuals and the society are in mind, the right of the society is of primary importance, and the rights of individuals have priority over the rights of one individual. Albeit, every multiplicity has priority over every unity although it might be preferred to superior unity.

Now we must see how things stand in the ultimate society. In this part, we shall be discussing whether the ultimate goal in the human society is leading the individuals to bliss or that the ultimate goal includes leading the society to bliss.

If we say that the goal is leading the individual to bliss, the idea is that we regard originality as being particular to individuals and if believe that the goal includes leading the society to bliss, it means that originality belongs to the society. That what bliss is, depends upon the social insight. The materialists do not believe that bliss is outside the realm of nature and they found any interpretation of morality and spirituality on material values. However, according to the theologians, bliss is of a vaster realm and embraces both nature and metaphysics.

Those who do not think beyond their whims and passions, act on the hypothesis of individual originality. Hence, they found their way on despotism, exploitation and enslavement. It is with this thought that some believe they are a better race than others. Among them are those who lord over people and all social forces should be in their service. Pharaoh was one of them who said,

"I am a better god." (***Surah an-Naziat 79:24***)

In contrast, there is another group who has achieved relative freedom. They hold that originality is particular to the society and step in the way of serving people. They think that if the society is corrected, the ultimate goal is achieved. If this way of thinking belongs to a monotheist, it arises from his ignorance; for this way of thinking is particular to the school of materialism. It must be noted that a materialist grabs at this thought ignorantly, for he cannot believe sacrificing himself for others.

The secret of this matter lies in this that a materialist accepts that death is the end of man and that he does not perceive any pleasure or pain after death. On the same basis, how can this person learn about social welfare after death? After all, the life of any living creature is based on truth. If man does not have eternal soul, how can one sense people's pains and pleasures?

The third group are the monotheists who have freed themselves from the dungeon of the individual and the society and have ascended to the peak of divine school. They all have the divine color, which are above all other colors.

"Who has a·better color than the Almighty?" (***Surah al-Baqarah 2:138***)

They protect their deeds from any sort of desruction and reach to the glorious peak of goodness after passing the stage of justice and seek others joy at the cost of their own pain to lead others to bliss. They justify their hunger with the saturation of people and buy their thirst by quenching the thirsty ones and

justify their lack of shelter by sheltering others. They are the striking examples of this verse:

"They prefer others to themselves, although they are themselves in need." (***Surah al-Hashr 59:9***)

Another characteristic of this group is that they always prefer others to themselves, but try to vie others in goodness.

"They vie each other in good deeds." (***Surah al-Baqarah 2:148 and Surah al-Maidah 5:48***)

The most important point to be taken into consideration is that they do sacrifices simply because they wish to provide perfection to elevate their souls. In other words, all this goodness is not only the sign of the originality in the ultimate order but it is a sign for the originality of the individual as well, namely that in the ultimate order, one has to do good works to elevate his spirituality.

Thus, in divine school, individual originality finds its special meaning. Therefore, in the active order, the superior human beings make the society and originality belongs to them. In the ultimate order, originality belongs to individuals but as it was expressed.

It must not be forgotten that these words are brought up in legal and moral discussions. However, if they take the shape of philosophy, then it becomes evident that in the ultimate order and the active order, originality belongs to God alone, and not to the individual or the society. This is our belief:

"God is the beginning and the end." (***Surah al-Hadid 57:3***)

With this conviction, the originality of anything save God in the active order does not correspond with the priority of truth; as the originality of anything but God in the ultimate order does not correspond with the truth which is the end of anything.

Principles of Human rights in Islam

Life

Everyone has the right to life

The first right enumerated for man by the holy Qur'an is the right to life. There are two phases for life: physical and spiritual. No one has the right to take this right from others. The violation of physical right is done with killing. According to the holy Qur'an, this is equal to destroying the whole society unless it is done under sound reasons.

"Whoso slays a soul not to retaliate for a soul slain, nor for corruption done in the land, shall be as if he had slain mankind altogether." (***Surah al-Maidah 5:32***)

The violation of the spiritual right to life is done by misleading others. They destroy their spiritual life. The

loss of spiritual life means the loss of bliss; otherwise the spirit of man shall not be destroyed. For the same reason, the Holy Qur'an regards spiritual life as opposed to atheism. In other words, anyone that becomes atheist, they shall lose bliss and die spiritually. This contrast is thus described:

"... that he may warn whosoever is living, and that the Word may be realized against the unbelievers ." (***Surah Yasin 36:70***)

As is evident from this verse, those who have not become pagans are living; in other words, the infidels do not enjoy life.

According to the holy Qur'an, the right to life is granted to man by God and hence, it is God who can interfere in it. Thus, any kind of violation of physical or spiritual right without God's permission is forbidden. In other words, life is the right of man, it is his duty, and no one can shirk this responsibility.

It was said that the right to life is the first right of man. On the other hand, in *Treatise on Rights*, Imam Sajjad (peace be upon him) holds that rights spring from the knowledge of God. The secret of the words of that venerable Imam lies in the aforementioned words; if anyone does not know God, he indeed divests himself of the right to life. Thus, the knowledge of God is enjoying spiritual life.

Thus, according to the Holy Qur'an, those who have surrendered to the Culture of Ignorance are dead:

"You were dead; then, God gave you life." (***Surah al-Baqarah 2:28***)

In this verse, the meaning is the life after this world and the spiritual life after ignorance.

Kinds of life and the Relationship Between Them

As was mentioned in the previous part, the Holy Qur'an elucidates two kinds of life; spiritual and physical. Now we shall be discussing three types of life; vegetable, animal and human.

In many Qur'anic verses, God sends down rain for the growth of plants and for the growth of man. This life is called vegetable life. It seems that this verse talks about vegetable life:

"We created every living thing from water." (***Surah al-Anbiya 21:30***)

This vegetable life belongs to those who summon up all their power to grow up and nothing else. This group does not enjoy animal life, let alone human life. Plants have the same life and their growth is limited to their getting tall.

A superior stage is the animal life. In this stage, there is the question of kindness, love, affection and hatred and hostility. The present order of the world is founded upon this animal life. Even the formulation of the Universal Declaration of Human Rights has been meant to silence the oppressed.

When the Holy Qur'an talks about animal life, it places men in the rank of the cattle.

"These blessings are for you and the cattle;" (***Surah an-Naziat 79:33 and Surah al-Abasa 80:32***)

"do you eat and pasture your cattle." (***Surah Taha 20:54***)

It is evident that the Holy Qur'an should be refined in style. This way of talking is because it intends to impart a message to us. That message is that these blessings are common among you and the cattle and if you stick to them, you shall be relegated to the degree of animals.

However, when the Holy Qur'an talks about human life, man is ranked among the angels. For instance, about the virtuous sages, the Holy Qur'an has stated:

"God bears witness that there is no god but He-and the angels and men possessed of knowledge-upholding justice." (***Surah Aale Imran 3:18***)

This spiritual life is also described in the Holy Qur'an:

"And whosoever does a righteous deed, be it male or female, believing, We shall assuredly give him to live a goodly life." (***Surah an-Nahl 16:97***)

The attribute pure for life shows that this life is superior. This pure life may never be found in vegetable or animal life.

Sometimes, the holy Qur'an describes the kind of life they conduct. For example, about the martyrs, it says,

"Count not those who were slain in God's way as dead, but rather living with their Lord, by Him provided." (***Surah Aale Imran 3:169***)

In this verse and other verses as this, we realize that they have spiritual and human life; otherwise, having the advantage of living is not enough, for as mentioned earlier, death does not exist. Even those who are slain in the cause of falsity are eternal although they do not have the same eternity as the martyrs:

"They are summoned from a distant land." (***Surah al Fussilat 41:44***)

This truth may be observed in a scene from the Battle of Badr. When the holy prophet addressed people near the well abounding with the dead bodies of the pagans: "You have now understood that the divine promise has been fulfilled."4

As mentioned earlier, the holy Qur'an proves the different kinds of man's life. Concerning the vegetable and animal life, corresponding indication was as it was shown but the indication per nexum is expressed through verses which forbid the killing of others.

However, concerning the human life the corresponding indication comes from the verses quoted above.

And the indication per nexum comes from the verses which condemns life like Noah who prayed to God to destroy all the pagans, for their life jeopardized the spiritual life of others:

"If you do not kill the pagans, they will lead your servants stray." (***Surah Nuh 71:27***)

Besides, the Holy Qur'an refers to the relation between the two kinds of spiritual and physical life. According to the holy Qu''an, if man has to choose one between the two, he should sacrifice the physical life and choose the spiritual life. Those who live with the truth have always this choice in mind like the combatants who fight in the cause of God:

"Those who sacrifice the physical life for the spiritual one, must fight in the way of God." (***Surah an-Nisa 4:74***)

Those who do not make this choice will suffer on the Last Judgment:

"Why did we not gather provision for our spiritual life*?"** (Surah al-Fajr 89:24***)

Another point mentioned by the holy Qur'an is that spiritual life is more fruitful than the physical life. Thus, those who threaten the spiritual life are more dangerous than the ones who threaten the physical life:

"Persecution is more grievous than slaying" or ***"Persecution is more heinous than slaying".*** (***Surah al-Baqarah 2:191*** & ***2:217***)

Dissension includes the violation of spiritual life and religious belief. One of the examples of dissension is disseminating false and corrupted thoughts. Hence, it is far harder and more useful to combat dissension than to combat crimes such as killing.

The Most Important Distinct Feature Between Physical and Spiritual Life

In the two previous parts, we talked about the two aspects of life. Now the question is how useful this division may be to the understanding of human rights. To discover this effect, one must understand the relationship between the soul and the body.

The most important feature of the body is that it has different conditions in different situations, for instance, the difference in climate, race and geographical features of different people. Even the way plants influence other things in a certain area is geographically different. Sometimes it is observed that the plants with medicinal properties grown in the tropical areas are void of medicinal properties in other areas. Even a wise and experienced pharmacologist cannot say for sure that a certain medicine has equal properties for different people.

However, man's incorporeal spirit is never prone to climatic differences. This spirit which may exist in the east exists in the west. A spirit in the equator has the same features as a spirit in the South Pole. The

incorporeal spirit is bound neither to the earth nor to the sky. However, it is on earth and in the sky. In other words, unlike the body, the spirit is one, not plural; it is static but not dynamic. For the same reason, there is no change in the spirit:

"There is no change in the creations." (***Surah ar-Rum 30:30***)

If the spirit is only on earth, it cannot move in the sky while man's spirit can find God in the sea and in the sky: "O you who are in the earth and in the sky." 5 Because of this lack of boundary of the human spirit, God says:

"Wherever you tum, you see the face of God." (***Surah al-Baqarah 2:115***)

Now, the fruit of this discussion can be observed in legal topics. Human rights are formulated within the realm of human body. Hence, these rules are dependent upon different places. Thus, they cannot be universal. However, religion, which is in the realm of the spirit, does not belong to time and place. It is obvious that all the things associated with religion, including legal-religious rules have the same characteristics. For the same reason, the prophets have brought down the message of the sublime religion. For the same reason, one can never reach a dogmatic certainty in material sciences. Every day the world witnesses something new founded on other propositions. However, religious concepts never know decay and change.

Islam Condemns Suicide

More than any other religions, Islam has placed stress on the prohibition of suicide. There is historical evidence that says, the holy prophet said about someone, "He will surely go to hell." Upon hearing this, people were surprised and asked the reason because the person in question was outstanding as a warrior and as a politician. Afterwards, they learned that the person in question had committed suicide.6 The right to life is so valuable that if ever anyone violates this right and commits suicide will go to hell.

It must be noted that mental suicide is far worse than physical suicide. It may not be imagined that Islam accepts such freedom of opinion. According to other religions, man is free to choose his own way of life. However, as mentioned earlier, the holy Qur'an holds that life is not only man's right but also his duty. This is a precious gem in the hands of man and he should try his best to guard it. It goes without saying that the violation of spiritual life is worse than the violation of physical life. It is interesting to note that committing physical suicide is forbidden by certain religions but cramming the minds with poisonous ideas is not considered forbidden.

Reasons for Forbidding Suicide and Homicide

Now we must see why suicide or homicide is forbidden. Firstly, it must be said that even the angels considered the shedding of each other's blood as a vile act:

"Will thou set therein man who will shed blood?" (***Surah al-Baqarah 2:30***)

If there were no truth in what the angels said, God would not have accepted it. God implicitly accepts this truth which shows that the idea of homicide was vile and revolting. In later ages, other signs for this prohibition were seen. For example, one of the promises taken from the Sons of Israel was not shedding blood:

"And when We took compact with you: 'You shall not shed your own blood.'" (***Surah al-Baqarah 2:84***)

This promise is not particular to one single group, but belongs to all religions. Retaliation used as a means to stop blood shedding is common in all religions. Thus, the Holy Qur'an states retaliation with a view to approving the previous holy books.7

However, besides these common examples there are other reasons. The prohibition of killing is one of the first commands of the holy Prophet:

"Come, I will recite what your Lord has forbidden you; that you associate not anything with Him, and to be good to your parents, and not to slay your children because of poverty; We will provide you and them; and that you approach not any indecency outward or inward, that you slay not the soul God has forbidden, except by right." (***Surah al-An'am 6:151***)

In yet less limited realm, the killing of children by parents has been forbidden. In the Age of Ignorance, some people killed their children. There were so many motivations for this. Sometimes, they killed their daughters, for they thought they would be ravished by the enemy in case of invasion. Sometimes they killed their children in fear of drought and hardship. In this regard, the holy Qur'an states,

"Do not kill your children because of poverty . We shall provide you and them." (***Surah al-Isra 17:31***)

Sometimes they killed their children before the idols to come close to them. This indiscreet act was also prohibited by God:

"Those who killed their children ignorantly suffered." (***Surah al-An'am 6:140***)

The same prohibition is included among the conditions for entering into covenant with women. The Holy Qur'an states,

"Enter into covenant with those who do not kill their children." (***Surah Mumtahanah 60:12***)

In this part, one can resort to verses, which determine the punishment for the killer. This is one of the reasons for prohibiting killing. Some of these punislunents are spiritual and some others physical. Physical punishments include retaliation or paying blood money. One of the spiritual punishments for killing a believer is remaining eternal in fire.

"Whoso slays a believer willfully, his recompense is Gehenna, therein, dwelling for ever." (***Surah an-Nisa 4:93***)

If anyone slays a believer for his faith, he is a disbeliever and his recompense is dwelling in Gehenna forever. However, if he has slain him not for his faith, he will dwell long in Gehenna.

The violation of others right to spiritual life incurs the selfsame punishment. Those who lead others astray should repent of their deeds. However, this repentance is accepted when they repair all the destructive thoughts they have brought about. Thus, repentance is considered as a solution for these people:

"... be cursed by God and the cursers, save such as repent and make amends, and show clearly-towards them I shall turn." (***Surah al-Baqarah 2:160***)

To put it in a nutshell, Islam regards life as man's right and duty, considering two phases for it: physical and spiritual; it prefers the spiritual phase to the physical one. It considers certain punishments for the violators of this right.

Freedom

All prophets were freedom-bringers

To understand the message of the prophets, it is enough to present the message by one or some of them. The reason is that the achievements of the prophet were the same in many cases. In this regard , the holy Qur'an uses shari'ah or minhaj:

"To every one of you We have appointed a right way (***shari'ah***) ***and an open road*** (***minhaj***)***."*** (***Surah al-Maidah 5:48***)

However, where there is talk of the main principles of religion, the holy Qur'an states that all prophets transmitted the same message. For instance, the al-Hijr

"cried lies to the Envoys;" (***Surah al-Hijr 15:80***)

"The men of the Thicket cried lies to the envoys when Shu'ayb said to them, will you not be God-fearing?" (***Surah as-Shu'ara 26:176***)

We all know that the people in both places had then one prophet. That the Holy Qur'an condemns the people's rejection of the Envoys shows that all the prophets had one single message.

Another sign for this truth is that every prophet confirms the words of the preceding prophets. This was one of the characteristics of the prophets which shows that the main axis of the prophets' messages was the same:

"And We have sent down to thee the book with the truth, confirming the Book that was before it, assuring it." (***Surah al-Maidah 5:48***)8

Now we shall consider one of these messages by Moses. After bidding the people to worship the one God, that great prophet cried freedom to them. This message was not for the freedom of the land and the economic resources of Egypt. The purpose was freeing the Egyptians from the bondage of falsity. Of course, if a people are freed, the economic resources will surely be freed. This was the message of Prophet Moses:

"O false Gods, deliver to me God's servants." (***Surah ad-Dukhan 44:18***)

Pharaoh's followers answered that they would not surrender to those who were their own servants. It is clear that he did not mean that he was the Lord of others. Pharaoh said,

"I am your superior Lord." (***Surah an-Naziat 79:24***)

However, he did not mean that he was the master of other affairs. Pharaoh and his followers were idolaters. For the same reason. Pharaoh's followers told him.

"Will you allow Moses and his followers to ignore your Lord?" (***Surah al-A'raf 7:127***)

Hence, Moses demanded the freedom of others from this servitude,

"That is a blessing thou reproachest me with, having enslaved the Children of Israel." (***Surah ash-Shu'ara 26:22***)

So Moses meant that it is not fit to worship anyone but God and that all human beings should be free from this bondage and that they should not follow the man made rules.

In the works of the Innocent Imams, the message of freedom is clearly discernible. The most obvious document in this regard is Nahj al-Balaghah where Imam'Ali addressees his son Mujtaba, "Be not servant to anyone but God, for He has created you free."9

As is seen in this statement , true freedom lies in breaking from any servitude but from God. For the same reason, Imam 'Ali finds his honor in this kind of freedom, "O God, it suffices me to be Thy servant; this is great honor for me to have Thee as my Lord."10

The Difference between Islamic Stance On Freedom and that of other Schools of thought

As pointed out, freedom lies in freedom from servitude of others but Allah. However, the proponents of other schools believe that freedom lies in man's capability to choose anything. In their eyes, man is free to choose any religion he desires, for they regard religion as an ordinary thing. Thus, as man chooses his profession and residence, he chooses his own religion . According to this belief, religion finds its origins in the traditions and beliefs of people. However, in Islam, this absolute freedom is servitude, for if

man is free to choose whatever he likes as his religion, then he falls into the pitfall of his desires and follows them,

"Has thou seen him who has taken his caprice as his god?" (***Surah al-Jathiyah 45:23***)

The implication is that man has to choose the true religion although he is free not to choose any religion?

This different interpretation of freedom misguides causes the followers of other doctrines. Now we shall discuss some of these issues. One of these issues is political freedom. In the dark atmosphere of atheism and egoism, political freedom means that people participate in the elections and vote for anyone they wish and boast of this democracy.

However, in the bright atmosphere of monotheism, political freedom is never limited to this. In this atmosphere, there is the talk of leadership and representation. In addition, there is a fundamental difference between the representation of Faqih and his deputyship. It must not be imagined that Islam accepts democracy and that we can choose the leader of the Islamic community with the votes of others. It is never so. What the votes of people have part in is neither the leadership nor his representation.

According to the Islamic thought, the Lord has chosen the qualified jurisprudent to lead the Islamic community. The society accepts the leadership of this leader with its vote as he himself accepts his leadership but he has no part in placing him as a leader. Hence, he accepts his leadership as a legal person. For the same reason, if he issues a verdict, no one is allowed to violate it nor is he allowed to violate it. So there is no difference between him and others as fair as the observance of rules and laws is concerned.

Another difference is the kind of interpretation of opinion and expression . In this regard, the Holy Qur'an states,

"So give thou good tidings to My servants who give ear to the Word and follow the fairest of it." (***Surah az-Zumar 39: 17-18***)

On the other hand, the Holy Qur'an explains what the fair word is,

"And who speaks fairer than he who calls unto God and does righteousness and says, surely I am of them that surrender?" (***Surah al-Fussilat 41:33***)

Thus, although the Holy Qur'an bids others to listen to different sayings and choose the fairest, it introduces the fair words. In other words, it offers the general syllogism, "Freedom in choosing the fairest word" it offers the minor syllogism "the nature of fair words". The proponents of atheism do not pay attention to this minor syllogism and think that man is completely free to choose his way.

The common point between the Islamic thought and the atheistic thought is the general principle but it must be noted that the Holy Qur'an explains the better world. Besides, this premise is itself a broad premise, for the more delicate premise is mentioned in the Holy Qur'an which may be called the narrow premise. In the narrow principle, a better instance is indicated. And that instance is the word of the holy Prophet (S.A.) which has been mentioned in the Holy Qur'an as a minor to that broad principle:

"I invite ye all unto God; with clear sight which I and he who followeth me" (***Surah Yusuf 12:109***)

On the basis of minor and major premise cited as broad premise, the better word is inviting people unto God. In this verse, the holy Prophet (S.A.) is introduced as being the one who invites people unto God. With this narrow premise and through a new comparison, it can be concluded that the holy prophet (S.A.) is the bringer of the fairer word.

However, the followers of atheistic thought accept only the broad premise and neglect these two premises which are the central motifs of that premise. It must be noted that all schools of thought believe themselves to have the fairer words. Even the followers of Pharoah who perpetrated numerous crimes believed themselves to be the followers of the superior doctrine and warned their people that Moses and his brother Aaron were determined to destroy that.

"These two want to wipe out your most exemplary tradition." (***Surah Taha 20:63***)

Another instance of difference may be observed in economic freedom. In the open Islamic atmosphere, after enumerating the lawful and the unlawful, it has been stated that everyone can be a master of his economic achievements.

"For men shall have of what they earn: and for women shall have of what they earn." (***Surah an-Nisa 4:32***)

It must be noted that wherever the Holy Qur'an lays stress on a common affair between man and woman, it enumerates it separately for them.11 In most cases, the Holy Qur'an explains the common affair between man and woman with a certain expression; however, in striking instances, it employs a special expression for each of them. From this one can gather that freedom of profession and economic independence are of paramount importance, otherwise God would have said, "For everyone shall have of what they earn."

From the discussion on economic independence and lawful and unlawful, one can perceive that in Islamic thought, economic freedom is interpreted within the matrix of the servitude of God and respecting the lawful and the unlawful. However, in materialistic thought nothing but the economic considerations of man determine for man any boundary for trading and economic policy of man. In view of this, the most unpleasant transactions and the ugliest tradings are allowed in materialistic thought, even if it jeopardizes the most decent moral and human institutions.

The very difference may be observed in freedom of residence. In divine thought, man is not free to travel where he likes and make his residence wherever he wishes. Although the Holy Qur'an regards the earth as being extensive, religious teachings warn us to make residence where we are capable of preserving our religious values. This idea is implied in the words of Imam Ali, "The best place of residence is the one, which can tolerate you."12

For this reason, it is not essentially advisable to travel to a land where one's religion is endangered. In other words, the freedom of residence is acceptable as far as the spiritual life of man and his original freedom are not threatened. However, in this case, the adherents of atheistic thought do not see any boundary for themselves and decide to settle by their materialist criteria. And they do not accept that the moral and religious criteria can limit this freedom.

The Glorious Manifestations of the Qur'anic Attention to Freedom

Freedom as expounded earlier in this article is of great value in the Qur'anic view. This value is such that the Holy Qur'an bids people to worship before the symbol of freedom and undertake other worthy tasks before it. That symbol is Ka'ba which is called Bayt al-Atiq (the Ancient House). Some believe that this way of naming it is due to the reason that the Ka'ba is ancient and historically valuable.

However, according to some tradjtions the Innocent Imam (A.S.) has observed that this method of naming it is because no tyrants have succeeded in conquering it.13 In other words, this house has always been free. Hence, they have called it 'atiq (derived from 'Atiq meaning freedom). So, the Ka'ba can be regarded as the symbol of freedom.

Now let us see how the Holy Qur'an regards this symbol and induces people towards it. On the one hand, the Holy Qur'an has bidden people to stick to this symbol and glorify it.

"And let them circuit the Ancient House." (***Surah al-Haj 22:29***)

On the other hand, it has commanded people to turn to a mosque in life in which Bayt al- 'atiq is located.

"Turn then thy face towards the Sacred House." (***Surah al-Baqarah 2:144*** **&** ***150***)

Besides this eternal approach towards Ka'ba, many of man's actions are related to this symbol. Most of the worthy acts such as praying should be done towards Bayt al- 'Atiq. Some of them like reciting the Holy Qur'an had better be done towards this symbol. Reciprocally, the ill acts should not be done towards this symbol and if so, it is generally deemed offensive. So everyone is in one way or another associated with this house of freedom. Even in the last moment of presence in this earthly world, we should turn towards this house.

This deep attention to Bayt al- 'Atiq and guarding it, means that the Muslims ought always to struggle for their freedom and should not risk heavenly freedom for enthralling enchantments. It is manifest that

among the most striking enchantments are man's engaging thoughts manifested within the matrix of the teachings and laws of philosophical, moral, legal and political schools and drag some groups from here to there.

The Difference between Genetic Freedom and Legal Freedom of Man

In studying the freedom of choice, we have to distinguish between genetic freedom and legal freedom. By genetic freedom is meant that the choice of path and opinion is not compulsory in the Cosmos. Religion is a set of particular beliefs, which may never be imposed upon anybody. If the principles and tenets of religion are not achieved for a person, religion goes beyond its realm. Hence, the Holy Qur'an states,

"There is no compulsion in religion." (***Surah al-Baqarah 2:256***)

Besides, by legal freedom is meant that man is not obligated in any affair as he is not free. In scientific terms, the cosmos is neither within the realm of determinism nor is it within the realm of libertarianism.

However from this genetic freedom, one cannot conceive that man can move towards any direction in the choice of opinion and that God may not regard his desire. This is never so! That genetic freedom is interpretable visa-vis the religious duties.

"The truth is from your Lord; so let him who pleaseth believe; and let him who pleaseth disbelieve." (***Surah al-Kahf 18:29***)

Hence, what is accepted by the Lord and belongs to Him is right; but some people move towards untruth on the basis of genetic freedom. Numerous Qur'anic verses have determined the boundary for these two freedoms and have drawn man's attention to accept religious duties.

"Hold ye fast that which We have bestowed upon you with strength." (***Surah al-Baqarah 2:63 & 93; Surah al-A'raf 7:171***)

So in the choice of truth or untruth, man must not only accept the truth but also guard it with strength of determination. If someone accepts the untruth after complete investigation and in complete awareness, and refrains from accepting the truth, he is ranked among those against whom the holy Prophet (S.A.) has issued the order of preliminary jihad. And if the preliminary jihad is not accepted by some, everyone surely believes that these people dwell forever in the fire of Gehenna and do not have before them any path of salvation.

Therefore, it must be noted that although the Lord has created man free in choosing religion, he has explained for him the path of growth.

"Indeed truth has been made manifest distinct from error." (***Surah al-Baqarah 2:256***)

In view of Islamic world vision, every belief of man in the Resurrection Day and the purgatory is manifested in a special way. And man is a creature who is constantly traveling from the world to purgatory and from the purgatory to the Hereafter. In the meantime, apostasy and atheism are manifested in the shape of snake and scorpion. This shows that ill thoughts are equal to venomous poison. And it is obvious that the Lord does not allow man to choose the poison and perish himself.

In Qur'anic terms; such a person flames his soul as the devourer of unlawful things fill their souls with fire.[14] In this regard, the Holy Qur'an states,

"They eat nothing but fire into their bellies." (***Surah al-Baqarah 2:174; Surah an-Nisa 4:10***)

It is clear that the Lord does not allow man to have freedom in the choice of flower and fire or honey and poison. Religious freedom is never accepted in the Qur'an or by the Islamic culture.

The Relationship between Life and Freedom

In Qur'anic view, freedom is the prelude to life. All the freedoms allowed to man are meant to induce man to lead a worthy life. In order for man to achieve a worthy material and spiritual life, he should be free and in order to achieve freedom he should relieve himself from the bond of lusts. All people are the hostages of their own conducts. Only those who are ranked among the upright and the believers shall be free from this bond.

"Every soul for what it earned is held in pledge save the people of the Right hand." (***Surah al-Mudaththir 74:38-39***)

Now we should see how the upright people have relieved themselves of this bond. The answer to this question can be found in the words of the holy Prophet which he delivered on the last Friday of the month of Sha'ban. "O people! Your lives are imprisoned by your conducts; so save your lives by repenting your deeds."[15]

So the genuine freedom of man lies in relieving himself of his sins by repenting and they may be ranked among the upright people by virtuous acts. This is the freedom, which can be the prelude to original and sublime life.

Justice

Analytical Definition of Justice

You have frequently heard that justice means "putting things in their right place." Some have presumed that this definition is replete with ambiguity for it is a general axiom whose purports are not quite clear. However, it must be noted that a definition becomes ambiguous when the totality of it is questioned. However, if a definition has no shortcomings in this respect, it is not ambiguous although its purports may not be clear. To decipher the purports, one must refer to the source, which is responsible for

adjusting them.

When a lawyer intends to know justice , he must be aware in recognizing its purports . To this end, one must understand the phenomena, and the place of the phenomena in the universe; one must also know how to put each phenomenon in its place. If like everyone else involved with justice a lawyer takes the three steps mentioned above, he can adjust that general axiom to clear purports.

After all, one must be aware that justice is not hypostatized although it is an evaluative concept. The implication is not that justice does not really exist in the universe, but fabricated by human mind. Like all other evaluative concepts, justice is derived from the universe and abstracted from genetic affairs.

It is appropriate now to give an instance at this juncture. When some people gather together with the intention of undertaking something purposeful and organized, their situation may be interpreted as a manifestation of a living human person. A human person has a head (the center to command the limbs) and limbs (the parts of taking command, each of which has a particular function.) With this choice and abstraction, one can choose among them one as the head to lead others and the rest of the limbs as parts engaged in a particular function. With this choice, the terms *head* and the members come into being. This is true for justice. In the universe, each phenomenon is in its place and busy with a task appropriate to its situation.

This harmony and proportion bespeak the justice of creation. One abstracts this from genetic affairs and with this choice, any time each member of the community the instance of which was given earlier performs his function, the situation is regarded as being just. Although justice is an evaluative concept, it runs within the stream of existence; however, in evaluative issues, the concept is a hypostatized one and in genetic affairs, a real concept.

With this in mind, it becomes evident that justice is not a concept replete with literal ambiguities. It cannot be said that justice in the creation of God holds a particular sense or that the human justice is different. It must not be imagined that social and political justice have two distinctive meanings. In addition, it cannot be accepted that these have difference of meanings.

The truth is that justice is a spiritual ambiguity and holds the same meaning in all this. The difference of purport never agrees with the conceptual unity . To clarify this point, one can consider science. Science is of different kinds such as hypostatized sciences or real sciences; immediate or intuitive knowledge; or the knowledge, which is identical to nature and the one going beyond it. These differences come from the difference of purports rather than that of concept. In fact, knowledge is not a sheer concept. However, in different cases, it has different manifestations. In other words, knowledge is a spiritual ambiguity. The same case is true for justice.

Understanding and Feeling Justice

At times this question comes up: how can one feel justice? Can one understand justice with tangible and

experienced signs? If not, how can one understand justice in real life or in the realm beyond the human mind?

First, it must be said that justice is not of the perceptual concepts to have perceptual signs. One cannot experiment justice in the laboratory. Imam ‘Ali (A.S.) states, “Truth is not of the experimental signs through which one can distinguish between right and wrong.” 16

However, this does not mean that one cannot distinguish between just and unjust. To understand right and just is not confined to sense and experiment. This Imam ‘Ali (A.S.) has shown us. The eminent Imam has stated in one of his letters, “Those who reside in my government, and joined the Umayids, saw and heard justice and placed it in their hearts, but did not accept it.”17

From this pithy statement, it is perceived that Imam Ali had treated in his time in a way that people could understand justice. In other words, a just government can introduce justice to people by showing the evidences of justice. By virtue of this reason, on the basis of a statement by the same venerable Imam, the best servants of God are those who can make understood justice by their deeds. “The nearest servants to the Lord are those who are more truthful than others though to their detriment, and stick to truth more than others, though there might be harm in it.”18

Although it is hard to be adorned with justice and truth, it is the best way possible to introduce it.

Basically, the politician who can be the representative of justice with his foresight shall prosper . Hence, reason is no other than justice. In defining the sage, Imam ‘Ali has given the same statement as for justice. It was asked of Imam: “Define the wise man for us.” The Imam said, “The wise man is he who puts everything in its right place.” Then the Imam was asked, “who is ignorant?” the Imam replied, “the same thing I said about the wise man.”19

This means that the reverse image of the wise man mirrors the ignorant. Definitions of this type, which are sometimes observed in the sayings of the innocent Imams, are polemic definitions, albeit of the superior polemic. In this type of definition, an affair is not clarified by genus or differentia but by its likes. In the definition cited above, the same polemic method is used. Of course, the Imams have defined concepts by genus and differentia elsewhere.

With attention to the function of justice in policy making, one can perceive why justice is a better concept for some rulers. For instance, Imam Ali in response to a question said, “Justice puts things in their right places and puts them in categories; justice coordinates the public policy and gives benefit to those who are forgiven: so justice is nobler and superior.”20

In other words, from charity, one can benefit in time of tumult but what should be done by a ruler or a policy maker is justice. In view of what was said, justice is like reason and practical wisdom.

Now that our discussion has diverted to this point, it deserves note that one of the secrets of the needs

of man for innocent Imams lies in this very fact. If they are not innocent, how can one choose among the numerous evidences something as justice? If the innocent Imam does not show justice within the matrix of evidences, how can one recognize justice? As understood by what Imam ‘Ali said, one can understand the right with utter simplicity.

However, when applying the truth, who but the innocent Imams can exercise the truth and offer it to people? “The truth in description is of great expanse but in practice, it is of the narrowest realm .”21

Nobody censors Plato, Aristotle or other sages as to why they have not presented a practical instance of their ideals?! They are scholars who do not have chastity in practice although they have sublime knowledge. However, the society expects an innocent Imam to present a practical instance of right and justice and truth so they may not fail to understand the truth. And if it is not so, how can one understand those general concepts?

Explaining Justice within the Realm of Human Powers

As was mentioned earlier, there are many things to say about right and justice. Some scholars have embarked upon describing corporeal qualities and human powers. Based on their experiences, observations, testata, and those of others, they have concluded that human powers may be classified under three categories. And although they are not unrelated to each other, the boundary of each one of them is separate from that of the other.

The first category is the intellectual and scientific power of man. The second category consists of the power of attraction. And the third category is the power of dispelling. Based on this division, the human powers do not go beyond these three categories for each one of the human behaviors is of two kinds; either they are associated with intellect and perception which is related to the first category or with conduct which belongs to the second and third categories.

Each one of these powers has three stages: moderateness (tafrit), middle or immoderacy. The intellect is sometimes within the realm of moderateness. In this state, the individual is slow. Sometimes, this power is in the stage of immoderacy, which renders one sharp. If this power is in the middle stage, it means that the individual has intellectual balance and understands each affair properly; neither does he delay in understanding nor does he go beyond what is necessary, that is he does not beat about the bush.

This state of immoderacy, that is precocious understanding and untimely wandering of the mind is called *jurbuzah*. As a slow person does not reach anywhere, the person with jurhuzah does not achieve success. However, the one whose intellectual power is balanced, merely accepts rational affairs, champions it and does not wash his hands off it so easily. The one who possesses such a power (and in this respect), he is in a state of justice and intermediacy is called a sage. And this central kernel is called theosophy which apart from absolute science is juxtaposed with theology an Gnosticism.

Now let us speak about the second category, that is attraction. This power can also have one of these three states. Sometimes man strives to achieve his aspiration and inclines towards it with greed. This state is called *shirah*. Sometimes he procrastinates in reaching his aspiration, which is called *khumul*. However, if the power of attraction is in a state of equity, it is called iffat (chastity.) Of course, this method of naming is of the instinctive affairs.

These three states are respectively called *hirs* (greed), *tabdhir* (extravagance), and *sikhavat* (generosity) in financial affairs. Thus, the central kernel of power of attraction is generosity and chastity. If someone achieves this central kernel, he may give away all his wealth, this act being called generosity, not extravagance.

To ascertain what is generosity or extravagance deserves special alertness. Especially to ascertain this, one has to accord special attention to the stages of this state and the relation of every individual to those states. For instance, there are many stages for generosity and each individual has one of these states. It is evident that ascertaining that central kernel plays an essential role in legal and moral perceptions.

In the third category, that is the power of dispelling, the case is the same. Sometimes an individual wishes to obliterate all the affairs he considers unpleasant. This state is called *tahawwur* (audacity). And sometimes he keeps silent in the face of tyranny and finds himself hand tied in dispelling the misfortunes of life. This state of moderateness is called *jubn* (cowardice). However, sometimes the individual adopts a middle manner and observes equity. This state is called *shuja 'at* (courage). Here as in the second category, the states are different. Someone may have a lot of courage and some other person a little of it; at any rate, he is in the same central kernel of the power of dispelling.

It is good for the individual to be in these three central kernels, that is theosophy, generosity, chastity and courage as someone who walks on a straight path and avoids walking in the bypasses. When man is in the main path, he shall definitely have different speeds. The one who is in the path should have different speeds as his situation necessitates. Therefore, equity does not mean stability or equality, but on the same path, going with speed is like equity. In this way, our leaders are the innocent Imams who manifest real equity with their conducts. If someone wishes to distinguish between the boundary of immoderacy and middle and move with balance along the path, they have to walk in the ways of those eminent Imams.

In view of what was said, justice is the outcome of the balance of the three human powers and can never be counted as an independent identity. The one who walks in the main path, is called just. If someone is in the middle of two powers, this means what is used in philosophy and major jurisprudence.

However, in minor jurisprudence, this does not have the same meaning; the just one is he who puts aside the prohibited and does the obligatory affairs. For instance, a person may not be courageous but minor jurisprudence regards him as being just whereas philosophy and major jurisprudence do not consider him so. Therefore, it must be noted that what we stated concerning the meaning of justice, is

derived from the sayings of the sages and is common among them.

Of course, there have been and are people who reject this categorization and gives such criticisms: it is not obvious that every affair may have middle or immoderacy. Also, extravagance cannot be beyond the realm of justice. However in view of what was stated, it became evident that what they criticize does not hold any similarity with sayings of the sages, but fabricated by their minds.

The great sages, those who lived before Islam or before it, were all the followers of the Abrahamic prophets and these criticisms are not true about their sayings. As you observed, in the eyes of the sages, as soon as man steps into the main path, speeding up or walking slowly does not oppose to justice. And sometimes walking with speed is good. Before stepping into this path, the rule of "the best of affairs is the middle" is prevalent. However, after it, sometimes

"Hasten then to precede each other in everything good" (***Surah al-Baqarah 2:148;*** **&** ***Surah al-Maidah 5:48***)

appears. All these are conditional upon the fact that man gets lesson from the evidences of justices as manifested in the sayings and conducts of the innocent Imams and distinguish his way from them so he may not fall into the pitfall of miseries and substitute immoderacy and middle with justice.

Justice is All-Pervasive

All human beings, no matter what language, tradition or culture they have, long for and love justice. That is why the Holy Qur'an has introduced the essence of everyone as being truth and justice.
"The Lord created you and bade you to justice." (***Surah al-Infitar 82:7***)

This justice in creation manifested itself in the way that God bestowed upon the universe whatever it required for existence and gave it whatever it needed to achieve its end:

"Our Lord is He who created everything and then guided it." (***Surah Taha 20:50***)

So, justice and equity are located within the existential structure of everything and all creations have the essence of justice. By essence, no one goes beyond the realm of justice unless they assist the anti-essence factors. The Lord, who is in control of everything, has placed the straight path before the Cosmos and all creatures by nature strive for this straight path.

"There is no living creature but He holdeth it in His control by its forelock. Verily my Lord is on the Right path." (***Surah Hud 11:56***)

By virtue of this reason, the Holy Qur'an bids everyone to uphold justice:

"O ye who believe! Do stand firmly with justice. Witnesses for God's sake." (***Surah an-Nisa 4:135; Surah al-Maidah 5:8***)

Here, the Holy Qur'an talks about *qawam* not *qaim*. This indicates the difficulty of upholding justice. Man should uphold justice through experience so he may reach from *qa'imiyyat* to *qawwamiyat*. There is many a time when man is seized with doubts concerning upholding justice. If someone overcomes these doubts and upholds justice, then he shall be the upholder of justice. It is through this process which man becomes impelled to ignore his personal benefits and avoids kinship in the way of justice. Here, for the sake of kinship, man ignores the truth.

"When ye speak, be just, though it be against a kinsman." (***Surah al-An'am 6:152***)

Here is why revenge does not become an excuse for tyranny.

"And let not hatred of a people incite you not to act equitably." (***Surah al-Maidah 5:8*** **&** ***2***)

Hence the Holy Qur'an enjoins man not to use friendship as a way of immoderacy and enemy as a way of ignoring. This is the best way possible to avoid blindness arising from greed and animosity.

As everyone strives for justice, the Holy Qur'an bids everyone to justice. In his letter to Malik, Imam 'Ali (A.S.) wrote, "Do not tyrannize over people like a voracious wolf, for people are of two kinds: either they are your brethren or your equal in creation."22

This command of Imam Ali (A.S.) embodies all the teachings of the Holy Qur'an which bids the holy Prophet to uphold justice towards the nonMuslims. For instance, every time the people of the book find legal differences, and step into a Muslim court, the Prophet is given authority to either solve their problem himself or send them to the court of the people of the book.

"If they come unto thee judge between them or turn aside from them: and if thou turneth aside from them, then never shall they harm thee in any way, if thou judge, judge thou between them with equity; verily God loveth those who deal equitable." (***Surah al-Maidah 5:42***)

The very same Qur'anic principle is prevalent in our jurisprudence and well indicates that the Holy Qur'an values all-pervasive justice.

Justice: One of the Goals of the Prophetic Missions

Th Holy Qur'an states that upholding justice is one of the goals of prophetic missions. However, it must be noted that the Holy Qur'an states this along with two major principles. Firstly, the Holy Qur'an regards the Cosmos as being on the axis of justice - we shall treat this later - secondly, the upholding of justice is considered as the intermediate mission of the prophets, not their ultimate goal: Thus, on the axis of truth, justice is not located in the beginning to be considered as the beginning nor is it located in the end to be regarded as the ultimate goal.

As to justice being one of the goals of the prophetic missions, the Holy Qur'an states,

"Indeed sent We our apostles and clear proofs and sent We down with them the Book and the scale that people may establish themselves in justice." (***Surah al-Hadid 57:25***)

However, it must be noted that the talk has been diverted here after some processes. Prior to this, the Holy Qur'an considered God as the upholder of justice and introduced the angels as the witnesses to the oneness of the just Lord,

"God is witness that there is no God save Him and the angels and men of learning (***too are witness***) ***maintaining His creation in justice, there is no God save Him, the Almighty, the Wise."*** (***Surah Aale Imran 3:18***)

In this verse, the oneness of God is united with the justice of creation. In other words, as God is the upholder of justice, it shows the oneness of God, for if this origin was organized before this, the harmony, order, and justice would leave the cosmos and everything would decide its own fate. Then, the law and justice did not manifest themselves so that God founded His work upon it, but justice is begotten by His work: and He is the Heart of justice. As the scholars see this justice, they testify to the oneness of God. This means that justice is not located at the beginning of that line.

On the other hand, justice is not the ultimate goal of the prophets. The Holy Qur'an regards for middle men justice as the goal of prophetic mission. However, for the seekers the main goal is that they should tear the dark veils and penetrate into the world of light.

"This is a Scripture We have revealed unto thee that thereby thou mayst bring forth mankind from darkness unto light." (***Surah Ibrahim 14:1***)

There is a big difference between a just man and a luminous man. The just man upholds justice for he regards it as his own duty; but the luminous man is himself the source of justice and justice is manifested by him. One can understand this difference in the comparison between the *mujtahids* and ordinary men. An ordinary man tries to create within himself *ijtihad* through study; but as to those who have attained to the degree of *ijtihad*, the qualities of *ijtihad* are manifested within their thoughts and souls, the same qualities others attempt to create within them.

What was said becomes manifest in the question and answer of the holy Prophet. The Great Prophet was asked, "Although you are infallible, why are you so humble before God?" The Prophet answered, "Should I not be a grateful servant of God?" This means that the holy Prophet did not show humbleness in fear of divine punishment, but that he was humble before God because he had the sense of gratefulness.

Therefore, justice is a goal for those who are in the middle of the path. He, who attains light, does not consider a goal the upholding of justice but he is the personification of justice. Concerning such a person, the Holy Qur'an states,

"And set for him a light wherein he walketh among men." (***Surah al-An'am 6:122***)

Whereas the people in the middle of the path try to reach through justice a light by which they can live with people.

Justice Runs through the Entire Universe

One of the sweetest fruits of Islamic thinking is that justice is not confined to one or several creatures but runs through and with the entire universe, even the Exalted Nature of the Almighty. It is appropriate to quote an example from the Holy Qur'an. In the Sura of Kahf (Cave), there is a mention of two gardens, which are both lush and green and bear many fruits. The Holy Qur'an states in this regard,

"Each of the gardens gave its fruit and withheld naught thereof." (***Surah al-Kahf 18:33***)

It must not be imagined that the use of the word "withheld" is metaphorical. It is neither metaphorical in word nor in transmission; it is neither intellectual metaphor nor is it literal metaphor.

The garden is indeed just. The idea is that it perfonns its duty in the cosmos. All other creatures are founded upon justice like these two gardens. However, the beings endowed with intellect are bound to be genetically just and religiously responsible . It is everyone's task to accept justice. Even the angels and perfect men are bound to perform this duty. Despite the fact that the angels are free from sins, they shall be chastised if they shirk their responsibility.

"And one of them who should say: Lo! I am a God beside Him, that one We should repay with hell." (***Surah al-Ambiya 21:29***)

Even the great Prophet of Islam – who is the most perfect man – is bound to this genetic and religious duty. On the one hand, he is located within the realm of existence and is born and dies like everyone else and on the other hand, he is bound to uphold justice like everyone else,

"If thou ascribe a partner to Allah, thy work will fail and thou indeed wilt be among the losers." (***Surah az-Zumar 39:65***)

So, whatever exists in the world, is bound to uphold justice and that justice runs through the universe. Now this question comes up: if so, is the Lord bound to this must? The answer is that the Lord is just and never tyrannizes: however, there is a substantial difference between the acceptance of justice on the part of God and on the part of others. About any creature but God, we say, "He deserves justice." But about God, we say, "Justice should be meted out by God." The idea is that God never tyrannizes, it does not mean that He should uphold justice and should not tyrannize.

The Lord, unlike other beings, is not confined to the realm of musts. And no superior system may impose anything on Him. Whatever God does is pure justice, for He is pure perfection. And every must, justice springs from Him. The same proof that demonstrates the truth of God, shows His qualities and

then evaluates His actions on the basis of these qualities. Therefore, God and existence are all the upholders of justice.

This justice running through the entire universe shall never cease to be. For instance, Some people believe that the lack of justice arises from the social deprivations. As people are deprived, they are thirsty for justice: and if their deprivations are gone, there is no more need for justice. This is extremely wrong for they have stated that justice is not only the goal but also the duty of every creature in the universe. This duty should be done under any circumstances.

Besides, justice and deprivation have two different relationships with each other. Sometimes this relationship is based upon precaution and sometimes upon dispelling. Sometimes, justice is meant to combat the existing deprivations with the present situation. But this does not cause the other duty, justice to be forgotten which involves creating a background and escape from the society and the aloofness of the society from ills. Anytime the superior society is inflicted with a misfortune. it struggles against it through justice to eliminate it. And any time it does not have any deprivation, it strives to eliminate the ills by upholding justice. Therefore, it is everyone's duty to uphold and champion justice and justice constantly runs through the warps and wefts of the society.

The Union of Justice and Moral Issues

It must be noted here that although the materialistic schools have accepted the relationship between legal and moral issues, this bond is considered to be confined to nature and material. However, in the Islamic thinking, this bond is firmer in the Hereafter. At any rate, in this part, we shall deal with the relationship between justice, love, equality. and charity.

Let us begin with the concept of love. Do love and feeling leave no room for justice? If the members of any society love each other, will there be any talk of justice? Those who give a negative answer to this question, have stated that any time there is any mention of love, the tyranny is not obliterated but everyone tries to give his rights to others. For instance in a family brimming with love and affection, everyone gives his financial benefit to others with utter enthusiasm and risks their own comfort for the comfort of others. In such a family, there is never any talk of justice. Now if we round our society on the basis of love and charity, we shall not need to talk about justice.

The answer is that love is a moral value which although it has union with rights, it has a different realm. On a longitudinal axis, rights come first and then morality. If someone succeeds in respecting the moral issues, he shall then step into the realm of moral affairs. The Holy Qur'an constantly reminds us of this sequence. Firstly, it bids us all to justice and then to good works.

"Allah bids to justice and good-doing." (***Surah an-Nahl 16:90***)

If we look at the relationship between love and justice from this angle, the status of each of them is clarified and there will be no room to bring up the previously mentioned discussion.

Now it is the time to study the relationship between justice and equality.

This engaging slogan has long been common that the laws should be done equally towards people. This slogan has constantly drawn the oppressed people and has been used as an instrument by the policy makers and the tricksters. But the truth is that there is difference between justice and equality. To explain this difference, we had better choose a star from the sky of Imam 'Ali's words.

During his reign, a group went to him and said, "Why do you distribute the common wealth equally among people?" They thought that if the Imam gave more to the powerful group of the society, they would protect him. However, the great imam answered, "Do you want me to win victory at the price of tyranny?"[23]

To understand this, one must know that in the Islamic thinking properties are of different kinds to three of which we shall refer. One group of properties should be distributed equally among people. The second group should be distributed differently among people. The third group should be distributed among some people.

Equality runs in the society where everyone performs their duty shoulder by shoulder. For instance, the booty should be distributed equally among those who have fought side by side. However, if among them are some who have taken greater pains, they shall have more booty. Thus, if some people have shirked responsibility during the war, they will not benefit from the booty. As you see the three different type of distribution are seen in the three instances given above which include equality, difference and allocation.

With this explanation it becomes evident that Imam Ali believes the common wealth to belong to the first category and believes it to belong to all members of the society and considered equality in the distribution of it. Now once again observe his answer, "Do you want me to win victory at the price of tyranny?" This answer embodies some lessons.

The first lesson is that the end does not justify the means. To achieve victory – even if the victorious ruler is Imam Ali, one cannot choose an inappropriate path to violate the truth. Imam Husayn repeats the same thing when he says, "If someone tries to reach his goal through sin, he shall lose way before everyone else and plunge into pitfall."[24]

Sin can never be a way towards victory but it is a bypass.

"But they will meet deception." (***Surah Maryam 19:59***)

The lesson we get from the sayings of Imam Ali. "Indeed it is not proper to bestow one's wealth upon those who do not deserve it. This raises the status of the one who bestows but debases him in the Hereafter. That is, it endears him among people but puts him to shame before God. He who squanders his wealth and bestows it upon those who do not deserve, God will make them ungrateful and he will not win their friendship. Thus, if some day something awful happens to him and he happens to need them,

they will be among the most censorious friends."[25]

So in distributing properties, one does not have to be too extravagant or too generous. *Tabdhir* means spreading the seeds in a place like a heath from which there will be no fruit. Apart from this minor syllogism, he propounds the major syllogism. "He who puts wealth in an inappropriate place, he shall be endeared by people but will be humbled before God."

From this syllogism, it is concluded that he who squanders his wealth will be put to shame before God. This is the outcome of the first lesson. The first lesson was this; that from tyranny one cannot attain his end. Now the manifestation of the same truth can be observed. A ruler might be held dear through tyranny by powerful people, but he will be humbled before God and if one day he takes recourse to these powerful people, he shall realize that they are the worst friends. And they will save him from solitude. The secret lies in this that the cosmos is governed by God and if God does not will, man will not be dear in the eyes of people even if he shows great generosity.

The same leader who so firmly manifests equality, elsewhere shows that justice does not equal equality. As was said earlier, there are different ways to bestow one's wealth. Now, an instance shall be given concerning the funnction of the Imam. One of his disciples came to him and asked for some part of the booty. Although he was a friend of the Imam, the Imam stated:

"Indeed, this is not yours but the property of the Muslims and the fruit of their swords. If you had participated like everyone else in this battle, you would have some. However, if it is not so, none of the booty shall reach you."[26] As you see, allocating wealth here is to those who have had a part in gaining it and there will not remain a chance for propounding the slogan of equality.

In the end, it must be said that the slogan of equality is equal to truth and justice when there is talk of the wealth of the first group. Yes, everyone is equal before the law but the law of equality is not equal for everyone. It is not in harmony with intellect and equity that the people with intellect and diverse physical and spiritual interests and benefits to have equal laws. It cannot be accepted that the members of the society shall be rewarded equally, given the amount of pain they take. Hence, equality is not equal to justice and cannot be replaced by it although it might not seem pleasant to some people.

Here, it is good to quote Mohaqeq Tusi, "There must be two bases for every writing and saying; they must be understood by the common folk and the elite alike." Those who chanted the slogan of equality and justice and drew people behind them, did they not think that speaking of a classless society before the scholars, would entail so many criticisms?

Now let us see how justice is unified with charity. Firstly, it must be admitted that in the Islamic thinking, there are two aspects for charity; one is moral, the other being legal. Its moral aspect manifests itself when man cooperates with others and assists them in good works. However, the legal aspect of charity which is our concern is manifested when there is the question of the basic needs of man. That a Muslim should answer the basic needs of the needy is not among the jurisprudential or moral issues for the

verses touching it descended in Mecca; and we know most of the Meccan verses did not involve jurisprudential issues. One of such verse is this:

"Give the kinsman his due, and the needy and the wayfarer." (***Surah al-Isra 17:26***)

Although some believe that this verse is descended in Medina, there is no doubt that the other verse concerning this matter is Meccan:

"Those in whose wealth is a right known for the beggar and the outcast." (***Surah al-Ma'arij 70:24-25***)

From this verse it is concluded that God, in the very beginning days of advent of Islam, has considered a right for the poor which is divine and should be respected. The one who gives this right should not think that he has done it. He should know that it belongs to the poor: not a right alms-giving (zakat), attonement (kaffiirah), khums (one fifth of one's income) and other jurisprudential payments. Even another verse which was descended in Mecca before the aforementioned verse speaking about alms, deals with this kind of payment and not jurisprudential one:

"Prosperous are the believers who … at the almsgiving are active." (***Surah al-Mu'minun 23:1-4***)

This means that anyone endowed with genius-whether intellectual economic etc. benefits as far as his power allows. But he who does not have such genius, if he obtains what he deserves and then falls into shortcoming, the powerful people are bound to pay him the divinely recognized rights. The secret of this matter lies in this: that the Lord has bestowed genius upon some groups to test them and he who has provided his divinely recognized rights will become victorious in this test. If some people do not do this, they are not among the worshippers and the Almighty God thus states about them,

"Have they not traveled in the land and seen the nature of the consequence for those who were before them? They were stronger than these in power, and they dug the earth and built upon it more than these have built. Messengers of their own came unto them with clear proofs (***of Allah's sovereignty***)***. Sure Allah wronged them not, but they did wrong themselves."*** (***Surah ar-Rum 30:9***)

This is a great lesson so that we may not forget that if we do not pay divinely recognized rights, our children will suffer deprivation and grief. And is there any wise man who wishes to fall into depravity? All parents after death are aware of the fate of their children and gladden with their joy and grieve with their sorrow. Then, the powerful groups should observe charity as a legal duty not a moral one so that they may not share in the sorrow of their children.

"And let those fear (***in their behavior towards orphans***) ***who if they left behind them weak offspring would be afraid for them. So let them mind their duty and speak justly."*** (***Surah an-Nisa 4:9***)

Thus, the superior aspect of charity is its legal aspect which is in complete harmony with justice. It must never be supposed that the paying of religious taxes such as *khums* (one fifth levy), *zakat* (religious tax), and *kaffarah* (atonement), is the only duty of the Muslim in eliminating social needs. The Lord esteems the geniuses and talents and has bidden everyone to benefit as much as he can; and He has also bound the supervisor of the common wealth to answer the needs of those who have less genius.

The Principles Of Rights As Reflected In The Sahifah Sajjadiyah

In the last part of this article, it is good to cast a glance at the glorious book of Imam Sajjad (A.S.)

Through this, one may learn useful legal lessons and perceive how the difference of principles of rights of one person affects his approach towards rights. Now let us try to present in isolated titles the principles of human rights as reflected in the legal treatise of that great Imam.

The Philosophy of Human Rights

The legal treatise has been included in the works of some great scholars. The original treatise as narrated by Abu Hamza Thamali and other narrators, includes the philosophy of rights and legal cases, that is in the same year the Late Shaykh Saduq has stated in *Khasal*27 and has also come in *Tuhaf al-Uqul*28 and not what is stated in "Min la Yafzaruh al-faqih."29 The text included here begins with legal cases and does not include the first part of the treatise, that is the philosophy of rights.

The philosophical statement of the rights included in this treatise is such that the Imam begins with his world vision. In this introduction, Hazrat Sajjad states, "Know that your Lord has some rights towards you which control in every move you make, in the place where you are, in the place where you sit, in the part which you move and in the tool which you apply. Some of these rights are greater than the others and the greatest is that which has been made incumbent upon you and it is the essence of all other rights. Then, the turn comes to the rights which have been made incumbent upon your soul, the rights from the head to the toe."30

From this statement, it may be concluded that the foundation of all rights is oneness of God. Freedom, justice, order etc is not the goal of human rights, but procedures for achieving that ultimate goal, that is visiting the Lord. Before reaching this goal, one may ask oneself. "Where am I going?" However, when you reach that destination, you have transcended the borders.

If this foundation is excluded from the rights, there remains only a little necessity and unnecessity. As they extract rose water from the rose, there remains only a scentless thing. In the ninth chapter of the celebrated book of *Isharat* of the late Muhaqqiq Tusi, he passes judgment on the words of Avicenna. That is, after employing so many proofs and reasons to prove the necessity of mission, he asks what is the goal anyway? If the goal is reaching after an organized way of life, one can reach this without inspiration as some communities have reached it.31 Of course Avicenna has brought up the discussion of prophecy free from this criticism in the mystical discussions of that book and has considered the goal

as finding mysticism of the people and visiting the Lord.[32]

He who worships God, will make this worship as a means to visit God,

"O ye who believe! Be mindful of your duty to Allah, and seek the way of appoach unto him." (***Surah al-Maidah 5:35***)

He who does this is indeed the one who is standing on the ladder, he who climbs up the ladder, if he forgets the ladder and moves it away, will fall down from the height. The pious man as well climbs up the ladder to reach intuition and never forgets worship. At the same time, he does not regard it as his goal. All the worships are the firm bonds with God. He who seeks after the ultimate goal, must tie to this string,

"He who believeth in Allah has grasped a firm handhold which will never break." (***Surah al-Baqarah 2:256***)

The Holy Qur'an shows us why the right of oneness of God is prior to all other rights. The Holy Qur'an regards the entire universe to be the divine grace and every creature-from the angel to the heaven to be the signs of God. This is relevant to the principle of existence. However, from the viewpoint of the knowledge of God, the Holy Qur'an states that the knowledge of God runs in the knowledge of everything, that is before anything else, one has to know God. This truth is thus stated in the Holy Qur'an,

"Verily, Allah is visible through everything." (***Surah al-Haj 22:117, Surah as-Saba 34:44, Surah al-Fussilat 41:53, Surah al-Mujadilah 58:6***)

To understand this, it must be noted that in this verse, the letter *ala* has been used not the letter b*a*. In the statement, "God is witness to everything", the idea is that God is cognizant of it. But in this verse, there is the mention of the vision of God before anything else. On this basis, in the Surah of alFussilat (Distinguished), the same verse is included with the view to putting aside doubt with the vision of God. If the meaning of this verse is that God is cognizant of everything, has it been enough to eliminate the doubts of those who were in doubts? Let us cast a glance at that verse in the Sura of al Fussilat, (Distinguished)

"Doth not thy Lord suffice, since He is Witness over things? How! Are they still in doubt about the meeting with their Lord?" (***Surah al-Fussilat 41:53-54***)

Aye, man recognizes the light first before knowing other things and then he comes to know that thing. Then, there will remain no doubt as to the existence of light. On this basis, the knowledge of God runs in the knowledge of eveything else. Therefore, the proving of other rights in the universe and their knowledge arises from proving the existence of God which is the main concern and from theology and monotheistic world vision.

The delicate point derived from this matter is that the signs of the same statement of Imam Sajjad are present in other parts of the treatise. After this introduction, the turn comes to proposing legal issues. Imam Sajjad reminds us that the foundation of all rights is oneness of God. This reminding is manifested in two ways. Sometimes with the phrase of "*billah nasta'in*."[33] And sometimes with the phrase of "there is no power save God."

Having expounded the philosophy of rights, the venerable Imam teaches the rights one by one and some of these rights are superior to some others as the philosophy of rights is dominant in all of them. Now we shall refer to four legal cases to show glimses of what is stated in the fifth and sixth chapters of the book.

The Right of God over Men

The first right stated by the venerable Imam is the right of God towards the servants. "But the greater right of God is this that you worship Him and take none as His partner. So every time you uphold this right with sincerity, God has made incumbent upon Himself to render you needless and guard whatever is dear to you."[34]

In this regard, the minor syllogism comes from the general principle of the Holy Qur'an. The Holy Qur'an has asked us,

"Doth God not suffice his servant" (***Surah az- Zumar 39:39***)

And we have answered,

"You are our guardian." (***Surah as-Saba 34:41***)

The Imam states that the efficiency involved is that man should pay God's right which is the greatest right. And that right includes believing sincerely in God. He who has God before his eyes in everything can entertain this pure oneness in his heart. It is appropriate here to quote *Kashaf al-Ghata*. Like some other jurisprudents, he believes that "bi hawlillah" (I rise with Allah's power) is the continuation of the prostration prayer. He believes that "I sit" along with: "I rise with the power of God" indicates that man needs God in things which demand power and energy and he is dependent upon Him in actions like sitting.[35] Hence, man is in constant need of God and he who remembers this need, will have in mind the right of God. Hence, the worshippers whether sitting or standing need say that.

If someone reaches this stage of gratefulness to God, then all his *dhikrs* (remembrances of Allah) are like prayer and all his deeds are prayer and worship. There is a hadith that says, "He who has God in mind constantly is like one constantly praying."[36] The Holy Qur'an says something similar,

"Those who are constantly praying." (***Surah al-Ma'arij 70:23***)

It must not be supposed that in this verse, there is talk of the timely worshippers. That idea is suggested

in this verse,

"Those who guard their prayers." (***Surah al-Mu'minun 23:9***)

Baba Tahir's quatrain suggests the same idea, "blessed be those who are constantly praying."

The Right of Oneself over Oneself

In another part of the treatise, Imam Sajjad speaks of the right of oneself over oneself. In the Islamic thinking, man is not his own owner so he may treat himself the way he desires. This prayer all the prophets sing, "those who know no benefit for themselves, no harm, no death, no life and no resurrection."37

Then it may be asked why Moses said to God;

"I am the only master of myself and my brother." (***Surah al-Ma'idah 5:25***)

Of course it is probable that the meaning of the verse be such, "I am the master of myself and my brother is the master of himself." In answer, it must be said that here, there is talk of religious ownership not genetic ownership. Moses speaks to God and asks Him whether he is the master of himself and his brother is the master of himself or that everyone is their own master and no one can draw them to God. But what has come in the prayer of all prophets is genetic ownership; namely that man is not genetic owner of himself, therefore he does not have any sort of right and must pay his rights.

The Right of Non-Muslims

Now we shall talk of the last part of that treatise. As you observed, we were determined to present some of the manifestations of the principles of Islamic thinking, and we do not consider even a drop of that sea. Therefore, we shall talk of the last part, "The rights of the non-Muslims (who are with you in this land and live in shelter of the Muslims) are that you accept from them whatever God has accepted from them; and accomplish whatever God has promised them. You do not have to be cruel to them and you have to leave them with the promises they have made; and decree as God has placed between you and them. You do not have to be cruel to them and you have to observe whatever God has placed as their rights; because the news has come to us that the holy Prophet said: I am the foe of those who are cruel to the non-Muslims with whom they have made promises."38

You see how the things talked about concerning justice and Islamic conduct are prevalent as to people in other religions in this part of imam's teachings. In other words, he who tyrannizes an infidel, has shown animosity towards the holy Prophet. These types of teachings clearly show that Islam is an all-pervasive religion which has had a pleasant behavior towards people of different religions and never needs the teachings and principles of other religions in this regard.

1. Mafatih al-Janan, Deeds of Friday Night

2. Bihar al-Anvar, Vol.7, chapter 16
3. For example, Surah al-Baqarah, verse 18 &171; Surah al-Anfal 8:22
4. Bihar al-Anwar, Vol.8, chapter 1, p.187, tradition no. 18
5. Mafatih al-Janan
6. See: Bihar al-Anwar, Vol.2, chapter 12, p.98, tradition no.28
7. See: Surah al-Maidah (5:45-48)
8. Also Surah al-Baqarah (2:97), Surah Aale Imran (3:3&50), Surah al-Fatir (35:31)
9. Nahj al-Balaghah, Letter 31, p.128, part 87.
10. Bihar al-Anwar, Vol.74, chapter 15, p.42, tradition no. 23 and Vol.91, chapter 32, p.92, tradition no. 6
11. As a similar instance, see: Surah al-Hujurat 49:11
12. Nahj al-Balaghah, Maxim 442, p.189
13. Bihar al-Anwar, Vol. 96, chapter 7, p.58, tradition no.16
14. See Surah an-Nisa 4:10
15. Bihar al-Anwar, Vol. 93, chapter 46, p.356, tradition no. 45
16. Nahj al-Balaghah, letter 53, p.141, part 123
17. Ibid., letter 70, p.148
18. Sharh-i Ghurar wa Durar, vol. 2, p.448
19. Nahj al- Balaghah, Maxim 235, p.171
20. Ibid., Maxim 437, p.189
21. Ibid., Sermon 216, p.105, part 2.
22. Nahj al-Balaghah, letter 53, p.137, part 8.
23. Nahj al-Balaghah, sermon 126, p.56
24. Kafi, Vol.2, p.373, narration no.3
25. Nahj al-Balaghah, Sermon 126, p.57
26. Nahj al-Balaghah, Maxim 232, p.112
27. Abwab al-Khamsain ma Fawqah, p.564, narration no.1
28. The chapter on the words of Imam Sajjad, first tradition
29. Vol 15. (Al al-Bayt), chapter 3, p.172, vol.26, chapter 3, p.241
30. Risalat al-Huquq, Majmal al-Huquq, p.7
31. Al-Isharat wa al-Tanbihat, Vol.3, chapter 9, p.374
32. Ibid., Vol.3, chapter 9.
33. Risalat al-Huquq, Haqqullah, p.9
34. Ibid.
35. Kashaf al-Ghata, p.294, line 1
36. Imam Baqir (P.B.U), Wasa'il al-Shi'ah, book of Salat, chapter 1, Al-Dhikr chapters, tradition no. 5.
37. Bihar al-Anwar, Vol.13, chapter 4, p.82, tradition no.9
38. Risalat al-Huquq, Haq al-Zama, p.37

Ayatullah Sayyid Muhammad Khamini'i

Freedom is too broad a concept to claim definition, the truth of which can be best perceived by human conscience and soul. The most limited definition for freedom is not being in a state of slavery and the broadest one is not remaining in chains of servitude.1 This article is concerned with the definition of freedom particular to man in general and the explanation of individual freedoms in particular.

The use of the word freedom, which has traveled from the realm of philosophy and law to that of politics,

is paradoxically used in different connotations, and sometimes lacks a stable political status. Hence, this spiritual definition of freedom is used as a political weapon.

One of the most important points of our discussion is to study the exact definition of words. One of the difficulties of encountering the clashes between ideas and opinions is the ambiguity one may encounter in case of undefined words. In addition, these lexical common points can lead to logical fallacy and sophistry.

Words such as right, human being and human rights, freedom, justice and tens of other words are of this sort which are frequently talked about and for which there are no certain definitions. That is why instead of solving the problem, they only intensify it.

At this juncture, a fundamental question comes up: Who is this human person? And where is he for whom rights are considered?

In some of the cultures and civilizations – either in the past or in the present – man was defined in very limited terms, which only included a certain nation or a certain ethnic group or followers of a certain religion excluded other human beings. Instances of this are the idea of the Greek people about the non-Athenians (calling them Berbers) and the idea of the Romans about the non-Romans and the idea of Semite contemporary Western countries about the non-Europeans or the non-whites or the Semite tribes, this being implicitly stated in their holy book, the Talmud, that regard the non-Jews as having human dignity.

Hence, when discussing freedom or when interpreting the Universal Declaration of Human Rights and other international documents of the United Nations or the international compacts and agreements, the concept of human rights should be first clarified by the two parties and the signers or the users of this word should agree upon an exact definition for this concept.

To complete our discussion here on the Cairo Declaration of Human Rights in Islam on freedom, we need to mention that *man* in Qur'an and in Islam is used to mean man without regard to any limitation such as race or color or religion or culture. The word *nas* (which means people) in Qur'an includes all people in the world and it is not important whether they are Muslims or whether they have a certain race or not.

The holy Prophet always stated, “All people are the descendents of Adam and of one family and race. Adam was from dust and pride does not become of the children of Adam and in practice, he did not make any distinction between the Arabs and the non-Arabs, between Muslims and non-Muslims and treat everyone equally.”

Freedom at First Glance

Every living creature is endowed with a natural yearning for freedom. Plants need freedom to take in light and heat in order that they may have their roots take in food and grow although there are natural impediments which prevent them from earning this freedom or even from reaching natural growth.

Every creature struggles for breath, food, water, mate and an arena for a comfortable life, regarding itself rightful to provide these things and struggle towards this end. In addition, according to the natural law or the laws of jungle he fights the rivals or tries to remove the obstacles. And ultimately due to the last resort which is force and domination, right is distinguished from wrong and justice from injustice and one reaches one's natural freedom and others lose it and reconcile oneself to limited freedom.

Man has the same instincts as well like any creature obeying natural laws. If there were no humane elements such as conscience, religion, and tradition, he would pursue his animalistic desires and follow the law of force for survival.

Hence, it is natural that all creatures share a yearning for freedom. Therefore, freedom is an important principle in nature although it is rarely found.

Freedom within Man's Realm

At a deeper level, man is supreme compared to other creatures. Besides his carnal and vegetable desires, (or in philosophical term, animal and vegetable self) he has the rational soul, reason, power of distinction, and most importantly, the willpower for organizing his human desires and the power of choice for choosing the best and the most rational things.

In other words, the willpower logically leads us to the existence of the inherent freedom in man, for freedom must have inherent roots. Moreover, if freedom is not inherent in man, it is meaningless to grant him willpower.

In short, man is a creature endowed with special dignity and rational soul and voluntary power of choice. Hence, it should be said that man is the only creature on earth that has two kinds of natural and inherent freedoms:

First: the same instinct for freedom, which exists in all creatures just as the instincts for eating, sleeping, passions, and rage. The child is an instance of this whose behaviors like animals are all based on instinct and without the interference of will power[2] or based on natural or conditional reflexes.

Second: the freedom particular to man which due to his inherent dignity and respect for his reason and this power and divine gift in the Holy Qur'an is described as heart and from this power man is bound to revelation and religion and deserves the title of being addressed: that is why all human beings and animals have rights but assignment is particular to man.[3]

The interesting point is that in Islam and in most traditions and customs, the freedoms of the second group (human freedoms) are juxtaposed with the first group freedoms (wild freedoms), putting them aside or limiting them. From this one can realize that in human and social communities, the limiting of wild freedoms (the freedoms shared by man and animals) is in fact to the gain of man. Since the beginning of civilization wherever there is a society, which considers the general welfare, the animalistic freedoms are limited and laws have taken the place of force and domination.

Man's Freedom in Islam

According to Islam, the second group freedom, which is particular to man, is the main basis of social, political and even individual life of the human person. In addition, the Divine laws (known as Shari'ah) are fixed based on this external reality for man. A perfect man is he who transcends the realm of animal life, uses his inexhaustible power and attains worldly and spiritual bliss or in philosophical terms, the second inherent perfection and the second nature of the creation of Adam.

All manners and traits of man must emanate from his basic natural dignity; in other words, man should have the commendable traits he is expected to have. ·

In the story of the creation of Adam in the Qur'an, when God tells the angels, "I am setting in the earth a viceroy." The angels reply, "What, wilt Thou set therein one who will do corruption there, and shed blood, while we proclaim Thy praise and call Thee holy?" Then God answered, "Assuredly, I know that you know not."4

In other words, Adam is distinctive from other creatures because God is setting in the earth Adam and his descendents as his viceroys; it is manifest that in Islamic and Qur'anic sense, Adam is a creature endowed with a faculty and aptitude to be God's viceroy and not a wild one. In addition, the goal of Islam is to build the very same chosen man, not an animal one.

Islam and Man's Instincts

Islam agrees to the first group freedom and the rights relative to it to a large extent, for it is the selfsame gift granted by the Lord to man: however, as I said earlier, Islam limits it to individual and social welfare; for instance, if it says, "Eat and drink" it also enjoins extravagance in these acts.

The nature of animals is such that they do not know extravagance and unlike man, they act on their unconscious nature, which is harmonious with their welfare and real needs, and the general system of nature.

This limitation exists even in the realm of liberalism and absolute liberalistic freedom is a clear matter, for with regard to the common freedom of animals and the special freedom of man, they mix it with civil and penal laws of each society and inevitably limit it.

Hence, the limitation of freedoms is not particular to Islam or to other religions inasmuch as anywhere any society is established based on a social convention, freedoms are limited.

Limitations and Boundaries

This freedom is generally limited or confined in two ways; first, by the traditions and habits of the people of the society, even in the farthest and wildest regions or in the oldest human societies. Thus, a kind of limitation has existed differently in every society in each age.

In sociology, these traditions and habits are referred as being social norms. And the binding guarantee of abnormalities in any society or social group is the penal behaviour of people (or the majority of people) towards abnormal person. Secondly, the limitation of nature by law namely the same laws made by people as deriving from experience, thought, culture, traditions and habits of that society.

In no society, especially in the civilized ones, individual or individuals have the right to freely take whatever their instincts covet.

The right to private property or the respect for the family unit and other civil and human rights, exist in fact to limit the reckless animalistic freedoms and man's wild instincts. Man has constantly regarded this limitation as prevention from invasion and violation and social welfare and an emblem of his urbanity.

The result of these two freedoms is the freedom that makes Islam meritorious of man. Indeed, instinct is the innate programming characteristic of man, enabling him to respond appropriately to particular stimuli; the wisdom and the rational soul check and guide it. In addition, a well appropriated combination of these freedoms arising from these two forces in man guide man and his actions, enabling him to perfonn his humane-divine acts.

Backgrounds of Freedom

Theoretically speaking, the freedoms of man can be catalogued under six categories, each one of which is observant of one aspect of his freedom and a manifestation of that freedom.

One-Freedom Vis-A-Vis Others

In this kind of freedom, people do not have the right to hurt the physical health of their wives and children, and others' properties, secrets or personal affairs. Civil rights and parts of the penal rights are relevant to this kind of freedom.

Two-Freedom Vis-A-Vis The Society

This kind of freedom constitutes great respect for the life, property, family, dignity of people in the society, giving each individual freedom of residence, movement , religion, opinion and expression and

the right to participate in the government towards his own destiny.

Three-Freedom Vis-A-Vis The State

Although in an equitable humane and religious system, the State is the representative of people, due to the authorities of the State and the political and legal authority it exerts on the individuals, the individual and social freedoms of people should be studied in isolation and ensured. As we shall see, the basis of the Universal Declaration of Human Rights is laid on these relations.

Besides the rights noted above, we should include the right to the choice of administrative and political representation, the right to comment on the political approach, the right to participate in public supervision, the right to protest against the vices of the authorities and the likes.

Four-Freedom Vis-A-Vis The International Community

Every nation is entitled to the enjoyment of public rights such as independence, leadership, natural resources, defense against the enemy or any form of invasion or retaliation against the enemy, the instituting of relations with nations or other nations or private rights such as the right of movement, the seeking of asylum, and complaint in judiciary centers.

These four rights are recognized by Islam and the common rights in use; however, there are two other rights in Islam, which form the fifth and the sixth category.

Five-Freedom Vis-A-Vis The Almighty

Although man, due to inherent poverty in his essence and in his acquisition of natural qualifications and in his real relations is dependent on the Almighty, this man due to his power of choice is entitled to choose his destiny and accept or reject the divine religion5 and no one shall be compelled to accept Islam; even after the acceptance of Islam and all the commitments imposed by it, man finds himself in the horizon of allowed freedoms.

Sixth-Freedom Vis-A-Vis Oneself

As man is made of different psychological and internal elements, (for instance, the Qur'an refers to three souls, the despotic soul, the reproaching soul and the peaceful soul and psychology points that human psyche is divided into three parts, the id, the ego and the superego) there is automatic relation between the clash of these internal souls with man's inherent power of choice and man is responsible to himself and his conscience serves as an interward mediator, he is free towards it. That is why some are virtuous and others are unrighteous. That is why some accept moral values while others reject them.

In Islam, freedom embodies a vast body of meanings and realities, which may be discussed under the six categories noted above, and none of them can obstruct any other one. These freedoms can be

divided into two main human aspects, soul and body, namely the physical and spiritual or mental freedoms.

Physical liberty includes whatever belongs to him6; hence, slavery, detention, exile, prevention of life and free movement are the violation of man's physical freedom and the violation of the right to property is the violation of the freedom of property. _

Spiritual liberty includes the freedom of thought, will, choice, and destiny, opinion, science, art and traditions.

These two liberties are generally interpreted as civil freedoms, individual freedoms, and the freedom in enjoying fundamental rights, the will and choice of individual, social destiny and political freedom.

Study of the Universal Declaration of Human Rights

The Universal Declaration of Human Rights was provided in 30 articles by the Western European countries, approved by the General Assembly on December 1945. The Declaration was actually influenced by post revolutionary mottoes of France and the United States, itself arising from influence of Islamic culture on the West. A large portion of the declaration is allotted to different forms of freedoms.7 In fact, stress is on the first group freedoms, the freedoms common among men and animals, although in the preamble, it talks of the inherent dignity of man and the inalienable rights. The comparison between these rights and the rights in Islam reveal certain facts.

The freedom of thought, opinion, religion or participation in elections or complaining is particular to man, but the rest of the freedoms cited therein are common among men and animals. The important thing neglected or forgotten is the spiritual freedom, which we refer to as *liberty* and Islam places particular stress on it.8

Physical freedom relates to man's carnal desires; although it is essential as breathing, and eating, it is not very instrumental in the spiritual perfection of man,and in escalating him from the common level of being to perfection. By natural disposition, every creature seeks freedom of marriage, residence, movement, property, occupancy, and gets enraged when these rights are denied him and combats oppression and violations.
However, man's special freedoms such as the freedom of expression, thought, belief, religion, and the right to participate in his social and political destiny known as political rights, are but vaguely adumbrated in this declaration despite its apparent statements.

There are two ways for voluntarily entrusting political rights and iindividual leadership to a certain individual, State or group:

1. **Open and Wholesome Atmosphere** – in which each individual relying on his reason, conscience and experience can exercise his will; for instance, he may choose an eligible individual or individuals

endowed with a wholesome soul, and belief in justice–and good will as authorities.

This is the same way emphasized by Islam and the Qur'an. The Holy Qur'an enjoins people to think wisely before they choose and enjoy the historical experiences. It even attributes the acceptance of the divine religion and prophet to the conscience, reason and intellect.9

2. **Unwholesome atmosphere** – In which the deceitful religious or political demagogues lay before people's feet the enchantment of propaganda, and inculcations and false promises. In Islam, this kind of leadership is called hidden servitude and those who drag people behind them like slaves are called the lords of people.

The Holy Qur'an scolds those people of the book who take their rabbis and monks as their lords and addresses them thus;

"Come now to a word between us and you, that we serve none but God, and that we associate not aught with Him, and do not some of us take others as Lords, apart from God." (***Surah Aale Imran 3:64***)

In another verse, God chides those that have forsaken God, placing the chain of servitude of their masters on their necks and says;

"They have taken their rabbis and their monks as lords apart from God" (***Surah at-Tawbah 9:31***)

and there is a hadith as a protest against the despotic Amavid government: Itakhezu din alah dowalan wa ibadellah kholan.10

According to the Qur'an, this type of enjoying the will and choice is hidden force and is thus condemned as people are pushed to an imposed way in the name of democracy.

With a keen glance, we can find the forestalling of freedom in two ways:

1. By force, namely by imposing one's will on others which is, in jurisdiction, called coercion or aversion, rendering void any contract thus agreed on and in international custom, illegal duress is condemned and void.

2. By directing people's benighted minds to a trajectory which is nothing but mere mirage: however, Machiavellian demagogy makes it look like a clear stream, goading people into the vortex of that otiose wasteland.

This unconscious force and the clandestine forestalling of freedom are generally found in most countries noted for their democratic manner. The mass media take from people the power of telling right from wrong, and evil from good, and drag them on under the banner of democracy. This apparent existence of choice is, in fact a kind of lordship over them.

Lordship means that the Lord decides and exerts his will in every affair. This existed in the form of master vis-a-vis peasant in the Iranian rural system before the Islamic revolution.

However, the Islamic Shi'ite Imamate (political leadership), despite what the foreigners had in mind, is based on the free choice of people and this rulership is based on alliance (the will and the free choice of people in an open horizon and without discrimination of any kind) and compulsion is not allowed therein.[11]

In this kind of free choice and will, the mental state of people should be at peace and for the same reason, Islam and the Qur'an bid people to free thinking and reasoning before making a choice and commends the intellectuals and regard only those who choose the best they hear as 'abd, namely the true believers.[12]

On the contrary, the perversion of people's thoughts from the right path and true expediency to unlawful goals are called bandits, those who impede the path to nature and the right path in the Qur'an, considering chastisement for them.

One of the problems with the Universal Declaration of Human Rights lies in its preamble where it talks of the inherent dignity and equal, inalienable rights of man, but they are without equal basis to explain why man has inherent dignity, for the probation of such dignity seems impossible without philosophical or inherent or reasonable basis and anyone can reject them and as long as the origins of these inherent traits are not made clear, the function of laws-which are the subdivisions of ideology-shall not be made clear.

We know that such a claim is completely logical and acceptable in Islam, for the root of this dignity lies in the viceroyship of man granted by God who has put the crown of nobility on man's head.

Hence, the inherent dignity of man is the main basis for granting rights to man. His advantages can be taken into account, he can be given ample freedom in order that he may determine his own destiny. Or the human beings should be equal in rights and dignity[13] and nothing sch as race, color, sex, language, religion and political opinion as well as nationality, the social status, wealth, birth or any other status[14] can disturb this equality or no one can hold others in slavery[15] or subject them to torture.[16]

However, the probation or the fonnulation of such rights or committing others or expecting them to accept these laws from others is impossible without a philosophical or religious basis and this shortcoming still exists in the Universal Declaration of Human Rights.

After all, words such as right, man, freedom, dignity and the likes have not yet been properly defined and their boundaries have to be detennined by the States. That is why the Western States in the attitude of the Greeks and the Romans denounce rights of others and relates man to the people of Rome (or any country populated with white people) and freedom to a kind of slavery.

By comparing the Islamic stance on spiritual and political rights with the Universal Declaration of Human Rights one can understand that despite the deep Islamic stance on human freedoms, what in practice is proposed at international level as human freedoms is ambiguous and in practice and in theory, they pay scant attention to them in international laws and policy: in fact they are political playthings for players in political arena although people are apparently free and freely go to the polls.

Individual Freedoms in Islam

The concept of liberty in Islam is so comprehensive that it arouses wonder and praise in all scholars: in this brief article, the writer strives to explain liberty to the best of his ability.

It must be noted that on the basis of the same inherent dignity granted by the Almighty, and the same viceroyship of man granted by God and the same freedom particular to man the violation of which is not allowed. Islam recognizes its ultimate aim and the aim of other religions as the liberating of man, because the inherent dignity is impossible without freedom. In this regard the Holy Qur'an states,

"The prophet of the common folk, whom they find written down with them in the Torah and the Gospel, bidding them to honor, forbidding them disonor, masking lawful for them the good things and making unlawful for them the corrupt things, and relieving them of their loads, and the fetters that were upon them." (***Surah al-A'raf 7: 157***)

In this verse, the fundamental mission of the holy Prophet is introduced as bidding people to honour, forbidding them dishonour, and making lawful for them the corrupt things and relieving them of their loads.

Unlike the Declaration of Human Rights of France and the Universal Declaration of Human Rights, the concept of freedom in Islam is not the corollary to the bloody revolutions in Europe or the response to the oppression of people for their wishes, but basically it was per se an impromptu revolution for granting rights to man although none of the civil, urban. continental or international situation of that day-the great empire of Pesia had surrounded the world from both sides and the Roman empire from the north-were not in harmony with this revolutionary concept.

Besides, the depth of freedom in Islam far more transcended the carnal or material freedoms. The freedom of self from the self includes the freedom of human self from the animal self and the civilised self from the uncivilised self. Hence, people were relieved of national and racial prejudices, of imitating the false customs, and of the corrupt bonds, of the passions, ignorance, rage, jealousy, avarice and egotism.[17]

In Islamic and humane concept, freedom regards rebellion and carnal desires as prisons; true freedom lies in refraining from them.[18] For instance, a train freely running along the endless tracks is contained by the tracks although it is apparently free. The freedom of the train lies in the freedom from the tracks.

Similarly, the man who is incarcerated in the dungeon of his passions, rage, sleep and food and knows himself free is not in fact free but imprisoned. And his freedom is achieved when he steps beyond new horizons and into the vast realm of humane-divine light, thus relieving himself of animalistic nature which is to man an open foe.

Now that we have briefly talked about the vast concept of freedom in Islam, we shall deal with the individual freedoms in Islam, and sections of its legal and jurisprudential principles. However, before embarking on discussing these freedoms, we deem it necessary to elaborate on the terms *rights* and *freedoms*.

In the works of the outstanding Shi'ite jurisprudents, there are useful and extensive discussions on the definition of right and the difference between it and decree. However, it is beyond the scope of our brief study. Right may be shifted from its owner to others but decree may not be transferred to others unless by law.

Some of the rights set forth in the Universal Declaration of Human Rights are regarded as decree which may not be shifted to others neither by the owner himself nor by others.

One of these rights is the right to life (Article 3) which deserves respect and observance in Islam and most of the valid laws of the world and even the person himself cannot destroy it. Hence, in Islam suicide and some other related subjects are crimes and liable to punishment. In the preamble of the Universal Declaration, the rights are called inalienable. If a decree is inalienable, it is no longer a right. Besides, some of the rights mentioned therein may be entrusted (like property) so the use of decree is null and void.

One of the individual rights of man is that he shall not be held in slavery (article 4 of the Universal Declaration of Human Rights and article 12 of the Cairo Declaration of Human Rights in Islam). This is a fundamental right in Islam and a jurisprudential principle (Asalat al-Huriyyah) and has been mentioned in a hadith.[19] Also, another hadith by Imam 'Ali, says, "Worship not any one but the Almighty: indeed God created everyone free."

This testifies to the fact that man is the master of his own destiny and no one can hold him in slavery or arrest him without legal sanction.

Based on this fundamental principle, everyone-men and women- has the right to live freely and enjoy the divine blessings. However, on a legal basis, the enjoyment of natural resources and wealth is clear in Islam, for according to the clear sayings reflected in the Holy Qur'an and in hadiths, these resources are created for the sole benefit of man in order that they may use them as much as they need.[20] However, in the Universal Declaration of Human Rights, it is neither explained nor is it clear.[21]

Another right of man is the right of movement and residence, nationality, or their dissolution. In addition, everyone has the right to choose any profession he desires.

These rights are clearly explained in the Cairo Declaration of Human Rights in Islam and the Islamic jurisdiction is filled with laws concerning these freedoms. There is a hadith that says, “The best residence is the place, which accepts you.”[22] As a poem says, “Paradise is where there is no perturbation.” In addition, regarding freedom and will power, the jurisprudents have said, “People are the masters of their belongings.”

Respect for private property is so strong and clear in Islam the need for explaining them is obviated. It has made some of the jurisprudents recognize the right to property as private property and regard public property as an exception to it.[23]

There are limitations for private property in Islam as well as in reliable rules. There are times when ownership seriously hurts others or the society and therefore, legal limitations are natural in many societies.

The freedom to choose a profession exists in Islam in its best form. Based on primordial nature, Islam recognizes profession as a principle for man and regards unemployment a malady and against the laws of nature. It encourages people to work and provide for their family and reproaches unemployment.[24]

Employment is an obligation in Islam as far as it does not endanger the family members and overwork to earn more comfort for the family is highly commendable, though not necessary.

Although man is free to choose a profession, a legal limitation prohibits working beyond one’s ability. This prohibition exists regarding the profession forbidden by law, which is hurtful to the society or engaging in beggary, which does not accord with the exalted dignity of man.

Another natural right approved and encouraged by law is the founding of family. Article 16 of the Universal Declaration of Human Rights says, “Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family.” Paragraph three of the same article says, “The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”

Islam highly recommends the founding of family, considering it a vital component of the society; however, it builds marriage on the basis of inherent principles executed by the observance of human dignity to ensure its durability and regards divorce as the ugliest acts.

The only condition for marriage is the existence of balance between the two parties in morale, thought and personality without limitation of any kind due to race, nationality, and family with the exception of religion which is not mentioned in article 16 of the Universal Declaration of Human Rights.

As Islam states that all religions preceding it are lawful, it entitles man to form a union with a woman of another religion,[25] for in such case the harmony on the part of man–whose duty is to provide for his wife–will be consistent.

In other individual rights, on the level of legal and religious basis, Islam is pioneer to other systems of rights and accepts it as a logical and natural form.

Freedom of Opinion

Another freedom is the spiritual and human freedom not found in other creatures; it is interpreted as the freedom of thought, conscience and religion in article eighteen of the Universal Declaration of Human Rights.

The reason for the inclusion of this article in the Universal Declaration and the attention of the Europeans to such freedoms in the last two centuries is the pressure exerted by the church and the monks on the beliefs and thoughts opposite to the Torah, the Gospel and the beliefs of the church which entitled itself to combat heresy and things such as alchemy, witchcraft, and sorcery and wielded considerable power in medieval and early modem times and put them to apprehension and trial by burning them at the stake or making them repent.

Basically, the church opposed reason and man's capability to interpret the bible and regarded this act against faith and combated it. And no one could encounter the natural issues of the world but with a heart brimming with faith and no one had the right to be a non-Christian and the church exerted all its might to christianize all the people and send them to paradise.[26]

With the advent of the French Revolution, the collapse of sovereignty and feudalism and the emergence of the bourgeois and the decline of power and sovereignty of the church in Europe particularly after the emergence of Protestantism and the bloody battles between the two parties and the Declaration of Human Rights in Europe, these nations collapsed yet in another way, falling from extravagance to shortcoming and went to the point where everyone found enough freedom to change their religion and to think the way they wished.

Consequently, under the influence of this culture, freedom of religion, thought and opinion is included in the Universal Declaration. As Islam is a religion of moderation, it is far from extravagance. Islam entitles man to think any way he wishes and knows no limitations for his thoughts and opinions; yet, ill-founded thoughts bound to hurt or destroy the society and disturb the general order are invalidated by law. In addition, whatever contrary to this is an oppression against the social welfare and thus against logic and law.

In article 22 of the Cairo Declaration of Human Rights in Islam, the Muslim countries entitle man to the enjoyment of freedom of thought and opinion and these freedoms are banned when they disturb the general order or hurt the public opinion.

Freedom of Religion

Absolute freedom of religion mentioned in the Universal Declaration of Human Rights is the aftermath of the misinterpretation of religion by the European intellectuals. Religion is ill- defined in the West. They look at it from a sociological perspective. On this basis, religion is personal, heartfelt and therefore a matter of taste; and everyone has the right to preserve it for himself just as some people are interested in music or a sport: Western interpretation of religion is sometimes heard from the easterners who opine that the diversity of belief is to be respected.

However, religion-in its objective and subjective entity-and in Islam (which regards religion as the inherent law in man) lives in the minds and hearts of people, but the origin is an outward one; the ideology, world vision, the explanation of the realities in the world and the rules stem from natural laws and as Muslim ulama (religious scholars) state, "Religious matters stem from genetic realities and the belief in religion means the harmonizing of man with nature."

Hence, as nature is not illusionary or absurd, religion should not be based on illusion, and absurdity. Any misinterpretation of the world or God, nature or man is not religion and any opinion-when absurd-cannot be respected.

Be that as it may, as man and his belief are to be respected, Islam allows that everyone who is no able to understand the amazing nature of Islam and accepting and no one has the right to refrain his fellow beings from accepting Islam. Concerning this, the Holy Qur'an states,

"There is no compulsion in religion."27 (***Surah al-Baqarah 2:256***)

The path to salvation is made distinct from aberration and no one shall be compelled to accept religion, for everyone is free to choose the right path by virtue of his rationale and intellect and tell apart wrong from right.

As pronounced in the Holy Qur'an, one can exercise freedom in the choice of one's religion, but thereafter one is bound to follow it as a covenant is made with God, based on the will of man.

Other rights such as the right to complain to the court or immunity from others' interference in one's affairs, letters and correspondences or the right to recreation or education or participation in social literary and artistic gatherings have been predicted which may be classified as individual rights and with the understanding we have of Islam these rights exist in Islam in their entirety.

The only point which we need to make here is that paragraph three of article 29 of the Universal Declaration of Human Rights states, "These rights and freedoms in no case be contrary to the purposes of the principles of the united nations."

The word *purposes* is very ambiguous here; it has not been properly defined in any culture. Ultimately

the Declaration gives a definition for freedom and human rights and adds that all these rights and freedoms are dependent on them and the institutes of the United Nations do not have the right to allow veto to them; otherwise all those rights become null and void.

1. This is called negative freedom and positive freedom suggests the ability to do any desired thing.
2. That a child does not use his willpower before the age of maturity is because it has not reached full maturity. In addition, this is one of the veiled scientific points, which has found scant attention. There are philosophical and psychological differences between will and desire, although they have been mixed up.
3. Some criticize the Islamic laws and jurisprudence for heing filled with assignments and different commands and if the words of this humhle writer are true which are not, this is not the fault of the Muslim jurisprudence but the perfection of it and that of a community in which these rules dominate for if that community is tilled with rights but without assignments, is not a human community and in practice, such a community has never existed. Even in the olden communities, (like Hammurabi or in time of Ghengiz), the assignments had priority over rights.
4. Surah Al-Baqarah (2:30)
5. "There is no compulsion in religion." Surah al-Baqarah, 2:25; "Indeed God changes not what is in a people, until they change what is in themselves." Surah ar-Rad, 13:11
6. Freedom is a spiritual affair which may have spiritual and physical manifestations.
7. At least 18 articles out of 30 articles.
8. Like "Worship not any one but The Almighty"', which will be later on dealt with.
9. "And think in the creation of the heaven and the earth, (Surah Aale Imran, 3:191); I exhort you only to one thing, that rise up ye for God's sake in twos and singly, then ponder ye, (Surah as-Saba 34:46); "Reflect they not within themselves" (Surah ar-Rum 30:8); "So related the story; haply they will reflect" (Surah al-A'raf 7:176; Surah al-Hashr 59:41; Surah al-Jathiyah 45:13; Surah az-Zumar 35:42; Surah Yunus 10:24 and the likes, and verses like "Do you not understand?" in surahs: al-Baqarah 2:44, 76 & 442; Aale Imran 3:32: al-A'raf 7:169; Yunus 10:16 and several other verses.
10. See Bihar al-Anwar, Vol. 22, p.391, "izaa balagha abi al-as thalathin rajolan itakhezu din allah dakhalan wa ibadallah kholan wa mal allah dowalan", (in a hadith of Abudhar from the Holy Prophet and in the sermon of Imam Husayn (a.s)
11. Imam 'Ali, Nahj al-Balaghah, Is Victory at the Price of Tyranny over Me Allowed?
12. "The true servants of God are those who hear everything, follow the best and these are the ones whom God guides and people call wise." Verses which encourage thinking are already dealt with.
13. Article 1
14. Article 2
15. Article 4
16. Article 5
17. From this one can realise morality -unlike the beliefs of other idealogists is an inseparable part and cannot he separated from human idealogy and rights, law and traditions.
18. It is quoted from Imam 'Ali "He who overcomes his carnal desires, he is free."
19. "O People! Adam did not beget slaves or maids and people are all free."
20. "It is He, Who created for you all that is in the earth." Surah al-Baqarah 2:29.
21. Article 17, Everyone has the right to own property alone as well as in association with others.
22. Bihar, Vol. 32, p. 134.
23. See Public Ownership of the same author.
24. There is a hadith that says, "La'n allah in zigha man ya'ul."
25. They are considered lawful by some of the jurisprudents and unlawful by others.
26. The basis of sending the missionaries for disseminating religion adds up to this fact.
27. Also verses: "To you your religion, and to me my religion" (Surah al-Kafirun, 109:6); "Wouldst thou then constrain the people, until they are believers?" (Surah Yunus 10:99), "So let whosoever will believe, and let whosoever will desbelieve'" (Surah al-Kahf 18:29); "Then remind them! Thou art only a reminder; thou art not charged to oversee them" (Surah al-Ghashiyah 88:21-23); "It is thine only to deliver the Message, and Ours the reckoning" (Surah ar-R'ad 13:40); "It is only for

the Messanger to deliver the Message" (Surah al-Ma'idah 5:99); and the likes.

Ayatullah Muhammad 'Ali Taskhiri

To avoid any possible ambiguity, which might occur in discussing this issue, all relevant terms should be first defined. It is evident that the issue in question finds deeper overtones when it is discussed in legal terms, especially if this concept is to correspond with international criteria.

The Relation between two Philosophical and Social Issues

In point of fact, for one who wishes to study the concepts of the Universal Declaration of Human Rights, it might seem strange to encounter these termss repeatedly without having any explanation for the truth of their intended meanings.

What is right? Who is this human person we are speaking of? What is the inherent dignity of man? What is meant by human family, fraternity, equality, friendly relationship, human morale and the likes?

This ambiguity becomes clear when we realize that this Universal Declaration is meant to be concerned with man's life regardless of philosophical aspects. It is due to the impact of capitalistic tendencies that this issue discusses social problems aside from philosophical issues, alleging that there is no connection between these two whereas we presume there is a logical relationship between these two issues (social and philosophical). Ideology no matter of what nature it is gains root in realities and man does not know what he should be unless he figures out who has entity and what the necessities of truth are.

This concept is recognized when we presume that man believes in the divinity of the Almighty and agrees that Allah has sent the holy Prophet and his manifest faith, Islam for the guidance of mankind. Having acquired knowledge of this issue, man will face two choices: he either embraces the Islamic ideology and organizes his affairs on a basis prescribed by it or casts off his past thoughts after acquiring certitude. Yes, if man conceives materialistic ideas in his mind, he will have vicarious ideologies and different gods before him, each one of which draws him to his own direction,

"Indeed, We have struck for the people in this Qur'an every manner of similitude; haply they will remember." (***Surah az-Zumar 39:27***)

Hence, he will find no justification for his inclinations towards any ideology whatsoever. The late Ayatullah Mutahhari, the celebrated Muslim sage, states,

"The function of ideology is to create conceptions about the world. Ideology is practical philosophy and the conception of speculative philosophy. And practical knowledge is based on a certain kind of speculative philosophy."

Martyr Sadr states:

“The social side of life is associated with the facts of life not properly manifested, save for the time when it is laid upon a basis which explains its existence, facts and limits; the capitalistic system has lost this basis, resorting to tricks, deception or impatience. Besides, the social side of life is blockaded, and the social issue is studied in isolation.”

The study of the Universal Declaration of Human Rights shows that this point is totally ignored while it frequently talks about the terms mentioned above. At all events, we should first know what is right and who is the human person so that we can recognize the changes in human rights in a logical manner.

When we refer to the root of the word *right*, we realize that the minimum implication of the word is that it is not liable to any change. Hence, only the Almighty is right and knows no change. The news corresponding with facts is right; there is no change in it. Despite the futile claims of the relativists, this concept is realistic and there is no place for mental considerations thereof. However, based on this, the concept of consideration is removed and this term has taken its place. It is used in social and individual relations. Thus, social rights should be based on the following two elements:

I . They should emanate from realism.

2. They should have religious and common agreement so that social life may be organised.

It may be said that the first factor is per se sufficient to prove truth but the social reflection causes the second actor to exist. Thus, right is a natural constant need around which consideration legally exists.

However, we cannot view man as a material being created by nature and shaped by the environment. According to Durkheim, what gives shape to man is nothing but social reflexes. According to Freud, man is the product of his complexes. Marx holds that man is a socio-economic product. According to Barkley, man is the product of mental beliefs. Other material ideas are similar.

Considering these opinions, one cannot possibly talk about the rights of such a man. Can we talk about the rights of iron, wood and water? Therefore, it is necessary for us to believe that man is totally different from other things, has his capabilities and inherent motivations, which he seeks under ceratain circumstances. Besides, he goes through the stages of growth and development as pre-planned. It is only under such circumstances that one can conclude that equal rights may be derived.

With a brief interpretation we must first believe in human innate disposition so that we may be able to talk of the concepts of human rights, justice, dignity, equality and human spirit. If we do not believe in this pure Islamic concept, man’s innate disposition, it would be meaningless to talk of self-evident concepts, morality, and motivations.

Thus, there must exist a certain criterion about man so that he can develop his spiritual faculty and go beyond his *Self*. Hence, the man for whom one can consider rights is one naturally endowed with inborn

elements. These elements have a certain procedure and if man goes beyond them, he will lose his human attributes:

"Be not as those who forgot God, so He caused them to forget their souls-those, they are the ungodly;" (***Surah al-Hashr 59:19***)

"They are like cattle; nay, rather, they are further astray." (***Surah al-A'raf 7:179***)

If man is treated in a manner contrary to his essence, that treatment will be inhumane. For example, we see that when Pharaoh weakened his people and deprived them of their rights, he was criticised for the injustice he did to people.

"Thus did Pharaoh persuade his people to make light [***of Moses***] ***and they obeyed him; verily they were a transgressing people."*** (***Surah az-Zukhruf 43:54***)

Pharaoh took away the natural values and rights of people, and so their rights were violated. With the violation of their rights, the people become a transgressing people, a people who exceed the bounds of their humanity.

Thus, we come to understand man and it is not possible to discuss human rights or the issue of declarations of rights unless on the basis of the understanding of human nature. Rights that cannot be realized through materialistic thought.

In the light of what we have come to know by the previous discussion, human rights may be said to be the natural conditions innately needed by man in order to proceed on his natural course of evolution towards perfection. On this basis, human rights go beyond what is allowed by others who have discussed rights, so that it must include such things as the right to worship, to be religious, the right to observe the desires of one's own nature as a creature of God, and the right to attach oneself to true religions.

Rights are the basis for important religious discussion of the need for prophets. Surely, religion has done a favor to man, and surely Allah is the source of favor and mercy for the raising of the prophets was both necessary and a favor.

Criteria for Recognizing Human Rights

So far such criteria as customs, reason, law, religion, corruption, pleasure and pain, emotions and the interpretation of justice have been discussed each of which is taken to be the source of rights or an element of the source of rights, or of their appearance or necessary conditions for their appearance. Before determining the proper criteria of rights, two conditions should be mentioned.

First, what has been mentioned is the concept of man and his rights. Second, the criteria for rights must

be universal and impartial with respect to color, race and social status or else the connection with human development and what is essential in human nature will be broken off. Which criteria can indicate that man's natural and constant needs are essential to man and will allow for this development? The only factor we can find is the human conscience in the general sense, which includes both conscious awareness and natural conscience.

Even if we limit ourselves to moral conscience, which is something everyone feels, we will be able to discover the principles of human rights without any doubt, although there may remain differences about how they are to be implemented and applied. There are cases which the moral conscience of man is certain. Conscience is able to uncover detailed features of rights. On the other hand, if conscience is ignored, we will be left with the idea of man as nothing more than his body and will have no standards by which to discover the essence of humanity. A body without conscience has no humanity; it is like a piece of wood for which there can be no question of rights.

Let us then turn to the question of what conscience is. Perhaps we cannot provide a sound proof or demonstration to convince those who would deny its existence but it is through the conscience that we discover the basic grounds for all knowledge. Also, it is through conscience that we recognize good and evil accepted by all and are able to erect the social structures founded on such recognition.

Perhaps those who have written the Universal Declaration of Human Rights have employed the innate elements of conscience, but unconsciously isolated the issue of rights from that of conscience. It is conscience which emphasizes that some things are good or bad, some actions just or unjust. Conscience affirms the right to life, the right of freedom, and the right of human dignity and equality with regard to race or color. These are recognized by conscience as general human rights.

Likewise, conscience is able to recognize more specific rights of mothers, the rights of women and of men and of nations. There are two ways to come to understand the ramifications of rights. First, one may study and observe all human behavior in detail, so that the conscience may make judgements where appropriate. It may be practically impossible to carry out such a study in the detail necessary to understand the common features of humanity, and the needs arising under specific circumstances. Second, one may seek the guidance of religion. Religion provides directions for the human intellect so that he may discover the secrets of the enchanting system of being and the Absolute Perfect Being who created this existence and guides it.

This Absolute Being innately rich and aware, extant and subtle, has raised the prophets in accordance with His mercy to provide a religion, to make evident the detailed features of social rights as an optimal way to realize the development and perfection of mankind. But if someone rejects religious beliefs or seeks to let the inner essence of man suffice as a guide, the shortcomings that ensue will prevent him from a logical understanding of human rights and morality.

The Historical Course of Human Rights

It is generally accepted that religion and man's moral conscience have had a profound impact on the course of human rights through history–even at the level of myths.

The late Ayatullah Ja'fari has pointed out that it is obvious that the aim of human relations is to create a practical respect for human rights in the minds of the progressive thinkers, and this is why we see some such expressions appear in the form of moral or legal considerations and others as cultural factors common among different nations and races. (1)

George Sabyan states that in general, the Greeks of the fifth century BC believed that natural rights are constant and eternal, whereas man and his conditions are changeable; so, if we could discover this constant and unchangeable law, and make it cohere with human life, man's activities would become logical and reasonable and evil and corruption would be diminished. In the light of this view, perfection would consist in adherence to the natural eternal law. The aim of this theory may be summarized as a search for the eternal among the changing and for unity among multiplicity. (2)

If we review the theories of philosophers and historians throughout history, we will encounter numerous expressions that manifest these features. In the same manner, Cicero emphasizes the fact that rights or laws are not based on the imagination, but on an eternal natural justice inherent in the human conscience. (3)

Historians and students of law have tended to ignore the influence of Islam over a prolonged period which continued up to the eighteenth century when the French jurists issued the Declaration of Human Rights of 28 August, 1789 which reflected the French constitution of 3 September 1791. After that they neglected the guiding light of Islam that provides the best detailed laws for man in the exalted teachings of the holy Qur'an and the noble traditions of the holy Prophet.

The light of Islam was the basic foundation for all approaches to the laws among the Muslims. The recent Cairo Declaration of Human Rights in Islam is merely a well–written form of that fundamental law. The historical and legal foundations for a proper understanding of human rights are to be found in the verses of the Qur'an such as these:

"And indeed, We have honored the children of Adam." (***Surah al–Isra 17:70***)

"O you men! Surely We have created you of a male and a female and made you tribes and families that you may know each other; surely the most honorable of you with Allah is the one among you most careful of his duty." (***Surah al–Hujurat 49:30***)

"He who murders a person it is as if he had murdered all mankind and he who saves a human life it is as if he had saved a whole nation." (***Surah al–Ma'idah 5:32***)

In addition to such verses, the traditions attributed to the great prophet and His Progeny have also had a deep influence on Islamic thought. However, if we want to study the recent course of legal thought, we must admit that the French declaration has had a tremendous impact although it also makes use of the British Universal Declaration of Human Rights and the American Declaration of Independence of thirteen colonies which had been composed thirteen years earlier.

In article one, it enunciates the right to freedom and equality, article two, the right to freedom, ownership, security, and defence against oppression, article three, granting people's rights, article four, emphasis on non-belligerent personal freedoms, article five, granting the right to elimination inflicting injury, article six, the recognition of the participation in formulating laws for everyone, article seven, the right to equality before the law and impartiality of job, article eight, the declaration of prohibition of illegal punishments, article nine, the emphasis on justifying the convict until he is pronounced guilty, article ten, the freedom of opinion, article eleven, the freedom of expression, article twelve, the idea of guaranteeing the right to form armed forces, article thirteen, the legality of demanding tax for supporting the needs of this organization, article fourteen, the granting of the right of the supervision of people over professions, article sixteen, the credit of the societies that do not approve human rights, and emphasizing the principle of separation in societies in which there is no constitution, article seventeen, the illegality of confiscation of properties unless it is to the benefit of the common people.

Finally, after the Second World War, on December 17, the Universal Declaration of Human Rights was approved by the United Nations; in general, 48 member states accepted it and the communist countries (Russia, White Russia, Ukrain, Chekslovakia, Yuguslavia, and Poland), South Africa and Saudi Arabia refused to accept it.

Universal Declaration of Human Rights and the Cairo Declaration of Human rights in Islam: A Comparative Study

The articles set forth in the two declarations may be compared in the following way:

	Islamic Declaration	**Universal Declaration**
Equality in human dignity	Article 1, par. A	Article 1
The right to dignity acquired through the development of occupation opinion	Article 1, par. A & par. B	Not extant
The right to equal enjoyment of rights before religion, law, and the rejection of all kinds of discrimination		Different cases
The right to life, respect for abortion, prevention of reproduction	Article 2 Article 2, para. B	Articles 3&8 Articles 7&10 Not extant
Respect for the dead Respect for the corpses	Article 2 Article 6	Not extant
The right of the protection of the innocent (old men, women and children) in time of war and the treatment of the injured and the prevention of amputating of the dead		Article 3, also in the Geneva convention declared after this declaration

The prevention of destroying the farms, and residential areas in time of war	Article 3, par. B	Not extant
The right to dignity before and after death	Article 2, para. 6	Article 22
The right to found a family without any discrimination	Article 5, para. 1	Article 16
Equal rights of men and women in civil personality and dignity	Article 6	Different cases
The spouse's right to alimony	Article 6	Not extant in this form
The children's right to physical and spiritual custody	Article 7, para. 4	Article 25, para. B
The right of mothers and fetus	Article 7	Article 25
The right of fathers in determining the manner of training their children	Articles 6 & 7, para. B & C	Without pointing up the fetus
The rights children have towards their parents	Article 7, para. B	Not extant
The right to a nationality	Not extant	Article 15
The right to enjoyment of religious and legal responsibilities	Article 8	Different cases
The right to education	Article 9, par. 1	Article 26
The right to wordly and religious education	Article 9, par. B	Article 29 At a lower level
The right to follow the innate religion	Article 10	Not extant
The right to freedom	Article 11, par. A	Article 4
The right to be free from exploitation	Arricle 11, par. A	Not extant in this form
Freedom of movement and residence and seeking asylum	Article 12	Articles 13 & 14
The right to occupation and social security	Article 13	Articles 23, 25, 25
The right to a legitimate way of earning bread and the prevention of usury	Article 14	Not extant in this form
The right to one's own property and the illegality of depriving others of their property	Article 15	Article 17
The right to the protection of material interests resulting from literary and scientific products	Article 16	Article 27
The right to the enjoyment of a wholesome environment	Article 17, par. A	Article 29
The right to a standard of living adequate for public welfare and health care	Article 17, par. B	Article 25
The right to a standard of living adequate for the well being of oneself	Article 17, par. C	Article 25
The right to security of person, religion, family, and property	Article 18, par. A	Articles 3, 12, 22
The right to personal independence in having property, family and relations	Article 18, par. B	Article 12
The right to protection of one's home	Article 18, par. C	Article 12
The right to an effective remedy for a competent tribunal	Article 19, par. B	Articles 8 & 10
The right to be presumed innocent till proven guilty	Article 19, par. Z	Article 11
The right to freedom of public treatment and the prohibition of limitation and torture and any kind of offensive act against personality and the prohibition of hostage taking	Articles 20 & 21	Articles 5, 9 & 14
The right to freedom of expression	Article 22, par. A	Articles 18 & 19
Bidding others to do good works and refraining them from doing evil	Article 22, par. B	Not extant

The right to protect one's sacred things against the violations of this kind and the prohibition of interfering with the values	Article 22	Not extant
The right to participate in the government, and decision makings	Articles 10 & 23	Articles 18 & 21 par. A, B & C.
The right to security for manifesting a certain belief or religion	Detailed	Article 18
The security to express one's opinions or beliefs	Detailed	Article 19
The right to the freedom of peaceful assembly and association	Article 23	Article 20
The right to the free choice of occupation	Article 23	Article 23
The right to rest and leisure	Article 13	Article 24, par. D

The Universal Declaration of Human Rights and the Cairo Declaration of Human Rights in Islam

Unfortunately, the Universal Declaration of Human Rights does not regard any relation between the reality and the society while the Islamic declaration has placed emphasis on this relation. Thus, it is logical in itself and the principles set therein.

The Universal Declaration proposes the following principles in its preamble:

1. The recognition of the inherent dignity and of the equal and inalienable right of all people as the foundation of freedom, justice, and peace in the world

2. The barbarous acts resulting from the official recognition of human rights

3. The advent of a new world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want as the highest aspiration of the people

4. The essentiality of preserving human rights so that they may not have recourse to rebellion against aggression and tyranny.

5. The essentiality to promote the development of friendly relations between nations and better standards of life

6. The promotion of universal respect for and observance of human rights and fundamental freedoms

7. The need for achieving a common understanding of these rights and freedoms

What is the inherent dignity of man? Is it innate? If such is the case, how can we propose this declaration before a world teeming with material thoughts contrary to the theory of innateness? What are the features distinguishing barbarous acts from human behavior? Can we come to an optimistic criterion without believing the theory of human development? Has there been any study on human desires to clarify that the desires are limited to freedom of expression and opinion and freedom from want and

poverty? Is it right to limit the human desires for the freedom of expression? Are not the surface and the deep structure mixed up? Can we say that human desires should be derived from the necessary needs?

If such is the case, we shall say: does not man tend to come to the full understanding of the absolute being manifested through the general study of the history of man? Besides, is this man's desire at stake of a multidimensional moral system? Where has it been talked of? Does letting individual freedoms not lead to the destruction of a large portion of the moral system?

Thus, a researcher cannot understand the relation between the surface structure and the deep structure concerning other principles set forth in the universal declaration of human rights but he can understand through other statements such as the essentiality of having recourse to rebellion against tyranny and oppression or the necessity of promoting friendly relations.

This declaration was proposed after the Second World War and the domination of the world's great powers in which the US emerged victorious with the least material and spiritual loss while Europe was left fatigued. Proposing its philosophical history based on revolutionary theories, communism expanded its influence and its ideology instigated the common people.

While the world's enthusiasm decreased for the new order and the man's dream came true for the realization of his aspirations, all this required a humanitarian motto so that the US could introduce itself as the pioneer of peace and order in the world and extend its domination to the far reaches of the entire world. They thought that they could encourage people by granting them illusionary rights and freedoms. The General Assembly of the United Nations proposes the idea of equal vote between the United States and Burma while the domination of the superpowers is actualized through the right of veto. Undoubtedly, however, it was a great movement for the international confession to human rights. It is a case which cannot be denied despite its numerous shortcomings.

The Islamic Declaration of Human Rights

When we study the preamble, we realize that the relation between the two issues is so logical that it enables us to conclude the following principles easily:

1. Belief in the Almighty God and His attributes (creation, blessings, generosity, viceroydom, granting the earth to man, and love). All these are thoughts, which constitute the belief in the Almighty God, and human rights, enable us to enjoy all these rights.

2. The second article of the Islamic declaration states that Islam is the true religion for all mankind. It is the religion of breaking from the bonds; it is a religion of equality and justice. It combats all kinds of corruption and injustice and discrimination. The scholar should understand these important principles(the right to cooperation, the right of freedom, the right to rebel against tyranny)

3. Belief in the oneness of God (worshipping only the almighty God)

4. Islam protects religion, life, reason, property, decency and children.

5. The role of the Islamic civilization is introduced as the best people that have created a civilization for all mankind, a civilization binding the world to the hereafter and to knowledge and religion.

6. Belief in man's participation in protecting human rights

7. Belief in man's increasing need to protect religion

8. Belief that fundamental rights are parts of religion and protecting it is worship and being fanatic is considered wrong and each individual is as well as the conununity is responsible towards it. This is the foundation of individual and social responsibilities for the full realization of the principles set therein.

These are the firm foundations of the rights set forth in the Islamic Declaration of Human Rights and as we said before, these constitute the basis of human rights.

The Shortcomings of the Islamic Declaration of Human Rights

We believe that this requires reevaluation; so we shall point out the shortcomings in the hope that they will be removed:

1. The necessity of pointing to the divine attributes as the first principle including knowledge, power and life and these are important facts for understanding these rights; Islam attempts to confer these divine attributes on Muslims and particular rights are derived thereby.

2. The third principle mentioning divine unity should be placed before the second, which discusses Islam as a universal religion, and after the first, which discusses divine attributes. This ordering would seem more logical.

3. The fourth principle should be integrated within the third one and it should be shown how these particular rights are related to divine attributes. Islam offers a universal plan for the promotion of man: that is, for drawing him closer to God by conferring upon him attributes which are perfectly characterized by divinity. Hence, the program of Islam and the rights it advances for humanity are best understood in terms of the divine attributes.

4. The preamble to the Islamic declaration of human rights should be supplemented by a discussion of Islamic law and morality and their objectives.

5. It is fit to propose this declaration as truly universal for given the Islamic understanding of the essence of man, his innate needs and its realism about the human condition, there should be no doubt or hesitation about the fact that Islamic rights are capable of meeting the needs of all human beings anywhere in the world.

A Comparative Study

Before we embark on making a comparative study of the two declarations, we should pay attention to the principles set forth in the two declarations. Before understanding these rights, we have to state that the ordering of the principles is different in them. However, the important point lies in the ordering of the principles set forth in the Islamic declaration, which are effected in a more correct manner. This shows how perfect it is. On the other hand, some of these rights can be referred to particular and public cases. However, the inclusion of any principle in the declaration should be for the sake of the importance they attach to it.

Common Points In The Two Declarations

We can express the common points in the following way:

Both declarations lay emphasis on the right to life, freedom, security, rejection of torture and unjust punishment and ill treatment. They also agree on the right to hygiene, social services, respectable life and the prohibition of detention and exile exceeding the crime. They both emphasize on the social position of individuals and providing them with the best standards of life.

The two declarations stress that man is born free and cannot be held in captivity. Everyone are equal in rights, endowed with conscience and reason and should act in a spirit of brotherhood.

The two declarations emphasize on the equal rights of men and women in dignity and the necessity of having a proper social status for both men and women. Also, marriage between men and women should take place with the full consent of both parties and that the family is the fundamental unit of the society. Women have the right to enjoy the protection of the government and the society. It is also necessary as implied by the two declarations to provide the security of person, property, personality and family at internal and international level.

Also, the two declarations place stress on the education whose goal is to promote the personality of all the conununity members. Also, the consent of the parents in every affair is expressed in the two declarations.

The two declarations stress that human being is born free and no one can put him on slavery. All persons are legally equal and possess intellect and conscience (this is not a legal issue) and they shout cooperate on the bases of brotherhood.

The two declarations lay stress on freedom of thought and opinion and expression. They both claim that man has the right to enjoy the material and spiritual interests of any literary works of which he is the author. They have the right to choose any religion they desire. They have the right to enjoy freedom of thought as long as it does not hurt anyone. They have the right to a legal personality and freedom of movement and residence. They can seek political asylum provided that they have not committed a non–

political crime.

The two declarations state that people are free to choose their own profession and that no one has the right to impose on others what they cannot do. The workers have equal wages and have the right to enjoy the advantages in time of unwilled unemployment, illness, physical mutilation, old age and celibacy.

The two declarations state that people are to be presumed innocent as long as their crime has not been proved. Crime is a personal matter and everyone has the right to have a just tribunal and the punishment is to be detennined by law.

Also, the two declarations agree on the prohibition of despotism and believe that any individual has the right to participate in the government. Equality should be realized before the law and the people should be allowed to take claims establish to the just courts. There is also the right to organize charity organization.

Finally, the two declarations emphasize that every human person is responsible to protect these rights and freedoms and must strive for promotion ... no one has the right to interfere in the freedom of others and cannot take advantage of them for his personal and social benefit.

Differences Between The Two Declarations

The difference between the two declarations can be explained in the following way:

1. The Islamic declaration makes a distinction between the dignity (which man acquires due to his being a human) and the acquired dignity (derived in the course of spiritual development). This is an important point ignored in the universal declaration of human rights. Thus, we consider it imperfect in this regard and believe that conscience makes a distinction between a great sage like Avicenna and an ordinary person w'ho has left nothing useful behind.

2. The Islamic declaration stresses the point that people are the servants of the Almighty God: This shows the perfect concept of this equality in dignity. Besides the relation of dignity in all aspects of life, all the servants of the Almighty are close to God and are equal in His eyes. However among the people there exists a spiritual competition to approach God through self-making by medium of opinion, true faith, virtuous acts effective in the realization the divine justice. However, the universal declaration has been incapable of understanding this relation.

3. The concept noted above may be seen in article two of the Islamic declaration. Life is a gift granted by the Almighty and consequently, its legal value has increased. Hence, it must be guarded and protected.

4. The human dignity must be protected even after death. For instance, Islam claims that slaughtering dogs is unlawful. The secret of this affair lies in moral principles.

However, there is no mention of these things in the universal declaration and this is its major shortcoming and the world attempted to eliminate this fault by an augmentation to the Geneva convention.

5. Article eight of the Islamic declaration places stress on the fame of man, a point stated in the universal declaration with the difference that in the Islamic declaration it is applicable after death as well, by protecting his corpse and grave.

6. The two declarations stress on family as the fundamental unit and the state and the community should defend it in every possible way, every man and woman have the right to found a family and limitations such as color, race and so on cannot prevent them from this. However, in this regard, there are differences between the two declarations which may be mentioned as follows:

A) The Islamic declaration believes that marriage is the foundation of family whereas there is no mention of it in the universal declaration.

B) The universal declaration regards equal rights for men and women which include alimony and divorce and such matters whereas the Islamic declaration makes a distinction between these affairs and emphasizes that women have certain rights which are in proportion to their duties and responsibilities. Women have financial independence, have the right to preserve their names and origins forever and the family expenses are on the shoulders of husbands.

C) The Islamic declaration stresses on the social responsibilities of the state and the elimination of impediments in the way of marriage whereas there is no mention of it in the universal declaration.

D) Another difference is that religion is not mentioned in the universal declaration whereas it is mentioned in the Islamic declaration. It stresses the fact that religion is necessary for the realization of the union between wives and husbands, otherwise all the hopes pinned on family are nullified.

7. The Islamic declaration stresses the rights of parents and relatives.

8. In the field of education, the Islamic declaration stresses that this is essential in all aspects of life whereas the Universal Declaration stresses that this should be free, not compulsory but it has suggested equal related issues for the rest of others.

9. The Islamic Declaration limits the goals of education to the development and balance of personality, and stregthening belief in God and respect for the necessary rights of others whereas the universal declaration stresses the most perfect limits of personality and strengthening of respect for the rights of others and preparing the ground for protection of understanding and human aspirations and sacrifice and respect for opposing views and development of kindness and efforts for protection of peace.

10. Article 10 of the Islamic Declaration deals with the first and the last feature of man, which is religion. As a result, it is natural that it keeps aloof any kind of exploitation, for it means alienating man from

himself. Hence, the Islamic declaration suffices to article 10, which prohibits exploitation. This is because Islam has a clear attitude towards this issue stated in this article. Atheism is not only the going from the human realm into the animal world, it is even worse than that. On the other hand, the Universal Declaration places stress on the freedom of religion and opinion; this shows a substantial difference in the two declarations. We do not propose to show the right attitude of Islam but to emphasize that the Universal Declaration distinguishes the legal issue from the philosophical one and we are extremely opposed to this.

11. To article 11 of the Islamic declaration, is opposed to article four of the Universal Declaration of Human Rights and with blatant differences. The aforementioned article in the Islamic declaration claims that man is born free. Hence, it obviates any sort of slavery, oppression, and exploitation of him. It believes that freedom springs from servitude to the Almighty and the divine servitude as imagined by the ignorant people are not aimed at proving the divine nature and He is needless of all. This servitude means breaking away from all kinds of slavery towards others. However, the universal declaration only rejects the slavery and servitude without stating the main reason or clarifying the relation between man and God.

12. What distinguishes the Islamic declaration is the negation of all kinds of exploitations, the placing of stress on freedom and self-determination and the supporting of other nations. The universal declaration has not dealt with it at all. It shows the weak points of the universal declaration.

13. Another characteristic feature of the universal declaration is that it does not refer to the acceptance of any particular nationality, for it has one of the issues, which have resulted in the breaking asunder of the nations.

14. Although the two declarations refer to the right of occupation, the Islamic declaration demands the workers to work conscientiously as it has demanded of the state to mete out justice to those workers whose rights have been violated.

15. Article 14 of the Islamic Declaration emphasizes on the right of income but it demands it to be lawful and this clearly shows the rejected ways while it places emphasis on the prohibition of usury. However, there is no mention of it in the universal declaration.

16. Article 15 of the Islamic Declaration places stress on the necessity of legality of possession. It insists that possession should not hurt others. When we study the expanse of the nature of loss which per se involves numerous social losses, we come to realize how far the the Islamic interpretation is exact and how far it loathes the capitalistic misuse of this right for hurting the rights of others and economy and looting and plundering their wealth.

17. Another feature of the Islamic declaration is considering the morality as human right stated in articles 17. As opposed to this, the Universal Declaration in article 29 states that morality brings about certain limitations for individuals to enjoy freedom. Considering the statement, within the democratic realm at the

end of this article, we conclude that morality is the freedom of others not the sublime moral concepts. Be that as it may, this does not approve a human right entitling man to enjoy a healthy atmosphere in which he can develop his spiritual life.

18. The Islamic Declaration prohibits the placing of others under scientific or medical experiments unless it is without danger.

19. Article 20 of the Islamic Declaration prohibits the torturing and illtreating of others. This is of considerable importance while it is ignored in the Universal Declaration.

20. Some might think that the Universal Declaration has advantages for it expresses absolute freedom of expression for others. However, we believe it to be a fault, for we can never allow the statement of issues, which might offend against the morality of people and the society. Offense against sacred things is far worse than offense against individuals. Hence, the limiting of it in the Cairo Declaration (using the sentence, "in a way that is not against lawful principles") is closer to the human spirit. And this is clearly stated in paragraph three of article 22.

21. Another feature of the Islamic declaration is that man has the right to bid others to good works and enjoin others to avoid evil. And this places stress on the responsibility the Declaration puts on all the community members. In the Cairo Conference, many agreed on this issue but there were some others who insisted on its elimination from the declaration.

22. In the Islamic Declaration there is an interesting reference to the fact that leadership is a deposit the violation of which is unlawful. There is no such a thing in the Universal Declaration of Human Rights although we find that it was a necessity that the public situation in which the Islamic Shari'ah belives in leadership should be pointed out.

23. Another difference between the two declarations is that the Islamic declaration views things from an Islamic perspective while the Universal Declaration limits all individual's freedoms as opposed to the freedoms of others.

24. The Islamic Declaration states that Shariah is the only source of reference while there is no source of reference in the universal declaration.

Albeit, there are other differences which are beyond the scope of this article including the time when the word freedom is mentioned it generally refers to limited responsibility or responsible freedom within the confines of religion and this per se is a guarantee which stops freedom from turning into a destructive force.

The Shortcomings of the Universal Declaration of Human Rights

The shortcomings of the Declaration of Human Rights can be summarized as follows:

1. The isolation of legal and social issues from philosophical ones

2. The lack of logical order between the preamble and the articles set forth therein

3. The lack of differentiating between the human dignity and the dignity acquired through virtue and good works

4. Ignoring some aspects of life such as fetus and respect –for corpses and destruction of sources of humanity.

5. Ignoring morality in conflicts

6. There are some articles which have not been clearly dealt with (such as equal rights of men and women for ever, or the changing of one's religion)

7. Ignoring the rights of parents

8. Ignoring the negation of exploitation

9. Ignoring the individual rights in a moral atmosphere

10. Absolute license for freely expressing one's opinions

Human Rights in the Past and in the Present Times

Although this might be a minor discussion by virtue of the fact that we have bypassed our main discussion, we deem it a basic discussion which shows the rejection of the law itself in the Universal Declaration of Human Rights and the Cairo Declaration of Human Rights in Islam. There is no binding guarantee predicted for the exercise of the articles enunciated in the two declarations. Besides, none of the countries signing them have committed themselves to exercise them.

The Universal Declaration as a sublime goal common among the nations of the world has been agreed upon not by as a binding case. As Mrs. Roosevelt, the president of the commission on human rights states, "The declaration is not an international agreement and is not binding but a collection of rights directly associated with man and the realization of them is regarded meet throughout the world."

Thus, the declaration turns into a set of moral rights. Sadly, the Islamic Declaration is like this. The preamble to the Universal Declaration begins in a way, which is binding as it is stated in the Tehran Conference,(4) "The Member States of the Organization of Islamic Conference do all the necessary measures set forth in this declaration."1

However, in the nineteenth conference of foreign ministers held in Cairo, some of the Islamic countries decided to eliminate secularism. They had claimed that they would accept the declaration if it accorded

with the rules of their country. However, this is a big contradiction, for Islam may not be accepted unless it is limited.

Has the Universal Declaration been effective? There is no doubt that the Declaration has encountered many problems in putting the principles into practice. However, the main fault lies in the formulators of this declaration or that their power or the slogans they have chanted have caused them to pronounce themselves as the defenders of this declaration and the articles set forth therein; here, the western countries are in mind.

They (the western countries) tear nations into pieces, loot and plunder what they have and speak of human rights. That is why they consider Israel as a democratic country whereas the countries that do not follow the west are accused of antagonizing human rights. Talk of these things is sad especially when we consider the right of veto and the great countries enjoy this right and thus violate the human rights. However, this discussion entails another field which is not our present concern.

We beseech the Almighty to give us hope and ability to step in His cause.

Appendix 1: Universal Declaration of Human Rights [1948]

Preamble

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

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,

Whereas it is essential to promote the development of friendly relations between Nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in cooperation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, therefore, The General Assembly Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

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

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, and trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and the security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any

incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

1. Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

2. No one shall be held guilty of any penal offence on account of any act or omission, which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed .

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State.

2. Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

1. Everyone has the right to seek and to enjoy in other countries asylum from persecution .

2. This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

1. Everyone has the right to a nationality.

2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

1. Men and women of full age, without any limitation due to race, nationality or 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.

2. Marriage shall be entered into only with the free and full consent of the intending spouses.

3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17

1. Everyone has the right to own property alone as well as in association with others.

2. No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

1. Everyone has the right to freedom of peacefol assembly and association .

2. No one may be compelled to belong to an association.

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen

representatives.

2. Everyone has the right of equal access to public service in his country.

3. The will of the 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.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has the right to equal pay for equal work.

3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection .

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

3. Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations are determined by law solely for the purpose of securing due recognition and respect 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.

3. These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to

engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

Appendix 2: The Cairo Declaration Of Human Rights In Islam

"O mankind, We have created you male and female, and appointed you races and tribes, that may know one another. Surely the noblest among you in the sight of God is the most godfearing of you." (***Surah al-Hujurat 49:13***)

The Member States of the Organization of the Islamic Conference,

Reaffirming the civilizing and historical role of the Islamic Ummah which god made the best nation that has given mankind a universal and well-balanced civilization in which harmony is established between this life and the hereafter and knowledge is combined with faith; and the role that this Ummah should play to guide a humanity confused by competing trends and ideologies and to provide solutions to the chronic problems of this materialistic civilization.

Wishing to contribute to the effort mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic civilization.

Convinced that mankind which has reached an advanced stage in materialistic science is still, and shall remain, in dire need of faith to support its civilization and of a self motivating force to guard its right;

Believing that fundamental rights and universal freedoms in Islam are an integral part of the Islamic religion and that no one as a matter of principle has the right to suspend them in whole or in part or violate or ignore them in as much as they are binding divine commandments, which are contained in the revealed books of god and were sent through the last of his prophets to complete the preceding divine messages thereby making their observance an act of worship and their neglect or violation an aboininable sin, and accordingly every person is individually responsible for their safeguard.

Proceeding from the above-mentioned principles, declare the following:

Article 1

(a) All human beings form one family whose members are united by submission to God and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of race, color, language, sex, religious belief, political affiliation, social status or other considerations. True faith is the guarantee for enhancing such dignity along the path to human perfection.

(b) All human beings are God's subjects and the most loved by Him are those who are most useful to

the rest of His subjects and no one has superiority over another except on the basis of piety and good deeds.

Article 2

(a) Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to protect this right from any violation, and it is prohibited to take away life except for a Shari'ah prescribed reason.

(b) It is forbidden to resort to such means as may result in the genocidal annihilation of mankind.

(c) The preservation of human life throughout the term of time willed God prescribes a duty of by Shari'ah.

(d) Safety from bodily harm is a guaranteed right of human corpse. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari'ah-prescribed reason.

Article 3

(a) In the event of the use of force and in case of armed conflict, it is not permissible to kill non-belligerents such as old man, women and children. The wounded and the sick shall have the right to medical treatment; and prisoners of war shall have the right to be fed, sheltered and clothed. It is a duty to exchange prisoners of war and to arrange visits or reunions of the families separated by the circumstances of war.

(b) It is prohibited to fell trees, to damage crops or livestock, and to destroy the enemy's civilian buildings and installations by shelling, blasting or any other means.

Article 4

Every human being is entitled to inviolability and the protection of his good name and honor during his life and after his death. The state and society shall protect his remains and burial place.

Article 5

(a) The family is the foundation of society, and marriage is the basis of its formation. Men and women have the right to marriage, and no restrictions stemming from race, color or nationality shall prevent them from enjoying this right.

(b) Society and the state shall remove all obstacles to marriage and shall facilitate marital procedure. They shall ensure family protection and welfare.

Article 6

(a) Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage.

(b) The husband is responsible for the support and welfare of the family.

Article 7

(a) As of the moment of birth, every child has rights due from the parents, society and the state to be accorded proper nursing, education and material, hygienic and moral care. Both the fetus and the mother must be protected and accorded special care.

(b) Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take in to consideration the interest and future of the children in accordance with ethical values and the principles of the Shari'ah.

(c) Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with the tenets of the Shari'ah.

Article 8

Every human being has the right to enjoy his legal capacity in terms of both obligation and commitment, should this capacity be lost or impaired, he shall be represented by his guardian.

Article 9

(a) The question for knowledge is an obligation and the provision of education is a duty for society and the state. The state shall ensure the availability of ways and means to acquire education and shall guarantee educational diversity in the interest of society so as to enable man to be acquainted with the benefit of mankind.

(b) Every human being has the right to receive both religious and worldly education from the various institutions of education and guidance including the family, the school, the university, the media etc, and in such an integrated and balanced manner as to develop his personality, strengthen his faith in God and promote his respect for and defence of both rights and obligations.

Article 10

Islam is the religion of unspoiled nature. It is prohibited to exercise any from of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism .

Article 11

(a) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to God most-high.

(b) Colonialism of all types being one of the most evil forms of enslave, humiliate, oppress or exploited. Peoples suffering from colonialism have the full right to freedom and self-determination. It is the duty of all state and peoples to support the struggle of colonized peoples for the liquidation of all fonns of colonialism and occupation, and all states and people have the right to preserve their independent identity and exercise control over their wealth and natural resources.

Article 12

Every man shall have the right, within the framework of Shari'ah, to free movement and to select his place of residence whether inside or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure his protection until he reaches safety, unless asylum is motivated by an act which Shari'ah regards as a crime.

Article 13

Work is a right guaranteed by the state and society for each person able to work. Everyone shall be free to choose the work that suits him best and which serves his interests and those of society. The employee shall have the right to safety and security as well as to all other social guarantees. He may neither be assigned work beyond his capacity nor be subjected to compulsion or exploited or harmed in any way. He shall be entitled without any discrimination between males and females-to fair wages for his work without delay, as well as to the holidays allowances and promotions which he deserves. For his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the state shall intervene to settle the dispute and justice enforced without bias.

Article 14

Everyone shall have the right to legitimate gains without monopolization, deceit or harm to oneself or to others. Usury (*riba*) is absolutely prohibited.

Article 15

(a) Everyone shall have the right to own property acquired in legitimate way, and shall be entitled to the rights of ownership, without prejudice to oneself, others or to society in general. Expropriation is not permissible except for the requirements of public interest and upon payment of immediate and fair compensation.

(b) Confiscation and seizure of property is prohibited except for a necessity dictated by law.

Article 16

Everyone shall have the right to enjoy the fruits of his scientific, artistic or technical production and the right to protect the moral and material interests stemming therefrom, provided that such production is not contrary to the principles of Shari'ah.

Article 17

(a) Everyone shall have the right to live in a clean environment, away from vice and moral corruption, an environment that would foster his selfdevelopment and it is incumbent upon the state and society in general to afford that right.

(b) Everyone shail have the right to medical and social care, and to all public amenities provided by society and the state within the limits of their available resources.

(c) The state shall ensure the right of the individual to a decent living which will enable him to meet all his requirements and those of his dependents, including food; clothing, housing, education, medical care and all other basic needs.

Article 18

(a) Everyone shall have the right to live in security for himself, his religion, his dependents, his honor and his property.

(b) Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationship. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The state shall protect him from arbitrary interference.

(c) A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.

Article 19

(a) All individuals are equal before the law, without distinction between the ruler and ruled.

(c) The right to resort to justice is guaranteed to everyone. Liability is in essence personal.

(d) There shall be no crime or punishment except as provided for in the Shari'ah.

(e) A defendant is innocent until his guilt is proven in a fair trial in which he shall be given all the guarantees of defense.

Article 20

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of humiliation, cruelty or individual to medical or scientific experimentation without his consent or at the risk of his health or of his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.

Article 21

Taking hostages under any form or for any purpose is expressly forbidden.

Article 22

(a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah.

(b) Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari'ah.

(c) Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of prophets, undermine moral and ethical values or disintegrate, corrupt or harm society or weaken its faith.

(d) It is not permitted to arouse nationalistic or doctrinal hatred or to do anything that may be an incitement to any form or racial discrimination.

Article 23

(a) Authority is a trust; and abuse or malicious exploitation thereof is absolutely prohibited, so that fundamental human rights may be guaranteed.

(b) Everyone shall have the right to participate directly in the administration of his country's public affairs. He shall also have the right to assume public office in accordance with the provisions of Shari'ah.

Article 24

All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.

Article 25

The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this declaration.

Sources

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2. George Sababin, *The History of Political Theories*, translated by Baha alDin Pazargad, Tehran, Amir Kabir Franklin, 1970, p. 77.

3. George, *Philosophy of Law: A History*, translated by Javad Awhadi, Tehran, 1957, p.67.

4. 'Allamah Muhammad Taqi Ja'fari, ibid, p. 50.; Hushang Muqtadir, *Developments in the United Nations*, Shiraz, University of Shiraz, 1979, p. 200.

1. The writer had the honor of presiding over the conference in Tehran (1987) in the final release of the declaration.

Hujjat al-Islam Muhammad Javad Hujjati Kirmani

Necessity of the Discussion

Disregarding the difference between the two terms Human Rights in Islam and Human Rights in the West1 the article attempts to look for the similarities and differences between human rights in Islam and the so-called human rights in the West as reflected in the Universal Declaration of Human Rights and the annexed conventions. After all, the article concentrates its focus on the similarities and the differences shall be briefly dealt with.

What induces us to concentrate on the similarities rather than the differences is that man is in need of the message of peace among religions and nations in this age as in all other ages. The proof for this claim is that dialogue among religions, specially the dialogue between Islam and Christianity has been in vogue during the recent years and the gatherings towards this end have played an incontrovertible role in bringing the Muslims and the Christians closer, and in creating ties between Muslim and Christian philosophers and scholars.

Furthermore, the message given by Sayyid Muhammad Khatami, the Iranian President, to the American people and the issue of “Dialogue among Civilizations” brought up by him which was fortunately welcomed by the universal community, requires the thinkers to contemplate and converse more on the linking bonds between international rights through conferences and meetings.

Another factor which makes the necessity of this discussion even clearer is the fact that despite the passage of a span of twenty years after the advent of the Islamic Revolution and despite the clear an inspiring messages of the Founder of the Islamic Republic of Iran, Hazrat Imam Khumaini, and the sayings of the Present Leader of the Revolution, Hazrat Ayatullah Khamini’i in respect to the common

points among religions and civilizations and specially what was announced to the world in the recent one and a half years by the President, a number of the world's super-powers and politicians are, however, trying to distort the face of the Revolution and the Islamic Republic.

They are incapable of enduring Iran's claim for freedom and independence, which is, accompanied by calling for observance of the rights of the oppressed people throughout the world specially the rights of the Palestinians. They try to render the minds of the nations rebellious to us especially to our ideological principles with a view to satisfying their domineering interests. Thus, it is incumbent upon us, and the seekers of truth and of happiness for man and the true advocates of universal peace and mutual understanding of the religions and the dialogue among civilizations to identify the linking bonds of world's religions, civilizations and cultures, promote friendship and love between human beings throughout the world and shield against anti-human and hostile propaganda of international Zionism and Imperialism who see their existence in the dissension and hostility among nations.

Approaches

The comparative study of Islamic human rights and Western human rights has long prevailed in the Islamic societies and a great bulk of books and essays have been written on this subject. The Western and Islamic scholars generally adopt three approaches toward this issue:

1. The first approach is total acceptance or rejection; in other words, they either accept one or reject the other without any reservation. Some Muslim thinkers reject the principles set forth in the Universal Declaration of Human Rights and seek after such rights only in Islam and assume the aforementioned Declaration as originating from human desires and even atheism. As opposed to their stance, some advocates of western human rights hold that the Islamic instructions are insufficient and even unjust. They question the origin of Islam, believing that such issues in Islam have been bound to time and place.

2. The second approach pertains to those drawn in by the western civilization. They know no other issue as this except in the Universal Declaration of Human Rights. After all, some believe in a religion like Islam, and see human rights as something outside the realm of religion; if they regard a worldly mission for religion, they consider it a phenomenon not as valid now as at the advent of religions. Therefore, if religions, which claim to express the divine knowledge, have stated anything on this subject, it has been only applicable for their own time and they may never be generalized for all times including our age. Deciding on this matter has been delegated to man by God.

When we come to the question of politics, this approach demonstrates the view that religion should be isolated from politics. According to this view, this separation is not a defect but the sign of religion's perfection. They hold that religion is in many ways superior to worldly affairs. However, what makes things difficult are the occasional contradictions between the Universal Declaration of Human Rights and the Holy Qur'an or other religious writings. This point will be briefly clarified at the end of this article.

3. The third approach is an intermediate one, which finds many similarities and connections between the sources, foundations and the materials of Islamic and Western human rights. The article attempts to display the point that similarities exceed the differences.

The Approach of this Article

This article adopts a similar approach and intends to show that the previously mentioned rights are similar even in respect to source, i.e. the ideological and general theoretic infrastructures. It is noteworthy that Ayatullah Javadi Amuli believes that sources should be identified first, then legal fundamentals be extracted from those sources and then legal texts be compiled in order to extract legal rules. For example, one of the articles of the Universal Declaration of Human Rights is that all people are equal before the law. The basis for this article is justice. Justice also originates from public and ideological approaches.

4-Public and Common Sources of Islamic and Western Rights

The origins of rights differ in materialistic and divine schools. Lawyers, who do not recognize a divine origin for rights, believe its source to be the human conscience and wisdom, which differentiates between good and the evil in individual and social areas. In Emile, for example, Jean Jacque Rousseau describes conscience as divine immortal instinct, celestial voice, virtuous and benevolent judge of the good and the evil. However, the disciples of the prophets believe that the prophets have infonned people of such rights upon divine command. It seems that these two views are not contradictory and in fact complete one another. On human nature, the Holy Qur'an says:

"By the soul, and that which shaped it, and inspired it to lewdness and god-fearing." (***Surah as-Shams 91:7-8***)

This verse clearly tells of divine inspirations granted to everyone and the path of goodness and evil has been shown to everyone. Therefore, in Qur'anic view, human nature, conscience and wisdom can distinguish right and wrong based on divine inspiration. On the other hand, revelation is a superb quality, manifested only in exalted spirits and wisdom. In other words, revelation and prophecy are the peaks of human wisdom and only suit those who have exalted spirit and superior wisdom. This is why our scholars regard the holy Prophet (P.B.U.H.) as the Absolute Wisdom.

Therefore, it is better to find the linking bond between these two, which is in fact focusing on human wisdom and conscience instead of causing opposition, only with the difference that in divine schools, this human spirit and wisdom have exceptionally evolved in the better men who are the prophets so as to make them capable of receiving divine revelations. In fact, scholastic theologians rely on human wisdom, but the wisdom, which has enabled them to fully perceive the truth with the aid of divine revelation. While in the works of other scholars, even philosophers, lawyers, and thinkers who have helped give shape to new schools, the likelihood of error and mistake may always be seen.

It is interesting that evidence for this view is clearly discernible in the works of western pioneers. For instance, somewhere in his work Rousseau says, “In order to discover the best rules and laws for the people, a total wisdom is required to see all human desires but not sense any of them, have any relation with nature but know it thoroughly: his happiness is not relevant to or dependent on ours, but is ready to help promote our happiness.”2

It must be added that this total wisdom as described by Rousseau is crystallized in divine prophets, although Rousseau’s indications show that he meant God.

Common Foundations

Unity Of Mankind

The original infrastructure of the first Universal Declaration of Human rights is the unity of mankind. This view is not only compatible with religious approach but it directly or indirectly arises from that, as, except when addressed generally for which terms like “O People”, “O Men”, “O Mankind” and are used, it is clear that in Qur’anic insight all men are equal. The sacred verse of

“O Mankind. We have created you male and female, and appointed you races and tribes, that you may know one another,” (***Surah al-Hujurat 49: 13***)

verifies this view. Furthermore, what is received from the oral and practical traditions of the holy Prophet and our religious leaders indicate the same approach.

In this regard, the holy Prophet states, “You are all the descendents of Adam and Adam came from dust.”

The provisions of the Universal Declaration of Human Rights also originate from a public and ideological approach governing at the time of formulating this Declaration, i.e. after the end of the Second World War, the formulators of the Declaration of the Human Rights believed that human family was a single entity with common gains and losses. This foundation per se originated from their ideology, which made them see external reality as this. Thus, the notion of man’s unity is based on the reality of the existence. Here, we also reach the linking bond of Islamic and Western human rights systems, as in the Islamic approach, the human family is one unit with common gains and losses.

As Sa’di, the outstanding Persian poet, says:

“The sons of Adam are the limbs of each other
Having been created of one essence
When the calamity of time afflicts one limb
The other limbs cannot remain at rest
If thou hast no sympathyfor others

Thou are unworthy to be called by the name of a man."

Man's Natural Value

The other common element between the human rights in Islam and the western human rights is the natural value and respect for man.

The Holy Qur'an states, "The best among you is the most upright one," and the preamble to the Universal Declaration of Human Rights talks of the recognition of the innate value of all members of the human family; it comes to our mind that this declaration has been, directly to indirectly, influenced by that Qur'anic instruction or at least both of them are compatible with supreme reason and man's wisdom. The deep difference between these two is believed to be the one that originates directly from revelation and the other relates to the divine revelation by some intermediate factors.

The Individual And The Society

Another linking bond between the Islamic and the Western human rights systems is the issue of individual and the society and man's individual and social dignity. Disregarding the theoretic and philosophical discussions related to individualism and socialism, in both legal systems, the interests of society are prevailing on the individuals. Means and instruments have been devised to protect the interests of each against the other.

The interesting point is that the conflict of the interests of the individuals and the society with the individual may be removed only by social institutions. This deeprooted experience has made mankind establish the government in order to regulate the relations of individuals with one another and with the society and give power and legitimacy to this institution. In this area, there may be seen many similarities between the statutory laws of man and the provisions of the Holy Qur'an and the tradition of the prophet.

Common Provisions

Besides the parts in which we discussed the fundamentals and sources of human rights, the similarities may be identified in the articles and principles of human rights as well. Here, we shall give some instances

A) Life

B) Freedom

C) Justice

Life

Some Muslim scientists have divided life into two parts: material and spiritual. The attention to spiritual

aspects in Islam and its deletion from the Universal Declaration of Human Rights is the priority of Islamic human rights over the western one.3 In Islamic and Western Human Rights System, by material life we mean that man is born one day and dies another day and paying attention to this very life (or the material life) is another common point and a linking bond of these two systems. "Blood Shed and murder" is so vile and condemned in Islam that killing one person is regarded equal to killing all mankind and the verse

"He who kills one man it is as if he has killed all mankind," (***Surah al-Ma'idah 5:32***)

is certainly about the common meaning we have in mind of "murder." Of course, a more general interpretation might be derived from the context of the verse as well.

Freedom

Concerning the sublime value of freedom which serves as another link between the two law systems involved, it is to be stated that the fact that in this area, the mystical and religious concepts of freedom which is freedom from carnal desires and slavery by everybody but by God should not be mixed with the common meaning of the word in the concept of human rights.

By freedom, we mean the same concept given in the Universal Declaration of Human Rights implying that man is born free, slavery is banned and that everybody is entitled to live free and secure.

It is worth mentioning that man's responsibility originates from his freedom. Man is by nature a free being. As he is wise, he himself regards restrains for his individual and social life based on wisdom and reason. These rational limits take a pure and real face in the process of mystical illumination and through divine revelation.

As suggested at the outset, human wisdom when exalted from the ordinary restrains and elevated to the superior state becomes capable of achieving the truth and human laws and rules of life through revelation. Therefore, as a reasonable being, man puts curbs on his natural and innate freedoms in individual and social life. Any man with a religion or belief in a school of thought has limits and regulations as well.

If some differences are observed in the Islamic and Western Human Rights with respect to the limits of freedom, this does not impair the rational and fundamental freedoms.

In other words, the Islamic and the Western human rights have set limits for man's inherent freedom. From epicurist view, the limits and restraints on sexual freedom are much less than divine value-oriented approach, but even in the same western view, there are limits for this freedom such as the ban on rape and overt sexual activities. In other words, even in the freest of societies, human reason has not stopped working; it has restrained freedom though on a very small scale.

In order to remove any misconception, the basis of western view toward sexual freedom is a mixture of feeling and desire and if it has any rational basis it is mixed with irrational and diverted extravagances and with a reaction against sexual ban and guilt feeling concerning the sacred issue of marriage as sermonized by Church authorities. At any rate, this approach is condemned in Islam.

Justice

In the preamble to the Universal Declaration of Human Rights, it is expressed that lack of recognition of human rights has led to barbarous acts which have in turn made human souls revolt and in general, the rights of people should be protected by law enforcement so that man may not be urged to revolt against injustice and cruelty as a last resort. The following points may be seen in the articles provided in this declaration:

Prohibition of slavery (Art. 4), prohibition of tenure, inhuman or degrading treatment or punishment (Art. 5), Equality of everyone before the law (Art. 7), the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the law (Art. 8), prohibition of arbitrary arrest, detention or exile (Art, 9), the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense (Article 11, paragraph 1), holding anyone guilty of any penal offense under national or international law at the time when it was committed (Article 11, paragraph 2), prohibition of arbitrary interference with people's privacy, family, correspondence, or attacks upon his honor and reputation (Art. 12), prohibition of arbitrarily depriving others of their property (Article 17, paragraph 1.)

These provisions are in fact evidence for enforcement of justice and removing injustice and the links of Islamic and Western human rights systems are quite firm and stable in them. The concept of justice in the Islamic teachings is so extensive which is an attribute of the highest rank of existence (God) and this attribute, like other attributes of God, is His nature.

What is stated is enough to show the superiority and the elevation of this issue, but the problem does not end here and the realm of justice has covered all the universe and all particles of the existence are covered by this general overwhelming issue so as it is said "The universe is made stable by Justice."

On the other hand, man with any religion, seek justice by virtue of reason and wisdom and hate cruelty and injustice and pressure in religious, social and economical domains. Therefore, what we see in the Declaration of Human Rights is a proper manifestation of man's wishes. Man strives to actualize and realize in his individual and social life what originates from the Creator of the World and what is current in the existence and what is the cause of its strength as instructed by his reason and wisdom.

In other words, man tries to make a model of the real external sample of justice, prevalent in the universe, deriving a value from an objective real affair.4

The Holy Qur'an states,

"Be 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***)

and

"And when you speak, be just even if it should be to a near kinsman." (***Surah al-An'am 6:152***)

These verses and similar verses show the esteemed position of Justice in the Qur'anic instructions. Whatever mentioned on the aforementioned issue in the Declaration of Human Rights is a direct or indirect reflection of the sacred teachings of Islam and other divine religions believed by man and cherished by man.

Differences

Let us now look at some parts of the Universal Declaration for Human rights, which are different from the Islamic approach and call the western and Islamic thinkers for dialogue and discussion on these parts:

1. All members of the human family have equal rights (introduction). It seems that Islam has a different view of the rights of non-Muslims.

2. All men are equal in dignity and rights (Art. 1)

3. The followers of any religion are entitled to all rights and freedoms mentioned in the Declaration (Art. 2)

4. Men and women of full age, without any limitation due to race, nationality or 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 (Art. 6).

5. Everybody has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship; and observance (Art. 18).

6. Everybody has the right to freedom of opinion and expression (Art. 19)

7. All children whether born in or out of wedlock shall enjoy the same social protection (Article 25, paragraph 2).

These cases should be studied in comparison with the Islamic rights.

At the end, we shall touch upon a pithy and noble point derived from the sublime teaching of Islam and can be counted as the striking differences between these two declarations. Although this case may be beyond the scope of our discussion according to some philosophers, lawyers, and politician, we deem it

proper to bring it up as this article deals with the similarities and differences between the western and the Islamic rights.

The point involved is the right of God and His will. This right is the basis of all human rights as viewed by Islam. As mentioned earlier, human wisdom and reason are the gifts of God but the point is that the knowledge of God is only His sacred nature. In this regard let us consider a saying by Imam Zain al-'Abidin, 'Ali Ibn Husayn (P.B.U.H.) who believes that all movements and actions are surrounded by divine rights and that it is incumbent on man to fulfill them; then he says, "The most important right of God is the right that God has set for Himself. The right, which is the origin of all rights and all rights, originate from it, from head to toe. And the greater right of God is to worship Him and take nothing as His partner."

1. This mistake is due to the fact that many of the articles set forth in the Universal Declaration of Human Rights are based upon the principles of all religions and sects such as the right to property, security, ownership etc. on the one hand and on the other what is called the Islamic human rights enumerated in the Cairo Declaration of Human Rights are common readings of the Islamic teachings which allow no marring. It is safe to say we Muslims should not attribute our personal reading and interpretation to Islam.
2. Jean Jacques Rousseau, Social Contract, p.81
3. The idea of corporeal life is not free from mistake for life belongs to the soul and the soul is abstract.
4. Ayatullah Javadi Amuli's words have been used.

Hujjat al-Islam Muhsin Kadivar

Introduction

Let us first define key words such as political rights1 people and Islam: political rights are part of the human rights, which concern themselves with rights in political area. They include things such as self-determination, political measures and the right to political freedoms. By people is meant the entire human race regardless of opinion, religion, sect, sex, race, color, language and nationality.

Islam embraces the teachings proclaimed to man by Prophet Muhammed the Last Prophet, and the Book and Sunnat2 constitute its most important sources. This article discusses the two important Islamic sects: Shi'ite and Sunni. It attempts to study the political rights of people based upon Islamic teachings without considering the historical differences between the Sunnis and-the Shi'ites.3

It might be maintained that the language of religion is the language of obligation. As any discussion on right is non-religious, there is no room for political rights of people in Islam. However, it must be said that the issue of obligation is of great importance in religion. By religious obligation is meant the divine right towards human beings, which is a unilateral right.

Not only does Islam deal with the relationship between God and man but with the relationship between

man and man, and man and nature. In Islam, there is the question of obligation and right between these two relationships. Each human person has rights towards other human beings and these rights put some obligations on others.

All human rights (the rights man has towards others and to nature) are bilateral. Obligation is the due right. From any right one can determine an obligation for others. And from the acceptance of any obligation, a right is provided for people. For God religion is an obligation but for men, it is a combination of right and obligation.

The Almighty introduces His immutable Word to His servants on the basis of justice, mercy and generosity.

"He has prescribed for Himself mercy." 4 (***Surah al-Baqarah 2: 12***)

Jurisprudence discusses religious obligations (arising from God's right towards people) and non-religious obligations (political, civil rights) and the jurisprudents have endeavored to recognize religious obligations. However, the jurisprudential issues are not related to obligations and rules and the rights of man and God are the important topics of discussion in jurisprudence.5 In view of the fact that religion is not limited to jurisprudence, the issue of principles of religious rights is included in theology, and the interpretation and *hadith* provide the roots for religious rights.

In general, there are two ways in Islam to understand the rights of people. Firstly, direct reference to the Holy Qur'an, the Sunnat of the Innocent, and through verses and traditions, which directly or indirectly recognize people's rights. Some of the political rights of people are accessible in this way. From among the most evident religious texts on the political rights of people in Islam are Imam 'Ali's explications in Nahj al-Balaghah. Let us, for instance, consider the following sermon by Imam Ali:

"The Almighty God has appointed me as your Imam, thus vesting you some rights towards me. O people, I have a right over you and you have a right over me. Right is the broadest affair in description, and the rarest affair in moment of action and justice. No one has rights towards others unless others have rights towards them and others have no rights towards those others unless they have rights towards them. If someone has rights towards anyone, the rights are particular to the Almighty God. So the Almighty God has proclaimed necessary some rights towards some people and proclaimed them equal as compared to some others and has proclaimed some of them incumbent as compared to others. Some of these rights are not achieved unless at the cost of some others. The greatest rights proclaimed necessary by the Almighty God is the right of people towards their Imam and the right of their Imam towards them."6

The second method is referring to the conducts of the sages. If a case is proved as an innate or natural right by virtue of reason, religion recognizes this right as well for religious or jurisprudential sources or rights as stemming from the conduct of the sages and through reason. Some of the human rights ignored by religious scholars were ushered into the realm of contemporary religious thought.7 It is

evident that these intellectual rights may not contradict any religious principles for if such rights lead to the analysis of unlawful and the ratification of lawful, the necessary law is not endorsed. Attention to intellectual subjects on human rights sheds light on some hidden comers of religious texts and enriches the contemporary religious thought.

The simultaneous use of the two methods stated above introduces the Islamic stance on human rights. Multi-dimensional attention to some religious duties have paved the way for discovering some of the human rights as the attention to the inalienable human rights which are considered religious rights has led the jurisprudents and the Muslim thinkers to formulate some duties and some new principles. This reciprocity between the two areas of reason and tradition has helped advance the human rights as viewed by Islam.

The acceptance of the political rights of people in religious thought doubles the binding guarantee of the exercise of those rights because the social contract is the support of these rights other than religion and the violation of them entails worldly punishment whereas recognizing them by religion renders them dependent upon religious principles and religious conscience. And the violation of them besides the worldly punishment entails spiritual punishment as well.

If the political rights of people are institutionalized in juxtaposition with the rights of people in the religious society, religion and faith become a sure haven for the exercise of these rights. Therefore, it is natural that the religious society is expected to observe the rights of people more than other societies.

Political rights are directly associated with anthropology. The recognition of political rights of people came from the belief in human dignity:

"We have honored the children of Adam, carried them on lands and sea and provided them with good things. And preferred them greatly over many of these." (***Surah al-Isra 17:70***)

"And when thy Lord said to the angels, 'I am settling in the earth a viceroy …'" (***Surah al-Baqarah 2:30***)

"We offered the trust to the heaven and the earth and the mountain: but they refused to carry it and were of afraid of it and man carried it. Surely he is sinful, very foolish." (***Surah al-Ahzab 33:72***)

Or it believes in man's responsibility;

"God changes not what is in a people, until they change what is in themselves." (***Surah ar-R'ad 13:11***)

"So let him who pleaseth believe; and let him who pleaseth disbelieve." (***Surah al-Kahf 18:29***)

Or it believes in a sublime nature of man;

"When I have shaped him and breathed My spirit in him, fall you down, bowing before him." (***Surah Surah al-Hijr 15:29***)

"Surely We created man in the best structure." (***Surah at-Tin 95:4***)

In general, the Holy Qur'an is optimistic about man whereas pessimists and cynics that lay the foundation on man's being removed from social affairs believe all the dignities pronounced in the Holy Qur'an as being particular to the elite and consider man as being conquered by Satan, thus depriving him of numerous rights.

The believer accepts the priority at God's will in all spheres of life, believing that pure happiness lies in following it. He holds that the absolute authority of God over them depends entirely upon maturre wisdom and belongs to God. The Almighty has assigned for man certain responsibilities and recognized certain rights. These rights and responsibilities stemming from a divine source may not contrast each other. Thus, religious obligations, that is, the obligatory and the prohibited, have priority over man's will and humane rights, including the individual and the collective ones, are of secondary importance. This priority or posteriority is concomitant of man's servitude towards God.

The reference area to people's rights is the area of the permissible and in this area which is often called *Mantaqat al-Faragh*8 (The Area of Separation), man is free to make decisions and of course he is responsible for his decisions. Here, socio-political freedom is the intended meaning rather than the philosophical one.

Mantaqat al-Faragh is not a small place but an extensive one. The political rights of people become manifested in this place. Attention to the principles cited above shows clearly that enumerating the political rights of people does not at all mean violating the obligatory and the permissible; on the contrary, not recognizing these rights, which are parts of the legitimate rights of people means to encroach upon religion and its tenets. He who abandons the rights of God and he who violates them shall be forgiven by an act of repentance but he who violates the rights of people ought to repent and ask forgiveness from the people.9

Man's bliss is dependent upon his righteousness. Righteous deed is one, which is dependent upon religious principles. Religious teaching or the pattern for righteous deeds is divided into two parts: some part of it is focused on man's individual life and some other part on social conventions and principles.

The Almighty has placed the exercise of these principles on the believers: In other words, the exercise of divine teachings is incumbent upon all Muslims. This is a public duty. And the collective duty does not hinder the prediction of some special conditions for exercising some of these principles because faith, religious conscientiousness, truthworthiness, competence, and skill in administering the religious affairs and other affairs such as justice, *ijtihad*, jurisprudence are necessary. Thus, people are obligated to observe all the rules enumerated by the theologian and select the ministers from among the reliable people imbued with religion.

Given the points stated above, we should deal with the most important political rights of people. This right plays an important part in fundamental rights. .

The acceptance or rejection of it exercises a fundamental influence on political rights without recognizing the changes.

This is self-determination. We shall be discussing it in three parts; the first part deals with the imaginary principles of this right; the second part deals with the principles or its approbation. And the third part discusses it in international human rights documents.

Part 1: The Presumed Principles Of Self-Determination And Political Matters

The most important principle of political rights is self-determination dominating all political atmospheres. Who does the political atmosphere belong to? Who is to determine the major policies? Who is to choose the main formulators? Who should one get permission from in interfering in public realm? Who is responsible for it?

As the believer holds that whatever is in heaven and earth belongs to God, and that He alone is able to interfere in the earth and the heaven, religious belief necessitates that whatever God decides is for the sole bliss of mankind. Then, God's immutable tradition is such that He does not interfere in any sphere without intermediary. In political sphere, it is obvious that God does not directly take part in the administration as in other affairs. God has recognized that Man has the right to take part in social sphere. That is why he gives the trust to him. ·

To understand the different dimensions of this divine right, let us consider the following points:

1. This right originally belongs to God and to man. Hence, man is responsible to God in the public spheres. What we mean is that man is the right of man to man, not the right of man to God. This is a Godgiven right emanating from a divine source. Man, as God's viceroy has such a right.

2. The public sphere belongs to man.[10] On this basis, in any society, the administration of general area belongs to all who live in that society.

3. As it is very difficult and sometimes difficult to ears, others believe that in the public spheres the practical solution is that the criterion for political matters should be the consent of others.[11]

4. In using the God-given rights in the public spheres, man is obliged to consider sublime goals such as dignity, justice and magnanimity and observe them carefully.

5. Regardless of the two duties stated above, no interference is allowed in the public spheres except by consent of the owners of rights. In other words, as the late Imam Khumaini stated, the criterion is the vote of people and any kind of interference is forbidden.

6. The authorities perform these duties as representatives of people. There are the chosen representatives of people. The representatives are bound to satisfy people's desires. Also, the realm of their authorities in transactions is to be determined by the satisfaction of the people. In this deal, the duration for deputyship for public services and its conditions is mentioned.[12]

7. The authorities are responsible for people and perform these duties under the supervision of right owners. The authors of public services may be put aside by people-owners of right. This may happen due to their perversion.

8. As the use of this God-given right depends on following religious principles, a group of chosen clergies assume the responsibility of these two.[13] In general, the representatives choose positions in which certain duties such as *Ijtihad*, jurisprudence, etc. are considered.

9. The two positions of prophecy and Imamate are beyond the realm of people's choice and determined only by divine command. In general, in all cases prescribed by the religious representatives, the cases shall go beyond the *Mantaqat al-Faragh* and people shall not find the chance to choose or give comments.[14]

Part 2: Affirmative Principles As Self-Determination Of Political Matters

Evidences and reasons stemming from wisdom on self-determination and political administration are possible. Not all these cases enjoy a unique unity. This includes:

Rational Demonstration

Reason recognizes the right to selfdetermination and political matters. This principle exactly corresponds with the recognition of rational demonstration. Whatever man owns - material and spiritual, individual and social - is independent. The familiarity with public realm or politics is enough to lead Reason to approve the conducts of any society.

Besides, the invasion of the bully in determining the political destiny in the course of history has taken place in these ways: firstly, without the consent of individual and the society; secondly with the choice and consent of people.

The first method is manifestly rejected. It is religiously deemed an immoral act to interfere in the political decisions of the society. The administration of the society compared with people's consent lies in the acceptance or rejection of people.

As the first part is rejected by virtue of reason, the second part is proven.

Principle of the Lack of Leadership

Principle of the Lack of Leadership[15]

All human beings are the masters of their destiny. In Islamic thought, the principle is that man should be good and wise.

Everyone is entitled to choose for them unless there is a contrary reason. In short, people are the masters of the destiny in public spheres. And being under guardianship demands reliable reason. Everyone is allowed to administer his or her own affairs unless the reliable reason of being under guardianship is proved. The proofs presented on the basis of the lack of interference of people in public spheres are not sufficient and cannot prove the priority or guardianship in this regard.[16] Based on this principle, people are in control of their affairs.

The Principle of Sovereignty

Practical reason accepts the sovereignty of people over their properties. The intellectuals regard the violation of others' properties as false, forbidden and odious. In this regard, there is a hadith by the holy Prophet that says, "All people are the masters of their properties."[17] When people are in control of their properties, they can do any kind of ownership in what they have, and others have no right to interfere in their properties unless by their permission, and others have no right interfere in his political and social affairs without permission, and the individual himself has priority in choosing his political destiny.[18] The comparison of properties with the political affairs bespeaks the importance and majority of influence and the priority of political affairs over material properties. The pivot of the discussion in both cases is the necessity of gaining the satisfaction of the owner and the respect for usurping without permission.

Consulting with People

The Almighty God has considered the will of people as being the realm of public affairs and has bidden people to consult each other in this regard.

"And those who respond to their Lord, and establish prayer, and conduct their affairs with counsel among themselves." (***Surah ash-Shuraa 42:38***)

It is clear that by saying "and conduct their affairs with counsel among themselves" is not meant the divine responsibilities or principles because in the realm of religious responsibilities, the vote of people is not the criterion. The reference is to the *mantaqat al-faragh* in which police takes place on the basis of public counsel. In other words, in the public realm decisions are made with attention to people's satisfaction acquired by counseling them. If people lack rights in the public realms, why are the authorities bound to counsel with them?

Verses of Viceroyship

Verses of Viceroyship[19]

The verses implying the viceroyship of Man by God fall under several groups:

Part one-Verses of Vicegerency and Trust Holding

"And hen thy Lord said to the angels, I am setting in the earth a viceroy" (***Surah al-Baqarah 2:30***)

"We offered the trust to the heavens and the earth and the mountains, but they refused to carry it and were afraid of it; and man carried it. Surely he is sinful, very foolish." (***Surah al-Ahzab 33:72***)

From the first verse, one can reason in the following way:

First: He who granted viceroyship was God, not the previous generation nor the angels and jinn.

Second: The humankind is God's viceroy, not Adam alone.20

Third: Man, that is God's viceroy, has the responsibility to spread justice, exercise self-determination , and determine political and social destiny.

Fourth: Every man as God's viceroy shall have the right to take part in determining his political destiny. Thus, leadership is particular to everyone.21

From the second verse, we can reason in the following way:

1) Trust is the divine leadership of mankind,22 including leadership, selfdetermination and political administration.

2) Only the humankind has the quality to bear the divine trust.

3) Betrayal of divine trust comes from tyranny and ignorance resulting in hypocrisy and paganism and the believer exercises divine trust out of knowledge and justice.23

4) Every man is the bearer of Divine trust, and has the right to take part in the political destiny of his country.

Second group, Verses of Viceroys of the Earth

"It is He who has appointed you viceroys in the earth, and has raised some of you rank above others, that He may try you in what He has given you." (***Surah al-An'am 6:165***)

"He who answer the constrained, when he calls unto him, and removes the veil and appoints you to be successors in the earth." (***Surah an-Naml 27:62***)

"It is He who appointed you viceroys, in the earth. So whoever disbelieves, his unbelief shall be charged against him." (***Surah al-Fatir 39:35***)

Resorting to this group of verses to prove the right in question, depends on the acceptance of the following points:

1. He who granted viceroyship is God, not others.

2. Man is God's viceroy, not a particular nation from old times. In other words, these verses discuss verity-proposition, not actuality-proposition.

3. The act of appointing includes other genetic appointment (creation) and divine appointment (appointment of man as God's viceroy)

4. It includes divine authority, self-determination and political administration.

5. Every man as God's viceroy can take part in determining the political destiny of his country.

Third group of verses: Leadership of the upright believers

"God has promised those of you who believe and do righteous deeds that He will surely make you successors in the land, even as He made those who were before them successors, and will give them in change after their fear, security." (***Surah an-Nur 24:55***)

"Yet we desired to be gracious to those who were abased in the land, and to malice the leaders and to make them the inheritors." (***Surah al-Qasas 28:5***)

"For we have written in the Psalms after the Remembrance 'the earth shall be the inheritance of My righteous servants.'" (***Surah al-Anbiya 21:105***)

"Surely the earth is God's and He bequeaths it to whom He will among His servants. The issue ultimate is to the god-fearing." (***Surah al-A'raf 7:128***)

Resorting to this group of verses to prove the right involved, depends on the acceptance of the following points:

1. He who granted viceroyship is God, not the tyrants.

2. God's viceroy and the inheritor of the earth refer to upright believers.

3. God's viceroys have the right to self-determination.

4. Every upright Muslim has such a right.

The Verses Guaranteeing Social Duties

The Verses Guaranteeing Social Duties24

Social issues constitute a considerable part of Islamic teachings. The Muslim Ummah are the addressees of these verses. Although the society shows no other entity beyond its own members, people are the members of the Society, and they have the duty to bid others to work righteousness and

to enjoin others to avoid evil.

As mentioned before, the necessity of observing some conditions does not contradict any belief or idea. The society chooses the heads of such affairs from among the qualified people. If people were not qualified, the society would not have the quality to assume such affairs and could not gain the competence to be addressed by God.

That the believers are considered the exercisers of religious principles shows their having a right in this regard.

In the following, there are a few social verses addressing upright people:

"Make ready for them whatever force and strings of horses you can, to terrify thereby the enemy of God and your enemy and others beside them that you know not." (***Surah al-Anfal 8:60***)

"If two parties of the believers fight, set things right between; if one of them is insolent against the other, fight the insolent one till it reverts to God's commandment. If it reverts, set things right between them equitably, and be just. Surely God loves the just." (***Surah al-Hujurat 49:9***)

"You are the best nation ever brought forth to men, bidding to honor, and forbidding dishonor, and believing in God." (***Surah Aale Imran 3:104***)

"This is the recompense of those who fight against God and His messenger and hasten about the earth to do corruption there; they shall be slaughtered or crucified, or their hands and feet show alternately or be struck off or they shall be banished from the land." (***Surah al-Mai'dah 5:38***)

"The Fornicatress and the fornicator scourge one of them a hundred times." (***Surah an-Nur 24:2***)

General Guardianship of Faithful Men and Women

General Guardianship of Faithful Men and Women25

By general guardianship, we mean the guardianship of victory and friendship. The Muslim Ummah love and assist each other. The viceroyship of faith, the foundation of the Muslim society and solidarity of the Muslim community are dependent upon this public guardianship of the Muslims:

"And the believers, the men and the women, are friends of one of the other: they bid to honor, and forbid dishonor; they perform the prayer, and pay them alms, and they obey God and His messenger." (***Surah at-Tawbah 9:71***)

The principles of the guardianship of the believers can be enumerated in the following way:

1. All the Muslim Ummah are friends of one another.

2. In general guardianship, there is no difference between Muslim men and women.

3. In general guardianship, the only advantage is the authority of the holy Prophet[26] and those who are like prophets, namely the infallible Imams.[27] Then, everyone is equal to other fallible creatures and in the time of Imam Mahdi's absence.

4. General guardianship leads to internal and national friendship. On the other hand, it leads to national cooperation and on the third degree, it leads to a kind of participation in policy making the result of which is bidding to honor, forbidding dishonor, establishing prayer, paying religious taxes, and obeying God and the holy Prophet. In other words, public guardianship is the social backdrop of upholding religion.

5. The result of public guardianship is national unity of the Muslim Ummah.

6. Any interference in the general area should be done with the permission of the authorities and within the framework of laws. General guardianship is particular to men and women who are under the guardianship of God and His Messenger.

7. The necessity of getting permission from authorities indicates the fact that believers have rights in this realm.

The reasons of bidding others to honor and forbidding them dishonor.

One of the most important social teachings in Islam is bidding the leaders of Islamic community to honor and forbidding them dishonor. All these principles are incumbent upon everyone.

Bidding others to honor and forbidding them dishonor shows them the social duties of Muslims. If people do not have the competence to interfere in political matters, they would never be given important responsibilities.

This is the right of other members of the society to put this responsibility on others' shoulders. If a Muslim does not bid the Muslims, especially the leaders to honor or forbid them dishonor, he has violated the rights of others.

These verses indicate the two social responsibilities:

"You are the best nation ever brought forth, bidding others to honor and forbidding them dishonor." (***Surah Aale Imran 3:104***)

"And the believers, the men and the women, are friends of one of the other: they bid to honor, and forbid dishonor; they perform the prayer, and pay them alms, and they obey God and His messenger." (***Surah at-Tawbah 9:71***)

The holy prophet stated, "There are three things which may not be betrayed by the men, pure deeds for God, doing good to religious leaders and assisting them."[28] Imam Ja'far Sadiq states, "It is incumbent

upon the believers to give advice to others in public or privately."[29]

Imam Ali's Explications in Nahj al-Balaghah

Here we shall refer to some of his words:

"Of the affairs, you should go for the one, which does not violate the truth, does not fail and that which encompasses justice and appeals to people."[30]

Here, three criteria are mentioned; affairs to be loved by the true guardian, justice and the satisfaction of people.

"If people presumed you were tyrannizing over them, discuss your excuse with them openly, thereby diminishing their doubts so you may prove yourself just, you treat them fairly and with the excuse you make you will reach what you want and lead them to truth."[31]

Does recognizing the right of question by people of the guardian hold any other meaning than considering them rightful in the public spheres?

"And the greatest rights prescribed by the Almighty is the right of the guardian towards people and the right of the people towards the guardian and this right God has regarded incumbent upon people and guardians alike."[32]

"Therefore it is incumbent upon you to give advice in the exercise of that right and assist each other. No one can reach the truth of the true obeisance of God although they may be longing to satisfy Him and strive hard to be His true servants.

Among the rights of God towards people is giving advice and assisting each other in the light of their powers and no one is needless in what the Almighty has prescribed upon him of getting assistance. However great his status may be, and however he has succeeded in religion, there is no one inferior to him to help or to be helped although people consider him small and he may seem small in their eyes."[33]

"There may be people who regard praise to come after sweet works, so do not praise me for my obeying God, my good conducts but ask me of the rights I have not exercised or the obligatory things I am impelled to do."[34]

"So do not avoid telling the truth and counseling for I am not infallible or safe unless God renders my self more powerful than me."[35]

Contemplation upon the concepts cited above and alike leave no doubts that the words and deeds of Imam Ali suggested the acceptance of the right of people in the public spheres, especially the right to self-determination and political fate. The Alavite conduct is none but this. There are abundant evidences to this right in the sermons and letters of Imam Ali. And what was cited was a few examples to mention.

Part Three: Self-determination and Political Decrees in Human Rights Documents

The subject matters of self-determination and political decrees have been clearly stated in International Human Rights bills and the human rights in Islam and in the constitution of the Islamic republic of Iran. Here we shall briefly point out to some of them.

Article 21 of the Universal Declaration of Human Rights:

1. Everyone has the ·right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right of equal access to public service in his country.

3. The will of the people will be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by univesal and equal suffrage and shall be held by secret vote or equivalent free voting procedures.

Article 23, Universal Declaration of Human Rights in Islam.

A) Authority is a trust; and abuse of malicious exploitation of it is absolutely prohibited, so that fundamental human right may be guaranteed.

B) Everyone shall have the right to participate, directly or indirectly in the administration of his country's public affairs. He shall also have the right to assume public office in accordance with the provision of Shari'ah.

The Constitution of the Islamic Republic of Iran

Article 6

In the Islamic Republic of Iran, the affairs of the country should be conducted according to the votes of the people either through electing a President of the Republic, Representatives of the Islamic Assembly, Members of the Councils and so forth or through a referendum as provided in other articles of this Constitution.

Article 7

According to the Qur'anic instructions, "Their affair being counsel between them" "Take counsel with them in the affair", the counsels constitute the main organs of decision making and administration of the country's affairs. The National Assembly Council, Provincial Councils, Municipal Councils, Town Councils, Neighborhood Councils, District Councils, Village Councils, and so forth. The instance and manner of formation, the extent of authority and the method of establishing them and the responsibilities of these councils will be specified in the present Constitution and the laws proceeding from it.

Article 8

In the Islamic Republic of Iran, calling people to virtue, enjoining the good and prohibiting evil is a universal and mutual duty towards one another and of the government with respect to the people and the people with respect to the government. The specifications, limitations and nature of this duty are established by law. “And the believers, the men and the women, are friends of one another: they bid to honor, and forbid dishonor.”36

Article 56

God is the absolute authority over the entire world. He has made man the master of his social destiny. No one is allowed to deny him of this right or direct it in his own favor; the people shall have the right to exercise this law through the following provisions.

Article 177

The articles purporting the republican system of the government in Iran as well as those relating to Valayat-Amr, the Imamate of the Ummah, those stipulating the administration of the affairs of the country based on national referendums and those indicating the official religion in Iran.

Considering the above discussion, one can conclude that selfdetennination and political administration has been officially recognized by Islamic teachings. It is hoped that I may find an opportunity to analyze other political rights, namely the right to freedom, equality and justice.

1. The term political rights is used with the term civil rights in the texts concerning human rights. However, in public rights, the term basic rights is used in lieu of political right.
2. The traditional portion of the Muslim law, based on the words and acts of Prophet Muhammad.
3. One ought to explain the varying aspects of a hypothesis in it critical analysis and in comparing that hypothesis with other hypotheses. Due to some reasons, however, the writer has ignored this method and contented himself with a positive criticism. For further familiarization with the views of the present writer on the critique of other hypothesises in this regard, see Muhsin Kadivar, Hukumat-i Walayi, (Andishi-yi Siyasi dar Islam 2), Tehran, Nashr-i Nay, 1998, part one.
4. Nahj al-Balaghah, Sermon 216, p.333
5. For further infonnation on the views ofjurisprudents conceming Rights of Men, see Muhammed 'Ali Tawhidi, Misbah al-Fiqahat, Vol. 2, Views on Rights, pp. 36-50; also Wahbat Zuhili, al-Fiqh al-Islami wa Adillat, Vol. 4, Views on Rights, pp. 7-39.
6. Nahj al-Balaghah, Sermon 34, pp. 332 & 333. Also, ibid, sermon 34 p. 79. Ibid, letter 50, p.424. Abu Muhammad al-Hasan ibn 'Ali al-Hurrani, Tuhaf al-Uqul ‘an ‘Ali al-Rasul (sa), (Qum, 1404 A.H.), p. 261.
7. For Further information, see Murtaza Mutahhari, Mabani Avvaliyyi huquq az Nazar-i Islam (First principles of law in Islam), Bist Guftar, (Tehran 1978), p. 51.
8. For further information see Muhammad Baqir Sadr, Iqtisadina, Mantaqat al-Faraq fi al Tashri' al-Iqtisadi, (Beirut, al-Tab'at al-Sadisat ‘Asharat, 1981), p. 400.
9. For further information see Thaqat al-Islam Kulaini, Al-Kafi, Kitab al-Iman wa al-Kufr, Vol. 2, Bab al-Zulm, Hadith 2, p. 331.
10. For further information see: Mahdi Ha’iri Yazdi, Hikmat wa Hukumat (Wisdom and Government), (London, 1994), pp. 69-71.
11. For further infonnation see: Muhammad ‘Ali Kazim Khurasani, Fava’id al-Usul, (Qum,

1983), Vol. 1 , pp. 321-336.
12. For further informtion see Husayn 'Ali Muntazari Najaf Abadi, Derasat fi walayat al Faqih wa Fiqh al-Dawlat al-Islamiyyah, Vol. 1 , p. 576.
13. For further information see Muhammad Baqir Sadr, Al-Islam Yaqud al-Hayatt, lumhat fiqhiyyat tamhidiyat 'an mashru' dastur al-Jumhuriyyat al-Islamiyyah fi Iran wa khalaqat al Insan wa shahadat a1-Anbiya'.
14. For further information see Husaynn 'Ali Muntazari Najaf Abadi, Ibid, Vol. 1, p. 405.
15. For further information see Ja'far Kashif al-Ghata,, Kashf-ol-Aza 'An Mobhamat al-Shariah al-Qara (chap Sangi), p. 37; Murtaza Ansari, Al-Makasib, (Beirut), vol. 2, p. 45 and all explanations and writings on Al-Makasib by jurisprudents after him; Ja'far Subhan, Resala fi al-Ijtihad wa al-Taqlid, Tahzib-ol-Usul, (Qom, 1993), Vol. 3, pp. 143-145; Ruhullah al-Musavi al-Khumaini, Risala fi al-Ijtihad wa al-Taqlid Al-Rasa'el,(Qom, 1978), pp. 100-101.
16. For further information, see Muhsin Kadivar, the same book, part II.
17. Allamah Majlisi, Bihar al-Anwar, Vol. 2, Kitab al-Ilm, Chapter 33, hadith 7, p. 272; also see Rasa'il al-Shi'ah, Vol. 13, Abwab Ahkam al-Wasaya, Chapter 17, hadith 2, p. 381.
18. For further information, see Husayn 'Ali Muntazari Najaf Abadi, Ibid, Vol. 1, p. ,495.
19. For further information, see Muhammad Baqir Sadr, ibid, Husayn 'Ali Muntazari Najaf Abadi, ibid, Vol. 1, pp. 501-503.
20. For further information about the first and second introductions of 'Allamah Tabatabai, AlMizan fi Tafsir al-Qur'an, Surah al-Baqarah 2:30.
21. For further information see Kazim Husayni Ha'iri. Walayat al-Amr fi 'Asr al-Ghaybat, pp. 175-178
22. Allamah Tabataba'I, Ibid, Surah al-Ahzab (33:71)
23. Ibid
24. For further information see Husayn 'Ali Muntazari Najafabadi, ibid, Vol. 1, pp. 499-501
25. For further study see Muhammad Baqir Sadr, ibid; Mahdi Shams al-Din, Nizam al-Hikam wa al-Idarat fi al-Islam, Vol. 3 (Qum), pp. 419-420; Mahdi Shams al-Din, Ahliyyat al-Mir'at li' al-Tawali al-Sultah, (Beirut, 1415A.H.), p. 127;Mahdi Shams al-Din, al-Nar Magazini, no. 42, p. 9
26. Surah al-Ahzab, (33:6)
27. For further information see Surah Aale Imran (3:61), Surah al-Mai'dah (5:55).
28. Thaqat al-Islam Kulayni, ibid, chapter of Amr al-Nabi (SA) B'al-Nasihat al-A'immat al Muslimin ..., hadith 2, pp. 403-404; Also, Musnad Ahmad ibn Hanbal, vol. 5, p. 183; Sunan Dari, Vol. 1 , pp. 74 & 75; Sunan Ibn Majid, vol. 1 , p. 84; Sunan Tarmazi. vol. 4, p. 141.
29. haqat al-Islam al-Kulayni, ibid, chapter of Nasihat al Mu'min, hadith 2, p. 208.
30. Nahj al-BalBghah, Letter 53, p. 429.
31. Ibid, p. 442
32. Ibid, Sermon 216, p. 333
33. Ibid, p. 334
34. Ibid, p. 335
35. Ibid
36. The mentioned articles haven't undergone any change in reconsidering of constitution in 1989

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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.[2] 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.[4] 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."8 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 Rights9 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 feat*μ*re 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 mentioncd. 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.
UN Documents: A/C3/14229 A/C3/1422
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.'"
14. 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

Dr Husayn Salimi

What are the limitations and the borderlines for human rights? How far and by what criteria do social rights and welfare limit man's rights and freedoms? This is a question of great significance, which without answering, one cannot reach a universal hypothesis on human rights.

Before we embark on answering the question, which is the main concern of this article, it is worth mentioning that those who generally propose questions of this sort tend to mar human rights. The bulk of work written on this issue is meant to find ways either to threaten human rights or to flinch them. The best example in this regard is the theory of Stalinist Marxists on human rights, which tends to invalidate the theoretical foundations of human rights and to limit them by means of giving credence to social rights. It cannot be disputed that many of these theoreticians seek to vindicate the atrocities of Marxist states and their violation of human rights by reinforcing the general social welfare.

At this point I deem it necessary to cast a brief glance on this viewpoint so as to determine that our discussion on the limitations of human rights and the relationship between individual and collective rights is totally separate from other views like those of the Marxists.

From the viewpoint of orthodox Marxists, one has to bear in mind a few hypotheses when discussing human rights:

1) Social rights have priority over individual rights and social expedience and the expedience of the progressive class has priority over the rights and welfare of each individual.

2) Human rights are the ideology and power tool of international capitalists who wish to extend their powers to every part of the globe.

3) Human rights justify the interests of the superior classes of the society.

Based on these hypotheses, orthodox Marxists have sought to analyse human rights, intimating various conditions and limitations for them.[1] Whenever any international organisation remonstrated against the violation of human rights in the Soviet Union or any eastern bloc country, their writers, politicians and thinkers discussed human rights in the light of hypotheses noted above.

Basically, orthodox Marxists are against man's having inherent right to freedom and property, believing that this form of defending human rights is an individualistic outlook arising from the bourgeois trend of thought which ultimately will end in justifying the interests of the ruling class in the capitalist system. What in their view can be used, as the main basis for human rights is the concept of expedience and public rights. In their eyes, social rights and interests have priority over the individual's rights and privileges. Indeed, what is called human rights serves the interests of those that safeguard the capitalistic system or those that benefit from it. Thus, human rights can be violated when social well being is jeopardised.[2]

Many of the gruesome events, which took place during the Marxist period in the Soviet Union and

Eastern Europe, were justified in the name of defending social welfare. The violation of the most fundamental human rights such as freedom, the right to property and even life was perpetrated under the pretext of public welfare, which assures true human rights.

It goes without saying that what we endeavour to express in this article is radically different from this outlook on human rights. Discussing the limits that social welfare and rights can create for individual rights does not mean discounting the inherent rights of individuals or justifying the violation of human rights under any circumstances.

The Clash Between Individual and Public Rights According to the Universal Declaration of Human Rights

With a brief glance at the first steps taken in formulating the new human rights, one wonders if granting extreme freedom to man does not lead to social chaos. With this view, the formulators of human rights have striven to find ways to protect human rights and to forestall social chaos. Therefore, individual and public welfare has become so complicating an issue that they have not yet found a fundamental solution to it.

The first indication of this perturbation can be observed in the Declaration of the Rights of Man and of the Citizen approved on August 26, 1789. According to this Declaration, “men are born free, remain free and equal in rights; the aim of all political association is the preservation of the natural and imprescriptable rights of man. These rights are liberty, property, security and resistance to oppression.”

In Article four, liberty is thus described. “Liberty consists in the freedom to do everything, which injures no one else: hence, the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. Law can only determine these limits.”3

According to Article five of the same Declaration, “Law cannot prohibit such actions as are hurtful to society. Noting can be prevented which is not forbidden by law, and no one may be forced to do anything not provided for by law.”4 According to this Declaration, law is the expression of the general will and what the people’s representatives determine is the manifestation of law and general will.

As observed in this Declaration, there are some limits for individual rights and freedoms, which are, accepted facts. That human rights and freedoms are limited where they are injurious to society or where the rights of others are infringed upon is a concept accepted as the first and most impassioned step in formulating human rights. This is the point where the clash between individual and public rights emerges, as the representatives of every society, basically known as fomrnlators of the general will according to the Universal Declaration of Rights, can detemiinc the limits and the hurtful aspects of human rights.

Since there are different values, cultures, principles and traditions among different nations, a number of different interpretations appear: What is hurtful? What threatens public well being? How and by what criteria must the law limit individual rights and freedoms? This is the crux, which may give a different spin to the fate of human rights in different countries.

Different solutions are provided to this crux within the context of political obligations and the dominant culture within each society. In the eighteenth and nineteenth century France, the first step to safeguard and advance human rights was taken in what appeared to be the violation of the basic human rights. At that time it was deemed advisable that the revolutionary authority of the French Community be guarded against alien aggression and that the power of the French government, which served to protect revolutionary values and those of the general public, be consolidated.

The achievement of this aim called for a powerful army, independent of the wealth of the feudalists and nobles. With respect to this law, miltary service was made obligatory. Obligatory military service is a clear sign for limiting human rights with the purpose of serving public welfare.5 By virtue of this law, men are deprived, for some time, of choosing profession and residence, of the right of political choice and sometime–even life itself and placed under full military supervision and service to ensure public security. Historians state that the armed forces are created as a result of obligatory military service, as one of the pillars of the French government and that of Napoleon Bonaparte.6 It was an army, which marched along with its soldiers, French revolutionary values and new concepts like human and civil rights to the far reaches of the world .

However, the army in question consisted of men who were deprived of parts of their rights to ensure public security. Accordingly, limiting human rights to ensure public welfare existed at the very first step of formulating them. Perhaps, that is why the formulators of the Universal Declaration of Human Rights have sought to block all the ways to the abusing of this inevitable necessity. Attempts have been made not to include any limits or stipulations for the basic human rights in the totality of the 30 articles of the Universal declaration of Human Rights. The preamble to the Universal declaration of Human Rights, states:

This Universal Declaration of Human Rights a common standard of achievement for all peoples and nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of the Territories under their jurisdiction.7

According to the Universal Declaration, human rights are, therefore, an ideal for which everyone should strive. By way of avoiding any probable misinterpretation for the violation of human rights, the last article of the Declaration (article 30) states: “Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity to perform any act aimed at the destruction of

any of the rights and freedoms set forth herein."[8]

These emphasises show the deep awareness of the formulators of these international bills as to the misinterpretations made with the effect of violating fundamental human rights . Besides, they imply that they are fully aware of the clash between individual and collective rights. For the same reason, a similar emphasis is made in Article Five of the International Covenant on Economic, Social and Cultural Rights declared on December 16, 1966:

Nothing in the present Covenant may be interpreted as l) Implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognised herein, or at their limitation to a greater extent than is provided for in the present Covenant. No restriction upon or derogation from any of the fundamental 2) Human rights or existing in any country in virtue of law, conventions, regulations or customs shall be admitted on the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent.[9]

Emphases of this sort are frequently observed in other books or interpretations on the Universal Declaration of Human Rights. Can the point that states or governments should in no case violate human rights be a legal solution to the violation of human rights? Can we shut eyes to the fact that states and governments inevitably limit individual rights and freedoms to serve social interests? The answer stems from the ill intention of the ideological States that oppose human rights but in general, it arises from inescapable social facts.

The article on Hygiene and Human Rights in *Payam-i UNESCO* provides a striking example of these facts. The article centres on the point that when mortal diseases like AIDS spread, and social health and even life is jeopardised, the States have no choice but to limit human freedoms and check their slightest movements. In fact, when it seems necessary to prohibit freedom of movement, residence, and intercourse in case of fear for the spread of maladies, which threaten social life, limiting human rights is meant to safeguard social welfare and expedience.[10]

At first glance, this issue seems to be an established principle well understood by the formulators of human rights. As cited from the French Declaration of Human Rights in the preceding pages, legitimate Staes arising from public will and the free choice of people have the right to promulgate laws which serve the rights of the entire community. Such laws originate from the general will, which determines social welfare and limits human rights.

This idea is suggested in paragraph two of article 29 of the Universal Declaration of Human Rights, "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect 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."

Of course, in paragraph three of the same article, it says, "These rights and freedoms may in no case be

exercised contrary to the purposes and principles of the United Nations."[11]

Apparently, this solution has put an end to this crux, namely that if democracy is established in a society, the law in this democratic society can determine the conditions for achieving the full realisation of the just requirements of morality, public order, and the general welfare and these conditions are the limitations, which the general welfare imposes on individual rights.

However, this is the point from which the inextricable crux of human rights comes up. What if they establish a democratic society without promulgating laws in harmony with those enumerated in the Universal Declaration of Human Rights? Should we ignore the general will, considering article 30 of the Universal Declaration of Human Rights and article 5 of the International Covenant on Economic, Social and Cultural Rights, for the sake of observing the principles in these bills? Should we place a nation as opposed to the Universal Declaration of Human Rights if through democratic means that it administers religious principles as the paradigm of its ruling policy? Questions of this kind bring up more fundamental questions with respect to human rights. Can human rights be universal without considering the differences in culture, religion and race?

If we take it for granted that the new human rights stem from modern man's thoughts and modern western civilisation, is it not possible that the nations of the world may interpret and utilise human rights in the light of their own cultures and religions? Alternatively, is the universality of the present human rights dependent on the universality of western beliefs and values?

The general welfare and interests in each society are determined in accordance with culture, nationality and religion. Now should we ignore the culture and religion of a nation when there is a clash between its religion and culture and the new human rights? Is such a thing possible? If yes, is such an insistence not an indication of the disregard of the present realities in different nations?

These questions will be dealt with in the remaining pages of the present article. In case we fail to find definite answers to them, we could at least propose them properly.

Two Views on the Universality of Human Rights

Nowadays there are diverse articles on human rights written with the purpose of answering such questions as proposed earlier in this article. Amidst the topics which interest modern scholars are the impacts of nationality and national traits on the concepts of human rights, the differences and diversities among the nations and their effect on human rights, the universality and non-universality of western interpretation of human rights and the effect of ideas, philosophies, and religions on the concepts and the exercise of human rights.

As an example, A.G. Milen seeks to answer these fundamental questions in a book entitled *Human Rights and Human Diversity.* He discusses human rights under two main titles *morality* and *rules*. In his

opinion, the social roots of morality are, on the one hand, common and universal and on the other hand, different and regional. The concepts of justice, good and evil are accepted by all in one way or another; however, two different elements, namely religion and ideology, among different peoples give rise to different principles of morality and different norms of good and evil in different societies.[12]

As each society is built upon the prevailing normality and customs, human rights are interpreted differently in different nations. Hence, the idea of human rights, in Milen's opinion, may ultimately be recognised as the modicums of the universal moral rights and exercised at different stages.[13] Consequently, due to the existence of different traditions, norms, moralities, religions and ideologies, human rights are interpreted and exercised differently which may be universalised as the modicums that the universal morality accepts as rights.[14]

Like many other writers, Milen wishes to generalise human rights but the point has come within his grasp that human rights cannot be exercised equally and equitably for all societies merely because human societies are very different from one another.

Notwithstanding, there are writers like Jack Donnelly who lay stress on the universality of human rights despite the fundamental differences in religion, culture, and ideas. Donnelly maintains that the universality of human rights arises from the simple principle that every one has rights because they are human beings, not because they live in such and such a society. He asserts that although man develops different cultural traits in different societies, different cultures and cultural relativism do not in the least impair the universality of human rights.[15] What is introduced as human rights by different religions such as Islam and Confucianism or African interpretations is not in fact human rights but a group of common themes in relation to human rights and is only an interpretation by a certain religion.

In Donnelley's eyes, the term right embodies a political and an ethical conception in all languages. These two concepts include being right and rightful. In the former, what is meant is being in the right and in the latter, having right. He posits that human rights embrace the two concepts, namely those human rights are a truth and a right to be enjoyed by man by virtue of his nature. According to him, human rights belong to a certain category of rights.

Human rights are ethical, arising from the humanity of man, confined to the highest level of social rights. However, they may affect the lower rights. For instance, non–discrimination may affect the legal rights of homosexuals and the rights of employment in a country like the United States.[16]

In Donnelley's view, the main source of human rights is Man's Moral nature, deriving from man's nature. Human nature can be illustrated based on a scientific definition of his needs, not meaning, of course, human needs for survival but rather for conducting an existence worthy of the dignity of man.

Unlike other social activities, Human rights are not granted to man by the one Supreme Being, nature or the physical facts of life but rather they spring from man's free will.[17] For this hypothesis, Donnelley offers no scientific or philosophical reasons but states it as an obvious hypothesis, which is the root of

universal human rights.

In addition, he asserts that the individual constitutes the basic subject of human rights. It is the individual, not general and social welfare, which is the intent of human rights.[18]

Elsewhere Donnelley gives examples from other religions and cultures such as Islam, Christianity, and Chinese and African philosophy to the effect that the notion of human rights existed not only among Western countries but among non–Western states as well. However, the notion of human rights in these cultures is totally apart from the human rights stemming from western liberalism . Quoting Edward Said, he asserts, "Islam does not declare that the state should preserve man's dignity and values and that it should assure his happiness.[19] Hence, Donnelley believes that Islam focuses more attention on man's duties than on human rights.

Ultimately, Donnelley maintains that multiculturalism and cultural relativism are by no means impediments in the way of the universalization of human rights. What in different societies is affected by their cultures indicates the ways that human rights are exercised but not their totality and foundation because human rights arise from human nature, manifested in its best form within the context of western liberalism.[20]

This is one of the ideas, which seek, by refuting the claims of culturalists and relativists, to prove that human rights are universal and that nothing can cause to change them in any areas or cultures. While the individual is the cornerstone of human rights, no one shall have the right to limit or impair the rights included in the Universal Declaration of Human Rights in the name of the collective rights or under the pretext of differences in needs or conditions in a certain culture.

In defiance of the fact that ethnocentrism is imputed to a fundamental and important matter in international studies and human rights, it has left but a slight influence on human rights. Article 27 of the International Covenant on Civil and political Rights declares that "in those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion or to use their own language."[21] This implies that the formulators of human rights well knew that ethnocentrism in different communities could possbly affect the exercise of human rights.

Although this article tends to the maintenance and preservation of human rights even in societies with different ethnic backgrounds, it also signifies that the influence of ethnic difference on the exercise of human rights is not a matter to be disregarded. This point has been of interest to Rodolfo Staven Hagen, which he has treated, in his *Ethnic Questions*.[22]

In view of the different ideas furnished here, let us return to our discussion on the impact of limiting the collective rights and benefits on human rights. Although commentators have placed emphasis on the universality of human rights, it seems that human rights shall have different conditions to be fulfilled due to the existence of different mechanisms in determining the general welfare in different societies. This, of

course, does not defy universal principles, known as human rights. However, it affects the exercise of human rights. The two backgrounds, which we shall deal with, are scientifically verified which will cause differences in giving shape to the general welfare in different societies and naturally will affect the strategies of exercising or limiting human rights.

Cultural Relativism

The cultures generally distinguished by their language or art indicate the spiritual identity of different social groups, people or nations. The existence of different cultures suggests the existence of diverse identities, customs, manners and values which different people have chosen to live by. This concept is one of the principles of anthropology. Fundamentally, cultural anthropology has come into existence with a view to investigating the reasons for cultural differences and to find out why people in different societies choose different ways for living.[23]

For instance, wearing clothes in a certain fashion is considered a habit or even a value in one society whereas it is looked upon with contempt or surprise in other societies. Why are the concepts of good and evil, right and wrong, loss and benefit, different in different societies? Cultural anthropology seeks to answer questions of this sort by discovering the differences among peoples in different societies.

The concept of cultural relativism is of the main principles of modern anthropology. “Of the most important principles of anthropology, is cultural relativism, that is, the ability to look upon the beliefs and customs of different peoples according to their own cultural boundaries not ours.”[24]

In the broad sense of the term, culture is a system of beliefs, values, manners and customs applied by the society members to adjust themselves to the situation in which they live or to one another. Culture consists in the sets of behaviour acquired by instruction, reward and frustration, which teach man the social behaviour.

Culture is a system of socialisation and social assimilation.[25] Because social assimilation differs in different societies and the cultures are different, it seems natural not to evaluate them with a single touchstone.

Although the anthropologists adopt different attitudes in explicating the cultural differences in different societies, they admit to these differences and by a general consensus, declare that they can give rise to different social procedures each one of which in one way or another is effective in determining the general welfare. Hence, the existence of different spiritual identities and cultures specifies the ways of determining the general welfare and reinforcing individual rights.

Multiculturalism somehow has its roots in the selfsame anthropological findings and has an inescapable fact made by different cultures in different societies. Multiculturalism is juxtaposed with monoculturalism.[26]

Monoculturalism, basically arising from western culture and EuroAmerican culture, believes in the supremacy of a certain culture, which will soon pervade the entire universe. The values proceeding from modem western thought have pervasive quality and monoculturalism states that regional cultures will soon and inevitably be incorporated into this culture.[27]

The concept of universalisation in international relations or the idea of the end of history proffered by Fukuyama is in a way assimilated with monoculturalism[28] because in all these theories, the existence of a superior and unique culture: which will absorb all other cultures, is universally accepted. In other words, it is generally believed that the power and potentialities of this culture exceed those of other cultures and history will ultimately flow in a course in which the communities will reach a common point in their cultures and norms.

The notion of the universality of today's human rights shares this belief and authorities like Donnelley who offer its universality believe that human rights in their entirety have roots in western liberalism and like monoculturalists and the advocates of the universalization of human rights regard the western values as superior and developing in all parts of the world.

It is worth mentioning that the writer of this present article thinks that the fundamental individual rights should not be sought out in the western culture and community, for these rights spring from human beings which cannot be limited by the norms arising from a certain culture or value. The crux of contemporary human rights is intensified where it is limited and interwoven with another culture and attempts are made to assimilate the treatment of religion, the relation between God and man, the way of dressing, and even the judiciary methods with human rights within the realm of western culture.

While some commentators regard the universality of human rights in this way, they tend to accept monoculturalism and do not tend to accept the fundamental role of different cultures in the exercise of human rights.

As opposed to this view stand the multiculturalists. Multiculturalism which is based on facts from cultural studies suggests that the different nations, communities and groups due to having history, social heritage, language and consequently different cultures have different identities and adopt separate methods of living.[29] Based on the views the multiculturalists, which have recently turned in the form of Chicago Cultural Studies to Critical Multiculturalism, stress that the universalisation of some principles of the Western culture is impossible.

What Clinton states as the *American fashion of life* and what George Bush recalls as the *new universal system* because it is based on some kind of monoculturalism, are criticised by this group.[30] This criticism includes the attempt to universlise and assimilate the political models and systems. According to this group, the historical heritage and the different cultural identities of peoples cause the political systems and different decision-making organisations to take shape in different countries and even democracy if accepted, shall have varying fonns and even different natures in different countries.[31]

The much debated subjects in multiculturalism are extensive, and out of the scope of the present article. However, what can be the corollary to this current of thought is the impossibility of complete assimilation of social, political and cultural conditions in different societies. Over the recent years, this concept has been debated not only by different thinkers and theoreticians but in international assemblies as well.

In the World Conference on Cultural Policies held in Mexico City in 1982, much emphasis has been placed on the cultural differences and the necessity of preserving the cultural identity of different nations. In the report of the first commission, cultural identity is thus explained:

Cultural identity is the fundamental axis which gives shape to most decisions, conducts and fundamental behaviors and a dynamic process which enables the society to develop and preserve its specific characteristics.[32]

In the recommendations of the conference, the first part is allotted to cultural identity. Somewhere it says, "The conference accepts that cultural identity is determined not only in distinguishing between the forms and ways of cultures and arts of a people, but includes the spiritual values of a people in morality, habits and customs of that people as a whole.[33] Hence, the States gathered in Mexico City Conference accept that peoples can have different spiritual values and found their social life on this basis. Hence, they suggest. "The Member States are recommended that they should:

1. Respect the preservation of cultural identity of all nations, places and peoples and fight any discrimination in cultural identity of other countries, places and peoples

2. Develop the cultural identity through all suitable means

3. Protect the cultural and national heritage which determine the national and cultural identity by analyzing their contents and importance

4. Accept that culture is created by people and that the people's life is the source of all cultural creativities and that culture should arise from real life of people in order that the possibility of reaching a constant progress becomes available.[34]

Therefore, the existence of different cultural identities and values and the need for preserving these differences and the compromising change of these between them is accepted by all the participants in the conference. Of course, these declarations and recommendations contain extensive dimensions and varying concepts. However, this point can be stressed that the existence of identities and different ways of life and socio-cultural values in different nations are accepted in this conference and their recommendations and reports reveal the recognition and importance of cultural differences in the world.

On the same basis, some new views on social sciences especially international relation are based on the fundamental cultural differences between different nations and parts of the world. Regardless of the point whether these theories are completely acceptable or not, the existence of them reveals the

attention that modern scientists pay to fundamental cultural differences between nations in different cultural realms of the world.

Samuel Huntington's view on the clash between civilizations, which has attracted much attention, is a striking instance of such views. Huntington states, "Civilization is a cultural entity. The villages, the ethnic groups, lands, nationalities, and religious sects all have certain cultures which contradict each other at different stages. The culture of a village in the north of Italy may be different from the village in the south of Italy but they have in common the Italian culture, which distinguish them from German villages. The European communities have common cultural features, which distinguish them from Arab communities . The Arabs, the Chinese, and the westerners are not considered as a part of an extensive cultural entity, but that each one of them constitutes a civilization. Hence, civilization is the highest cultural classification and the most extensive cultural identity.

The civilization should be defined concerning common elements (language, history, religion, traditions, and organizations) and about the mental associations of men.[35] Somewhere else, he says, "the difference between civilizations is fundamental. The civilizations are distinguished from history, language, culture, tradition, and religion. Their views on the relation between man and God, individual and group, State and citizen, husband and wife, parents and children and issues such as freedom, equality and hierarchical order are different. These differences are far more important than political and ideological differences."[36]

Undoubtedly, Huntington's definition of civilization and their ways of treating this are debated and tens of books and articles have so far been written on this issue. However, why are Huntington's views and his explanations on the differences between seven or eight main civilizations of the world (western, Confucian, Japanese, Islamic, Hindu, Slav-orthodox, Latin American and African) so interesting under the present conditions? Today, even the commentators believe that this interest in Huntington's approach is due to an unknown fact.[37] He has attracted the authorities to a subject, which has been paid less attention to. Hence, those who have launched severe attacks on views of the clash between civilizations, implicitly accept that there are different civilization-cultural realms in the world today in which the foundations of socio-political relations are different and this is the point which we have in mind in this article. On the same basis, Huntington calls the West Unique not universal in the Foreign Affairs in his recent article. He holds that the western culture and civilization are based on history, language, social classification and different cultures which shall never be repeated in all parts of the world, for the concept of modernization is different from the concept of westernisation and no nation shall ever be able to be western without enjoying the historical, cultural, and political conditions particular to the west.[38]

Based on principles, which claim to universalisation, if mingled with the western culture and civilization the possibility of universalisation is taken from it. This concept does not only spring from Huntington's views but from the views of those who accept the fundamental socio-cultural differences between different cultural realms.

The Gras School in France developed by the leadership of Allan Debenoius is an instance of this. This school of thought severely criticized Huntington's views and regarded them as Western expansionism against the world's cultures. The thoughts of Allan Debenoius and his counterparts are close to the right wing even the French radical right wing. However, they regard their most important duty to criticize the western civilization against American leaders. Debenoius believes that democracy and new liberalism are at a dead-end and that the nations of the world have cultural identities and life, which ultimately stand against the western developing ideology and culture and even the human rights arising from them.[39]

In short, the Gras School opposes the complete assimilation and universalisation of western values. They defend the nations' right to difference and seek to prove the cultural identity of different nations against the American technocracy. In their views, the nations with cultural and civilization identity will stand against the assimilation and universalisation and the tomorrow of the world shall belong to countries such as Iran, Egypt, India and China, which have deep cultures and civilizations.[40]

The resistance of these nations and all groups, who wish to preserve their identity against the westerners, will create the future tensions of the world. Allan Debenoius regards the ideology of human rights as an American model and although he does not reject it altogether, he believes that the right of nations and the preservation of cultural identity of nations have priority over human rights.[41]

The aim of pointing to the current thoughts of Gras school is not the approval of all the stances including the complete rejection of human rights, but shows this point that the consideration of civilization-cultural differences in different thoughts can influence the concept of universalisation of western interpretations of human rights.

Therefore, the existence of cultural differences between different nations and areas is an undeniable fact. Undoubtedly, these differences will have a determining effect on the ways of formation and collective interests in different parts of the world. Considering that collective interests are given shape to through democratic ways, the main factor limiting human rights is different in different societies. Hence, the way of applying human rights in cultural areas and in different parts shall be different. This does not mean the limiting of human rights, but a study of human rights as a principle separate from the western reading.

The western reading of human rights which has been present in fomulating the Universal Declarations of Human Rights has been used in the most particular aspects of human life such as dressing, the relation between men and women and civil law and sought to organize the most particular social conduct on this basis regardless of the fact that the different socio-cultural conditions in different countries do not allow the assimilation of all social conducts and organizations even under the pretext of human rights.

The existence of different regimes and political systems in different countries shows the existence of different processes for decision-making and the ways of safeguarding collective interests among

nations. These different processes shall influence the decisions and the nature of the decisions taken in different nations. When Graham Alison drew his decision-making models, he well realized that the nature of the organizations and decision-making systems would influence the nature of the decision-making processes.[42] Of course, Alison's model is used more for decision-making in foreign policies but one can realize that the existence of the different political organizations and systems shall be followed by collective interests.

In *Countries and Concepts*, Michael Roskin has made a comparison on different political systems in the seven important countries of the world. After examining the historical background and the vital role of history in shaping the political systems of these countries, he has scrutinized the main political foundations of these countries. He holds that there are key organizations in the policy-making of any country, the recognition of which is one of the main factors in recognizing the political system in that country. The main political norms of any country are the second main factor in the shaping of policy.[43]

The models of political wings to each other and the methods and models which each political group uses in relation to its opposite side, are the third main factor in policy and ultimately, the issues under debate in each country and the political groups are the fourth main factor in the general decision-makings. Hence, the different political systems are distinguished from one another based on important organizations, strategies and action models and the issues under debate. Undoubtedly, the method of decision-making on the main discussed issues in any community will be different from one another. In other words, the existence of different political systems will cause the collective interests in any society to be substantially contradictory to those of others.

Here, our discussion is not on the recognition of the backgrounds of differences in political systems but we propose to clarify this point that the different political regimes will nourish within them different collective interests and these different collective interests shall to a large extent influence the different attitudes towards human rights.

The existence of communistically political system in China will cause the collective interests as to the present ideal of any regime to be defined differently from those in Taiwan, which has a different political system. The culture, rituals, traditions and languages of the two countries are the same but the their different political systems have caused the collective interests in these two countries to have contradictory definitions. The interpretation of human rights and the methods of limiting them by collective interests are extremely different in the two countries.

The different interpretations of the interests in North Korea and South Korea are another instance of the influence of political systems on the methods of determining collective interests and treating human rights. This is intensified when the political system of a country is mingled with the certain ideology or political theory and that this ideology is the basis for the legitimacy of that political system.

The sovereignty of religion in society especially when it is done with certain democratic mechanisms can

also influence the political system and the method of determining the social welfare. In Saudi Arabia, the Islamic republic of Iran and the Islamic republic of Pakistan, Islam is considered the official religion but the main basis is political. Except in Saudi Arabia, in both countries, Islam is chosen through democratic means by the majority of the community as the basis for government. It is understood that it will have the most important influence on the shaping of collective interests and the general welfare and the methods of exercising human rights.

Of course the existence of different political systems in these three countries have caused different interpretations of Islam and the methods of determining collective interests on the basis of Islamic thoughts.[44] This shows the independent influence of political systems on the methods of determining collective interests even in the countries in which they have accepted a single religion for the social welfare. In these three countries, the way of looking at women's rights, the people's participation in political matters, and the methods of exercising judicial laws, the freedom of religions are exceedingly different. These differences arise not only from different interpretations of religion but from political systems. Also, there are some common points in the functions of these countries.

Hence, the existence of different political systems especially when ideology and religion are interwoven the method of interpreting human rights will be different.

Undoubtedly, this is not alien to any theoretician on human rights, but many thinkers view this affair with a critical eye and believe that the universal ideal of human rights is such that all the political systems in the world will adapt themselves to it. In other words, the advocates of the complete universalisation of human rights accept the fundamental difference between political regimes but believe that the universal current of human rights require to influence the unacceptable political systems in order that they make ready to fully exercise human rights.

This great expectation reminds man of the idealistic goals between the two World Wars. They believed that with the spread of morality, the international organizations could overcome the discussions, debates and blood shedding in the international arena. With the advent of fascism, Nazism and the second world war, the idealists came to a dead-end and it seems that the advocates of the unconditional universalisation of human rights shall suffer a similar fate in encountering the facts arising from different political regimes.

Hans J. Morgenta believed that human and international rights took shape in the exchange of powers, namely when the superpowers of the world would create a balanced atmosphere at international plane. However, even under such circumstances, human rights might turn into a power tool in the hands of the superpowers.[45]

At all events, the undeniable differences between political systems are an assumption on which modem sociology is founded. These differences not only detennine the mechanisms determining the social welfare but also lend different nature to the concept of collective interests, the general welfare and

human rights.

Conclusion

Human rights arise from man's inherent rights; hence, one cannot consider them as synonymous with the reading or interpretation of a certain domain of human civilization Assuredly, men are inherently noble and have the right to life, property and fundamental freedoms; however, the way of granting these rights and freedoms cannot be done similarly throughout the world.

As discussed in this short article, the necessity of limiting human rights for protecting social welfare is as accepted and emphasized as the role of human rights. In addition, human rights are accepted in most of the basic bills on human rights. However, the way of limiting them exactly refers to cultures and the current necessities within the different civilizations. Hence, the steps taken with a view to detailing the regulations regarding the exercise of human rights do not answer the real needs of different peoples. For instance, the minimum age for marriage, minimums for clothing of men and women or the ways of civil judgement are designed on the basis of western models and the attempt to universalize them is the expansions of western readings rather than propagating the principles of human rights.

The main contradiction in contemporary human rights arises from the same thing, for the Universal Declarations of Human Rights allow the limiting of them through the fixed rules by proletarian states. In other words, the rules formulated by the State, which is the general will, can limit human rights for protecting the general welfare. However, if such a State acts based on the religious teachings accepted by the majority of people and determine some of the rules determined in the international regulations of human rights, then it becomes accused of violating human rights. Therefore, the mechanism arising from within human rights may lead to the violation of human rights.

At this point, this question emerges if the general will has severe limitations for determining the social welfare. Can the State play its role as long as individual rights and interests are not hurt as the proponents of social convention believe? Apparently, it is impossible to provide an exact answer to this question, for on the basis of new human rights, the members of the society should not behave in a way that will contradict any rules set forth in the Universal Declaration of Human Rights even if they value their local culture or accept a religion as the criterion for individual and collective interests. It seems that the right of choice and self-determination and the right to determine public interests due to facts arising from different cultures and values may be juxtaposed with some individual rights and freedoms. What is called the enigma of the clash between individual and collective rights contains this meaning.

Apparently, the conditions are such that only the cultures, which accord the western liberalism, shall not encounter this contradiction. Indeed, can we make equal all cultures and political regimes to reach human rights? Or in formulating the executive rules of human rights and their evaluating criteria, we have to move in a direction the realization of which becomes possible in all parts of the world and the human persons shall reach their inherent unalienable rights besides protecting the social identities and

originalities.

In a lecture at Tehran University on l0 December 1997 which coincided the fiftieth anniversary of the Universal Declaration of Human Rights, Kofi Annan, the Secretary General of the United Nations, regarded human rights as a universal affair:

Human rights are the manifestation of forbearance in all cultures, which are the basis for peace and progress. If human rights are properly understood and justly interpreted, they are not alien to any culture. This universality of human rights gives authority to them, enabling them to cross the frontiers, the impediments and thwarts any force. Human rights are universal not because they find their origins in all traditions and cultures but because they were approved by 185 member states of the United Nations. The Universal Declaration of Human Rights is the fruit of the discussions of certain scholastic gatherings most of which were not from the western countries.

This interpretation of human rights universality is different from the western one. This interpretation in one way or other accords the harmony of human rights with different cultures. Kofi Annan cites Imam Ali's letter to the ruler of Egypt :

Let the treasure of good deeds be the nearest treasure to you; fill your heart with pity, love and kindness towards others; do not act towards them like a voracious animal which has fallen upon an easy prey, for they are either your brothers or equal with you in creation.46

In Kofi Annan's opinion, human rights are common treasure, which can be found not only in all religions but also with all eastern and western philosophers. In his eye, human rights do not spring from western civilization with which other cultures or peoples should endeavor to adapt, but arise from man's nature and accord all cultures. He states:

There is no single model for democracy and human rights or cultural symbol. However, there should exist democracy, human rights and cultural freedom for all peoples. Man's talent shall guarantee respect for these values in all societies. That is why in Africa, I talk of African human rights. In other words, we should find the meaning of human rights in the language of people whom human rights protect. This gives me confidence that human rights shall some day be universal. Besides emphasizing equality, the Universal Declaration of Human Rights is a fundamental condition for universal variety and this signifies the authority and eternity of human rights. The Universal Declaration of Human Rights respects universal variety and pluralism, and explicates it clearly. This Declaration is a standard for an age, which we have in view, the age in which relations and co-operations between peoples and nations shall guarantee their durability. The struggle for human rights has been against tyranny and injustice everywhere; struggle against slavery, exploitation and racial separation. Today, human rights are not different from this affair.47

This explanation of the Secretary General of the United Nations is a fundamental interpretation of human rights and different from the western reading of these rights which is found with some contemporary

writers. So, human rights arise from man's nature and find universality in the mingling with different cultures and civilizations. Moreover, this is the only interpretation, which shall cause them to last.

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Dr Bihzad Shahandah

From the viewpoint of Asian people, the fall of the Union Soviet Republics reinforced the American claim that a universal culture should be instituted. This viewpoint sprang from two celebrated works by Samuel P. Huntington and Francis Fukuyama.

Fukuyama claimed that history would end with the fall of communism. The implication was not that no event would take place but that the clashes, struggles and oppositions (thoughts and movements) would eventually end in the supremacy of Technocratic Secular Liberalism1 and that no other powerful rival would exist to vie this supremacy.

Huntington observed that the struggles would pivot on the axis of culture and civilization with the fall of communism and considered the struggles between Islamic civilizations and Confucianism with the Western culture the main axis of the new struggles.2

Fukuyama and Huntington present opposite views as to the idea that the clashes between civilizations would not exist if according to Fukuyama, there remained only one culture. However, we can detect a synthesis or conformity between them by carefully studying those works. Fukuyama maintains that religion and nationalism will replace liberalism but will not defy it. Huntington reinforces the notion that those who remain outside the realm of Western culture try to weaken its pillars and oppose it one way or another.

Probing the aforementioned essays and books, Chen Yangu states that the difference between them is actually misleading because the clashes between civilizations hinge upon the end of history. From Huntington and Fukuyama's views, one can gather that the ideological attempt for Western domination is accompanied by a certain interpretation of human rights.3

Confucian Concept

The Asian countries have suggested that the emphasis on Asian culture or Asian Values serve as an attempt to fight the hegemonic policies of the West. They hold that the stress on a public culture and extending it to the entire globe shows Western domination and suggests an attempt to create uni-dimensional world.

The Asian countries lay stress on a collective outlook on Asian values as opposed to Western individualism. Likewise, the Confucian Concept is introduced as opposed to Western thought. Confucianism lays stress on the mutual relations of individuals. Confucius believes that men constantly live in mutual relation to each other. In other words, the society is not a convention among strange individuals but rather, it is congruent to man's nature and that man discloses his nature in relation to others. As a rule, the dominant relation within each society follows a hierarchical order; the inherent relation between father and mother and their children or the relations fabricated as a result of social convention.4

According to the Confucian Concept, the proper behavior or function (the term *Li*5 meaning ritual) is based on the relations we conduct with others. We should honor those who are inferior to us and respect those who are superior to us. The implication is not that we should act like slaves to the ruling power or accept unsound judgement but that we should obey the rues, respect the social relations, consider ourselves as its subjects and express our views in the ways previously determined.

In Western view, the notion of human rights lays stress on individual rights. You may have heard this many times that, "You cannot do this. I have certain rights." On the contrary, Confucianism claims that one is indebted to others. According to the great Chinese philosopher, one should not care whether others respect him or fulfil their duties to him, as they should. What a man should care about is whether he respects others as he should. At this
Point, we come up with the idea of mutual respect. If I respect others the way I should, others will respect me in like manner.6

The Confucian Concept enjoins its followers not to concern themselves with what others are indebted to them. Confucius places stress on the superior dignity of man in relation to other beings, considering man as a moral being who lays the foundation of his faith on mutual respect, living in harmony with others and respecting fraternity and the hierarchical order. Ethics takes root in some relations and becomes universalized. Children will bear love to their elders. Parental love thus induced is generalized to the entire humane society because if someone loves his elders, he will expect others to love their own elders and those of others.

According to Muslim values, we should do as we expect to be done by. Eminence is a great trait in Islam, in the Confucian Concept and in other religions. Confucius states that a weak and narrow-minded person does not stand responsible for what he does whereas a person of high caliber stands responsible

for his actions and scolds himself.

Abstract Rights

Abstract rights are the reflections of people's boundless dignity. Han Zhen, the Chinese theoretician, reinforces the notion that justice is not a matter of abstract rights but rather it has a social context. As people find themselves in particular social intercourse, there is no public status, which can be generalized to all. John Rawls[7] affirms that there are no absolute rights. Abstract rights cannot be regarded as the model for justice.[8]

Also, the Confucian Concept stresses the inherent equality of men. At all events, equality in dignity is not the intended meaning in the Confucian Concept. Xungzi[9], one of the disciples of Confucius, maintained that any socio-political system obligates each individual to obey hierarchically social order and rules (as a rule, human beings are egoistic; hence they see no point in preferring anyone's will to their own.)

Mencius[10] had an opposite view on this case, believing that goodness is an innate trait in man and he is capable of attaining the apex of humanity and ultimately saintliness. Man's goodness and perfection lie in his co-operating with others and following *Li* (ritual). At all events, according to eastern doctrine, equality does not mean that all human beings are equal. As to this point, Confucius states that a great moral individual values harmony, not equality. On the contrary, a low person stresses equality, not harmony.[11]

Eastern people believe that an excess of emphasis on individual whether pessimistic or optimistic is the root of all evil. Confucian disciples have emphasized the Private Desires and keeping aloof from Heavenly Principles. Human nature and the aforementioned description do not refer to man's personality. Man's egoistic desires and aspirations are not particular to his nature, but rather they are a deviation from nature, for man's limited desires triumph over the general desires.[12] For example, it is not selfishness that man wishes to eat good food. However, gluttony is both unnatural and egoistic.

Concerning what was mentioned, it must be admitted that the discourse of Asian values is part of the reaction directed against Western domination after the Cold War and the collapse of the USSR. From the time of imperialists to the flourish of theories of reconstruction, the clashes between civilizations and the end of history, it has been generally believed that the developed West is the arena in which modernism is manifested and will surely overcome those who oppose it. Hence, the American blade of human rights is aimed on those who do not follow this way, trying to pull them in own rank.

Eastern people believe that human rights are abstract and within the certain social context of interrelated communities. Besides, they are the cause of the agonies and sufferings inflicted on some Western communities today. The dominant milieu in the West that is, nihilism, and Western predicaments originate from them. (Self-alienation, lack of wholesome social intercourse, absolute individualism, asocial and unnatural selfishness, lack of hierarchical order, and respect.)

Eastern countries hold that the emphasis on human rights in the hope of reaching a certain concept is illogical and impractical, believing that it is a washed up culture and the exercise of human rights is an interference in their internal affairs.

In Asia, it is believed that the West proposes the notion of human rights in order that they may fortify their stance as a dominant power. The democracy engineered in the West is not the best form of democracy but an interpretation of democracy, which exactly accords the concept of Asian values. In general, Asia (with the exception of Japan and the Philippines, for
these two Asian countries do not agree on the concept of democracy)13 holds that liberty is sublime but should be achieved with a sense of responsibility towards the other subjects of community: otherwise, absolute freedom is not but the freedom particular to jungle.

How is it that everyone (including the Westem countries) stresses the sociability of man but regards individualism as absolute? Two hundred years ago, the Americans stated that there would be no taxation without representation: now, the Asian countries relying on their rich human resources insist that there will be no freedom allowed without a sense of responsibility.

For the Asians (Muslims, Buddhists, Confucian disciples, Shintoists and Hindus,) the society is at the top of everything else. The individuals and minorities should enjoy certain rights but not at the price of sacrificing the rights of the majorities. The individuals and minorities should correspond with the social ethics and norms. A little deviation is allowed: however, the unleashing of unlimited freedom which jeopardizes peace and quiet and threatens the society is not what the Asians expect of democracy.

On a moral basis, democracy is a right idea but it is good when it results in goodness. At this point, a statement by Mahatir Muhammad, the Malaysian premier seems to clarify the point noted above. He stated:

Ten years ago, a televised report affirmed the massacre of Palestinian refugees in the United Nations camps by Israel. The American reporter commenting on this newsreel expressed his aversion to this act so cruelly perpetrated (human aspect): however, at the end of the report, he said, “The United States should support Israel because it is the only democratic state in the region.” Apparently, mass murder is allowed in the name of democracy.14

Exploiting by democrats does not inflict less pain than the exploitation by the dictators. Both of them are to be condemned. Asia cannot accept Western culture altogether, particularly when the selfsame culture has failed in its own home. Asia is well aware of the fact that it should accept those principles, which conform to the Asian community. (All the countries because each one of the Asian countries is different from the other).
According to Mao Zedong, the former leader of New China, one has to treat each phenomenon as food: one has to taste it first: if it delights the palate, one has to chew it: hence, the process of digestion starts; the body absorbs and assimilates the suitable substance and eliminates the residues.

Swallowing is the only thing some Asians and Africans have done which has been of no use to them.

The discourse of democracy is true as to the issue of human rights. Asian human rights should not be an imitation of Western human rights. Individuals and the minorities should enjoy reasonable freedom: however, this freedom should not deny the majorities of their rights. In the West, they believe that their beliefs have the quality of universality and that the nonnative proponents of human rights (concerning us Asians) encourage the advocacy of exploitation, dictatorship and non-civilized conduct.[15]

As in other regions, we in Asia are bound to values which are universal. We are all fathers or mothers. We live in a human society so we should believe in certain principles. However, we have different values from the West. Those who believe in a dominant culture, and propagate it with all their might, are like those who are purblind and see only gray shadows and they are unable to see the rainbow. So, they say there is no other color except the one they see.

Can we affirm the point that there was no difference between the American way and some of the ways and values of the Old World in Europe? Indeed, for a million of people who fled the Old World, was it not for this that they wished to escape old values and ways?

At present, there are values towards which the Americans have an affective regard but the same values are abhorred by the French. Even Britain, the devoted cohort of America in Europe, criticizes some of the values institutionalized in America. In fact, many people regard the European culture as exemplary and universal, and the cradle for all Western values. The US culture is by no means the unique outcome of International community conditions and experiences to have a unique model or to deserve universalization. As a multinational country with diverse cultures emerging from different races and religions, America does not have a definite culture to universalize.

Asia: Power and Values

The problem that we encountered in the past or rather have in the present, is that we have long been exploited; sadly, most of us thought that our values and beliefs were secondhand. However, with the passage of time and the strengthening of Asia, especially in the last quarter of the present century, and the advent of the newly industrialized countries, the Asian tigers and the Asian tiger cubs and so on and so forth. Asia has secured its veritable dignity, and plunged fear in the hearts of the Western countries. Nowadays , they are worried about Asian power seekers.

We should note that in regard to the administration of affairs, treating cultures the traditional values of Asia and the achievement of success, there is a close bond among nations, which has brought up the game of human rights. At the end of Peloponnesian wars Thucydides, the ancient Greek historian, stated that the authorities acted on a personal will basis in administering state's affairs and that the weak ones should do as they were dictated.

The Asian countries (mainly including thriving eastern Asian countries and Iran, India ...) will no longer yield to blind obedience because Asia is not materialistically or spiritually weak. A great portion of Asia will strive against New Imperialism initiated within the context of human rights . Asia will struggle, not merely because it has succeeded in casting the chains of material and spiritual servitude but because it should pursue its course victoriously: it is the course which internal and external forces seek to thwart. Time will belong to us Asians when we are capable of resurrecting our past potentials: The past is the way of Asian future.

It must be born in mind that Asia is a continent comprising innumerable cultures, but in my opinion, the Asian features (stress on family and society as the first principle in social relations) have priority in Asia. Eastern Asia is the main concern of this article. David Hitchcock, the ex-president of East Asian and Pacific Affairs Department of the United States Information Agency, has performed a slight comparison between American and east Asian values which may be useful to us in our discussion of human rights.

In 1994, Hitchcock inquired the Americans and Eastern Asians (the Japanese, Thais, Koreans, Malaysians, Singaporeans, Indonesians and Filipinos) to choose six societal values and five personal values as the cornerstone of their society. The results of his research were presented under the title *Asian Values and the United States: How Much Conflict*.[16]

The six societal values which the Eastern Asians emphasized more than others included (1) disciplined society, (2) social integrity, (3) accountability of legal states for people,[17] (4) flexibility to accept new thoughts and ideas, (5) freedom of expression and (6) respect for power (government, State, organization). The Eastern Asians emphasized that a stable and disciplined society lay at the top of all other affairs in which individual rights preceded the social rights through reasonable respect.

The most important values stated by the Americans in order of priority were as follows: (1) freedom of expression, (2) personal freedom, (3) individual freedom, (4) free discussion, (5) thinking for oneself, (none of them appealed to the Asians) (6) accountability of legal states. The point, which manifests the sentience of the Asians, is the emphasis the Eastern Asian people laid on the importance of new thoughts and state's accountability.

Despite the discovery of common points between the Eastern Asians and the Americans, Hichcock's study disclosed not only interesting differences in societal values but it also differences of opinions touching personal values.

The five important personal values the Eastern Asians stressed were (1) hardworking, (2) respect for education[18] (3) rightfulness, (4) self-sufficiency and (5) personal discipline. The Americans stressed (1) self-reliance, (2) personal success, (3) industriousness, and (4) achieving success in life and (5) aiding others.

In evaluating the results stated above, one comes up with these important points: fulfilling one's duties to others is emphasized by 39 percent of the Eastern Asian people as the social cornerstone whereas

merely 19 percent of American people laid stressed on it. On the other hand, 59 percent of American people stressed the achievement of success in life while the rate fell to half among Asian people. Whereas 59 percent of American people stressed personal success, only 39 percent of Asian people stressed it.[19]

More interestingly, 69 percent of the Eastern Asian people laid stress on education but only 15 percent of American people emphasized it. Whereas 48 percent of East Asian people laid stress on personal discipline, only 22 percent of American people emphasized it. The writer of this article leaves the judgement to the readers on this score.

The outlook of the Eastern Asian peoples in particular and the Asian people in general on the West (particularly the U.S.A.) and the emphasis on Asian values should be discussed within the framework of the aforementioned societies. Western Model 2 (American one) does not avail Asia, not only because of its alienation to Asian climate but because as stated earlier, it has met failure (In general, cultural liberalism and emphasis on individual as the axis of the society) in its home, that is, in the West.

Despite our knowledge that human rights is used as a weapon against the States, which do not tend to belong to the so-called New World, we have avoided purely political discussions. Basically, Asia holds that morality is deteriorating in Western societies, sense of responsibility is diminishing, and socialism is greatly threatened; hence, those societies are falling apart.

The tradition of intellectual liberalism developed after World War II averred that man had attained a superior social system (man's desirable condition); everyone could have enjoyed the condition if laissez faire was generalized, and if everyone had the license to act as they wished; the system proved a total failure and we in Asia strongly believe that it will never succeed because some human principles (fundamental principles) are immutable. Man needs to know what is right or wrong. In human societies, there is an entity called devil, which may not be imputed to evil deeds in the society: in other words, evil deeds do not arise from being sacrificed . Man is a fallible being within whose soul lurks a devil, which should be checked as to the improvement of the society. Man's diabolical power should be constantly checked.

In the West, they have forsaken the abovementioned principle altogether, believing that all problems may be solved via benevolent states. However, there is no such belief in Asia. There is practically no Asian model. Yet, it may be firmly stated that the Asian outlook on the collective rights is different from that of the West.
The main difference between the concepts of society, State and government in the East Asia and those in Western countries lies in the point that the eastern countries do not acknowledge the individual being but within the framework of the family unit. The individual is not isolated or alienated from the family unit and only within the framework of family he finds recognition. The State does not strive to provide what can be found best in family for the individual.[20]

In the West, particularly after World War II, the states gradually turned into organizations which carried out the responsibilities , commonly done in less developed countries by the family, the natural and fundamental group unit of society. This policy caused the disintegration of families: for instance, the widowed mothers for whom the State assumed responsibility. In Eastern Asia, the preservation of social norms is of great importance and the States do not tend to carry out the responsibilities placed upon the family because they believe this attitude may cause deeply social crises, discoordination and tensions.

There is a Chinese maxim that goes "*Xiushen Qijia zhinguo pingtianxia*." The word *xiushen* means self-preservation, or the attempt to achieve self-making. *Qijia* means the protection of one's family. *Zhinguo* means the protection of one's country. *Pingtianxia* means peace in sheltering heaven. The Eastern Asian people have used this maxim as the model for their life. The maxim is the basis of eastern civilization. States will come. States will go; however this maxim will remain for all the time to come.

In East Asia, self-sufficiency is the basis. In the West. it is just the exact opposite. In the West, the state says, "Vote for me: I will solve your problems.[21] No one believes that the State can solve all the problems. In the time of natural calamities such as earthquake, storm and so on, it is always the human relation which is effectual. Family and human relations are structural and ultimately, help assure the endurance of the society members.[22]

In criticizing the disciplined culture of Eastern Asia, the Western countries claim that the Asian people are not initiative because there is not enough liberty for new ideas to emerge. However, in these very countries; Eastern Asia has gained the highest rate of progress and product. Despite the extreme exercise of order (as a tradition respected by people), respect for instructors, absolute abeyance of the teachers and the refrain of disputing the teachers, serious learning (not of liberalistic nature) has been in fashion and countries like Japan, are far more advanced in technology and initiation than the West which claims free climate for initiation.

The changes in the ruling system of Eastern Asia are inevitable: however, these changes will not be an emulation of the West. Eastern Asia seeks a State with which people find themselves related, the State which is not separate from people; the State in which people find peace; the state which is not despotic; the State which multiplies peoples' opportunities.

Now it makes no difference whether an individual has one vote or not. As to the field researches the writer of this article did in Malaysia, Singapore, Indonesia and the Philippines, it seems that a vote in Eastern Asia stands for one individual but in fact, an individual over 40 can have two votes, one for himself and another for his children, because he can use it more wisely. Regarding the research done in China, (in southern parts where education is higher), they believe that individuals over 60 should have one vote (the ages between 40 and 60 is ideal for active participation in all spheres of people's endeavors.)[23]

Conclusion

The traditional culture in Eastern Asia places emphasis on sociability of man, the preference of society to the individual, responsibility together with freedom, order, the individual within the social context, the family which is the main source of solving social problems, the prevention of the government from changing into organizations which carry out the responsibilities particular to family which is the main pillar in the east.

Considering the points mentioned above, Eastern Asia insisted on Asian values, resisted human rights and consideres absolute individualism as the great calamity of the West. Besides, the Asians give political nature to Western countries on generalizing human rights, consider it a failure and regard it as the root of all problems in the West today .

In fact, the success of Eastern Asia is a stress on the dynamic and rich nature of traditions and their sufficiency for striving against cultural assault. Countries such as Malaysia, South Korea, Japan, Taiwan, Singapore and Thailand have succeeded in treating modernism by preserving their deepseated traditions. Nowadays, the great success of Eastern Asia lies in modernization without Westernization. Today, Japan is more Japanese than Western. Today, South Korea, though having a traditional society is dynamic and technologically advanced. (In South Korea they say if there is a power cut in Japan just for 24 hours, South Korean industry will surpass it.) Yes, anything conceived is possible.

By creating multi-media Super Corridor, Malaysia has resurrected Islam, believing that Islam is not an impediment to progress: on the contrary it facilitates it. American human rights are without values for two main reasons: firstly, it is self-alienated and secondly, the east offers more constant and richer evaluation of anything that the West wishes to. Self-alienation, which has penetrated to the core of American society, has no place in Eastern Asia. The eastern people have started a serious struggle against corruption. They have the license and the power to encounter it. Malaysia is a sucessful country in fighting corruption and Western society; hence, it is a successful model of economic and trading success. (Over 150 million dollars of export, 7 percent growth, the high rate of education, the low rate of divorce, fighting narcotics, the high rate of fund)24 the models of South Korea, Singapore, Taiwan and Thailand in particular are interesting.25

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2. Fukuyama, op. cit, pp. 1-10.
3. Chen Yangu, Cultural leadership, Power and Socialism, Liawang no. 19 (1995) in Xin Hua Wenzhai (September 1995) pp. 20-21
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5. The Confucian term Li or ritual
6. The Confucian Analects, 1:18
7. John Rawls quoted in Michael Walzer, Spheres of justice: A Defense of Pluralism and Equality (New York: Basic Books 1983) p. 175
8. Han Zhen, Another contemporary Westem Theory of Justice, Philosophical trends, No.4, 1995).

9. Xungzi (C. 298–238 BC)
10. Mencius (C. 371–289 BC)
11. Donald. J. Munro, The Concept of Man in Early China, (Stanford: Stanford University Press, 1969) p. 192
12. Frank Dikotter, The Discourse of Race in Modern China (London: C. Hurst, 1992) p. 23
13. In 1993, in the Conference of Asian Countries, in Bangkok which was held exactly before the Geneva Conference on Human Rights, all the Asian countries criticized the Western human rights and emphasised that human rights were abstract and closely associated with the social culture, and history of other countries.
14. Mahathir Muhammad in an interview with Bernama (October, 1985).
15. "Mahatir Muhammad on Western Media", Nihon Keizei Conference on The Future of Asia, Tokyo, Japan, 17 May, 1996 (Malaysia's Prime Minister's Office Publication (Limited circulation)
16. USIA, op. cit
17. Accountability is an important principle in democratic systems
18. It must be noted that most East Asian countries allocate 20 to 30 perccnt of gross domestic product to education which is per se a guarantee for the Asian miracle to preserve its dynamic procedure.
19. High Differentials in Western and Eastern Values, Bangkok Post, p. 3, March 1997.
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Ayatullah Murtaza Mutahhari

Prologue

The following article is the text of a speech delivered under the title "*Primary Principles of Law in Islam*" and published under the same title in "*Twenty Speeches*" by Ayatullah Murtaza Mutahhari, the outstanding Muslim authority. In view of the importance of his opinions, the staff of the conference deemed it necessary to reflect his views on the discussions of the conference and include them in the present book. Some opening parts of the original speech have been removed from the present article for they were appropriate to the time the speech was delivered. It is hoped that the views of this outstanding savant may add to the scholarly calibre of the conference.

Justice is one of the principles of Islam. This principle has deep roots in the history of Islam. Although divine justice was in vogue, it stretched to social justice as well; it has reached the point where Islam has ordered that people's relations should be based on justice and preservation of rights and the restraint to violate each other's rights and that no one has the right to violate the rights of others. Does such justice essentially hold any truth? Do people, regardless of the laws prescribed by Islam have any real rights? Does Islam really explain their real rights? Does justice really involve the observance of others' rights? In point of fact and regardless of the laws prescribed by religion, are truth and justice begotten by religious

laws? Whatever religion holds just and right is right and just and whatever it holds unjust and cruel is duly unjust and cruel.

There once emerged a group among Muslims who refuted the principle of Justice. They announced the Divine rule to be above justice, both in creation and evolution and in law–making, claiming that the act of God follows no laws. There is one rule. Whatever God does is just and right, not meaning that God does what is just and right but that whatever ordered by God in religion is just and right, not meaning that what religion orders is right and just. It is concluded that in the world today, it would be all right if an obedient person is punished in the Hereafter despite his obedience and virtues and if a sinner is taken to Paradise despite his vices and sins and there is no harm in that Islam orders some people to enjoy worldly pleasures and to deny others of them. As justice and injustice are not real and rational but religious and subject to religion, this order is per se justice. The view that religion is not subordinate to reason has caused a major change in the Muslim World.

Essential Issue of Justice

Based on the first view which sees Islamic rules subordinate to real vice and virtue, believing that right and justice are real and that Islam has recognized their reality, we can have an Islamic social philosophy and a set of Islamic laws. We can study the legal principles of Islam and see what is the basis for being rightful and on what base it has established rules. What are its fundamentals? Then we can use them as our guide in many cases. However, according to the second view, Islam has no social philosophy or legal principles and that it rejects any legal principle.

Principle of Justice in Shi'ism

For the Shi'ahs, there is no need to prove justice, since it is one of the primary principles and a requirement of the Shiism. As the old saying goes, "Justice and monotheism are the principles of Alawis and monotheism and assimilation the attributes of Umayyads."

Justice is our main concern here and by monotheism we mean beholding God free from attributes and eliminating discrepancy between the nature and the attributes, but monotheism means lack of freedom and free will. Determinism involves the notion than man has no power of choice. One of the subordinate consequences of justice is free will. Determinism is a way to reject justice. By assimilation we mean assimilating God to the created beings and attributing their attributes to Him.

Primary Fundamentals of Islamic Law

Islam has a set of legal principles and established laws based on those principles. As justice is but giving rights to the ones who deserve them, we should realize what the primary principles of Islamic law are as derived from the Holy Qur'an and the instructions of religious leaders. How is it that some liking

develops between man and an object which is called right? If somebody takes that thing away, he is said to have been deprived of his right. What is the origin of this liking?

What is the cause of this liking? The Creator is the cause and the creation the effect. The world system is a system of cause and effect. The Cause or Creator of reason is of two kinds: it is either subjective or final. In other words, whatever causes somthing is either a doer and an agent, e.g. when man speaks, he is the cause and the agent of his speech; if there is no such agent, there will be no action, i.e. speech or a final destination of the action and that action is an introduction to and a means of creating that final destination.

When somebody speaks, he seeks a goal. He intends to persuade his listener and make him do something or he wants to inform him of something or ask him something. If there were no such destination and goal and if such speech was not a means to that destination, the act of speaking would never happen. Therefore any speech has a relation to the one who delivers it, that is to its agent and a relation to its destination.

This relation is the means and introduction to destination and final end. In the absence of either of these two causes, it would not have been actualized. Therefore, each of them is the cause and creator. Regarding right and right owner, when we say a special liking develops between man and the creatures and that man maintains some rights, we should see where this liking springs from and what the relation between those two is. Is it from the same type of liking between the means and the end or the type of liking between the act and the agent?

The Relation between Law and Ideology

It cannot be disputed that religious ideas in regard to man and the world, life and existence, influence the relation between man and other beings. Therefore, it is absurd to say that in materialistic philosophies the final aim is between man and the blessings. The goal liking requires to say that the wealth has been created for man and this per se makes us accept that there is a kind of overwhelming rationale governing the world and that overwhelming reason creates something for something else and for the sake of something else; if there were no such other thing and if it were not for the sake of that other thing, this thing would have not come into existence.

As we say tooth has been created in the mouth enabling one to chew, so that food may go through a digestion process in the mouth by chewing and to be assimilated into the body under the effect of the secretions of glands under the tongue. But in materialistic philosophies, there is no final liking among things. One can never say something is created for the sake of something else, nothing is the goal and the means to something else. If a being uses another being, it is not because one has been created for the other one, but that it has accidentally been useful for this one. Presently, we have nothing to do with general ideas of other methods.

The Final Relation of Right and Right Owner

According to the general beliefs and Islamic ideology in respect to man, the world, life and universe, there is a final relation between man and the blessings. In other words, there is a relation between man and the blessings in the nature of creation and in the general plan of creation. So if man were not part of this plan, the plan would have quite a different destiny.

In the Holy Qur'an, it is repeatedly stated that all the world's riches and blessings are created for man by virtue of the principle of creation. Therefore, according to the Holy Qur'an, before man can embark upon something and before the religious laws are announced to man, there is a relation between man and the blessings. All these blessings belong to man. For example, the Holy Qur'an states,

"God created whatever on the land for you and for the sake of you,"

or

"We·made you settle down in the earth and placed many blessings for you to be the source of your life and welfare. But you know the value of this very little and appreciate it not as deserved." (***Surah al-A'raf, 7: 10***)

Appreciation and gratitude for each blessing means using it in the manner for which it is created. Most of the Qur'anic verses state this fact.

Regardless of the explicit view of the Holy Qur'an, if we contemplate on the system of the universe, we understand that there is a final relation between inanimate objects, plants, animal and mankind. On the earth, various food and animals are so created that they can only survive interdependently.

If the balance is disturbed, they cannot survive. Now can anyone claim that there is no liking or relation between the foodstuff and the nutrition system of man or other animals in the general system of the universe and that all this conformity is just accidental? Biologists believe the principle of goal-oriented cause may not be denied at all as far as living beings are concerned. Such a relation exists when we say that food is made appropriate with these needs or the nutrition system is made so as to be able to use the existing foodstuff. At any rate, there is a final interest and these two conform to each other.

What difference does it make if we say, "If men or animals could not do without these, the foodstuff would have not come to existence or if various foodstuff did not have the characteristic they have, the structure of mankind would have been different. At any rate, the creation system shows that they are created for one another.

Therefore, this right has been recognized by the law of creation which has priority over the law of religion and as both laws originate from one common source, i.e. God, He has made religious laws conform to the laws of nature and the creation. He has not established them separately.

This conformity is clearly stated in a Qur'anic verse,

"Keep your face constantly toward this religion. Indeed it has a strong foundation and that is the nature of people as created by God and the law of creation is not changeable." (***Surah ar-Rum, 30:30***)

Therefore, in addition to the statement of the Qur'an, the system of creation itself is a sincere witness to the fact that the creation system has created man and all these blessings for one another. Think of a new born babe. What are the conditions of this baby? What can it do for itself? What food can it eat? What food can its stomach digest? You see God has provided it with nutrition in its mother's womb. As the time of childbirth approaches, the best food suitable for the baby's digestive system is gradually produced in the mother's mammary glands in a surprising manner and the baby can use the food thus provided as soon as it is born.

Can we say that there is no relation between the baby and its needs and the surprising structure of mammary glands and milk and even between nipples and the baby's little lips? Does not this milk belong to the baby? Who has fixed this right? The Law of Creation. What is the liking and the relation between the baby and the milk? The Final relation. In other words, the milk and the milk production have been all created for the sake of the baby. Therefore, creation itself has maintained that milk as the right of the child. The secretion of the mammary glands is but for the baby, not created aimlessly.

The philosophers divide the creatures into three groups: seven fathers, four mothers and three children. By seven fathers they mean seven skies as believed by the ancient people, four mothers are the initial elements believed by the ancient scientists to be water, soil, air and fire and by three children, composite beings are meant, divided into three groups of inanimate beings, plants and animal. Man is also an animal. The reason for calling them father, mother and child was their belief that the composite beings (inanimate beings, plants and animals) are created under the effect of heavenly factors as subjects and the four elements as object. Therefore, the composite beings are in fact the children of heavenly entities and the four elements.

At any rate, the composite beings are the offsprings of this land and this water and this air, this light and this heat. Man is the superior child of these parents. Naturally, children have some rights. As in the womb of the mother, measures have been taken for the embryonic stage and for the infancy period; such preparations have also been made in this great mother who is called the world and all these have been created with great care.

For example, as the time of birth approaches, the mammary glands start their activity, the glands secrete and all these are just for the sake of the baby. This is also true about the four seasons and the movement of cloud, the rainfall, and spring. These rains are the same secretions of the mother-earth for its children. The Holy Qur'an states,

"It is He who irrigates your land from up there and you drink this water, He grows trees for you

and you use the leaves of those trees. He grows plantations and farms and trees, from olive and palm and grapes and bestows you different kinds of fruits and all these are signs for those who contemplate."

There are numerous verses in the Qur'an implying the existence of a relation and coordination between the general things on land and the human needs.

It is related from Imam 'Ali (A.S.) who said, "Any living being has food and grain or seed." He means that there is a pre-determined relation in nature between the eater and the thing to eat. Their existence in nature is related to each other. This is one type of relation which exists between right and right owner in view of the general principles and the ideology of Islam.

Subjective Relation between Right and Right Owner

Another type of relation, is the subjective relation. That is the right owner himself has created the subject of right for himself. He is the agent and the creator himself. For example somebody plants a tree and takes care of it, irrigates it until it gives fruit. The relation between this person and that fruit is the relation of the act and the agent, i.e. his activity has given birth to this fruit. Had he not worked, this fruit would not have come into existence. This relation itself causes some rights.

Goal-oriented Relation Causes Potential Right

The first relation that is the goal-oriented relation between man and the blessings is a general relation. In this case, no one has private rights. All people, as they are created by God, have rights toward everything and as all have potential rights no one can prevent others from fulfilling their rights and from allocating all rights to them. But how to take his right is the second stage. In this stage, right and duty become annexed to one another and rights are realized due to the fulfillment of the task and duty and everybody reaches his specific right. There a verse from the Holy Qur'an in this regard. Sura of Hud states,

"It is He Who created you from earth and asked you to cultivate the earth. So return from sin and repent."

It does not say, "God does not say" He created you on the earth, but it says, "Created you from earth" brought you out of the earth. It apparently indicates the same meaning that the earth is your second mother. Secondly it says, "God wants you to cultivate the land." Being the child of the earth is not enough for our right to be actualized and for you to obtain right. For the recognition of right, something else is required and that is your action and your efforts in cultivating the land. As long as this task is not fulfilled, the right shall not be realized and will not become evident and specific. Why? Because man has been given reason and free will and authority. And it is his reason and freedom which leads to the growth of his range of action and practice.

The Role of Reason and Free will in Causing two Stages for the Right of Man

The life-system of mankind is different from that of other beings. They live by their instincts. Being a child of the earth is enough to prove their rights. However, man is endowed with reason and will and should work with his mind and reason. Therefore, as far as he does not do his task, he cannot enjoy his natural rights. As far as man is in the stage of instinct and there is no task for him, his right is evident.

A baby has rights toward his mother's breast without any obligation and the breast milk is his true right. But when man intends to feed on the breast of the earth, it is not as easy as that. He should prepare this milk through his own efforts. Therefore in lieu of his right in the mother-earth, he has a responsibility toward it as well. In other words, this mother-earth has a right toward him which is cultivating and developing the earth.

Right of the Earth on Man

In his early days of caliphate, Imam 'Ali (A.S.) told the people, "You are responsible even for the animals and the land." Not only are you responsible before God and people but before animals and the earth as well. Do not think this animal of yours has no rights. As it is your property you can do whatever you wish. You can treat it as you may desire, load it even above his power and ability, and feed it whenever you wish. Keep it hungry, thirst, or wounded and think you are not responsible for its needs. No, it is never so. You are responsible for these lands. You should not ruin it: you are obliged to cultivate it. God the Almighty has ordered you to develop the land.

Again, in his well-known conunandment to Malik Ashtar, 'Ali. (A.S.) gives this title to his letter, 'This is what Allah's servant 'Ali Amir al Mu'minin, has ordered Malik Ibn Harith known as Ashtar in his appointment for him when he made him governor of Egypt for collection of its revenues, fighting its enemies, seeking good of its people and rendering its cities prosperous."

Inseparability of Right and Task

With respect to duties and rights he states, "There is no right for anybody unless accompanied by a task and there is no task unless with a right. Task and right are not separate from one another. Why did the holy Prophet say, "He who imposes himself on others is far from the Grace of God?"

Right of the Weak People

Islam considers rights for the poor and the disabled. The Holy Qur'an states,

"Give the share of the relatives and the poor and the needy."

And

"There is a certain right for the beggars and the poor in the properties of the faithful."

The weak and disabled people who are not able to work and their work is not enough to satify their needs are not obliged to work and take share on themselves and their responsibilities should not exceed their abilities.

It is true that they are unproductive and unable to help development, however, they cannot be deprived of all rights because they are entitled to them by virtue of the primary principles and the goal-oriented relation between them and the blessings. This cloth has been spread for them as well. "God created the earth for all (not for some)." If they were able and did not do their job, they would be fined by being deprived of this cloth but being unable, their primary right is preserved. Indeed the poor and the needy have the right to the assets of the rich.

An Essential Difference

One of the differences between the Islamic social philosophy and legal principles may be explain here, According to Islamic divine law, the poor have real rights: But in the secular judicial systems right is caused only by work, production and activity. One of Imam 'Ali's followers asked something from the booty which the Muslim soldiers had gained with sacrifice. In his reply, the Imam said, "This belongs to those who have fought. If you have been with them and have suffered with them, then you can have a share. Otherwise it is the fruit of their efforts and for their own mouth, not for the mouth of others." Naturally, whoever labors and acquires something in a legitimate way, it shall belong to him. It is illogical to expect you to work and gain something and put it into somebody else's mouth.

Social Rights

Right is respected in Islam. The rights of people are extremely important. Justice is sacred. Betrayal of rights specially public rights is regarded the worst kind of betrayal in Islamic ideology. 'Ali (A.S.) said, "The gravest betrayal is betraying the people and the worst fraud is deceiving the Muslim leaders."

Islam became a universal religion in a very short time and found followers all around the world. Why? Was it only for a set of simple moral instructions? Had Islam not endeavored for social reforms, it would have been impossible to gain any success in its moral instructions. Islam called for justice, rights, freedom, equality and the elimination of any kind of discrimination. These factors caused a new world. Whatever harms and damages Islam suffered were due to the transformation and disregard of these major principles.

Yes, rights are respected in Islam. Justice which protects these rights is sacred. The respect for rights and justice in Islam, has always been the most important factor in developing Islam. In Islam, rights have

been predicted and regulations established based on such rights which show the ultimate grace, favor and scrutiny of this religion .

Right of Companion

During his caliphate, Imam ‘Ali (A.S.) went out of Kufa, the center of the Caliphate one day on a mission. As was his wont he did not take on any guard; he traveled alone. Upon his return he encountered a kitabi (follower of a Divine religion) i.e. a Christian or Jew or Zoroastrian. The man did not know Imam ‘Ali. They asked each other their destinations and they found out that a large portion of their way was the same. They agreed to travel together. They came along talking together until they got to the junction where their paths diverged. That man went on his way, and Ali left the Kufa road and followed him. The man said, “You said you wre going to Kufa, didn't you?”

Ali answered, “Yes.”

“Then why don't you go that way?”

Ali said, “Our prophet has instructed us that when two persons travel together and enjoy each other’s company, they find a right toward one another. As I enjoyed your company on this trip you have proved a right and I want to follow you for a while in token of gratitude and appreciation. The man fell into deep thought. He raised his head and said, “The reason for the rapid development of Islam has been the benevolence and greatness of your Prophet.” He did not know ‘Ali at that time until one day he came to Kufa and saw ‘Ali in the position of the Caliph and found out that his companion on that trip was nobody but ‘Ali Ibn Abi Talib, the Caliph of the time. He immediately converted to Islam and became an apostle of Imam ‘Ali.

The Name ‘Ali is Identified with Justice

The name ‘Ali, was later identified with justice. His tradition and manner of government was always an example with which people reprimanded other Caliphs. One year, when Mu’awiyah was in Mecca for Hajj, he searched for a woman known for her devotion to ‘Ali and her enmity to Mu’awiyah. He sent for her and asked her, “Do you know why I summoned you? I called you to ask why you like Ali and hate me.” She answered, “It is better not to talk of this subject. Mu’awiyah insisted on his demand. The woman said, “Because he was an upholder of justice and equality and you fought him without any reason. I like ‘Ali because he loved the poor and I am an enemy of you because you shed blood and separated the Muslims and are unjust and prejudiced in judgment and follow your desires.” Mu’awiyah got angry. However, he overcame his anger and as was his habit, he showed kindness and asked, “Have you ever seen ‘Ali in person?” She said, “Yes, I have.” Mu’awiyah asked, “How did you find him?” She said, “By God, I saw him in a state not possessed by crown and government as you are.”
“Have you heard his voice?”
“Yes, I have. It lightens the heart and purges sorrow as the olive oil removes rust.”

“Do you wish anything?”
“Will you give whatever I ask?”
“Yes.”
“Then give me one hundred red camels.”
“If I give you what you want, will I find the same position as ‘Ali in your heart?”
“Never.”

Mu’awiyah ordered to give her one hundred camels and said, “By God. if ‘Ali were alive, he would not give you even one of these camels.”

The woman answered, “By God, he would not give me even one single hair of them, because they belong to all Muslims.”

‘Adi Ibn Hatam Ta’i was one of the great disciples of the holy Prophet and a lover of Imam ‘Ali. This man converted to Islam in the last years of the holy Prophet’s life and became a faithful Muslim. When Imam ‘Ali was the caliph, he was at his disposal and three of his sons called Turaif, Turfah and Tarif were killed in Siffin, fighting for ‘Ali (A.S.) After the martyrdom of Imam ‘Ali and the stabilization of the caliphate for Mu‘awiyah, they happened to encounter.

In order to make him say something about Imam ‘Ali as he wished, he tried to remind him of the martyrdom of his three children.

Therefore he asked, “What happened to your sons, Turfah, Turaif and Tarif?” ‘Adi said serenely, “They were killed in Siffin in front of ‘Ali.” He added the words “in front of ‘Ali” to show his satisfaction and honor. Mu’awiyah said, “‘Ali did not treat you justly to dispatch your sons to the battlefield and leave his own sons back to survive.” ‘Adi said, “In fact I did not behave justly toward ‘Ali as he was killed and I survived.” Mu’awiyah saw that his plan proved futile. Changing his tone, he said, “Describe ‘Ali to me.” ‘Adi asked to be excused. Mu’awiyah said, “Impossible. You have to." Thus ‘Adi said, “I swear by God that ‘Ali was strong and judicious. He talked with justice and settled disputes with certainty. He was versed in knowledge and science. He hated the luxury of the world and liked the night and the nocturnal solitude. He cried much and thought plenty. In his solitude he questioned himself and repented the past. A simple life he conducted and simple clothes he wore. When he was among us, he was none of us. If we asked him something, he would comply. If we went to visit him, he treated us warmly and affably. Although he had no chains or jails, he had such great eminence that we did not dare to talk in his presence; he was so august that we did not raise our heads to look at him. When he smiled, his teeth glowed like pearls. He respected the faithful and was kind to the poor. By God I saw him one night with my own eyes standing in the altar worshipping the Almighty while darkness fell on everything. His tears rolled down his beard. He twisted about as one stung by snake and cried like mourners. It is as if I heard him say, “ You are bothering me and showing your face to me. Go and deceive somebody else. Your time has not come. I divorced you three times, irrevocably, and there shall be no return. Your joys are trivial and you value little. Oh, Oh some little provision, a long trip and few companions.”

When ‘Adi got to this point, Mu’awiyah started crying, wiped his tears by his sleeve and said, “May Allah have mercy on ‘Ali. He was true as you said. Now tell me how you feel in his absence.” ‘Adi said, “Like a woman who has embraced a child and whom you are about to behead.” Mu’awiyah asked, “Do you ever forget him?” ‘Adi answered, “Does time permit me to forget him?”

In Irshad, Shaykh Mufid states, “The term of ‘Ali’s Imamate, the Commander of the Faithful, was 30 years after the Prophet and he ruled for only five and a half years and this short period was spent in combating the hypocrites. He goes on to say that his death occurred on Friday night, 21st of Ramazan near dawn; he was struck by a poisonous sword by Ibn Muljam Muradi and died two days later.

Kafi states, “Then, Imam ‘Ali said: there is no God but Allah until his exalted soul soared to Heaven.” May God glorify him and his sacred family.

Dr Nasrin Musaffa

Introduction

One of the most important social characteristics of the present century may be the efforts carried out at national and international levels to ameliorate women’s conditions and to obliterate sex inequalities. While the constructive role of women and governmental measures cannot be denied, the United Nations Organisation played no small part in earning international support for women’s rights which can be evaluated.

Fifty years after signing the United Nations Charter as the first international agreement which considered sex equality as the fundamental principle of human rights,[1] the UN has created a collection of historical heritage including conventions, strategies, standards, practical programs and international conferences for women’s advancement.[2] The United Nations Charter approved the equal rights of men and women and provided that the activity of the Organisation should be done without discrimination of any kind due to sex, language, race and religion.

However, this, in practice, has never been sufficient. Therefore, decades of fighting to mobilise the words of the Charter in respect to women’s rights and to achieve a proper status were required, so that the issue of women together with poverty, unemployment, population growth, violation of human rights, and the destruction of the environment gained universal attention and the role of the United Nations Organisation became significant with respect to this issue.[3]

Among the international documents presented for the betterment of women’s status, Convention on Elimination of All Forms of Discrimination Against Women (referred to as the Convention herein) is the most important document which constitutes the basis for the ideas of the United Nations in this regard. This Convention is the outcome of the thirty-year efforts of the Commission on Status of Women

approved by the General Assembly in 1979 and which has become binding since 1981. This Convention has 154 members at present and has the second place after Convention on Rights of Children in respect to number of Member States among the international treaties on human rights.[4]

The ideal of the Convention is to achieve a society throughout the world in which men and women have equal rights, a society in which traditions, habits, beliefs and value systems of the past and the present are questioned and new forms of egalitarianism are established based on the new thought. The exercise of its principles requires the following of the policies, programs and legislations at national level. To what degree this idea is *per se* practical deserves due contemplation.

While the United Nations Organisation believes that this Convention is the most important binding document for elimination of discrimination against women, the large number of reservations of the Member States are also very important. Although many discussions are brought up on the validity of such reservations, the conditional acceptance of approximately 49 Member States, some of which have objected to major basic principles of the Convention[5], has challenged its complete execution. While different countries, even the western countries have adopted various reservations, the reservations of Islamic countries have gained more attention and have become an important issue both for the United Nations and for the Islamic States as well.

Reservations of Islamic countries toward this Convention which have mainly conditioned their execution to their conformity based upon Islamic rules (*Shari'ah*) have led to this belief that Islamic principles are an obstacle in eliminating discrimination against women and therefore terms such as Islamic Tradition and Islamic Restrictions are brought up without offering a clear definition or a proper understanding of them. They examine the status of Muslim women in the light of Western values, claiming that Muslim women are under suppression and slavery.

Also by statistical analyses and through comparing the results with their own data and without any consideration due to the differences in cultural environments and legal institutions relating to women such as marriage, and inheritance, they claim that women's legal system does not exist only in Islam. Based on the same data, they refer to the advancement of Western women and the backwardness of Muslim women and prescribe Western patterns for the amelioration of their condition.

The purpose of this article is to study the challenge between the international standards of women's rights and the beliefs and values of the Islamic societies. This challenge reveals itself in conformity with the provision of the Convention. Besides, this basic question remains: can women's rights be universal? To what degree are the internationally known standards of the convention binding for societies with different traditions and value systems? What is the cultural legitimacy of the international means of women's rights? Of course, these questions can be discussed within the broader topic of universality or relativity of human rights values, which demands a lengthy discussion.

In order to study the cases noted above, a brief glance will be cast at the Convention. Then, in the

second part, the term reservation is generally defined and reservations of Islamic countries discussed. The fundamental challenge between Islamic views and the international standards of women's rights shall be the next issue discussed and at the end, the cultural legitimacy of woman's rights is analysed. The article ends with a conclusion.

Women's Convention: Characteristics

As discussed earlier, the United Nations has played an important role in developing international means for human rights. Without intending to evaluate the nature and outcome of such means, we can consider the following characteristics for the attention of the United Nations Charter to the human rights:6

1) Commitment to all human beings (at international level)

2) Equality or indiscrimination (without discrimination of any kind due to race, sex or religion)

3) Importance of international co-operation system in elevating human rights (Entering into treaties)

Women's Convention can be considered a means to achieve the point noted above. This Convention consists of thirty articles. The core of the convention is to condemn discrimination as the main root of sex inequality, which demands equal rights, equal standards and equal treatment of women in the societies.

According to Article 1, discrimination against women applies to any discrimination, exclusion (deprivation) or restriction due to sex, the result or purpose of which is to impair or destroy the recognition, enjoyment or exercise of human rights and essential freedoms in political, economical, social, cultural, civil matters concerning women regardless of their marital status and based on equal rights of men and women.7

Condemning it in Article 2, it demands for the practical steps of governments in eliminating discrimination. Such steps include adopting policies for eliminating discrimination, incorporating the principle of equality of men and women in the constitutions or other relative laws of each country practical realisation of this principle, ratifying appropriate laws and or other steps such as predicting punishments, if required, to prohibit discrimination against women, legal support for women's rights based on equality with men, preventing any discriminatory act, adopting all proper means for eliminating discrimination against women by any individual or organisation and adopting appropriate policies such as annulling laws for the purpose of amending or nullifying laws, customary regulations or existing manners which might be discriminative against women and abrogating all national penal regulations which cause discrimination against women.

As we see, the Convention looks for *De Facto* rules rather than merely *De Jure* laws and seeks to eliminate discrimination. Article 3 of the Convention also indicates the appropriate steps of Member States to guarantee the advancement and complete development of women based on equal

opportunities with men. The members allocate article 4 to adopting special temporary steps in order to accelerate the realisation of equal rights of men and women.[8]

In two paragraphs, Article 5 stresses the modification of social and cultural behavioural patterns of men and women in order to eliminate prejudices and all traditional customs, etc. demanding for common responsibility of men and women in proper upbringing of their children.[9] In the next articles, this Convention deals with all fields relating to women's rights including political participation, nationality, education, employment, healthcare, economical and social life, women in rural areas, equal rights of men and women before the law, as well as affairs relating to marriage, divorce and family relations. (Articles 7-16).[10] Then in Articles 17 through 30, the Convention discusses the executive mechanism of the Convention. Also, the formation of the committee for Elimination of all forms of discrimination against women as the core of the Convention and reporting system as a mechanism for supervising the exercise of the provisions of the convention are considered.

As it can be seen, the Convention defines women's rights in family and private life as well as in the society. In general, we can categorise the characteristics of the Convention under three topics:

A) Condemning discrimination as the root of sex inequality

B) Specifying the vast areas of discrimination against women

C) Moving towards practical steps for condemning and eliminating discrimination through various mechanisms.

One of its important features is that it deals with such issues as family relations and rural women who were not formerly subject to international law. The convention was accepted by governments more rapidly than the other international instruments for human rights and became binding earlier than any other international treaty on human rights.[11] Now that we intend to study the various reservations toward the Conventions especially by Islamic countries, we shall try to elucidate them.

Women's Convention and Reservation: Position of Islamic Countries

One of the major issues in International Law of Treaties is the concept of Reservation. According to Article 2 of Vienna Convention on Law of Treaties, reservation is the unilateral declaration of a country at the time of signing, approving, joining or accepting a treaty by virtue of which the concerned country asks for exception or modification of the legal effects of specific regulations of that given treaty in respect to the above-said country.[12] This rule is internationally accepted and we can find evidence for it in the manner which countries join different conventions.[13]

As for the concerned convention, up to 41 countries from the total 154 members have declared

reservations to one or more of its articles.[14] Of course, it should be mentioned that some of these reservations are necessarily executive procedures and relate to Article 29 (1) of the Convention which recognises the competence of International Justice Tribunal for solving disputes resulting from its execution. Reservation toward paragraph 1 of this Article has been recognised to be valid by virtue of paragraph 2 of the same Article.[15]

Of course, the effects of the reservations on the relations of states, which have joined the treaty, have been a matter of dispute regardless of the considerable number of reservations. In one point of view, treaties on human rights are different from other international treaties in the fields of commerce, trade and transportation, which are usually bilateral and embody mutual privileges for the Member States. In this type of treaty, the governments can adopt reservations concerning sovereignty of the government and restrictions of this sovereignty.

However, human rights multilateral treaties do not have universal legal effects in International Law and their obligations are *Orga Omnes*.[16] These treaties show the obligations of governments before their citizens. The fact is that many countries have approved human rights treaties with reservation. Two covenants on Civil and Political Rights and Economical, Social and Cultural Rights, Women's Convention and Convention on Children's Rights are among them.

Acceptance of these reservations has also been a matter of conflict. Some insist on the totality of the convention and on refusing any reservation, believing that reservation reduces the universality and efficiency of such conventions. While others believe that increase in the number of the Member States of each treaty adds to its universal validity and governments should be encouraged to join it even with reservation.[17]

In general, three types of reservations can be identified in respect to treaties which apply to Women's Convention as well:[18]

A) General reservation

B) Reservation toward main articles

C) Reservation toward substantial articles

In general reservation, special articles of the treaty are not usually taken into account and only a general reservation and exclusion of specific cases are requested. General reservation is usually based on the religion or the legal system of a country. Reservation toward main articles includes conditions indicating the articles, which are important and required for the implementation of the other parts of the treaty. Reservation toward substantial articles alludes to those reservations, which express performance of specific duties, regulations and different methods for achieving the goal.

Concerning women's Convention, we should say that different countries have demanded different

reservations based on their policies. For example, Libya established a general reservation and accepted the convention if its measures is not contradictory to Islamic religion. Of course, after investigating the first national report and related discussion , this country modified a number of reservations to specific cases.[19] A certain number of reservations include the main articles of the Convention. The main articles of this Convention are articles 1 through 5. The commentators have empasised that the execution of the first five articles is crucial for achieving the goals of the Convention but still many countries have adopted reservations in respect to these articles.[20]

The most important of these reservations is stated by Islamic Countries due to their contradiction with Islamic standards. The commentators see such reservations unfounded and against the spirit of the Convention and the demands of the Convention from the governments. In cases where these reservations are not accompanied with a special reason, their legal and executive state becomes more complicated.

The general recommendation of the Committee for Elimination of All Forms of Discrimination Against Women (referred to as the Committee herein after) has asked the Member States as well as the States which have not yet joined the Convention but intend to approve it with reservation, to express their reservations lucidly and specifically so that the assumed obligations of the Member States be specified.[21]

A number of states have also adopted reservation toward the main articles of the Convention. Concerning the relatively large number of paragraphs relating to the main articles, the reservations are innumerable. In general, articles 9, 15 and 16 have allocated most of the reservations to themselves. Of course, Article 28 of the Convention, approving reservation in the first paragraph, say, “Those reservations which do not conform with the objective and purpose of the ·convention shall not be accepted.” Nevertheless, it fails to introduce any institution to accept the validity of the presented reservations and this is *per se* one of the problems to the Convention’s reservations.[22]

Due to the importance of the reservations in respect to human rights treaties, the International Human Rights Commission has prepared a resolution on the normal reservations of human rights multilateral treaties supposed to be discussed in the 1997 meeting of the Commission. Based on this resolution, the Commission sees the measures predicted in Vienna Convention 1969 in relation to reservations of human rights treaties quite applicable. It also states, “While human rights treaties do not discuss the competence of the basic principles of the treaties for recognising the validity of the reservation, their foundations necessarily have such competence.

Therefore, there is a developing approach toward the active role of the basic principles of human rights treaties for recognising the validity of the reservations and identifying those reservations, which are against the objectives and principles of the treaties.”[23]

Ms. Rosaline Higgens, former expert on Human Rights Committee and the only female judge of

International Court of Justice says, “A balance should be established between the legitimate role of governments in support of their national interests and the legitimate role of the basic principles of treaties for improving the effective guarantee of human rights.”[24]

With regard to the experiences of the Committee in modifying some of the reservations, the present ruling view is that approving the Convention even with reservations which might be against the spirit of the Convention, should be tolerated and that such reservations should be eliminated by different mechanisms. Now, we shall study the reservations of the Islamic countries as the main purpose of this article.[25]

The Position of the Muslim Countries

Thirty-three countries, which are members of Organisation of the Islamic Conference have already joined the Convention the majority of which are African countries. Egypt, Libya, Tunisia, Algeria, Jordan, Turkey, Pakistan, Bangladesh, Iraq, Malaysia, Indonesia, Sudan, Morocco, and Kuwait are among them.[26] Of course, the Islamic Republic of Iran has not yet joined this Convention.[27] Apart from Iran, Saudi Arabia, Afghanistan and United Arab Emirates have not approved the Convention. All the countries mentioned above have approved the Convention with reservations. Their reservations mainly concerned Article 9 that is the issue of nationality and Article 15, complete equality before law and Article 16, different paragraphs relating to family relations, marriage, divorce and common responsibilities of married life. The majority of these countries have raised the common reason of contradiction with Islamic laws. In order to define the case better, let us look at the following table.[28]

Article 2: Bangladesh (paragraph 2), Iraq, Jordan (paragraph 2), Libya, Morocco (declaration), and Egypt (paragraph 2)

Article 7: Malaysia

Article 9: Bangladesh (paragraph 2), Iraq, Jordan (paragraph 2), Egypt (paragraph 2), Libya, Morocco (paragraph 2), Tunisia (paragraph 2) Turkey (paragraph 1)

Article 15: Jordan (paragraph 4), Morocco (paragraph 4), Tunisia (paragraph 4), and Turkey (paragraph 2 & 4).

Article 16: Bangladesh l ,c, p- Egypt (for divorce rules), Iraq (the whole article). Jordan (Article 16 and c, d, y), Morocco (Article 6: rights and obligations of the spouses) Tunisia (Article 16. c. d, p, y, h) Turkey (Article 16, g, f, d, c,)

Pakistan has also submitted a declaration for execution of the provisions of the Convention in case they comply with the Constitution of Pakistan, which is inspired by Islam. Tunisia also states through general declaration that this country undertakes no organisational measure and statutory rule against the provision of the First Chapter of the Tunisian Constitution.[29]

Morocco has also claimed to stick to Islamic standards in respect to rules relating to women while Turkey, which is deeply secular, and claims politics to be independent of religion, has adopted reservations more or less the same as other Muslim countries. Of course, it is worth reminding that it is not just the Islamic countries which have announced reservations. Countries such as United Kingdom, Germany, Spain, Belgium, Luxembourg, Australia, ...[30] have also placed restricted reservations. The collection of various reservations of the countries toward this Convention has led to many discussions in the Committee, raising objections toward validity of the reservations specially reservations of Islamic nations. Finland, Norway,the Netherlands and Mexico were among them.[31]

The problem of the reservation toward the Convention became a political problem inside the Committee and it was stated that movement against reservations is anti-Islamic.

In the years 1986 and 1987, numerous discussions were made in the Committee for Elimination of Discrimination. In 1987, after examining a large number of reports from Islamic countries, the Committee asked the United Nations to investigate into the status of women in Islamic Law and also the Islamic traditions and customs. This request of the Committee raised severe enmity in the Economic-Social Council of the United Nations and
was refused.[32]

Of course upon the increase of the number of Islamic states who joined the Convention and their reservations and the actual confrontation of the Committee with the issue, the Committee insisted on its request again and recommended that a review of the case would be very useful, but due to differences of opinions, no agreement was concluded.[33]

Of course, the General Assembly of the UN passed a resolution in 1988 and without mentioning the word reservation, asked the governments to fulfil their obligations toward the Convention. Because of repeated discussions and upon receipt of periodical reports, a number of countries modified the number and nature of their reservation. As an example, we can name Libya, which was earlier explained.[34]

Conflict of Ideas

Conflict between internal laws and international treaties is always of great importance. As pointed out earlier, the proper solution is to take advantage of reservation. Nevertheless, as to human rights treaties it is different. Of course it was said that reservations of governments in respect to these treaties are valid but the point is that the governments sometimes commit to conventions under international pressures and even internal pressures for fulfilment of which the governing value system shall be challenged. Evidently, there is a discrepancy between international standards of human rights and the principles of Islamic *Shari'ah*.

Women's convention is placed in the same category. While there are different interpretations of Islam, some principles and traditions are equal in all Islamic sects. Their principles and traditions, which have a

substantial origin in Islam, have a fundamental difference with the Western view.

Many of the behavioural patterns specially women's behaviour in Islamic countries are not equal to the equality pattern in the Convention and the basic hypothesis of dissimilarity of man and woman and their complementary function which is a basis in Islamic approach cannot conform to the Western pattern. Universal standards of human rights which are mostly the work of Western countries, as any other value system, are based on the cultural and philosophical ideas of its own base.

Human rights today as proposed and supported by the Western countries are historically and ideologically their own property and their main principles emanate from values of the Enlightenment Age and the Individualism.[35] The Universal Declaration of Human Rights and others including Women's Convention are inspired by these values. There have sometimes been discussions between the Western states and the representatives of the third world countries. Western mentality is dominant and it is natural that they try to implement it as a means for part of their universal domination.

Now, let us consider the main differences between the two outlooks: The conflict between Islamic values and the international standards and reservations of Islamic Countries toward the Convention are not a result of discriminatory approach of Islam towards women. It is clear to everybody that the Holy Qur'an revived women's rights. The changes brought by Prophet Muhammad's Religion in the life of the women of his age are not comparable with any other changes. Everybody acknowledges that the Qur'an has elevated women's status and has taken radical measures for human values and women's gain.[36]

In order to provide a better picture of women's status role in Islam, two things should be differentiated: Islam as a religion and Islam as a culture.[37] Islam as a religion, which embodies spiritual beliefs and rules, does not maintain that there is any difference between men and women. Men and women are equal in dignity. The reasons for this are numerous verses in the Holy Qur'an.[38]

The criterion for human value is virtue and piety is the sign of man's superiority to others, without regard for sex, colour, race, etc. The only point of differentiation is piety and virtue. But in Islam as a culture, that is the Islamic *Shari'ah* in the whole collection of norms of social, economic and legal standards which adjust and regulate the private and public relations, women are different from men, and although they are different, their rights and duties are equal.

Due to their nature, they are not the same in many respects and this requires their difference in respect to rights, duties and punishments. In Islam, this dissimilarity does not mean superiority of one over another but merely reveals itself in performing different duties. This dissimilarity is defined by virtue of a number of verses in the Holy Qur'an[39] and the tradition of the Holy Prophet. This issue embodies one of the most fundamental concepts in Islam, equality.

There is no doubt that the requirement for common human dignity of man and women and their equality in respect to humanity, is equality of their human rights. In other words, as in Islam, men and women are not created identical, the principle of similar rights does not intervene but equality exists based on

justice.[40]

Therefore, in Islam, political, social and particularly economic rights of women are of great importance. The history of the beginning of Islam is indicative of the political roles of women. The example of "Bay'at alRazvan"[41] is one of the most evident ones. As the other teachings of Islam were not practised in the real sense, women's rights were also interpreted differently, the dissimilarities increased in practice, and the constructive role of women in Muslim societies gradually fell into oblivion. Many of the restrictions imposed on women in Islamic countries are not rooted in the Qur'an but originate from ethnic traditions.

The existence of different Islamic sects, ethnic customs and habits has penetrated into the behaviour of the people in Islamic societies, thus making it very difficult to differentiate between them and the true spirit of Islam. It is evident that the original sources of Islamic Law can be used in the direction of equality of women in social, political and economic fields and in using social facilities such as education, health and employment but the practical realisation of this is faced with problems due to varying reasons.

Despite the rights fixed for women in Islam, lack of accurate understanding of the *Shari'ah* in a number of Islamic societies and interference of ethnic rituals and traditions has caused women's rights to be disregarded. The most important challenge between international and Islamic standards relates to family relations and adjustment of private life between husband and wife. As indicated earlier, Article 16 of the Convention has elicited some reservations. In fact, non-Islamic countries have also made reservations toward this Article[42] but the greatest number of reservations belongs to Islamic countries.

Most of the countries have offered no special explanation, but some others such as Iraq have explained that the Islamic Shari'ah has adjusted the private relations of husbands and wives based on justice. The idea of Islamic justice for securing women's rights is crucially important, stating that the collection of Muslim laws deserves due attention. Personal incorrect interpretations and patriarchal justifications have worked to the detriment of Islamic justice. Polygamy and unjustified divorce are among them. Therefore, inappropriate use of traditional laws on divorce changed radically in approximately all Islamic States in the direction of national interests in the twentieth century.[43] These reforms usually followed two important purposes:

A) Preventing the husband from misusing his power for divorcing the wife

B) Strengthening women's rights specially when unilateral divorce by the husband has seriously harmed her.

One of the major cases in Article 16 to which most of the Islamic States have made reservations (paragraph 1), are equal rights and responsibilities during the married life and at divorce. Based on the Islamic law, paying for life expenses (alimony) is the responsibility of the husband and therefore the division of duties has not taken place based on discrimination but on natural conditions of man and woman and on the prevalent tradition which requires different tasks and responsibilities. Paragraph 2,

Article 6 of Islamic Human Rights Declaration also provides that man is responsible to provide for family expenses.[44]

Some researchers wonder whether such a task division established in Islam and probably in the Holy Qur'an is fixed and unchangeable or changeable as to the well being of the people and consideration of existing conditions if the concept of well being or the existing conditions changes. In other words, if the society goes towards conditions in which women also participate in earning income and supporting the family, can such a task division be revised or not? Is the revision conforming to the basic idea of Islam?[45]

As Martyr Mutahhari says: "The conditions in our age requires a reevaluation of many issues and the former values are not sufficient anymore. Family rights and obligations systems are among them.[46] Therefore, relying on the spirit of Islam, which is justice, we can say changes are inevitable. It is natural that this revision should be within the domain of the basic principles governing Islamic thought as to time and place requirements. Islam has religious and social principles and heritage, which can be used in the best manner possible.

The world of Islam requires great efforts and programming to elevate and promote the conditions and rights of women. Justice, logic and well-being of all Islamic societies require that the healthy and proper way for realisation of women's rights which are often surrounded by superstitions and ethnic traditions be paved and social justice between man and woman in different aspects be established.

However, the problem which remains is whether such changes and revisions should be carried out within the framework of social experiences based on their own culture, or commitment to international standards should give rise to such reforms. It is not true to see all the international efforts to promote women's rights and the matter of equality as resulting from evil intentions of the Western governments. However, one thing is evident: international efforts are usually pioneered by Western governments and it is natural that they are within the framework of Western value system. Some of the facilities of the Western societies in the increase of creativity and social work of women might be notable but there are problems beside that which can be justified only in the same value systems.

A solution for the problems of women should be found within the general framework of Islamic system. Thus, the capability of the Islamic society in co-ordinating principles, objectives and spiritual values and the needs of today's life can be shown. Therefore, we can see that reservations by Islamic states, which have different political systems, should not be considered as a factor for discriminatory view of Islam toward women.

Besides this problem should be defined whether the serious belief of the majority of Muslim women in the execution of the Islamic *Shari'ah* based on the same existing standards and lack of the feeling of discrimination in them is to be called discrimination. Should not the application of the state of discrimination be carried out concerning its subjects? Therefore, while some of the great Muslim thinkers

discuss the need to revision based on present needs and with regard to practical realities of the contemporary world, should the compilers of international instruments themselves not pay attention to the requirement of revision in these deeds and create a balance between international standards and social values? Should they not require overthrowing the traditions and customs of the societies for promoting the status of women and refuse to recommend unique strategies for this?

For example, legal discussions are irrelevant in many African societies. There are a number of social and economic problems, which prevent accurate execution of the law. In many African societies, poverty is so harsh that ownership finds no meaning. Therefore, law enforcement differs from one society to another and in special conditions such as economic or social pressures or ethnic conflicts, an instrument different from law is demanded for improvement of women's conditions.

Another example is the example of South Asian countries where legal institutions are generally regarded as emblems of colonial powers, which have substituted native culture and tradition and religion. That is why any effort in taking advantage of international standards should consider the manner of supporting women within the domain of their own culture and traditions.[47]

There are superstitious traditions and Islam has suffered from them more than anything else. There are also traditions deep in the history and proper use of them can help the national identity and improvement of women's status. There are traditions embodying the customs of the ancestors and are very dependent on religion. So, believing in a given religion requires following them.

Even the words of the international instruments are sometimes selfcontradictory. For example, the contradiction between obligations included the Women's Convention and the Principle of Religious Freedom which is amongst the substantial freedoms of mankind as Charter and in the Declaration of Elimination of All Forms of Discrimination, inequality based on religion has been specifically supported. Likewise, the free acceptance of a religion which brings restrictions for women who are its followers will be considered discriminations based on sex if the principle of religious freedom is not taken into account.[48]

One point should be considered and that is the fact that the international rules of human rights and specially women's rights have not yet been effectively implemented. Special instruments have faced double problems due to special cultural and historical reasons. In addition to general causes for not executing the international rules, the following reasons can also be considered:

1) Lack of understanding of the nature of women's subservience due to various reasons

2) Lack of attention to discrimination against women as breach of human rights

3) Lack of governmental measures in condemning the discrimination against women

4) Lack of attention of the traditional advocates of human rights to the breach of women's rights as

breach of human rights

5) Lack of universal recognition of the international means of human rights for women

In general, international rules of human rights and legal instruments evolved substantially in a world of interpretations made by men. In order to improve the conditions, the following measures can be considered:

1) Studying the manner of women's rights and its improvement in different cultures based on their own culture and tradition

2) Specifying the challenges between international rules and domestic laws

3) Establishing executive guarantee systems for the improvement of women's rights

4) Establishing support structures for execution of law including political, economic and social structures.

Low level of economic and social development and its consequent outcomes affect the support of the women's rights enforcement. While at international level, there is pressure for implementation of international rules for women's rights, there is no international support to accomplish this task. Bangladesh, one of the members of the Women's Convention asked for financial aid after drawing its first national report to prepare the second report because in a country like Bangladesh, it is difficult to spend money for such a project, but the Committee said in response that there was no possibility of financial aids.[49]

At any rate, different means are required for improvement of the status of women who experience the oldest type of historical exploitation. Therefore, we cannot always wait for international measures and methods. International mechanisms can never substitute national mechanisms.

Conclusion

As discussed earlier, there is a developing process in passing and executing international laws for human rights in whose approval, although pioneered by the West; representatives of the third world countries also participate through international negotiations.

Of course, representatives of governments are not always the people's representatives but after approval, these are the nations that are influenced by the approved instruments. There is generally a challenge between the international rues of human rights and the value system of any society especially in developing countries.

There has always been a question in this writer's mind. Aside from the intention of those who draw up the human rights instruments, what is the real application of such means for women? Has the status of women really improved since the approval of the Convention for Elimination of Discrimination and the

governments joining it? Can this Convention be used as an international force for inducing the governments to accord more attention to the status of women and to the creating of a balance between their standards and the domestic needs?

Of course, the role of women can be effective in this regard. Legal requirements and necessity of unity for solving the existing problems generally reveals itself in the normal course of life of any society. If women define their demands based on their experiences of social inequalities, it will affect the development and enforcement of rules relating to them. The reply to this question depends on the future fate of women especially in the third world countries.

It is natural that those for whom such rules are to be implemented, should understand the standards and regard them not as imposed concepts but as measures rising from their own world and values, otherwise, such measures shall not be accepted and are not legitimate in their view. In addition, if they were imposed, would it not be the violation of human rights itself?

1. Paragraph 3, Article I, the International Bill of Human Rights.
2. In the following you will find part of this heritage:
The Convention on the Political Rights of Women, (1952)
The Convention on the Nationality of Married Women, (1957)
The Convention on Desire, Age, and Record of Marriage, (1962)
The Declaration of Elimination of Discrimination Against Women, (1967)
The Convention on the Elimination of all Forms of Discrimination against Women, (1979) The Final Declarations of the Conferences of Mexico City, Copenhagen, Nairobi and Peking Nairobi Strategy
3. The United Nations and Advancement of Women, 1945–1995, Blue Books Series, Vol. VI, New York, D. P. I 1995, p. 7.
4. CEDAW/C/1997/4, 12 November, 1996.
5. Ibid.
6. The Data on Human Rights for Six International Documents, New York, 1997, p. 17.
7. Convention on Elimination of All Forms of Discrimination against Women DPI/1993, February, p. 3.
8. Convention on Elimination of All Forms of Discrimination against Women, ibid, p. 5.
9. Ibid.
10. Ibid.
11. Rebecca J. Cook, Reservations to the Convention on the Elimination of all forms of Discrimination againt Women, Virginia Journal of International Law, 1990, Vol. 30, p. 643.
12. Convention on Law of Treaties
13. A glance at the treaties trusted to the Secretary General testifies to this claim. The Covenants on Political, Civil, Economic, Social and Cultural Rights, The Convention on Children's Rights, The Third Convention on the Rights of Seas; Multilateral Treaties trusted to Secretary of United Nations, 1995, UN, New York.
14. CEDAW/C/1997/4, 12 November, 1996, p. 1.
15. Rebecca J. Cook, op. cit, p. 645.
16. Byrnes, The Other Human Rights Body; Work of The Committee on the Elimination of Discrimination against Women, Vol. 14, 1989/p. 6.
17. CEDAN/C/1997/4, 12 November 1997, p. 4
18. Ways and Means of Expediting the Work of the Committees, Report by the Secretariat (CEDAW/C. 1995/9) p. 8.
19. CEDAW/C/1997/4), 12 November, 1996, p. 6.
20. Bangladesh, Britain, Egypt, Iraq, Malawi and Tunisia gave reservation to this article.
21. CEDAW/C/1997/4, 12 November 1996.

22. Byrnes, The Other Human Rights Body, The Work of the Committee on Elimination of Discrimination against Women, op.cit. p. 8.
23. CEDAW/C/ 1997/4, 12 November, 1996, p. 78.
24. Ibid.
25. Byrnes, CEDAWS'S 10th Session, the Netherlands Quarterly of Human Rights, Vol. 3, 1991, p. 339.
26. CEDAW/C/1997/12, 8 February, 1997.
27. The idea of Iran's joining to the Convention, has been discussed by different authorities including Bureau of Women's Affairs, Cultural Council of Women, and the Bureau for Women's Affairs in Executive Power and the Commission on Islamic Human Rights. Even before the Peking Conference, it was deemed an urgent act in foreign affairs. There are different views on Iran's joining to the Convention. Some propose it with the general reservation. In addition, some others are against joining the Convention. In their opinion, this shall give an excuse to the adversaries to accuse Iran of violating international conventions in case of not obeying it in Iran. Some consider it with certain reservations for joining it.
28. Katarina Tomasevski, Women and Human Rights, London, Zed Book Ltd., 1993, p. 118.
29. CEDAW/C/1997/4, p. 1.
30. Katarina , Tomasevski , op.cit. p. 117.
31. Byrnes, Andrew, The Other Human Rights Body, op. cit, p. 51
32. Byrnes, Other Human Rights Body, op. cit. p.51
33. Ibid.
34. Tomasevski, op. cit. p.119
35. Human Rights, Edited by Robert Blackburn and James Busutltil, London, Pinter, 1997, p.10
36. Murtaza Mutahhari, Women's Rights in Islam, Tehran: Sadra, p.25
37. Oxford Encyclopedia for Modern Islamic Thought, Oxford. 1996, p. 141.
38. Sura al-Hujurat (49:13): "O mankind! We have created you male and female, and appointed you races and tribes, That you may know one another. Surely the noblest among you in the sight of God is the most godfearing of you."
Sura al-Mudaththir (74:38): "Every soul shall be pledged for what it has earned."
Sura an-Nahl, (16:97): "And whosoever does a righteous deed, be it male or female, believing, We shall assuredly give him to live a goodly life."
39. Sura an-Nisa, (4:34): "Men are the managers of the affairs of women for that God has preferred in bounty one of them over another."
40. Nasrin Musaffa, Political Participation of Women, Tehran: Bureau for International and Political Studies, 1996.
41. Ali Davani, The History of Islam from beginning to Hegira, 'Ilmi Publications, 1985, pp.195-196.
42. Katarina Tomasevski, op. cit. p.118
43. Hisham Kamali, Divorce and Women's Rights: Some Muslim Interpretation, of s.2.228, Muslim World, July-October 1964, p.85
44. Muhammad 'Ali Taskhiri, Islam and Human Rights, Siyasat-i Kharijah Magazine, tenth year, 1996, p.223
45. Husayn Mihrpur, Islam and Human Rights, Siyasat-i Khariji Magazine, no. 1, tenth year, 1996, p.13
46. Murtaza Mutahhari, ibid., p.13
47. Human Rights of Women, National and International Perspectives, edited by Rebecca J. Cook, Philadelphia University Press, 1994, p. 514.
48. Faridah Shaygan, System of UN and Human Rights, Siyasat-i Khariji Magazine, no.4, seventh year, 1993, p.877
49. Katarina Tomasevski, op. cit. p.119

Zahra Davar

Property is the most inclusive right an individual may have in relation to the entities in the material world. In other words, man has the right to property so he may live peacefully and easefully and develop his

character.[1]

In legal terms, property is a permanent right by virtue of which an individual can possess something within the confines of law and benefit from it altogether.[2] Hence, each individual as a member of the human society has the right to use his entire faculty and his relation to others in order that he can appropriate something. This, in fact, is one of the most basic social rights particular to individuals.

Women as members of the human society are no exceptions to this case. After all, women have not been granted rights equal to men from the outset. The history of women's rights for attaining legal personality, social and economic rights, can be categorized in three phases:[3]

1) The age of barbarism and idolatry in which women were not even considered human beings. They served as asset objects to be owned, equal to slaves and beasts of burden without dignity and power of choice. Women were used to gratify men's needs and desires. In other words, they were treated as bodies rather than spirits.

2) The age of Greek, Egyptian, Roman and Iranian civilization: the religions and sublime thoughts of the social refomers gave birth to the advent of civilization; the advent of humane feelngs mingled with science and logic caused women to have material rights as human beings; yet, spiritually and socially they lacked legal personality; they were under complete domination of men in all aspects of life. Since, they had no legal personality, they could not manifest their potentials from a viewpoint of economic and social rights.

History tells us that only in Persia, *shahzan* (the woman who shared her husband's life and was considered his main wife) had independent legal personality, shared her husband's properties and at his death, took over the family in absence of a son. From this, one may conclude that women were weak creatures worthy of pity and protection.

The age of Islam: women attained legal personality and opinions changed. They gained rights equal to men, and shared their husbands' properties. Their not interfering in men's affairs was not owing to having an inferior personality but owing to the law of distributing duties (such as pregnancy, childbirth and ...). This change was so radical that women gained rights equal to men and all forms of discrimination were eliminated.

Thus, women could ultimately play a puissant role in the social arena, enjoy freedoms and rights as everyone else in the society, have economic rights, appropriate assets of their own and claim property.

On the same basis, when talking about freedoms and rights the Universal Declaration of Human Rights[4], and the International Covenant on Civil, Political, Economic and Social rights use *everyone* or *every human person*, meaning men and women on the same level.

Study of Backgrounds of the Realization of Women's Right to Property

As to the introduction stated above, we can say that women can have the right to objects and properties in two ways:

1) Kinship

2) Occupation

Here, we shall address the two topics.

1) Kinship: kinship, by definition, is the family relation recognized in one of the three ways below:

a) Consanguineous kinship: the relationship characterized by the sharing of common ancestors.

b) Affinal kinship: the relationship established by marriage.

c) Fictive kinship: the relationship established by being breast fed by someone other than one's mother which is equal to relative kinship.

In each one of the consanguineous or affinal kinships, there are occasions when women have the right to own property;

Consanguineous Kinship:

By reason of consanguineous kinship, women can gain properties in two ways through the medium of their families. These two ways are marriage portion and inheritance.

1.1) Dowry: it is the property that a wife or a wife's family gives to her husband upon marriage. This custom is not only common in Iranian or Islamic culture but also prevails in most countries. The philosophy and administration of marriage portion varies from country to country until 1262. In Scandinavian countries (Sweden, Norway, Denmark), girls were not granted inheritance and only at marriage, they obtained a small marriage portion from the one whose consent determined their destiny. A few decades before in Japan, the poor families let their daughters for a certain period in order that they could provide their marriage portion. The let might be done to a certain person or to brothels. At all events, after the fixed time expired and they provided a decent marriage portion, they could easily get married and this smut did not have the least effect on their social position nor did it ruin their chance of getting married.5 Or in countries like India, violence against women has been intense in the recent years. Indian brides are savagely slaughtered by the groom's parents for lack of a suitable marriage portion. It seems that in this country a marriage portion is a levy, which the bride's family must pay to the groom.

It might be asserted that the philosophy of a marriage portion is manifold:

It helped a new husband discharge the responsibilities that go with marriage; it made possible for the bride to have economic independence: it made up the girl's meager share in succession or the inheritance of her parents' landed property (the girls' share is half of the boys') and most importantly, it consolidated friendship and created a spirit of cooperation between the two families.[6]

A marriage portion either belongs to the bride or it is given to her by her family. Though the woman may entrust her marriage portion to her husband or to her future mutual children, the husband does not have the right to apportion them but rather he has the right to use them in a reasonable fashion, for legally speaking, a marriage portion is a wife's private property.

The bride's family tries to enhance the desirability of their daughter for marriage by providing her with a suitable marriage portion in proportion to their economic power although no article exists in law which necessitates the provision of a marriage portion.

Although the women are the owners of their property and that the husbands have no right to them, the women, in principle, entrust their property to their family and never make any mention of them. Assuredly, while the mutual life proceeds on the basis of love, friendship and morality, there is hardly any mention of these assets. However, when the foundation of family is shaken, the first problem is how to distribute the assets.

The time when one comes to ask what women's rights are and what assets belong to them, one has to prove women's claim to property.

In some countries, they usually make a list of the assets, and have the groom and his family sign it. However, such an act may be considered an insult to the groom, and an indication of misrust. Sufficed it to say that such an indication of mistrust at the beginning of a married life particularly when the two parties have not yet known each other can exercise a negative impression on them. As a last resort, the Iranian legislators have promulgated that while there is no proof for the women's right to assets, the things that are most useful to them belong to them.[7]

1.2) The inheritance: the transfer of property to an heir or heirs upon the death of its owner.[8] A brief study of the history of women's rights shows that the inheritance of women becomes effective when they develop social personality.

As inheritance is either on sanguineous or affinal[9] basis, women as daughters, sisters, aunts, or nieces can obtain the share determined by law. Here are some examples for the further information of the readers.

Girls

Although in most countries today, boys and girls have equal share in inheritance, at least until the

eighteenth century in most countries like France, Japan, China and so on, the landed properties went to boys: girls did not have any share or even if they had, it was in the form of a marriage portion.

However, Islam gave women social personality fourteen centuries ago, granting them a share in inheritance. The share of girls is as follows:

1. The girl is one of the heirs. If girls and boys are the heirs of the deceased, the share of the girls is half of the boys'. If girls are the heirs of the deceased, two-thirds of the landed property goes to them; and the rest goes to them if there are no other heirs.[10]

2. The girl is the sole heir. She receives half of the inheritance by precept and the other half by refutation.[11]

3. If the heir is the sole sister of the deceased, she is the sole heir; so, she receives half of the property by precept and the other half by refutation. If there are two sisters, two-third of the property goes to them.[12]

4. If the brother and the sister are the heirs, the share of the boys is two times bigger than that of the girls.

5. If the woman is the mother of the deceased and the sole heir, her share is one-fourth of the property. If the deceased has children; the mother's share is one-sixth of the property.[13]

The reason that girls receive one half less than boys, is thus justified:[14]

1. The men are responsible for the provision of things in the family; in other words, men are the economic center and women have no responsibilities whatsoever.

2. It is incumbent upon men to pay their spouses marriage portion, and they have no way to bar them from it even if they agree on it.

3. In executive laws, in paying blood money, women have no responsibility.

At the end of this discussion, I have to remark what goes to women as inheritance, is part of their property. Hence, as owners they can use it any way they desire because *people are the masters of their properties*.

Article 24 of the Cairo Declaration of Human Rights in Islam[15] stresses that: A) Everyone shall have the right to own property acquired in a legitimate way, and shall be entitled to the rights of ownership, without prejudice to oneself, others or to society in general. Expropriation is not permissible except for the requirements of public interest and upon payment of immediate and fair compensation. B) Confiscation and seizure of property is prohibited except for a necessity dictated by law.

Affinal Kinship

Affinal Kinship[16]

When two people get married, they are obligated by certain rights and duties. Concerning these rights and duties which serve as a background for the right of women to property, the following four phases can be discussed:

Marriage portion is, by definition, the property a man gives his wife upon marriage. History shows us that in performing Greek ritual marriage or Roman patrimonial rights, the father could transmit these rights and duties to the groom for gift or money or even for free, because women served as mere objects to be owned and to be enjoyed. For the same reason, some believe that marriage portion is the price for woman.

In Islam, men are obligated to give some property to women as gift.

"And give the women their dowries as a gift spontaneous." (***Surah an-Nisa, 4:4***)

The Holy Qur'an gives the beautiful metaphor of the gift. With regard to the changes Islam creates and the status the Holy Qur'an gives to women, one can never agree that this is a price for women, because they have their social personality; they are not objects to be bought or sold. In other words, marriage portion is not a price for which women give in to intercourse. It is a commitment that law assigns to men, for it is not the subject of any contract in modern law.[17]

There should be marriage portion at marriage and this is a canon, which neither of the parties can violate, for private contracts and agreements cannot overshadow canons. Hence even if marriage portion is not fixed at a marriage, the woman is given suitable marriage portion[18] and this refutes the claim of those who state that the suitable marriage portion is the price for women, for if the contract is based on selling and buying, and the price is not fixed, it nullifies the deal,[19] whereas marriage without fixed marriage portion is correct.[20]

Most jurisprudents believe that there are no limitations on the amount of marriage portion; the only condition is that marriage portion should be a transmissible property.[21]

Some others believe that the amount of the marriage portion should not exceed the one fixed by the holy Prophet.[22] It seems that such a basis should be respected, for it shall prevent the fixing of heavy marriage portions which cause the increasing of expectations and the deviations from cultural and social moral codes and problems of this sort.

Some people believe that marriage portion as the financial security for women in married life and an opportunity for their being independent of their husbands especially when the right to divorce is exclusive to men.

And if we regard marriage portion as gift, it is man's respect for women.

At any rate, no matter wat the philosophy of marriage portion is, when the marriage contract is signed, marriage portion is transmitted to women.[23]

From the points mentioned above, it becomes obvious that Islam and the Iranian law seek to protect women's rights and provide their financial independence; however, socially speaking, marriage portion has gained a ceremonial quality only mentioned in the marriage certificate. Although it is '*Ind al-Mutalibah'*, meaning that man is obligated to pay it any time the woman demands it, in practice, as long as they live under one roof, there is never any mention of it. And only when the family pillars are shaken, the right to marriage portion is mentioned. And when the marriage portion exceeds the financial power of man, the marriage portion loses its protective quality.

Subsistence

Subsistence, by definition, is whatever is incumbent on man to provide for his spouse such as food, clothing, housing and the likes.[24] In other words, the responsibility of providing for the woman when she still stays with her family is on her father but when she is united in marriage and organizes a mutual life, the responsibility is shifted onto her spouse. Likewise, the responsibility is shifted onto her elder son if she is a mother without a husband.

At all events, a woman is provided for by her consanguineous or affinal kin when she is a girl, a mother or a wife. Hence, she does not have anything to worry about on that score because under Islamic law and jurisprudence, the man is the head and the economic pivot of the family, so he is responsible to provide for her family.

According to Islamic jurisprudence, the Iranian Civil Law determines the limits of subsistence;

Article 1107: Subsistence includes housing, clothing, food, and furniture appropriate to the situation of the woman and a maid if she is used to having one or if she happens to be sick, or handicapped.[25]

Some Muslim jurisprudents[26] believe that subsistence must not be speci(ied by certain objects and that one should refer to common sense for determining subsistence, because subsistence differs at different times and places. Therefore, subsistence must not be limited to certain things. This seems natural because what matters in married life is the relation based upon mutual understanding and good conduct and the man's obligation to satisfy her material needs and provide her with solace.

There is a long-standing controversy over the philosophy of subsistence. Some commentators argue that if we believe in women's right to participate in all spheres of social and political activities, why should we reduce them to the degree of an object by considering subsistence for them? On the other hand, equal rights for men and women are accepted and women have the right to property. So, why should the law compel man to pay subsistence to woman?

Although Islam does not forbid women from participating in social activities and regards effective respect for their rights, it accords considerable attention to women's physical condition in fulfilling their maternal and wifely duties. Although attempts have been made to provide equal opportunities of employment for men and women particularly over the recent decades, and the States move onto this track due to their internal policies and the recommendations of International assemblies,[27] these opportunities, in practice, are more given to men than to women. Therefore, women have a lesser chance to play their part in providing for themselves. Therefore, opportunities should be devised to provide for them.

In this regard, one can refer to paragraph 2, article 23 of the Universal Declaration of Human Rights and paragraph one, article 25 of the same declaration and paragraph B, article 7 of the Cairo Declaration of Human Rights in Islam[28] because in these articles, it is mentioned that man should provide for his wife and children and this does no contradict the equal rights of men and women. The other question, which comes up here, is if the woman is the owner of her subsistence or if she is just entitled to use it temporarily.

In this regard, the lawyers and jurisprudents hold that the objects in question should be categorized and divided. For example, the cosumable goods (such as foods), belong to women, but in other cases (such as housing, ...) the women have the right to use them but should attempt to look after them.

Another question, which emerges here, is this: do women have the right to receive subsistence if they happen to work and earn money?

At any rate, man is obliged to pay for his wife's expenses. The legislators emphasize that subsistence is a rule to be obeyed and the women or other parties cannot cancel it. Even if women work and earn money, their husbands cannot oblige them to cover some of the expenses of their mutual life. However, women are instrumental in covering some of the expenses because they are more than ever before given the opportunity to work.

With a brief glance at Iran today, one can realize that women assist their husbands in covering every day expenses although men are obligated to pay for their subsistence. If they are employed, they expend their income in better administering the family; if they are homemakers, they cut down on expenses and if they are villagers, they do farming, carpet weaving and harvesting.

At any rate, this legal protection of women seems necessary although we witness women working and helping their husbands in most of the social activities.

In addition, the legislators have promulgated a law, entitling women to sue their husbands if they do not pay for their subsistence. Although this law can prove very effective in punishing men, it should not be ignored that what dominates the family is ethical practice and the law exercises its force when this ethical practice is violated.

Payment

The Islamic law regards effective respect for women's personality and dignity; so, they are not obligated to do the house chores and the husbands do not have the right to oblige them to such chores as cooking, cleaning, tailoring and so on. Despite some prevailing beliefs, subsistence is not at all a payment for women's housekeeping. Women do not do all these acts out of their own volition. That is why Islam entitles women to get payment for what they do at home, for in Islam, anyone is to be respected and deserves to be rewarded for their work. ·

The prevailing Islamic law regards divorce as a right particular to men. By virtue of this right, men can put an end to mutual life by paying alimony and marriage portion. After divorce, women need financial protection. Therefore, the legislators promulgated a law, which compels men to pay for the pains their spouses have taken during their married life. In other words, the spouses receive their share of the life, which they helped take shape, but now it has fallen apart. Some people believe that this act[29] is a manifest insult to the elevated status of women, relegating them to the degree of a house cleaner: However, it seems that if this law is viewed like marriage portion and subsistence from a materialistic point of view, such views can be proposed.

The fact is that if we view women as creatures endowed with dignity and personality with social and economic rights from an Islamic standpoint, we realize that the aim is to protect women's rights and pave the way for their economic independence but not set a price for them or insult their dignity, as article 1 of the Cairo Declaration of Human rights in Islam[30] states, "Dignity is a right guaranteed for the entire human race and all people are equal in dignity granted by God and the inherent responsibilities and women have the same human dignity as men.[31]

Inheritance

While women have certain rights during mutual life, they have other rights aswell when their husbands die, namely that they receive a share from their property just as the husbands inherit their spouses' property in the event of their death.

The share of inheritance of each spouse is different and this is one of the inequalities between men and women. Men inherit from whatever their wives possess: yet, women do not inherit from real property. In general, the women's share of their husband's property can be discussed in two ways.

Amount of inheritance

If the husband dies and his wife does not have any children, she inherits one-fourth of the property.[32] If she has children, she will receive one eighth of the property.

In case one of the spouses happens to be to the sole beneficiary, in case of man's death, the woman receives one-fourth of the property and the rest goes to the common wealth.[33]

The properties from which women inherit

According to Civil Law inspired by jurisdiction, the wife's share is half of her husband's: furthermore, she is deprived of certain properties inherited. These properties include lands, trees, and buildings. The land whether built or not is not given to women as inheritance. Therefore, women do not receive a share from building and trees.[34]

The philosophy of this may lie in the historical aspects of the tribes, lack of women's property after their husbands death, and the transferring of them to the tribe.

At any rate, women enjoy their deceased husbands property. The laws of inheritance contradict the equal rights between men and women from the perspective of international documents. For example, in the convention of all forms of discrimination against women, paragraph E of article 16 recognizes equal rights for both spouses in all cases: equal rights for the spouses as to property, acquisition, administration, custody, and the transferring of properties whether free from or with charge.

Employment

Of the most obvious individual rights in any society is the right to employment. The right to employment is the logical resu1t of freedom of employment, namely that there is employment for those who seek it.[35]

In other words, every individual has the right to choose his desired employment and use it as a means to earn his living and the state is obliged to provide this right for everyone.

In general, the goal of any employment, on the one hand, is to earn one's living and on the other, to improve the economic condition of the nation. At any rate, there are certain points, which must be born in mind in this regard:

1. Everyone has the right to work.

2. Everyone has the right to the choice of his profession

3. Everyone has equal rights as to profession.

4. The workers have the right to protective rules.

5. The government is obligated to provide suitable profession.

With a glance at the international covenants, it becomes obvious that the right to employment is recognized for everyone without limitation of any kind due to sex, color, race etc.

Paragraph 1 of article 23 of the Universal Declaration of Human Rights suggests, "Every one has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment."

Article 6 of the International Covenant on Economic, Social, and Cultural rights states: “The State parties to the present covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”

And the Cairo Declaration of Human Rights in Islam in article 21: “Work is a right guaranteed by the State and Society for each person able to work.”

According to the Islamic Constitution, the right to employment is regarded as the inalienable right of each individual and according to paragraph 12 of article 3, the state is responsible to set up a correct and just economic foundation according to Islamic principles in order to bring about welfare, eradicate poverty and eliminate all deprivation in all areas of food, housing, work, health and providing social insurance.

Also paragraph 2 of article 43 states “The State is responsible to provide the possibilities and opportunities of work for everyone towards achieving full employment for all and provide the means of work for all who are able to work but lack the means.”

And the rule of employment of the Expediency Council states: “All people, men and women, are equally protected by the law and everyone has the right to choose any occupation provided that it does not contradict Islam, the general good and the rights of others.”

From the points noted above, it becomes manifest that there is no difference between men and women as to the choice of employment; both are free to choose and the only thing that limits their freedom is that the occupation chosen should not contradict Islam, and the public good. In the case of women’s employment, the following two points are noteworthy:

1. Women ate not capable of equal work with men due to their physical condition such as their delicacy, pregnancy, and maternal duties: so, they might encounter discrimination as to the choice of employment, lose their jobs, and get lower salaries. Hence, due to these reasons, they should be protected by the state and the state should take appropriate measures to safeguard their rights.

2. Women’s occupations are limited due to legal limitations. For example, the legislators have forbidden hard, dangerous work by women.[36]

Therefore, even if we believe in the equal rights of men and women, we should persuade the States to take protective measures even if they are to men’s loss and to women’s gain.

The right to leave for childbirth, pregnancy and feeding is officially recognized as a way to respect and protect mother and child. The job security of women is ensured under certain special circumstances and the government puts services in priority.[37]

Besides, there are two limitations as to the choice of profession on the part of women; the limitation imposed by the society for women’s jobs; in political affairs, (leadership, presidency, executive power

presidency ...) and in official jobs (Judgment, military positions,) are among the activities in which women cannot actively participate: of course politicians and jurisprudents have different and sometimes contradictory views in this regard.

Secondly, limitation on the part of the spouse namely that the women should try to choose an occupation which in no case contradicts the family welfare or dignity, for the Civil Law entitles men to deprive their wives of choosing such occupations when they contradict the aforementioned issues.38

At this point, it seems necessary to point out that the recognition of such an issue is made by common sense and the legislator only seeks to solidify the family pillars. If we take it for granted that men are responsible for providing for the family and women for administering the house chores, man is capable to stop his wife's activities if they hurt the family relationship, or impede her doing her maternal or wifely duties.

In this case, when women encounter limitations in choosing a profession, they are consciously or unconsciously bound to choose their desired profession or when men provide such comfort that women relinquish their right altogether.39

Although the jurisprndents and the legislators believe that women must obey their husbands, and the fact that men are the heads of the family and that women are obliged to obey them and need their pem1ission to do their activities, some great Shi'ite scholars propose new ideas on this score because of the special time such as:

Q: What is the duty of women if their husbands are against their going to university or to office?

Ayatullah Sani'i answered, "It is incumbent upon women to obey their husbands unless something contrary is stipulated at their marriage. Their preventive attitude may be to the point here it does not prove hard and intolerable to women.40

It seems that this state of hardship is both individual and social. From a social point of view, one can justify that when the society provides for an individual's education, he, as an expert, has a role in contributing to the social and economic conditions of his country. One cannot say that just because men have the privilege to be the heads of the family, they cannot deprive their wives of the social services they can render to the society.

In the end, we should admit that the international covenants and forums have kept encouraging the governments to distribute equal rights of men and women for work, and they have succeeded in eliminating discrimination in the field of employment. The opportunities of women in obtaining jobs are practically less than those of men.41 In case of women, most of the part-time seasonal jobs are considered as self-employment. Women are abused in working and there has been scant protection of them.

So, even if we believe in the equal rights of men and women in work, we should require the States to take protective measures, though they are to men's loss and to women's gain, in order that we may reach a real balance.[42]

Conclusion

Throughout the past decades, the issue of Women's rights has undergone positive and considerable changes to the point where they have been promoted from the degree of chattel to the degree of acquiring legal personality and the finding personality as a human being and having passed that stage, they have brought up the notion of equality of men and women during the recent years.

By the same virtue, some of the International documents and civil laws of countries have betrayed a tendency to recognise women's rights and some principles are issued in this regard. In international documents, the possibility of anyone's any man's or anybody's enjoying social and individual rights has been emphasised and the use of these words shows the equality of men and women in using these rights and freedoms for woman is a human person.

Also, by studying the grounds for the realisation of women's property and discussing its offshoots it became manifest that in consanguineous kinship, dowry, inheritance and in Affinal kinship, marriage portion and alimony and inheritance provide the ground for woman's right to property.

As to occupation, the right to work and earning income which create the right to ownership were discussed in detailed as viewed by International and internal documents of law, and it was stated that although there are limitations concerning women's working from a legal and practical perspective, women's working creates the right to ownership.

To sum up, it must be asked whether women have full authority over their rights or her right to ownership should take place under the supervision of some second party like her husband? Or from a legal perspective, have women full authority or are they to have a guardian?

The reason for proposing this question is that in the past laws of some countries, including France, the spouse did not have direct interference in her financial matters and had to ask her husband's permission in doing financial matters.[43] In answer, it may be said that in the communities which by joining International conventions have accepted equality of men and women, women have financial independence and every interference in her properties. In Islam, resorting to the verse 32 of sura of Women,

"Men shall have of what they earn: and for women shall have of what they earn" (***Surah an-Nisa 4:32***)

women have the right to property, profession and earning money, and her right to property is esteemed in Islam and by the same virtue, they can have any kind of interference in their property.

The civil law of Iran, following the tenets of Islam as to the right to property and financial independence has elucidated this the basis for this independence in the two following principles:

Article 30: “every owner has any kind of interference in the his/her properties unless as otherwise prescribed by law”

(The word *every* includes men and women.)

Article 1118: “women can independently interfere in their properties” in fact, men and women have equal financial independence.

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5. Hasan Sadr, ibid, pp. 24-35 & 99
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27. In thc Convention on Elimination of All Forms of Discrimination Against Women, the States have been invited to accept equal payment for men and women, to eliminate the discrimination among men and women under special circumstances such as marriage, pregnancy and motherly duties as much as possible, and to formulate protective rules for women. In addition, in the international arena, paragraph 2 of article 43 of the Constitution obligates the State to provide suitable working conditions for all and sundry.
28. ARTICLE 23: 1. Everyone has the right to work, to free choice of employment, to just and fovourable conditions of work and to protection against unemployment. 2. Everyone, without
any discrimination, has the right to equal pay for equal work. 3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. 4. Everyone has the right to form and to join trade unions for the protection of his interests.
ARTICLE 29: 1. Everyone has the right to a standard or living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood , old age or other lack of livelihood in circumstances beyond his control. 2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.
ARTICLE 7 of the Cairo Declaration of Human Right in Islam: A) Woman is equal to man in human dignity, and has rights to enjoy as well as duties to perform; she has her own civil entity and financial independence, and the right to retain her name and lineage. B) The husband is responsible for the support and welfare of the family.
29. For further information see Zahra Davar, A Study of Divorce in Jurisprudence and Law, Majalla-yi Siyasat Khariji, Peking Conference, 1995, note no. 60: in the course of divorce, in case the spouse demands payment for the things nor religious incumbent upon her, the court takes measure by way of compromise; if no compromise is achieved, steps are

taken based on any financial conditions stated prior to marriage; otherwise, if the divorce is not demanded by the spouse, and if the divorce does not arise from any error on the part of woman, or any perversion, steps are taken as follows:
If the spouse has performed the duties prescribed by religion or marital bond, and if this is proved to the court, the court shall calculate the payment for those duties and issues the decree for the payment.
Apart from what was stated earlier, the court determines a certain payment according to the period of the married life and according to the financial prowess of the husband.
30. Muhammad Taqi Ja'fari, ibid.
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41. As to the equality of wages of men and women for equal work in letter no. 100, the International Organization of Labor is considered as the basis and most of the countries have joined it but in practice this action has been less exercised.
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Susan Pasgar

Over the recent years, reproductive health and rights have been the subject of conferences and assemblies relevant to population, development and rights of women at national and international level. Although women have been taken into consideration due to their physiological structure in reproduction, their needs and desires have been accorded little or no attention.

Women's spiritual and physical health and social welfare play an essential role in reproduction. The neglect of women's reproductive health and rights and lack of suitable healthcare possibilities have resulted in the diseases of women and children and their sudden deaths. The current statistics suggest

that at least 500,000 women lose their lives every year due to the diseases resulting from pregnancy and 99 percent of these victims are living in the developing countries.[1]

In developing countries, the rate of death of the women who have had a healthy life during childhood increases as they approach the reproductive age. The danger of the death of women is reported to be 80 to 800 times bigger than a similar case in developed countries.[2]

In most societies, sterility is looked upon with contempt; even when sterility is on the part of men, the idea of sterility is most cruelly directed towards women. In the world today, the right to life, which is among the most fundamental human rights, should not be violated because of the incurable diseases or sudden deaths. The calamities resulting from sterility can be reduced to minimum with proper knowledge and recognition and suitable healthcare possibilities.

Not only are the reproductive health and rights a new issue but they are also a controversial issue in national and international conferences due to the fact that they are closely associated with the most personal aspects of human life and the status of women in different spheres of family and social activities. This article is an attempt to investigate the concept of reproductive health and rights as a component of women's rights, the perfection of this concept and the different aspects of this concept from an Islamic viewpoint.

The article grows out of the writer's interest in women's rights especially in developing countries. Attempts have been made to come to a desirable conclusion regarding the recognition of the social needs, and necessities.

The Genesis of Reproductive Health and Rights

Article 16 of the Universal Declaration of Human Rights lays stress on the founding of family. The recognition of this right is dependent on the marital bond and the founding of family.[3]

Twenty years later, the Declaration of Tehran Conference (1968) on Human Rights declared the right of parents in free decision-making and the recognition of their rights in relation to the number of their children.[4] Although the documents involved do not necessitate legality in international arena, they have gained great international protection.

As to the rights of covenants, the International Bill of Human Rights, the recognition of reproductive health and rights within the framework of family, guarantees some of the legal obligations as to the protection of rights included therein (article 23 of the Covenant on Civil and Political Rights and articles 10 and 12 of the Covenant on Cultural, Economic and Social Rights 1966).[5]

The status of married women constitutes the constant subject of International Bill of Human Rights. Article 12 of the Covenant on Cultural, Social and Economic Rights lays stress on the individuals rights for the better enjoyment of mental and physical healthcare. However, a fundamental agreement on the

concept of women's rights was not concluded at international plane at the moment of approving the bill, and the aforesaid covenants lack sufficient sensitivity towards women's healthcare and rights. The idea that women can enjoy certain rights is nipped in the bud in international dialogues. The sad truth is that the Bill of Human Rights has sought to drive women into the margin from the issue of human rights and only over the last fifteen years, human rights have considered the truth of women's life in the society.6

At any rate, regarding the neglect of the fundamental women's rights at international level, what has become of particular interest since the sixties has been the issue of family planning. Considering the increasing population growth at international plane and its effects on the provision of food, the acquisition of resources and development, a great number of developing countries took effective measures in modifying reproduction and in increasing access to the services relevant to family planning. Thus, family planning became the focus of demographic and healthcare plans in these countries.

Family planning, now extensively exercised in most countries, has started as controlling population plans since the 1960s and 1970s which itself was a significance of the destructive nature of population growth as a bomb, which might explode any moment and devastate the world. In this demographic model, the rights of individuals and women are paid scant attention to as to deciding on their reproduction and intercourse,7 while family planning is paid ample attention at the very early stage.

Since 1970, medical–biological model was developed in relation to family planning. The recent model places stress on health care advantages for women as to the reproductive distance and the limitation of children so that childbirth may be brought back to individual level. The plans of the United Nations were centered on elevating and improving mothers' healthcare conditions and children's survival. The idea is that the main shortcoming of the previously mentioned plans lies in ignoring the women's experiences, rejecting the necessity of self–empowerment and stressing the protection of their free choice.8

As gradually as the international movements on healthcare introduced the humanitarian outlook in improving population and healthcare policies, there appeared a change in the demographic models. The horizon of the new outlook was not only limited to family planning but included many diverse issues including the reproductive health, educational plans, the empowering of women , and equal rights for women.9

Surely, the access to healthcare is an issue, which influences the position of women, men and children in all regions of the world. However, due to unequal and vulnerable situations, women encounter many problems.

In 1975, the first women's conference in Mexico was the turning point of women's healthcare issues based on human rights. Article 12 of the Convention Elimination of all Forms of Discrimination against Women (1979) expressing the equal rights of women and men as to access to healthcare points to the issue of family planning. The right to equal access to healthcare requires the removal of any social and legal impediments which might exist in this regard especially as to the women who are deprived of such

services due to poverty, illiteracy and false beliefs.

Article 16 of the aforementioned convention addresses the discrimination against women in private life especially in the realm of the family which is based the long-term cultural processes. Paragraph 2 of the recent article in one word or another lays stress on the concept of the reproductive right based on free decisionmaking by understanding the reproductive distance and the number of births and the right to access to information.

It was only after 1985, namely after the outbreak of HIV and AIDS that the policymakers, the workers of the general medical care, the scientists and the advocates of women's rights began to recognize and approve the mutual relation between healthcare and human rights.[10] It must be noted that in the Convention on Elimination of all kind of Discrimination noted above, the reproductive right has not been officially recognized.

In 1993, the Universal Conference on Human Rights was held in Vienna. Although the declaration of the aforesaid convention explicitly recognized the women's right to the highest standards of physical and spiritual healthcare, suitable medical care, access to family planning services and education in all stages, it did not elucidate the concept of reproductive health. This essential affair was entrusted to the Intemational Conference of Population and Development in September 1994 in Cairo.

The Cairo Conference was the third intergovernmental conference which dealt with the issue of population. The first conference was held in 1974 in Bucharest and the second conference in 1984 in Mexico. In Bucharest Conference, the differences of north and south prevailed.

The representatives of the countries discussed the ways to fight the effects arising from the rapid growth of population and the ways to ameliorate the economic development, reconstruction and the revision of international economic system. In the second conference, the developing countries expressed more protection for family planning. However, they opposed some of their executive ways such as abortion as a way to birth control.[11]

The topics discussed in the preliminary sessions of Cairo Conference (The Third Conference on Population) and also the independent gatherings of non-state organizations centered on moral views, and values relating to human right, poverty, decline in values, women's healthcare, abortion etc. The discussions under the influence of the issues are encountered by the international community during the last decade including the outbreak of AIDS, the irreparable destruction of environment, the increasing population growth etc.

However, the main discussion of the conference was formed as the result of the coalition of States active in human rights and women's healthcare related to the traditional approach to population and family planning.

Some people held that population growth was not the main factor for development. Some others argued

that population policies were usually cruel and unfair to women. Still, some others believed that the approaches focused on family planning were very limited and did not reflect the realities of women's life.

Considering the aforementioned differences, the advocates of women's healthcare regarded a new approach as necessary. The viewpoints expressed by the Catholic Church, Muslim and population experts were not accepted. The result of the above-mentioned discussions expresses a balanced compromise between different views.[12] Thus, the final document of Cairo Conference approves the authority of states and guarantees the principles relating to human rights. The first paragraph of the preamble to chapter two, which was the result of the attempts of Muslim countries and some Latin American countries states:

It is the right of every State to harmonize the exercise of the recommendations with its developmental rules and priorities, and put them into effect with complete respect for religions, moral values and cultural backgrounds of people based on the international human rights rules accepted by everyone.[13]

The final document of Cairo Conference indicates the executive plan relating to population and development in the next twenty years. This document shows the strategy in which emphasis is placed on the affairs between population issue and sustainable development , and on the full realization of women's and men's needs as individuals and not as the goals of demography.

The key to this new outlook is empowering the women, providing more opportunities for them through access to medical, educational and occupational services. The executive plan refers to everyone's access to family planning until 2015 or earlier as part of a comprehensive outlook towards the rights and childbirth rights.

The Conceptual Development of Reproductive Health and Rights

In 1990s, some international conferences expressed a common belief in the social development through providing the basic human needs, the cooperation of the individuals, families and society in development. Undoubtedly, the real development requires independence and freedom of action.[14] The president of the Central Committee of Cairo Conference states, "The reproductive health and rights are the main factors for development. Hence, the services relating to reproductive health should be treated as one of the most appropriate answers to individuals' needs."[15]

As expressed earlier, the concept of reproductive rights as the basic human rights, takes root in some international documents. The executive plan of Cairo conference states that it does not seek to create any new human rights but it stresses and verifies the use of the standards of human rights accepted by everyone.[16]

The concept of reproductive rights was discussed in chapter seven of the executive plan of Cairo Conference and in the Fourth Conference of Women's Rights (1995). It guarantees some parts of human

rights recognized by national rules and international documents relating to human rights and other agreements relating to the United Nations. It includes the right to free decision-making of all spouses and everyone as to the number of their children, the time of their birth without any kind of discrimination, pressure and violence, the right to the enjoyment of proper information and instruments for the exercise of human rights and gaining the highest standards of reproductive rights.

Considering the points noted above, the international concept of these rights seeks to recognize the reproductive rights for everyone. Hence, reproductive rights have assumed greater dimensions since the inception of the Cairo Conference.

Although the recognition of this right outside the family unit contradicts many rules and values of countries including the Muslim countries, the problem has somehow been subdued as a result of the exercise of the authoritarian right of states and reconciliation of the recommendations of the conference with national rules and moral and religious values in the introductory of the plan.

Generally, reproductive rights have three dimensions:

1. The rights of individuals to become parents who are allowed to have any number of children they wish. This right requires the right to the enjoyment of medical and educational possibilities, access to information and low-expense healthcare strategies for birth control.

2. Human rights require that the spouses and individuals can satisfy their reproductive needs without any impediments.

3. Human rights require guaranteeing that family planning, especially those areas relating to motivational activities, should be exercised fairly and softly in relation to individuals, family planning and everyone concerned in order that no inequality might emerge among social groups.[17]

After the Cairo Conference, reproductive rights suffered conflicts relating to national and international rights just like most of human rights generally expressed in abstract with a view to achieving a certain definition which implies the vastness, exact distinction and the rules on its violation.

The rules for determining the content, the elements of the rights, the issues and effects of these rights relating to the new technology of reproduction including laboratory reproduction, and choice of sex of the baby are among the fundamental problems in giving a definition for the aforementioned rights. Although it seems farfetched that these issues can be settled at international level between the States, it is advisable that the international community help the other countries by presenting political and moral guidelines.[18]

Despite the conceptual deficiency, the document of Cairo Conference became a turning point in recognizing the reproductive health and rights as part of human rights, rights that shall not be achieved without granting equality and empowering women.

The impediments to achieve the goals of reproductive health and rights were described in a report by the then Secretary General of the United Nations: there are many impediments to achieve the goals of reproductive rights due to the importance of the issue and due to its controversial nature and struggles have gone on for ameliorating these rights. The important problem is the conceptual nature of the issue.

In many countries, human rights and reproductive health and rights differently expressed in other international documents are not very familiar. Besides, due to formulation and expression human rights and reproductive health and rights might be abstract rights alien to the outlooks, traditions and local experiences.

There are few experts on the previously mentioned rights and in many cases, they have no knowledge of the case. Under such circumstances, women are more limited than men. Therefore, without access to information and relevant knowledge, the achievement and exercise of such rights do not seem farfetched.[19]

Due to these impediments, achieving the reproductive health and rights has limited domain. To overcome the impediments, we can strengthen and apply international pacts and monitoring bodies. Another way would be to increase relevant information and education, attempts to promote awareness of millions of people who have little or limited knowledge about healthcare issues.[20]

Perhaps the best ways to give a proper definition for the concept of reproductive health and rights at national and local level are to adopt the legal language with practical needs. “For example, in order that such concepts as reproductive health and rights should be materialized at national level. it is necessary that they be mingled with social, political and religious structures.”[21]

Reproductive health

Reproductive health is not a new concept but the product of a process, which made a change in the stance towards the issue of public healthcare and family planning. The reproductive health is the first and the most important element of the reproductive health and rights and is conditioned by the level of social and economic development, life style, the women’s status in the society and their access to medical services. Article eight of the first chapter of Cairo Conference deals with a new impression of the reproductive health:

The world has undergone changes, which have brought about new important opportunities for development and population. Among the most striking of these opportunities is the fundamental change in the outlook of the people and their leaders concerning the reproductive health, family planning and population growth which includes a new widespread mentality to the reproductive health as defined in these programs.[22]

Reproductive health as recognized at international plane is dependent on a definition, which the World

Health Organization has given of public healthcare. The reproductive health is the situation in which complete physical and mental health, the social welfare of the individuals in all aspects of system of childbirth, and the functions are safeguarded and does not refer only to lack of sickness, and weakness.

The reproductive health means that human beings may enjoy healthy marital life and can decide on the time of childbirth and the number of children. The awareness and access to the best sure methods of family planning which does not contradict the laws and the access to medical services enabling women to pass their pregnancy time are among the rights of men and women.

The healthcare issues are associated with the situation and conditions of different social groups. However, the important thing is the outlook towards these methods and the steps taken for changing the unpleasant conditions and solving the relevant problems. In the new outlook, the reproductive health finds vaster dimension and gets associated with the healthcare and the environment of the individuals. Hence, in the system of childbirth, health is a comparative concept influenced by varying factors, which operate in mutual relation to one another. Mental peace and the access to the healthcare require the creating of an atmosphere in which the process of childbirth takes place in physical, mental and social conditions.

The new outlook is based on the presupposition that the individuals' healthcare and health is influenced by their medical backgrounds and health. The reproductive health not only reflects their situation and instructions in childhood but their healthcare situation influences it in childhood, and adolescence.[23]

Family Planning

One of the most important aspects of the reproductive health and rights is the access to methods for family planning as there has been hitherto no method is considered as complete without family planning.

Due to the traditional aspects of the reproductive health, medical aspects of childbirth were discussed in relation to the general outlook of the healthcare of mother and child. However, changes taken place in sociodemographic matters during the recent decades reveal that the outlook is very limited and shall fail to answer the women's healthcare needs. Therefore, family planning is chosen not only as one of the basic features of reproductive health and rights but also as a method for living through fewer pregnancies.[24]

Although reproduction is regarded as the main mechanism of man's physical life, its planning is a determining factor for the mental and physical welfare and health of the individuals, the family and the society. Thus, "planning as to the time and number of births is one of the least costly methods of improving life and surely it is a grave mistake ignoring it."[25]

Reproduction is conditioned by the complicated economic, social and cultural structure. "The study of history shows that the unequal position of men and women in different historical periods and societies

has been instrumental in decisions concerning reproduction although the process of women's socialization has verified the inequalities and women have been the main reason for these inequalities."[26]

The fact is that these are the women who become pregnant and nature has not given them power of choice in this regard. Therefore, in order to control their biological situation, they should consciously think of a way. The woman who is not capable of controlling her own pregnancy and directing it in her own favor lacks mental and physical health and cannot enjoy the pleasure of a self-willed pregnancy and avoid the depression resulting from unwanted pregnancy. The potential effect of family planning is that women become able to plan for their pregnancy and give birth in the most suitable time due to their physical or mental situation and economic sources of family.

Meanwhile they should seize suitable opportunities to further their education and to actively participate in all aspects of social endeavors and consequently enjoy a prosperous life in wide dimensions.

Throughout the world, especially in developing countries, the prevention of unwilled pregnancy has an important effect on mothers' health. The differences as to the deaths of mothers in developing countries and developed countries are numerous. In 1988, in less developed countries, the deaths of mothers due to pregnancy effects were 700 out of 100,000 whereas in developed countries, in the same year, the rate was 26 out of 100,000.

According to the report of the World Health Organization, during a woman's lifetime, the probability of death due to pregnancy effects in developing countries is one to twenty whereas in some developed countries, it is less than one to 10,000.[27]

The Secretary General thus describes the relation between the rate of pregnancy and development:

The rate of birth and death demands social concepts apart from population. For instance, decrease in reproduction means small families, and allocating less time to reproduction and bringing up children. These changes enable many women to further their education and work outside. The low rate of reproduction and death results in the decline of population, the fact that has important effects on the work force, commitment, services, social well-being and healthcare system.[28]

The executive plan of the Cairo Conference demands the long-termed success of family planning to observe the conscious choice with freedom of action. As an attempt to satisfy the frustrated needs, all countries are demanded to remove all the obstacles to the use of family planning service in order that one may be sure that each child is consciously brought into this world.

Abortion

An induced abortion is one of the oldest methods of birth control widely performed throughout the world in the highly industrialized countries or in developing countries. The places in which abortion is legal, the

method is a little threat to the health of women whereas in places in which it is illegal, (for it is often performed in unhealthy conditions) it might bring on infertility and cause unwanted abortions. According to the report of World Health Organization, 70,000 women die annually as the result of the effects arising from abortion.29

From among the 45 million abortions annually reported, about 20 million are reported to be unhealthy which might amount up to 20 million today.30

The fact is that the prohibition of abortion has never been an effective method for preventing it. Hidden abortions are repeatedly performed and surely the ill effects of such abortions shall be directed to low income classes of the society.

Based on the existing information about 193 countries, a great majority of countries (98 percent) has allowed abortion to preserve the well being of the mother. Abortions for preserving the physical well-being of the mother are legal in 119 countries (62 percent); abortions for preserving the mental ,well-being of the mother are legal in 95 countries (50 percent); abortions for preventing the completion of a pregnancy resulting from rape or incest are allowed in 81 countries (42 percent): abortions for preventing the birth of a child with serious deformity, mental deficiency or genetic abnornmality are allowed in 78 countries (40 percent): abortions for social and economic reasons are allowed in 55 countries and are allowed in 41 countries (21 percent).31

The issue of abortion is so extensive, which can be discussed from different, medical, social, moral and philosophical perspectives. The extent of induced abortions throughout the world has turned it into a universal problem. In the Cairo Conference on Population and Growth, abortion was one of the most debated issues. Finally, the representatives agreed on the following points:

In no case, abortion should be encouraged as a method of family planning. All States and intergovernmental and non-governmental organizations are demanded to accord more attention to their commitment concerning the women's healthcare, regard the unhealthy effects of abortion as an important issue, and decrease abortions through extensive and optimal family planning services. Any change in abortion in the medical system at national or local level must take place according to national laws. In circumstances where abortion is not illegal, such operations must be performed safely.32

Education-Information-Communications

The right to have access to information and communications is another constituent of the concept of reproductive health and rights. The importance of the aforementioned issues arises from the knowledge that they are important instruments to create changes in conducts and attitudes. Without access to information, decision-making shall not be possible.

Regarding the socio-cultural background, the States should take necessary steps in presenting

information and instruction, which is the necessary condition of the reproductive health and rights. The Cairo program of action offers a harmonious approach to education, information and communication and provides that it should mingle with the goals and policies of development and population at national level and the reproductive health.

In general, in some cases, the cultural, political and social conditions limit the access to the reproductive health. In this regard, one can mention ignorance, superstitions and some cultural taboos. The strengthening of the interrelation of family planning and the activities relating to the aforementioned issues cause them to protect each other and enable the national programs to achieve the full realization of the frustrated wishes through transmitting healthcare to reproduction to the highest degree of quality.

Education is one of the social variables, which can exert the deepest effect on the concept of the reproductive health and rights. In the present age, education especially for girls and women is an essential factor for achieving sustainable development and is confirmed in international conferences. The fact is that in many countries, women's status is inferior to men's. Women's participation in home, social activities and employment are often ignored. Their situation has been viewed from the perspective of childbirth and child caring even though they gain little support in these cases.

In most of the developing countries, the long-termed historical negligence of women's education has conduced to increase illiteracy among rustic and old women. The illiteracy of women plays a big part in putting them beyond the margin of work and social life. Despite the endeavors exerted in developing countries to fill the educational void of men and women, it was reported in 1994 that 75% of the illiterate are to be found among the women.[33] It is universally acknowledged that girls play a small part in production and for them, education is for fun. Hence, in some developing countries, scant attention is accorded to women's education.

Even in societies in which access to women's education is increasing, they are generally encouraged to pursue women's activities, thus strengthening their traditional role in the society. National and non-national studies show that the relation between education and reproduction is more than what was conceived in the past, for this is closely associated with the rate of development, social structure and cultural milieu.[34]

The attention to the internal relation of women's education and the conduct of pregnancy plays an important role in policy-makings. Education elevates women's understanding of their healthcare needs and views, increases their power of decision making in relation to the issues of the reproductive health and family planning, enables them to make proper decisions in their attitude towards the aforementioned issues proportionate to their family interests.

Educated women get married at a later age, give birth at a later age, and have fewer births. Demands for children decrease among the educated women. This is not only due to the decrease of death of children resulting from unhealthy conditions but due to the fact that it focuses women's attention on new

interests, decreases their inclination towards greater number of children, and provides them with more opportunities for the workforce.

During this process, the recognition and knowledge of women increases, their talents are revealed and they acquire an identity beyond childbirth as the result of which true independence and freedom of action are provided for them, guaranteeing true development. Today, the need for the furthering of education as the means to develop and decrease pregnancy in the world is supported.

The executive plan of the Cairo Conference suggests that there is a mutual relation between the population changes and social changes, regarding the amelioration of women's education as a factor for empowering them, for delaying the marriage age, for decreasing number of families.

Reproductive Health and Rights in Islam

In the general evaluation, the attempts on the formation of the concept of reproductive health and rights considering the different cultures of regional and relative tendencies on the general and universal concepts in different societies, it becomes obvious that the reactions of identical conditions are different in different areas. The general outlook on the concepts of human rights disregards the varying value systems of different societies and presents a unified outlook of the impression of different cultures towards human rights.

Considering that the international community does not have a unified structure, the access to a universal agreement is difficult at international level towards certain definitions in different areas of human rights including the reproductive rights without considering the different cultural characteristics especially the Islamic values.

As discussed in the first part, the reproductive rights are closely associated with the status of women in different societies. These rights as described in international documents are dependent on the absolute equality of different sexes although the absolute equality of men and women is an ideal prescribed by international documents.

In the final documents of the conferences recently held on the status of women, development and population and certain strategies are considered for them. The ideal concept has not yet been materialized in any country especially where it is ardently protected. Besides, as the partiality of legal regulations in conditions where sex discriminations reign in social relations, it is per se a factor for strengthening the dominant equality, the equality of rules and regulations do not often correspond with the facts.

Equality is a comparative concept, which can be substantively and formally discussed. Most of the superficial equalities guarantee real inequalities. Hence, the achievement of superficial equality might result in the violations of real equalities.

With this view on the concept of equality, the abstract generality of human rights is modified and new views more associated with women's lives emerge. Under these conditions, the human values of different cultures especially Islam stress the universality of the general principles of human rights. "The Islamic human rights indicate the natural states which man needs in relation to himself and his nature in order to develop his natural perfection."[35]

The women's status in Islam has been misinterpreted due to different reasons. In this regard, we should not ignore the underdevelopment in some Muslim countries. Undoubtedly, the phenomenon of underdevelopment has placed women in the margin in Islamic and non-Islamic countries.[36]

In Islam, men and women are equal based on their virtue. The Holy Qur'an states,

"The noblest among you in the sight of God is the most godfcaring of you." (***Surah al-Hujurat, 49: 13***)

In the Qur'anic verses, men and women are addressed under one unified title (believers) and their equality has constantly been stressed.[37]

Paragraph B of article one of the Cairo Declaration of Human Rights in Islam states, "All creatures are the servants of Allah and the most beloved of them is the one who is most helpful to his fellow human beings and no one is superior to anyone else."

In Islam, the family is the foundation of the society and considered as the only bed for the emergence of the new generation. Hence, the reproductive rights are recognized within the framework of family.[38]

Article five of the Cairo Declaration of Human Rights in Islam states, "The family is the pillar of the society and marriage is its basis." Thus, despite the international documents which refer to the reproductive rights for couples and individuals, the province of these rights is limited to couples in Islam.

Although men and women have equal rights in performing sociocultural activities and religious duties, there are certain regulations as to the family unit which cause the priority of men's rights over women's and sometimes the other way around.

If we accept that this inequality is not based on the value differences of men and women but on the basis of the distribution of responsibilities in proportion to their nature, the question may be brought up whether this distribution of responsibilities described in Islam may be revised as to the welfare and the changes in conditions if such a thing does not contradict Islamic view. It is understood that this matter should be determined by the Muslim 'Ulama.[39]

The important thing in the founding of family is the consent of both parties. Obviously, when there is no consent on both parties, the reproductive rights are annulled. Regarding the conventional nature of marriage, both parties can include any conditions in their marriage. For example, women can include certain rights in their favor so that those rights may be observed more than others. Surely, the use of

such rights is closely associated with women's status, their recognition of their own rights. It must be noted that the literature on marriage in the last few years indicates the granting of many rights for women.

In Islam, the conventional nature of marriage and some of women's rights in the family unit including the preservation of name, the enjoyment of financial independence and the recognition of their nationality in administering affairs and the possession of properties and the alimony which consists of medical and healthcare expenses are among the factors, which can be effective in empowering women and the exercise of the reproductive rights.

Undoubtedly, Islam is the school of order and welfare. Many Qur'anic verses indicate the existence of order in the world, which demands man to ponder upon the existing order.[40]

The birth control, planning, and family planning are not exceptions to this rule. Besides, concerning the principle of *Isalat al-Ibahah*, meaning that any time we suspect the legality or illegality of something, it is not unlawful,[41] or in other words, any time there is no reason for suspecting something, the use of that object is allowed for that person. Some scholars believe that so far there has been no order from the lawgiver for the prohibition of birth control, hence, family planning is necessary.[42]

It is also manifest that if reproduction places women in dangerous and intolerable situation or inflicts mortal agonies on them, or if it is medically ascertained beyond question that an abnormal child may be born, abortion is not only allowed but also compulsory according to *'Usr va Haraj* which is a well-known law in Islamic jurisprudence.

In addition to the previously mentioned points, the lack of birth control causes extensive population growth and the limitations of the resources and energy deficiency in the world which have in turn caused poverty, illiteracy, illness and unemployment. The repetition of this process has caused a vicious cycle, which has destructive effects on life and the environment especially in developing countries, which constitute a large part of the world.

In Islamic Iran, over the years after the victory of the Islamic Revolution (1979) and the period of the imposed war (1980-1988), the issue of family planning was ignored and the population growth has caused the highest rate of childbirth in the country.[43] After the imposed war the issue of population and the social-economic straits formed the core of the discussions relating to socio-economic development.

The modification of population within the framework of the general policies of the first socio-economic plan (1989- l993) was taken into consideration and in 1993, family planning law was ratified, annulling the advantages expected for the fourth child. Hence, population growth had an upward trend. In the second five-year plan, family planning was taken into consideration within the framework of populaion issues. In this program, there is extensive birth control especially in deprived areas and allocating part of the activities of the hospitals, clinics, and medical centers to the provision of birth control and annulling all advantages relating to large fumilies.

From an Islamic perspective, education is equally recommended for men and women. The holy prophet states, “seeking knowledge is incumbent upon every Muslim man and woman.”

Article nine of the Cairo Declaration of Human Rights in Islam states, “Every human being has the right to receive both religious and worldly education from the various institutions of education and guidance including the family, the school, the university, the media, etc, and in such an integrated and balanced manner as to develop his personality, strengthen his faith in God and promote his respect for and defence of both rights and obligations.”

The regulation of the second development plan stresses the education and the increase of women’s knowledge in the age levels of pregnancy and the advantages of birth control, acquisition of knowledge and doing studies for using and developing the new methods in pregnancy prevention. It suggests the performing of scientific researches with a view to acquiring knowledge, insight, function and family problems in family planning and the applied studies to increase awareness, outlook, function of family and access to methods and suitable technology. Firiydun Rahmani states:

In investigating the effective factors on women’s childbirth in Iran, two factors of literacy and occupation for women have been discussed. The results show that the more the rate of women’s literacy and women is especially the females over 15–49, the less the rate of births becomes. Besides, there is a reverse relation between the rate of women’s occupation in industry and childbirth and the rate of women at education at higher level and childbirth. Thus, the effects of these factors on reproduction in Iran are determined and considering the decrease of women’s occupation in industry in between 1976–1986 on the one hand and the decrease of the rate of women at higher education, the petty increase of women’s literacy and the existence of the great number of illiterate women and the deep gulf of urban and rural spaces, the necessity of increase of literacy and education of women especially in rural areas and their occupation outside the family are determined.”[44]

Considering that 34 percent of the fifteen year old Iranian population are illiterate and there are 150 illiterate women compared to 100 illiterate men[45] and the decrease of women’s presence in the work force, the necessity of steps for ameliorating educational level and women’s occupation as the effective factor in controlling birth and the exercise of the reproductive rights becomes all the more apparent.

Abortion in Islam

Abortion is not only a medical and social issue but also a philosophical one where the legality of induced abortion is different. The moral characteristics of such abortions lie in protecting the defenseless life of man or what is potentially accepted as life and the philosophical aspects of it are determining the progressive process of fetus which is the beginning of man’s life.

According to a certain decree, the killing of children is forbidden in the Qur’an and the children refer to fetus and the like.

"Those who killed their children out of ignorance are in loss." (***Surah al-An'am, 6:140***)

Today, the science of genetics shows that human life begins at the time when ovum is formed or at least when it is shaped in the womb and is not stopped after those physiological changes continue until death. In other words, the determining of a moment in the development of the fetus as the moment when human life begins is impossible.[46]

There is a difference between the medical and the jurisprudential definition of fetus. According to the Holy Qur'an,

"We have created man of an extract of clay, then We made him a small seed in a firm resting-place, then We made the seed a clot, then We made the clot a lump of flesh, then We made the lump of flesh bones, then We clothed the bones with flesh, then We caused it to grow into another creation, so blessed be Allah, the best of the creators." (***Surah al-Mu'minun, 23:14***)

They interpret another creation as the infusing of the spirit of God, regarding a human life for the fetus. With this reasoning, most of the jurisprudents regard the aborting of the fetus as killing.[47]

To interpret the above mentioned verse they refer to a Hadith by prophet Muhammad that states, "Each one of you remains in the womb for forty days, and as a clot for the same period of time, and then as flesh for the same period of time and then God sends an angel to infuse within it of His spirit."

This hadith states that from the ovum to the infusing of spirit, 120 days pass. In other words after 120 days, the fetus assumes a human form.[48]

Although the fetus, within which the spirit of God has not been infused according to Islam, is not a human being, it is valuable and if the fetus is dropped before the spirit is infused within it, the act shall incur punishment. There are different ideas in this regard.

In the Iranian legal system, which is based on jurisprudential and Islamic rules, abortion is a crime. Although access to reliable information for determining the number of induced abortions is difficult, the formal statistics shows almost zero in this regard.[49] However, the fact shows the great number of induced abortions.

In the study after the revolution in five governmental hospitals, this result emerged that in the five hospitals, 295 people confessed to induced abortions. Another study in another Tehran hospital during 1990-1991 shows the hospitalization of 7% of the whole people who committed abortion.[50]

The Islamic penal system determines the types of blood money for abortion and besides this chapter, the operation of people in this act is predicted in book five through articles 622-624. It is obvious that the illegality of aborting does not include medical abortions.

Conclusion

One may gather these results from the discussion:

1. The concept of the reproductive health and rights has been recognized as the manifestation of universal human rights.

2. This concept is based on the fundamental documents on human rights, the final documents of the conferences of population and development, women's rights and the internal affairs of states.

3. Due to the incongruity of the different population cultures, there has been no certain definition for these rights.

4. The reproductive rights as described in the international documents of the last decade includes: the rights of spouses and individuals for free decision-making and the responsibility of determining the number of children and their period and the right to enjoy proper instrument, information and instruction for the exercise of the aforementioned rights which include the reproductive rights and birth control.

5. In Islam, the reproductive rights are recognized only within the framework of the family.

6. From the things expressed on the reproductive rights, it seems that women should decide on the time of their childbirth due to their physical and mental state so that they may give birth to healthy children. In addition, the couples shall have financial commitment to their children and should determine the time of childbirth.

7. In the end, expressing views on the content of the reproductive rights should correspond with Islamic values and can only be determined by the jurisprudents and the experts in this field.

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3. Article 16 of the Universal Declaration of Human Rights states: 1. Men and women of full age, without any limitation due to race, nationality or 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. 2. Marriage shall be entered into only with the free and full consent of the intending spouses. 3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
4. Article 16 of Tehran Conterence states: "The international community contantly considers the protection of family and children. Parents have the right to freely determine the number of their children and the age distance between them."
5. Article 23 of Civil and Political Rights states: 1. Family is the basic group unit of society and is entitled to protection of the society and the State. 2. The right of men and women of marriageable age to marry and to found a family shall be recognized. 3. No marriage shall be entered into without the free and full consent of the intending spouses. 4. State Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. Article ten of the Covenant on Economic, Social and Cultural Rights states: The State Parties to the Present Covenant recognize that 1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society. 2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. Article 12 of the same Covenant states: 1. The States Parties to the present covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. 2. The steps taken by the state parties to the present covenant to achieve the full realization of this right shall include those necessary for: a) the provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child b) the improvement of all aspects of environmental and industrial healthcare c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases. d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.
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Hujjat al-Islam Dr. Sayyid Mustafa Muhaqqiq Damad

Introduction

War is one of the most catastrophic phenomena human beings face. That is why it is emphasized that the requirements of war should give way to humanitarian imperatives. The most basic rights of human beings have been violated during wars. Therefore, the relationship between the laws of war and human rights should be taken into consideration.

It seems that the violation of human rights during wartime may be minimized if wars are somehow legally

regulated. The existence of some internationally sanctioned legal principles can serve this cause.

Although humanitarian considerations have been included in many international legal instruments–dating back to the nineteenth century – no direct link between human rights and law of war was established until the late 1960's. Their first formally accepted conjunction could be traced back to the international human rights conference in Tehran (1968) where a resolution was adopted in this regard.

According to this resolution, the observance of human rights should be taken into consideration in various types of legal regulation including those governing "armed confrontations." In the same year, the UN General Assembly confirmed the contents of this resolution.

Of course, armed confrontations are not limited to international relations, "Human rights imperatives" should be followed in civil way and other form of domestic armed confrontations. In other words, human rights should be observed in any kind of armed–and of course non–armed–conflicts.

It is worth mentioning that many centuries before the advent of modern international attempt to formulate the law was in accordance with the observance of minimum standards of human rights, in many divine religions, especially in Islam. The observance of human rights during wartime was taken into consideration.

One of the important discussions in the Islamic law is the prohibition of brutal and inhumane behavior in armed confrontations. The following article analyses humanitarian law from an Islamic point of view. According to Islamic law, the dignity of human beings should not be denied and any arbitrary and immoral treatment of people should be avoided.

1. The evident fact is that the history of war dates as far back as the history of man. In the war among states, only force reigns and each one of the parties seeks to overcome the enemy through, all means and might. In this cause, religions, moral schools, philosophers and lawyers have endeavored throughout history to limit non–humanitarian acts in war by formulating the laws of war.

2. Some people believe that there is no need for formulating the laws of war as the Suppression of the Act of Aggression for limiting or forbidding the acts which are tinged with crime, believing that the setting of such rules implicitly lends legality to war. However, the fact is that the illegality of resorting to war does not at all obviate the need for the laws of war and humanitarian rules, for such laws aim to reduce the ill consequences of the inability of international community in forbidding war.

After fifty years, the United Nations has failed in the total elimination of this bitter truth despite the prohibition of resorting to force in international relations and has been incapable of determining the aggressor and has failed to do its duty in forbidding or stopping aggression although it has achieved great success in organizing the laws of war especially in approving the humanitarian acts. Besides, it played an important role in organizing the Geneva Conference, which led to the 1977 protocols known as the Four Geneva Conventions (1949).

In addition, the Convention of the United Nations in 1981, which banned the use of lethal weapons, was one of the innovative acts of the United Nations. Recently, the Commission on International Law studied the crimes against peace and security perpetrated in some areas such as the former Yugoslavia and had the court and the laws of court approved.

3. Basically, the laws of war seek to enact three limitations for armed operations as follows:

A) Limiting the war zone

B) Limiting the use of weapons

C) Limiting the operations to combatants and immunity of the civilians.

The laws of war seek to fulfill four aims:

- Humanitarian treatment
- Protection of non-military zones
- Protection of civilians
- Keeping the non-belligerent states aloof from the war

4. The study of the group of rules and rights of war from the Paris Declaration dated 16 April 1856 regarding the rules of Marine War to the last rules in this regard, that is the Four Geneva Conventions and the 1977 protocols amended to them and the 1981 United Nations Convention and comparing them to the rules and principles in Islamic rules regarding war and armed strifes well demonstrate that the origins of the rules of war in general and Humanitarian law and the protective rights can be completely found in Islamic teachings. In addition, the idea that such laws are derived from Islamic rights is not exaggerative. This fact shall be proved when the Islamic sources and the way the jurisprudents of early centuries classified international and non-international wars and their systems and the treatment of Muslim combatants towards the enemy are considered one by one.

Punishment for the violations of soldiers in Islamic law directs our attention to another fact and that is the aforementioned instructions are not merely moral recommendations but laws to be exercised. In addition, the violators are responsible for the punishment thus incurred.

5. Assuredly, the Muslims have performed such mighty system for instituting the war and peace rules since the seventh century that they have remained within international rights and relations even before the West gained such recognition about one thousand years ago.

Imam Muhammad Ibn Hasan Shaybani, the Hanafite jurisprudent, was the pioneer of this body of laws and principles. He founded this knowledge in the eighth century through his books *Al-Sayr al-Saghir* (The Small Conduct) and *Al-Sayr al-Kabir* (The Great Conduct). During the recent years, the *Shaybani*

Society of International Rights was founded in Gottingen as a way of commemorating this great jurisprudent. In addition, the strivers for human rights from various countries joined it. The aim of this society was to introduce Shaybani and his works in this field.[1]

The mindful orientalists and the researchers in this field well know that the West has been influenced by the Muslim products in this regard.[2]

It is a fact that Grocius, the Dutch Statesman, the pioneer of international rights in the West who lived in the seventeenth century was in a state of exile[3] in *Astanah* (a name given to Turkey or Constantinople). It is not farfetched that he might have had access to the Arab and Islamic world and a link between east and west. Apparently, he was the missing link between east and west in this regard. It is also certain that Grocius was inspired by the works of Fransco Swazbir[4] who was definitely acquainted with the Arab and Islamic writings.

Chapter 1- Generalities

Definitions

The two expressions Human Rights and the Humanitarian Law have two distinct meanings in contemporary literature of international law. There has been a long controversy on the birth of the latter concept as distinctive from the former. In 1969, when the General Assembly of the United Nations inquired the Secretary General to give a report on the common human rights in armed strifes, many scholars discussed whether the term had been properly used.

At all events, there is no doubt in the minds of the scholars on this score.

The Humanitarian law include the set of laws and provisions which seek to determine human rights in the time of war or during armed operations whereas human rights include the rights which determine people's rights in time of peace. In other words, Humanitarian Law have two fundamental elements:

1. The Protection of the Wounded, the Afflicted, the Prisoners of War and the Civilians

2. The peak of armed strife

However, human rights pertain to everyone at all times.

From the perspective of a philosophical analysis, one can say that Human rights observe the humanitarian rules and humanitarian Rights are derived from benevolence towards man. The humanitarian rules refer to human nature without any distinction as to race, nationality or so on, or in other words, to human nature.

Probably, some scholars oppose the notion of international humanitarian law in Islam. In their eyes, how can one separate part of Islamic humanitarian law, labeling it as humanitarian whereas by consensus we

believe that all Islamic laws are humanitarian and Islam means peace and amity.

At the outset, I had such a feeling but I realized that it was but a superficial feeling. Therefore, I overcame it. In fact, I propose to analyze the everyday use of the term, which is of special significance. It is a truth that peace is the spirit of Islam. However, peace is not the only dominant truth in human societies. Likewise, man's murder by man is an undeniable fact in human societies.

In order to understand the Islamic meaning of humanitarian law we should put it in its true context and analyze it in a historical vista because the Islamic manner which is universal and transcends time and place is not dependent on armed strifes but on the Muslim beliefs, the nature of Islamic rights system and its interpretation of the relation between the Muslim world and the external world. Hence, in order to clarify and make comprehensible the concept, we should study its varying elements and consider the necessary factors for any systematic and mature thoughts.

The Features Of The System Of Islamic Law

The system of Islamic law has two characteristic features, which are not identical to other contemporary systems of rights.

The First Feature: Divinity

The system of Islamic law is not substantially mundane but divine and holy, including the exercise of Islamic faith in a definite way as to human relations. Islam consists of a set of laws dominating the believers' conduct, which molds their relations within the matrix of society. In Islam, the religious faith and the legal discipline constitute an inseparable whole in which faith is the origin giving rise to legal discipline.

The Second Feature: Inseparability

Unlike most contemporary systems of law, the Islamic system of law, which includes private and public law, is not branched out. Its rules are derived from the Holy Qur'an, addressed to everyone everywhere at all times. They originate from a divine source and they are particular to individuals and groups from all occupations.

The Almighty God addresses man through his apostle and enacts certain laws for guiding him and checking his behavior. Hence, there is one God and one law in Islam. This law is addressed to everyone without any distinction or discrimination and includes rules dominating the entire human relations. Whatever the nature of the law is, the basis is the same.

It must be noted here that lawyers might try to scientifically classify the previously mentioned rules and introduce one law as national or international, private or public.[5] This refers to the science of law and legal researches. What is impossible is that we try to include utterly alien concepts such as monotheism

or dualism within Islamic rights or alter its sacred concepts such as oneness and the principle of equality.

The Historical Conditions For The Formulation Of The Islamic Law System

The other salient point is that we should take into account the concept of humanitarian law in Islam within a historical context and consider the two necessary aspects, environmental and temporal, in a fair comparison. Islam emerged in the seventh century whereas the international humanitarian law had not taken shape until the second half of the twentieth century. So there is a period of thirteen centuries between these two concepts.

If we study these thirteen centuries with our present knowledge and compare the then society to the present one, we shall inevitably come to the conclusion that the changes have been so diverse that they could have taken place as a true revolution. In the present study, we do not tend to give a dark picture of society in the seventh century and then compare it to the modern society. Our sole intention is to draw the readers' attention to these factors, for we should avoid complicating the issues and the times and we should make our comparison within a proper framework.

Islam emerged in the seventh century when war, domination, slavery and ignorance reigned, force was dominant in all aspects of life. The societies did not have any economic or social structure or at least were very poorly structured. The concept of state, border, nationality, and organized relations did not exist or were unknown. Islam sought to fill this dark gap.

The basic mission of Islam was to bestow faith and civilization on man with a view to establishing a modern society, which was bound to be the master of its own destiny. To this modern society, Islam granted a religion based on monotheism and a system of rights derived from the Qur'an, the tradition and the Ijtehad (the use of reason to arrive at truth in Islam).

The Sources Of Islamic Law

The Qur'an is the Word of Allah, the Master of the worlds who sent it down to his chosen Apostle for the guidance of mankind. The Qur'an descended upon the holy Prophet at different stages in the span of 23 years. The Qur'an was sent for the guidance of mankind in the course of his worldly and spiritual life to all classes of people at all times at all places. The nuclear theme of the Qur'an is monotheism, the belief that there is only one God. At all events, it deals with all aspects of human life.

The Qur'an is divided into 114 Suras (chapters) covering a pervasive scope. The laws expressed in the Qur'an are imperative and thus should be applied to certain relations. It is noteworthy that the existential cause of the laws included in 200 verses refers to five fundamental principles, which are the fundamentals of the whole system of Islamic law. These principles include:

1. Justice

2. Equality

3. Counsel based on respect for people's opinions

4. Fulfillment of promises

5. Retaliation

In general, these five principles constitute the pivotal values of the system of Islamic law. With the death of the holy Prophet, the inspiration came to an end and nothing can be definitely added to the Holy Qur'an.

This is the point where the social role of Ijtehad emerges, namely that, all laws and new solutions for organizing the human behavior should be comprehended on the basis of the aforementioned general principles. It must be noted that any principle or solution, which does not accord with the previously mentioned fundamental principles, cannot be viewed to be Islamic.

The prophet's tradition is the second source. The prophet's manners in fulfilling his mission and his conduct towards others are the source of the laws, which enjoy legal power in Islamic law. These laws complete the Qur'anic laws because they tend to approve the recent laws or determine how those laws should be put into effect.

The point is that the Qur'an and the Sunna had deep roots in the life of the holy Prophet and after him, no one was capable of enacting laws. Since life is constantly changing and Islam has a stable nature, there was a need for another living legislator, a source for creating new rules corresponding with new phenomena within dynamic societies.

The third source is the system of Islamic law, *Ijtihad* explicitly expressed in the Holy Qur'an. By virtue of *Ijtehad*, we can understand the necessary rules in the mutable life of societies. However, we should emphasize that this understanding can take place within the five main tenets of Islam.

What inspired consolidation in the spiritual and worldly aspects of Islam in the first three centuries was this third source. However, unfortunately at the time of the Abbassid dynasty the rulers who wished for boundless domination saw fit to stop *Ijtehad* and bar the inductive method. From then on, Islam and its system of rights remained static in a dynamic world.

The consequences of the decisions made by Abbassid dynasty marred Islam and its mission to spread civilization. Only over the recent decades, the new generation of the jurisprudents and Islamic lawyers had recourse back to *Ijtehad* due to their encounter with the problems of the world today. However, their attempts were mingled with doubts and fears, for the new state with the power of legislation limited their role.

Therefore, within this framework briefly elucidated, we should look at the Islamic concept of international

humanitarian law. At first, this concept is dependent on those Qur'anic verses6 which are relevant to the practice of the prophet in time of enmities imposed on him and ultimately, on the rules perceived from the five fundamental principles of Islamic law derived from the prophet's commands given to the armies of Islam.

Chapter II-The General Concepts of International Humanitarian Law in Islam

A) Non-international Armed Strifes

B) International Armed Strifes

Now that we have covered the introduction and the general points, we had better follow the method of Pictet7, the Swiss lawyer. At first, we shall explicate the international humanitarian law together with the current international humanitarian law influenced by positive law.

Armed strifes or war in the Muslim world and the august Muslim countries are divided into two categories: civil wars or as al-Mavardi states wars for welfare8 and the wars waged against the pagans and the infidels. The first category may be labeled as non-international and the second category as international.

Non-International Armed Strifes (Civil Wars Or Wars For Welfare)

To clarify the issue, we need to further explain the types of war for the general welfare.

War against Armed Thieves and the Bandits

The armed thieves and the bandits are corrupted people who take up arms and kill people, loot and plunder their wealth, and stop traffic on the way of the caravans. It is evident that we are talking of the war waged within the realm of human rights, namely the laws that organize human rights in time of peace, but not the international humanitarian law which determine human rights in time of war. Hence, the laws relevant to the first category may exercise punishment to those who violate the law, a severe punishment dictated by the Qur'an because of its blatant abomination that threatens the social security.

War against the Rebels and the Kharijites

The rebels and the Kharijites are the Muslims who rebel against the ruling *Imam*, fight the society and follow an odious school. In the history of Islam, we encounter *Kharijites* (Seceders) who opposed Imam Ali, rebelling against him when he was forced to agree to arbitration by umpires. They gathered in a village called *Harura* so they were called Harurians. Their leaders were 'Abdullah Ibn al-Kawwa al-Yashkari and Shabeth al-Tamimi. Some of them interrupted 'Ali while he was giving a sennon from an elevated place and protested: "Judgement belongs to God alone." And Imam 'Ali said: "This is a truth to

cover up falsity." And he added: "I shall not prevent you from three acts: 1) I shall not prevent you from entering the Sacred Mosque 2) I shall not wage a war against you 3) as long as you are with us I shall not deprive you of the booty.9

If such rebels display their rebellious tendencies while they are with other believers it is incumbent on the ruling Imam to mention their corrupted stand, haply they may follow the Muslim community.

In addition, the Imam can consider punishments for those who are in a state of blatant corruption to serve an example for others and bar people from following them in order to preserve social integrity. However, such punishments should not include execution or *hadd* (fixed punishment) other severe ones as long as they have not committed abominable acts. (Hadd includes a punishment fixed by the Islamic Shari'ah for deadly sins).

The stand adopted towards the rebels .is identical to the one adopted towards the opposing parties. In other words, as long as their acts are not accompanied with violence and force they have complete freedom of opinion. If they resort to any of these violent acts, the Imam has the right to get them punished. It is obvious that this has nothing to do with the international humanitarian law.

In fact, any rebellious act against the Imam is a kind of civil war, which necessitates war against the aggressors. In this regard, the Qur'an states:

"If two parties of the believers fight, put things right between them; then, if one of them is insolent against the other, fight the insolent one till it reverts to God's commandment. If it reverts set things right between them equitably and be just. Surely God loves the just." (***Surah al-Hujurat 49:9***)

In this verse, tyranny and invasion mean war or the rejection of peace. The war against the rebels or the Kharijites is identical to the war mentioned in the third principle of all the Four Geneva Conventions.

As to the armed strifes, which are not labeled as international and waged within the zone of one of the Geneva Convention signers, each one of the belligerent parties, is obligated to observe the following rules:

1. All those who do not actively participate in war including the ones who have put down their guns, the sick, the wounded and the prisoners should be treated humanely without distinction of any kind due to race, sex, religion, poverty, wealth, etc.

To achieve the aforementioned goals, the following acts are severely prohibited under any circumstances:

A) Execution or physical injury, that is, murder of any kind, mutilation, savage treatment and torture

B) Hostage taking

C) Degrading, inhumane treatment

D) Execution without previous trial by a just tribunal in which all judicial procedures are accepted by civilized societies

2. The wounded should be gathered and taken care of[10]

Considerable attention is accorded to this kind of aggression in the second protocol of the two protocols approved by the General Assembly in 1976 with a view to developing humanitarian law.

At all events, the protocol meets innumerable impediments, and seems to lack real identity. As in the paragraph noted above, the protocol pertains to persons who do not have active participation in the war including the Sick, the Wounded and the Prisoners. To these people are allotted guarantees which are not beyond the instances cited in the previous paragraph.

On the laws of war, the protocol has determined rules, which forbid revenge and betrayal, also the prevention of others seeking asylum is not allowed. In addition, the protocol states rules on the protection of children and civilians. In fact, these protective rules constitute parts of the rules, which are exercised in relation to those who participate in an international armed strife. This we shall deal with later in this article.

At this point, it would be very interesting if we compared these rules with the ones declared by Imam Ali to soldiers and commanders in relation to the war against Mu'awiyah. This is the command:

To the army before encountering the enemy at Siffin:
If by the will of God, the enemy is defeated, then do not kill the escapee; do not strike a helpless person; do not finish the wounded; do not disclose any one's private parts; do not mutilate the dead; do not enter any house without the prior pennission of the house master; do not loot their property save the ones which come to you from their army such as coast, animals, maids, slaves; the rest belongs to their heirs which according to Islamic law should be distributed among them. Do not inflict torture or pains on women although they may attack the things you hold sacred.[11]

The Geneva conventions rules of 1949 on the nature of non-international armed strifes is not inclusive and the guarantees cited therein are insufficient in comparison with what has been stated on international conflicts. The reason for the partition of the humanitarian law and rules in the form of two protocols (the first protocol concerns non-international conflicts and the second protocol concerns international conflicts) is that a large portion of those rules may not be extended to non-international conflict combatants.

However, an utterly different attitude is adopted towards it in Islamic system. It must be noted that in Islam a very mild attitude is recommended to the Kharijites, making them enjoy rules and laws which have been denied to the pagans and infidels entangled in the welter of international conflict.

International Armed Strifes

Now we shall be dealing with international armed strifes. At first, we shall investigate the international humanitarian laws and rules and discuss the important principles in this regard. Although it might seem verbose, I should admit that as in the context of proven rights, all these principles spring from the important concept of universality cited in the preamble to the St Petersburg Declaration 1868 which implies that the only legitimate goal of war is to weaken the power of the enemy.[12] Consequently, what lies in the way of this goal does not conflict the international humanitarian law whereas what is contrary to international custom, is in fact the violation of what is called the violation of human principles and the rules of the general conscience.

In this regard, the Holy Qur'an says,

"Whoso commits aggression against you, do not commit aggression against him like as he has committed against you; and fear you God, and know that God is with the God-fearing. (***Surah al-Baqarah, 2:90***)

Hence, God has forbidden aggression from legitimate goals, declaring deviation from it as a sin, which is not pleasing to God. The glorious verse cited above, explicitly states that the goal of war is to eliminate aggression.

The holy Prophet says, "When a mighty government wages war against a weak one, God shall bring victory for the latter. However, if the triumphant party humiliates the vanquished one, and takes advantage of the victory thus earned, the wrath of God shall be on them until doomsday."[13] This suggests a fundamental principle for many laws in which the policy and freedom of states in war are limited to a certain extent. We shall investigate these laws as under:

1. Employment of arms

2. The way of treating enemy in time of fighting

3. The way of treating the prisoners of war

Employment of Arms

Humanitarian thought constantly seeks to mollify the extent of savagery in wars. Thus, it limits the right to the choice of weapons and prohibits the employment of arms, projectiles, or material calculated to cause unnecessary suffering. At all events, no inclusive law is established on this case and the general laws established to the fulfillment of these goals are insufficient and inapplicable.

The newest rule in this regard is article thirty-five of the first Geneva protocol annex 1977.[14] This principle contains two rules relevant to our present discussion. The first rule states that in any armed strife, the right of belligerents to adopt means of injuring the enemy is not unlimited.[15] It is obvious that

the way it is expressed is important, for it can be justifiably said that the spirit of the statement more sounds like advice than a binding and legal commitment to be observed by the signers of the protocol.

The second article states that the use of missiles or other weapons, which cause incurable injuries or inconceivable pain, is forbidden.[16] It is perfectly clear that this rule has been violated according to the will of people for the use of mass murder weapons is not severely and clearly forbidden but it is stated in way that it has opened the way for the States to resort to cruelty and violence.

It may be said that the Declaration of St Petersburg of 1868 enumerates more limitations for the States for according to it, the only legitimate object, which states should endeavor to accomplish during war is to weaken the military forces of the enemy.[17] What encouraged the states in forging these limits in the context of Declaration of St Petersburg? And what caused them to forget such limits when formulating the articles of the declaration in the form of legal laws?

We may be accused of ignoring some of the international conventions including the 1925 Geneva Protocol[18] by which the use of chemical, bacteriological, and toxical weapons was banned. However, these laws were established after such weapons or even more lethal ones had been repeatedly employed before. Are we not today witnesses to ceremonial and Byzantine type negotiations on the prohibition on nuclear weapons? It is no surprising matter that article 36 of the first protocol has left the states to decide on the use of such lethal weapons. It is obvious that it is extremely farfetched for the states to come to a constructive agreement on this case.

Assuredly, this issue was not of any importance in the eyes of the earlier Muslim jurisprudents, for it was not then recognized. The weapons used in those days were not destructive arms to cause unnecessary suffering. In *Khalil al-Maliki's Book on Jihad* (holy war), it states that combatants are forbidden to employ weapons, which cause unnecessary injury on the enemy save the weapons they need during war. In addition, he gives an instance, which shows the prevalent idea in those days. The use of poisonous spears is forbidden, for such spears inflict unnecessary injuries on the enemy. As we see, any kind of cruelty is condemned. Even the law noted earlier specifies the weapon, which is forbidden.[19]

The views of this jurisprudent accord with the Islamic laws by which increase in killing although justified, is forbidden.

In this regard the Holy Qur'an states,

"And slay not the soul God has forbidden except by right . Whosoever is slain unjustly, We have appointed to his next-of-kin authority; but let him not exceed in slaying; he shall be helped." (***Surah al-Isra, 17:33***)

An authoritative hadith by the holy Prophet states, "Pity is the attribute of the great ones; if you kill, kill justly."[20] This is another clear indication of the point noted above. When 'Umar, Caliph II officially retired Khalid for he had killed the enemy whom he did not need to, he said, "Indeed. Khalid's sword is the

touch of tyranny."[21]

In a hadith related by Ibn Hatam, the Messenger of God said, "If any of you fights with his brother, he should avoid injuring his face, for God created man in his own image."[22] Hence, the injuring of face is prohibited except by right. So the employment of unnecessary weapons is prohibited.

As to protection of the enemy in not inflicting unnecessary suffering on him, Islam proposes rules from which the Western civilization is so distant.

Someone might rely on the forged account concerning Imam 'Ali that he burnt some of his own allies for saying that 'Ali was the personification of God with a view to leading the Muslims astray, and rejecting my words. There is no sign of this relation in any historical books. The burning of people by the nearest kin to the holy Prophet is not an account to be ignored by the historians. Or at least none of them condemned an event of such importance and barely touched upon it.

Murtaza al-'Asgari, the contemporary historian, wrote a book entitled *'Abdullah Ibn Saba and Other Myths* in 1994. In his opinion, all the relations attributed to 'Abdullah Ibn Saba are prevaricated. One of these prevarications is that Imam 'Ali burned his own disciples.

The writer scrutinizes all the hadiths in relation to this tale, proving that they are groundless. He says, "That Imam 'Ali had executed a few of the apostates might be right but that he had burned them cannot be true, for regardless of religious reasons, these acts did not at all correspond with the situation of those days, especially that he had killed a man called *Fajiy Salmi* in time of Abubakr and that people protested against this act. When Abubakr saw the wrath of people, Imam 'Ali publicly repented his act. It is impossible that Imam 'Ali had done it again."

The writer introduces the people and calls them prevaricators. At the end of his analysis, he concludes that this act, that is the burning of a large multitude of people has not been a subject to be ignored in history whereas it has not at all touched upon by other Muslim historians including the following ones;

Ibn Khayyat/ died 819

Ya'qubi/ died 897

Tabari/ died 922

Mas'udi/ died 950

Ibn Athir/ died 1232

Ibn Kathir/ died 1372

Ibn Khaldun/ died 1405[23]

So, it can be claimed that the sublime kindness and mercy of Imam ‘Ali and the tendency of people to him has caused the enemies to forge these tales so they can make him look harsh. Of course, the writer of these lines recognizes the attempts of the Jews in making Islam look harsh as a certain act, which is beyond the scope of this present article and deserves note in due course. At all events, this may be one of these instances.

Distinction between Combatants and Non-combatants

Islamic teachings as to weapons, take into account another goal, that is, the employment of arms without goal is forbidden for combatants and noncombatants and the arms used without aim against military targets is forbidden. Hence, combatants are faced with two kinds of commitment, first, combatants should be distinguished from the non-combatants and only the former should be the target - and secondly, military zones should be distinguished from non-military zones. The commitment of each combatant is approved by a hadith from the holy Prophet.

At the end of one of his wars, the holy Prophet observed that some people had gathered; therefore, he sent someone to investigate the matter. The man returned and said, “A woman is killed.” The holy Prophet said, “She could not have been fighting.”[24]

In another case, some Muslims following their enemy killed some children. At this, the holy Prophet was greatly angered and said, “Why are some people so bellicose that they kill children?”[25]

These hadiths by the holy Prophet all indicate that combatants should be distinguished from non-combatants and the use of arms without goal is forbidden.

In Islam, a combatant is someone who is capable of fighting, whether he participates in war or not. Islam holds each Muslim combatant committed not to commit a sin by hurting the non-Muslim combatants who may be among the enemies. If the Muslim combatants have certain uniforms or carry certain banners, they can be easily distinguished from the non-Muslims. It is related that the holy Prophet wore a certain aba (loose sleeveless outer garment) during military actions.[26]

Of course there is no clear evience that the Muslim combatants at the time of the holy Prophet wore uniforms, but there is evidence that in the Battle of Badr, the Muslims tied a piece of wool to themselves.[27] In addition, the probability of this affair caused Tabari to say in his interpretation that in that battle, they used wool as the symbol for the Muslim combatants. Moreover, what he meant was the Battle of Badr.[28]

In relation to the commitment of Muslim combatants in distinguishing between the military target from the urban centers Shafei states that slings can be used against the forts but not against houses.[29] The idea suggested by al-Shafi’i is that residential areas should not become the targets of military attacks, save the ones very near the forts of enemy.[30] In fact, it implies attack against military zones. After all, destruction as a means of threat is not allowed in Islam, especially when it is probable that the

conquered area may fall into the hands of the Muslims.

The Muslim jurisprudents make a distinction between the properties which fall into the hands of Muslims due to military domination, and the ones which come to them due to peace accords. In fact, unjustified attacks against the military targets are a kind of invasion, prohibited by the Almighty. Such an act is indeed a deviation from the divine command that says,

"I have been commanded to be just between you." (***Surah as-Shura, 42:15***)

God showed His interest in justice by saying,

"God loves those who are just." (***Surah al-Ma'idah, 5:42***)

2. Treatment of Enemy in War

This includes the treatment of enemy at war and those who are in the enemy's territory. Now we shall start our discussion on the enemy soldiers. The first international humanitarian law provides that combatants should avoid killing the wounded and the sick, torturing, and outraging the personal dignity of those who have surrendered .

This basic principle of the international humanitarian law was formulated in paragraph C article 234 of Hague Convention in 1907[31] and ratified by article 37 of the first protocol and article 7 of the second protocol of Geneva Conventions.

In international humanitarian regulations of Islam, this principle is accorded special attention to in the form of verses from the Holy Qur'an.

"So long as they go straight with you, do you go straight with them: surely God loves the God-fearing." (***Surah at-Tawbah, 9:7***)

God also bids people to peace,

"If they (***enemies***) ***tend to make peace, make peace and place your trust in God."***

In addition, the Almighty forbids the killing of enemy who has surrendered or put his arms down.

"If they withdraw from you, and do not fight you , and offer you peace, then God assigns not any way to you against them." (***Surah an-Nisa, 4:90***)

Hisham Ibn Hakam states, "I myself heard from Prophet Muhammad say, "God shall torture those who torture people in the earth."[32] The holy Prophet has stated, "Gain people's love; treat them well, invite them to Islam before you fight them; I would rather have nomads or citizens brought to me after they have embraced Islam than women after their husbands are killed."[33]

Hence, war in Islam is accompanied with kindness, for in Islam, love is preferred to killing and it does not allow killing without reasonable cause.

The second principle, which is as important as the principle mentioned above, is the prohibition of combatants from resorting to betrayal for killing, injuring or captivating the enemy. This regulation is mentioned in article 23 paragraph B and article 24 of the 1907 Hague Convention[34] and in article 37 of the first protocol.[35] In this regard, the international humanitarian regulations distinguish between the war strategy and betrayal. War strategy is allowed whereas betrayal is forbidden which is recalled in the first protocol as the violation of promise.

Islam also distinguishes between these two. The holy Prophet regards war as a kind of trick.[36] Hence, one can kill the enemy unawares. The prophet assigned some people to penetrate the enemy forces in order to spread fear and rumor among them, consequently weakening their morale.

During the War of Ditch (Khandaq), *Na'im Ibn Mas'ud* came to prophet, saying, "O prophet! I have embraced Islam but the people do not know it. Order me and I shall obey." The prophet answered, "If you stay with us, you are but one; then go back and spread fear and trembling among the enemies, for trick in war is of great value."[37]

Ibn Shaddad in his *al-Navadir al-Sultaniyyah* points to an interesting instance of trick and that is, the combatants set pigs on the ships instead of soldiers to deceive the enemy.[38] Another narration is that Hajaaj Ibn 'Alat al-Salmi, embraced Islam and fought in *Khaybar* together with the holy Prophet. When Khayhar was conquered, he said, "O Messenger of God, I have some property with my wife, *Umm Shaibah*. *Talhah's* daughter and some money with some Meccan merchants. I beg you to let me go there." The holy Prophet gave him permission. Al-Salmi said, "O Messenger of Allah, I must tell a lie there." The holy Prophet said, "Tell whatever you deem right." In other words, the holy Prophet's permission means that Hijaz can resort to trick to take back his wealth and property. Hence, when he reached Mecca, people asked him about Khayhar and he answered, "The prophet met a colossal defeat and his followers were killed or captivated and the people of Khaybar avoided killing the prophet and will send him to Mecca so they may take revenge on him." Upon hearing this, the Meccan people were filled with joy. Meanwhile, Hijaz seized the opportunity and asked the Meccans to help him take back his wealth and property so he may go back to Khaybar and buy the booty. Then, they gave him back his wealth without hesitation.[39]

According to *al-Nuvi*, there is a consensus among the schools of jurisprudence on the trick in war unless there is a treaty in this regard.[40] The Holy Qur'an states in this regard,

"And break not the oaths after they have been confirmed." (***Surah an-Nahl, 16:91***)

Islam does not allow resorting to betrayal. The holy Prophet States, "Whoso betrays us is not one of us." When Abu Jandal Ibn Suhail fled from among the pagans, he heard that the holy Prophet wished to send him back to Mecca because he had entered into a covenant with them. Upon hearing this, Abu

Jandal rose up and said, “If you send me back to the Meccans, they will torture me so much so that I shall denounce Islam.” The holy Prophet said, “The violation of covenant is not to our benefit even for the protection of a Muslim.”41

It is also related that Umar Ibn al-Khattab heard a Muslim soldier tell an Iranian combatant, “Let no fear into your heart.” Then he had killed him. In this regard, ‘Umar thus wrote to the army commander, “By God, if I hear again that he has committed this act again I shall chop off his head.”42 In this regard, Shafe’ie says, “Whatsoever is allowed with the Muslim community is allowed in the pagan land and also whatsoever is forbidden in Muslim land is forbidden in pagan land. Whoso commits an unlawful act, he shall incur divine chastisement. Hence, since the unlawful act is perpetrated in pagan land, the guilty party will be sinful.”43

Forbidden Treatments

Massacre and Lack of Right to Surrender is Forbidden

The Muslim combatant is forbidden to total destruction of enemy or banning the right to surrender. This principle is mentioned in article 40 of the first protocol44 and paragraph 1 of article 4 of the second protocol45 in approval of article 23 of the 1907 convention.46 Hence, the Islamic decree in this regard has temporal priority over all the regulations noted above.

The Islamic regulations in this regard are expressed in the aforementioned verses according to which the Muslims are obliged to accept peace if the enemy desires it. Moreover, killing after abandoning war and giving in one’s anns is prohibited.

Never has it been heard or seen that people or groups were killed after they surrendered themselves by the Muslims. The conduct of the holy Prophet with the Meccans in this regard is a very striking example. The Prophet freed them all, and called them *al-Talqa*, meaning those who remained pagan until the capture of Mecca and then were freed. The Arabic word *Taliq* and *Taliq* mean free and *al-Talqa*’ is the plural form for it.

At this point, one might recall the tale of Bani Quraizah tribe. However, the complete tale cancels all rumors.

We know that in the War of Ditch (Khandaq), the prophet had entrusted the protection of Islam to Bani Quraizah tribe. We also know that the situation of the army of Islam was so sensitive that the holy Prophet told Bani Quraizah tribe that he would give them one third of the dates harvest of Medina if they fought in the war. However, the Jews of Bani Quraizah tribe did not hesitate in seizing this opportunity to cooperate with the pagans and turning against their covenant and attacking the Muslims.

When the chaos in the army of Islam subsided, the holy Prophet summoned ‘Ali, assigning him as the commander of the attack against the Bani Quraizah tribe. When ‘Ali approached their forts, he heard them insult the holy Prophet. The next morning, the *Aws* tribe hurriedly went to the holy Prophet, saying,

“O Messenger of God, they are our men, not from Khazraj Tribe. Yesterday, you treated our brothers from *Qainiqa* tribe with kindness (whom the holy Prophet had freed).” At the end of this conversation, the Jews agreed to accept the rulership of Sa ‘d Ibn Ma’adh, from the *Aws* Tribe. And according to their own book, he ordered that they be killed, their properties be distributed and their women and children be captivated.”[47]

It is evident that this event does not show massacre but it shows the decree issued based on their own book.[48] Moreover, this affair is in complete accordance with the rules set forth in the Geneva Convention relating to prisoners of war. The decree applied to Bani Quraizah was not in accordance with Islamic laws but the decrees mentioned in their book namely Torah.

This act attributed to Islam is in fact the result of accepting the laws of the enemy, the enemy who was extremely cruel and arrogant. How can one stop commending this Muslim act while the holy prophet said considering the heat of that summer day, “Do not mingle the heat of today with the heat of your sword; postpone their execution until the heat subsides.”[49] Besides, they had not accepted the rulership of the holy Prophet and we know that the rulership of the holy Prophet about their neighboring tribes *Bani al-Nazir* and *Bani Qainiqa* led to the confiscation of their property; however, their lives remained secure.[50]

Here, we deem it necessary to tell a tale related by *Abu Harirah* in the sources of Sunni traditions, which suggest the Islamic decree in this regard. *Abu Harirah* relates that he heard the holy Prophet say, “Some day, an ant bit a holy Prophet and that was why the prophet ordered that all the ants on that hill should be burnt. Then God said to the prophet, ‘If an ant bites you, is it advisable that you order the killing of all the ants which cry praise to the Almighty!’”[51]

Revengeful Acts Are ForbiddenThere are verses in the Qur’an relating to the prohibition of revengeful acts, which determine the principles of punishment.

“The recompense for any evil act is an act identical to it;” (***Surah an-Najm, 53:31***)

“whoever does an evil deed shall be recompensed only with the like of it:” (***Surah Mu’minun, 23:40***)

“and when insolence visits them do help themselves - and the recompense of evil is evil the like of it; but whoso pardons and puts things right, his wage falls on God.” (***Surah ash-Shura 42:40-44***)

“the holy month for the holy month; holy things demand retaliation . Whoso commits aggression against you, do you commit aggression against him like as he has committed against you; and fear you God and know that God is with the godfearing.” (***Surah al-Baqarah 2:194***)

The clear meanings of these verses determine the rules of retaliation. From these verses, one might realize that in retaliatory actions the Muslims are allowed to retaliate the way the enemy has attacked

them.

This realization is prone to criticism in two ways:

First, the retaliatory acts in the modern sense of the word according to the principles of international conventions on humanitarian law includes an illegal act tyrannically imposed by one state on another with the only purpose of forcing that state to accept the elimination of aggression on the part of the illegal act of the second party. Consequently, the retaliatory act is an illegal act done to retaliate another illegal act.

It goes without saying that the Muslim combatants who obey the laws of Islam shall never resort to any retaliatory act which is in fact the justification of an illegal act. Therefore, the aforementioned assumption is outside the Muslim laws.

Second, as to the exercise of retaliatory acts, there are limitations in Islam. No Muslim has the right to act like the enemy while in time of war when the swords shine that is when it is allowed to take someone's life, observing virtue is a recommendable act, for wherever allowed, there should not be limitations on prohibitions.

However, we talk of a war, based on virtue vis-a-vis crime, sin and aggression, so it is natural that the war waged for the sake of virtue shall be illogical. What if in the field, the Muslims act in a way to violate the principle of virtue? Hence, the Muslim war based on virtue is always with problems and even if the enemy does not observe virtue, the Muslims will never go beyond it. If the enemy amputates the bodies of the dead Muslims, the Muslims will not follow suit for the holy Prophet says, "Never, never amputate the dead."[52] When the pagans killed Hamza Abdolmotaleb in the Battle of Ohod and amputated his body, the prophet was severely outraged by this act,[53] for Hamza was his uncle and the holy Prophet loved him more than anyone else among his relatives.

At all events, he never even thought of giving the order of amputating the enemy in the coming wars. Even if the enemy keeps the prisoners of war hungry or lets them die of thirst, the army of virtue shall never act likewise, for Allah commands the Muslims to treat the enemy soldiers fairly and the holy Prophet forbade people not to keep anyone thirsty.[54]

Outrages against the Dignity of the Wounded is prohibited

Based on the international humanitarian law, the wounded and the sick should be treated with respect. For this reason, the medical organizations are paid much attention to. That is why many of the principles of Geneva Convention 1949 and the two annexed protocols relating to the Wounded, Sick, Shipwrecked and medical organizations are instituted.[55]

To show the vast consideration of Islam relating to the wounded and the sick, it is sufficient to relate the tale of *Salah al-Din Ayyubi* and Richard the Conqueror. *Salah al-Din* entered impromptu into his tent and although Richard was the bloodiest enemy in the crusade wars, Salaf al-Din took care of him until

he completely recovered. This indicates that the Muslims not only look after the sick and the wounded no matter who they are but extend their kindness into the tents of the enemy. Regardless of his motivation, he would not do anything otherwise if it contradicted Islamic law.

Therefore, it is no exaggeration to say that any illegal act against the wounded and the sick is against Islam.

It is Forbidden to Deprive Others of Food and DrinkNow we shall talk about depriving the citizens of food and drink (for survival) for the sole purpose of driving them from their houses. Islam even prohibits the killing of animals except when this helps satisfy man's hunger.[56] For preventing the waste of economic value of animals, Islam prohibits the killing of animals by burning them except for the time when they help enervate the military forces of enemy.[57] If the Muslims bound for the battlefield cannot obtain food even at paying the price and when people refrain from selling them food, they are allowed to obtain their food through resorting to force.

When Islam allows the Muslim combatants to stop the source of water by polluting it with poison and dirt, the target of the combatants is the enemy, not the citizens. Resorting to such acts is very limited and allowed only in time of necessity.

When the Muslims leave a place, leaving some food, they are not allowed to burn them unless it would enervate the enemy forces. This implies that the Muslims are not allowed to destroy anything at all except for military reasons.

In the sixth year of Hegira, Thamamah, the leader of Yamamah Tribe, decided to prevent the coming of crops to Mecca where the people needed it most urgently in order that the Meccans might be forced to accept Islam. Consequently, when Mecca was encountered with the danger of famine, the inhabitants asked for the removal of the sanction. And the holy Prophet wrote to Thamamah to remove the sanction.[58]

When the aggression against the Meccans was at its highest point, the holy Prophet sent many dates to Mecca for which he had paid a lot of money.[59] We know that the Meccans were at war with the holy Prophet since the time he had immigrated to Medina. At all events, the order of the holy Prophet for not destroying Mecca which we shall deal with soon demonstrates the truth of the aforementioned points.

It is Forbidden to Destroy the Buildings and the Trees

Here, we shall deal with the commitment of the Muslims to the enemy's property. Briefly, the commitment in this regard is making a distinction between the military goals and the citizen's property which the latter should not be exposed to destruction. The order of Abubakr explicitly suggests the same thing. Surely, he who knows himself as the companion of the holy Prophet should obey the orders of the holy Prophet.

Some of the Twelver Shi'a jurisprudents believe that the destruction of buildings and trees should be

allowed. In this regard they quote the Holy Qur'an,

"Whatever trees you cut down or left standing upon their roots, that was by God's leave, and that he might degrade the ungodly." (***Surah al-Hashr, 59:5***)

These jurisprudents interpret the word trees as palm-trees. To stress this point they stated that the Muslims destroyed the houses of the Tribe of *Bani Nazir* at the order of the holy Prophet and that the holy Prophet had ordered that the castle of Malik Ibn 'Auf, the military leader of *Ta'if* should be set on fire and by cranes, their castles should be destroyed and their trees cut down.

At all events, what is understood from these quotations is that there is no absolute permission for destruction. On the other hand, the branches burdened with fruits do not mean palm-trees. The meaning of the Qur'anic verse. "Whatever trees you cut down, or left standing upon their roots, that was by God's leave..." cannot be interpreted as palm-trees but only the dates on top of the palm-trees. Hence, the picking of fruits does not mean the destruction of trees. Besides, about the destruction of the houses of *Bani Nazir* Tribe, Abu Zahrah says,

The reason for the destruction was this that they had used their houses as forts and a means for injuring the army of Islam: hence, it was necessary that the houses should be destroyed in order that the Muslims might be immune from torturing them. In fact, the disciples of the holy Prophet did whatever was deemed necessary, but when the Jews realized that they should deliver their houses to the Muslims, they destroyed the houses completely.60

This event has been referred to in a glorious verse, which suggests that the Jews had destroyed their houses themselves. The Holy Qur'an states,

"They destroyed their own houses at the hands of the Muslims." (***Surah al-Hashr, 59:12***)

However, military attacks against the forts have been an allowed act and those places were the shelter for the aggressive people, so the destruction of the places was for weakening the morale of the enemy. It is true that the threat to the chopping of the fruit trees of the gardens in *Ta'if* took place, for the fruits were used for making wine. At all events, it must be noted that the holy Prophet did not put this order into practical shape in order to encourage the enemy to surrender. To what was previously mentioned it should be added that that when Alsoud delivered a slave belonging to a Jew to the holy Prophet during the battle of Khaybar, the holy Prophet told him, "Go somewhere else and drive the flocks to their masters."61

Special Classes Under Protection

Women and Children

According to Muslim jurisprudents, women and children are immune from aggression and killing them is prohibited.62 The reasons for this fatwa are the prophet's traditions and his actions. For instance the

following examples are given:

The holy Prophet stated, “Do not kill women and children.” It is also related by *Ibn ‘Umar* that: in one of the battles, a woman was seen among the dead. Hence, the holy Prophet prohibited the killing of women and children.[63]

Another relation is that during the Battle of Hunain, the holy Prophet passed by the corpse of a woman and said, “Did I not prohibit you the killing of women and children?” A man answered, “That woman was following me, trying to kill me, so I killed her.” Then everyone fell silent.[64] Then he ordered the dead body to be buried.[65]

It is related by Ibn Rabi’ that in one of the battles, the holy Prophet told someone, “Go to Khalid and tell him not to kill women and children.”[66] It is also related that when the prophet wished to dispatch some people to the battlefield, he addressed them, “Go in the name of Allah and ask His help and take care that you do not kill their women or children.”[67]

The leaders after the holy Prophet adopted a similar policy. “I command you to ten things: Never kill any woman or child, or any old person; never cut any fruit tree; never destroy any house; never behead any sheep, or any camel, unless when you are hungry;...”[68] Similar commandments have been quoted from ‘Umar, ‘Uthman an ‘Umar ibn ‘Abd al-‘Aziz.[69]

According to many commentators of the Holy Qur'an, the killing of women and children is a kind of aggression which, according to the verse

“And fight in the way of God with those who fight with you, but aggress not; God loves not aggressors,” (***Surah al-Baqarah, 2: 190***)

is prohibited.

Ibn ‘Abbas and *Mujahid* have stated that the rejection of aggression means the rejection of killing women and children.[70] *Ravandi* is of the same opinion.[71] What was said is under the circumstances where the women and children are in normal conditions, namely that they do not attack the Muslims, or do not help the enemy. However, if they are of the enemies, killing them is allowed.

Nawawi said, “If women and children participate in war, killing them is allowed according to many Muslim jurisprudents.” [72] The reason is that their not killing was for their not participating in the war. Hence, if they participate in war they will be killed and so, in battle against Bani Quraizah, the holy Prophet ordered the killing of a woman who had thrown a spear at Mahmud Ibn Salmah.[73]

Some of the jurisprudents including *Abi al-Salah* in his book *Al-Kafi* agrees to these principles with those of other religious schools.[74] They regard the killing of women and children as allowed when they participate in war, but according to many Twelver Shi’ah jurisprudents, the killing of women and children is absolutely prohibited, even if they participate in war. Muhaqqiq Hilli states, “The killing of women and

children is absolutely prohibited even if they help in war."[75]

Shaykh Tusi stated, "The killing of women is not allowed, although they fight against the Muslims in cooperation with their spouses, except in emergency."[76] Ibn Idris is of the same opinion with Shaykh Tusi.[77] By emergence, Shaykh Tusi means the cases in which someone is scapegoated.

Allamah Muhammad Hasan Najafi quotes the book *Muntahi al-Matlab* that there is a consensus on the prohibition of killing women and children among the jurisprudents. And in case of women, killing them is not allowed even in time of necessity.[78] However we did not encounter this quotation in *Muntahi al-Matlab*.

Definition of Children: From the viewpoints of Muslim jurisprudents, children are those who have not reached the age of maturity. In Islamic jurisprudence, the age of maturity is limited to natural growth (age 15).[79]

Old People

Generally, old people belong to classes under protection. In the following, we shall mention the opinions of some Muslim jurisprudents.

'Allamah Hilli, a Twelver Shi'ah jurisprudent, divides the old people into four groups:

1. Those who are experts in war and actively participate in it

2. Those who are not experts in war but fight the Muslim army

3. Those who are experts on war but do not fight

4. Those who are not experts on war and do not participate in war

As to the aforementioned forms, the jurisprudent states that it is allowed to kill the old people who fought against the Muslim army or have assisted the enemy by giving them ideas on war and the fourth form is not allowed. He derives this from the holy Prophet's attitude in the Battle of Khaybar. In that battle, the Muslim soldiers killed an old man aged 150 who collaborated with the pagans, and gave them ideas on war and the holy Prophet did not scold them.

The jurisprudent derives the source for his fourth form from the hadiths narrated in different forms that the holy Prophet recommended his army, "Do not kill the old people."[80] Muhammad Hasan Najafi approving 'Allamah Hilli, believes that the twelver Shi'ah jurisprudents agree, by consensus on this score.[81]

Abu Hanifah, Malik, Thauri, Laith and *Awza'i* agree on the fourth form with the twelver Shi'ah jurisprudents and among the jurisprudents only Ahmad Ibn Hanbal and Abu Ishaq have given the fatwa (formal opinion) on killing in the fourth type.[82] In addition to the previously mentioned hadiths, the old

people in the fourth category cannot be killed according to the Qur'an.

"And fight in the cause of Allah with those who fight with you." (***Surah al-Baqarah, 2: 190***)

The prohibition of killing the old people is one of the ten commands, which Abu Bakr gave when dispatching his army. "Do not kill old people."83 And other caliphs followed suit.

The Handicapped, the Mad, the Sick and the LikesThis group enjoys protection, for firstly, due to physical incapability, they are not among the combatants and the military forces and killing do not involve those who do not actively participate in war. Secondly, special narrations are given regarding them including this statement: in a narration, *Abi 'Abdullah Sadiq* included the physically handicapped and the blind in the category of women and children, adding that it was not incumbent upon them to pay poll-tax, for even if it was incumbent, and they refused to pay, killing them would not be allowed.84

From this tradition, one can conclude that killing old people is not lawful. The Shafi'i and the twelver Shi 'ah jurisprudents have included the mad people in the category of children.85

Non-military Passers-by*Muhaqqiq Hilli*, the twelver Shi'ah jurisprudent, stated that the passing of passers-by who pass in war zones can be prevented.86 He added that when the commander of the army together with the army under his supervision steps into the enemy zone, he can surround the enemy and prevent the comings and goings of the passers-by, for this is one of the necessary cases.87 Shaykh *Tusi* also stated the same thing.88

From the narrations of the jurisprudents, one can conclude that the prohibition on the comings and goings of the passersby should be necessary. In other words, the comings and goings of the passers-by might suggest espionage against the Muslims. Hence, otherwise, when there is no such probability, the passing of the passers-by shall not require legal permit. Secondly, except for preventing their passing, no other measures should be taken. Hence, based on the first principle, it can be said that the passers-by shall have immunity.

Exceptions:

Abusing the Immunity of the Non-military PeopleOne of the tricks that the enemy might resort to is abusing the immunity of the non-military people. The enemy might use the immune people as the means to protect itself from danger or defeat. Here, the question is: should we surrender to enemy for protecting these people who are immune in normal conditions? Or, is it necessary to aggress against the immune people?

By different explanations, the Muslim jurisprudents have sought to answer these questions. Muhaqqiq Hilli states, "If the enemy uses women and children as the means to protect itself, aggressing against such people is not allowed, except when war is going on. In this case, this impediment can be removed. And if they use the Muslim prisoners of war as a means for their protection, this can be ignored (even if it

leads to their death) if there are no other ways of fighting.[89] 'Allamah Hilli states, "If the enemy uses women and children as scapegoat, they can be shot if the war is in progress.[90]

Ibn Baraj says, "In case of scapegoat, if the war is in progress, it is allowed to shoot the enemy. Of course, the children used as scapegoat shall not be shot, for this act is done on necessity basis. It is evident that children cannot be shot if the war is not in progress.[91]

Ibn Idris states: "If the enemy uses children as scapegoat, if the war is in progress, the enemy cannot be shot; the children should not be shot but only the military people shall be shot. This is true for the Muslims and the women who are used as scapegoat."[92] Yahya Ibn Sa'id states, "If the children or the Muslim prisoners of war are used as scapegoat, only the enemy shall be shot.[93]

The writer of Athar al-Harb fi Fiqh al-Islami, criticizing those who have prohibited the shooting of women and the children used as scapegoat states, "This is true when enemy has used these people as a means of protection. However, if the enemy wishes to provide ammunition or strategies of war in their shelter, killing them is allowed, for the situation necessitates it."[94]

Some jurisprudents on allowing the killing of the scapegoats derive from the holy Prophet's act in the battle of *Ta'if*. The holy Prophet tied the people of *Ta'if* (including women and children) to cranes in the battle of Ta'if.[95]

It must be noted:
In the aforementioned war, the conduct of the holy Prophet must be treated as a single event in which the access to enemy was through the means stated above and the holy Prophet did it to follow them. Hence, the general document which prohibits the killing of women and children requires that we should resort to ways which do not endanger people.

Therefore, choosing the ways which lead to the death of no-military people is not allowed, for they might have been prohibited by the Holy Qur'an.[96]

Scapegoating Enemy by the Muslims
When the enemy uses the Muslim prisoners of war, citizens, merchants and the tourists as scapegoat, the Hanafi jurisprudents believe that it is allowed to attack them, for suffering special loss is for eliminating common loss. Undoubtedly, the elimination of common loss namely the defending of the Islamic nation, has priority over suffering the special loss, the death of the Muslim prisoners of war.[97]

Also, if the Muslim prisoners of war and their children are in the enemy's fort, most jurisprudents state that if the victory shall be actualized by killing the prisoners of war and the children, it is allowed to burn drown and tie them to the cranes.[98] The point noted above is supported by juristic preference in Hanafi jurisprudence, the general welfare and the greater welfare[99] in *Maliki* jurisprudence, and extension in Twelvers.[100]

Treatment of Prisoners of War

The Islamic order in the ways of treatment of prisoners of war requires the principles which the international custom and rights can never approach. The first principle in determining the position of a prisoner of war is that the belligerent State is responsible for his health and protection and that he is not under the control of the combatant who has taken him prisoner. Islam refers to this in the Qur'an,

"When you have taken power over the pagans, tie hard the prisoners of war and free the women until war subsides." (***Surah Muhammad, 47:4***)

Another verse says,

"It is not fit for a prophet to take captives unless he has fought and triumphed in the land." (***Surah al-Anfal 8:67***)

It must be noted that both verses embrace the same idea and that before complete victory, the soldiers should not do anything. But after complete victory, captive taking starts and the verse should be put into practice.

Some commentators[101] hold that there is difference between these two verse with the explanation that the second verse forbids the prophets to take captives and that they are obligated to destroy the enemy as long as the religion of God has not yet been spread in the earth. Under no circumstances, they are allowed to keep captives with them.

However, in our opinion the two verses embrace the same idea. And the solution to the problem lies in "*Yuhthan fi al-Arz.*" *Yuhthan* means victory in the field not the sovereignty of God's religion in the world. What is according to the second verse forbidden is captive taking before victory.

The first verse obligates the Muslims to fight as long as the enemy is totally crushed. The captives may be fast tied and the war ends as soon as the enemy is crushed and taken captive, then, the two following ways are adopted; the captives are either freed unconditionally out of pity or some gift is paid for their freedom. Hence, the Islamic decree is that of the goals of war is captive taking and then everything depends on the order of the imam. In other words, the prisoner of war is kept by the imam so that he might protect him until his fate is determined by him. That was why the holy Prophet said, "Never kill the captives."

It is related that 'Abdullah Ibn Amir[102] sent a captive to Ibn 'Umar so that he might kill him. Ibn 'Umar said, "I seek refuge in the Lord. I shall never kill a captive." He meant that he did not have the right to kill a captive, and that the imam had to decide for him.[103]

There is consensus among the jurisprudents that if the captive holder kills the captive, he is responsible.

At all events, the captive is no longer a combatant. In fact, the captive is a combatant who is not able to

continue the war, for he has been held a captive in a land other than his. So, his captivation should end in some other way.

Many jurisprudents hold that the imam has four authorities to end the captivation:

1. The liberating of the captive out of mercy

2. Obtaining ransom

3. Immunity from abuse

4. Killing him

However, based on the verse noted above, the captive should be freed out of mercy or by ransom. Hence, as to the validity of the latter choices, there is doubt.

Liberating out of Mercy

In my opinion, the liberating of the captive out of mercy should be done by the imam before any other ways. And the imam is not allowed to adopt any other way, unless it is necessitated by the Muslims' welfare, for based on the order of Qur'an, this has priority over the other. The Qur'an states,

"O prophet! Say to those of the captives who are in your hands: if Allah knows anything good in your hearts, He will give you better than which has been taken away from you and will forgive you and Allah is forgiving, merciful." (***Surah al-Anfal, 8:70***)

The liberation out of human mercy can be conditional or unconditional. In the first way, the captive follows the fixed conditions. In battle of Badr, the Messenger of God freed a poet called Abu 'Izzah on the condition that he would join no group fighting with the prophet. However, Abu 'Izzah joined the pagans in the battle of Ohud and taken captive by the Muslims and asked the prophet for forgiveness. The prophet said, "I swear by the Almighty God that I shall never let you crane your head out before the Meccans and say 'I have twice deceived the prophet.' The true Muslim is never stung twice."[104]

Ransom

There are different types of ransom. Ransom may include money, property, weapons, or any other thing. For instance, during the Battle of Badr, the ransom for freedom was to educate ten children. It is also related that 'Umar Ibn 'Abd al- 'Aziz, liberated 100,000 captives on the condition of capturing Constantinople. If the ransom for the liberation of Muslim captives is determined, this is called an exchange of captives.

Based on Islamic laws, the number of the captives on both sides does not need to be equal, for the liberation of a Muslim captive may be determined as the ransom for the freedom of others. The holy Prophet freed Al- 'Aqili who had embraced Islam and set him as the ransom for two Muslim captives.

Based on Muslim tradition, the visit of the enemy's representatives from the prisoners camp for determining the number of the captives is allowed. Likewise, it is necessary that the vehicles transferring captives from place to place should be examined carefully so that they become sure of their safety and health.[105]

Execution of the Prisoners of War

There is not a consensus among the jurisprudents on executing the prisoners of war despite the fact that some recognize it as lawful and others as unlawful. The first group using different sources has related that the holy Prophet had killed a captive. Al-Shafi'i and Abu Yusuf[106] hold that killing the prisoners of war is allowed if this act helps consolidate the religion of God and deteriorate the enemy forces and the case mentioned above is thus justified.

It seems that the narrations about the holy Prophet's act towards the prisoners of war is completely clear and far from ambiguity, for the times when the holy Prophet ordered the killing of a prisoner of war, are quite rare. If the present cases are studied carefully, it becomes evident that although the imam had complete authority as to what to do with the captives, the killing of the captives was not committed except for the crimes the captive had committed before his captivity such as crimes against the holy Prophet and Islam. In fact, article 85 of the Geneva Convention provides that 'The prisoners of war are tried according to the laws of the state of the captive holder. Even in case of sentence, they shall enjoy the advantages set herein.'

If the captive has done no crime before his captivity, the Imam does not have the right to have him executed. The Muslim welfare cannot justify the execution of the captives just as the freedom of a captive cannot inflict any damage on the Muslim community.

Slave-taking

In fact, the justification or acceptance of man's slavery is difficult concerning the verse in the Qur'an that says all the angels bowed down before Adam.[107] Besides, according to a Muslim law men are free and equal. An Arab or a white person is not superior to a non-Arab or a non-white except for virtue. Another Muslim law says that there is no compulsion in religion,[108] sufficient evidence should be provided.

In fact, slavery was introduced into Islamic thought in the age of the deterioration of human civilizations. It must be noted that the holy Qur'an uses past tenses any time it talks about slavery. This forced smuggling of slavery shows the general morale of people in an era in history in which slavery was in use and the Muslims suffered innumerabe sufferings. If the Muslims were captivated by the enemy, they were put on sale in the bazaar. In his Travelogue, Ibn Jabir writes that he had witnessed the great agonies of Muslim women and children in the slave markets in Italy.[109] Hence, the Muslims had no other alternative but to do the same.

Abuzar, the great disciple of the holy Prophet, relates, "They are your religious brothers whom the

Almighty has placed under your supervision; hence, any one who places his brother under his own supervision, it is incumbent on him to give him from the food he eats and the clothes he wears; do not expect him to do what is beyond his power; if such a thing happens, he should help him in it."[110]

Islam offered a very extensive plan for the freedom of slaves according to which they could gain freedom in a short time (without having unpleasant consequences.)

Islam has repeatedly recommended the freeing of slaves. In this regard, the holy Prophet said, "If anyone frees a Muslim slave, the Almighty shall free every limb of his body from the Fire of Gehenna." This has been differently related.[111] As seen from the present documents, the holy Prophet regarded it a bad act to keep an upright man in slavery. When one of his slaves did something good, the holy Prophet said, "Go, you are free. I do not wish to have a man belonging to paradise as my slave."[112]

In the book of *Wasa'il*, there is a chapter in which there is interesting information: an upright slave is freed after seven years either by his master or by the prevailing law.

Besides, the religious authorities have encouraged the people to free the slaves. In this regard, Imam 'Ali is said to have freed a thousand slaves.[113]

Islam has promulgated certain rules suggesting that if someone is not willing to free his slave, he cannot be compelled to free him. For instance, the Islamic jurisprudents regard two conditional kinds of freeing called *tadbir* and *mukatibah* each one of which has complete laws.

Tadbir includes the idea that the slave is freed in the wake of his master's death. And *mukatibah* includes the idea that the slave is freed if some ransom is paid for him. It is worth mentioning that if anyone fails to pay the price, the Muslim jurisprudents should pay the price from the common wealth.

These laws all indicate the interest of Muslim legislators and jurisprudents to free slaves. On the other hand, in books on Islamic jurisprudence,[114] there are abundant cases in which the slaves are freed by commitment or by persuasion by their masters.

First: Arbitrary Freedom
In the following cases, the slave is arbitrarily freed:

1. If someone frees a part of his slave's body, all other parts his body are freed. Thus, the slave is free. This implies that the freedom of slaves might take place under small pretexts.

2. If a man is the master of his father, mother, grandfathers, children, aunts, uncles, brothers and sisters, nephews and nieces, they are immediately freed.

3. If a slave goes blind or bedridden or is seized with leprosy, he is freed and his needs should be provided from the common wealth.

4. If any slave embraces Islam before his master, he is freed.

5. If the slave's ears or noses are cut off, he is freed.

6. If the master gets a child from his maid, he no longer has the right to sell her but he should keep her and give her a portion of his inheritance. It is obvious that this may provide the reasons for many people's freedoms.

7. If one of the parents is freed and the other one a slave, their children will definitely be free.

Second–Compulsory Freedom
In many cases, the Muslim is obligated to free a slave or slaves for reasons such as atonement for murder, and atonement for fast.

Considering the attention Islam has accorded to this issue, the gradual freedom of many slaves and their children becomes possible.

That some people say why Islam did not annul slavery altogether, is a very unsophisticated thought arising from inexpediences in social issues, for considering the slave trade in those days and that many had invested their money on this trade, the abolition of slavery was impossible. After all, after they wished to abolish slave trade in the USA after centuries, four years of bloody battle broke out which claimed so many lives. So how can we expect such a thing to happen in a time when Islam emerged in a Dark Age?

In short, as keen observers, we can realize that the prospects Islam considers for the freedom of the slaves, is fair, deep and modest, exercisable in all places and immune from any kind of reactions.

At the end of the discussion, it is deemed proper to consider the comments Georgi Zeidan, the Christian historian has given at the end of the history of Muslim civilization:

Islam is extremely kind to the slaves; the holy Prophet has given recommendations about them: he states, "Do not give the slaves what they cannot do and give them whatever you eat from." Somewhere else he says, "Do not address your slaves as bondmen or bondwomen; do address them as my son or my daughter." In this regard the Holy Qur'an says, "Worship Allah; do you not hold any partner for Him; be kind to your parents, relatives, neighbors, the slaves and the orphans, for Allah detests the vain."[115]

It is evident that what should be said about the slaves cannot be stated in a few lines. Sadly, it is beyond the scope of this article. Here, I propose to demonstrate the fact that slavery is a borrowed thing and Islam accepted it in a humanitarian spirit. Even the term *riq* meaning slave most probably stems from *raqqat*, which means greatness, not from the Arabic word Istirqaq meaning enslaving. Hence, it is no surprise that even the holy Prophet stated at his deathbed, "Consider virtue in your conducts to the weak, women and slaves."[116]

As said earlier, slavery, is, in fact, a borrowed thing in Islam, which deteriorates with the deterioration of its causes. Today, the international community condemns slavery. So there is no doubt that slavery can depend on the authority of the imam. The Muslims are not allowed to use the prisoners of war as slaves. If they do, they have violated their own rules.

The Rights of Prisoners of War

Abu Yusuf states that it is necessary to conduct well towards the prisoners of war and give them food and clothing. The Holy Qur'an states,

"And they give food out of love for Him to the poor and the orphan and the captive." (***Surah al-Insan, 76:8***)

As to respect for the captives, the holy Prophet states, "Advise each other to treat well towards the captive."

In Battle of Badr, the Muslims treated so well towards the captives that they gave them dates and fresh bread.[117] Salah al-din Ayyubi, freed many of the captives for not having sufficient food although this great number of the captives could join the enemy.[118]

Today, the *Imam* cannot make decisions about the destiny of the prisoners of war. Therefore, some rights are given to the prisoners of war, which we shall discuss in the following.

Respect and Prevention from Torturing the CaptivesThe first right is respect for the prisoners of war. Therefore, it is not allowed to expose them to torture under any circumstances. The holy Prophet stated, "The Almighty shall torment those who torture others in this world." The prophet's aversion for torture is obvious in the case of Suhail Ibn 'Umar al- 'Amiri who was a great talker and had directed the blade of his sarcasm to the holy Prophet. 'Umar Ibn al-Khattab asked the holy Prophet to allow him to take out Suhail's teeth in order that he might no longer be able to talk against the holy Prophet. The holy Prophet said, "I shall not make him so, for if I do this, Allah shall do the same to me who am a prophet."[119]

Preserving the Family Ties of the Prisoners of WarIt is necessary to preserve the family ties of the prisoners of war. Hence, there is a consensus among the Muslim jurisprudents that it is not allowed to separate a seven-year-old child from his mother. However, some of the jurisprudents hold that it is allowed to separate the spouses from each other in time of dividing the booty or in time of selling them.

Granting the Right of Corresponding to Family
The captives have the right to write letters to their families.

Prohibiting discriminationIt is not allowed to discriminate between the captives. The stance of Islam towards this issue is completely clear, suggesting that we are the descendents of Adam and created from dust.

At all events, the equality of human nature does not mean the equality of social conditions. Ther are many verses in this regard:

"And do not covet that which Allah has made others excel others" (***Surah an-Nisa, 4:32***)

And

"We have made some of the apostles to excel others" (***Surah al-Baqarah, 2:253***)

"The Holy God grants grace to those whom He wills" (***Surah al-Baqarah, 2:190***)

"And We have made them excel by an appropriate excellence." (***Surah al-Isra, 17:70***)

The Exercise of Fair TreatmentIslamic realism does not allow equal treatment towards the prisoners of war without considering their social status although humanitarian considerations are observed. When the daughter of al-Maquqas was taken prisoner, Maqrizi states, "The daughters of the rulers deserve special attention. Be kind to those who were once great but now have lost their status."

Ibn 'Asakir narrates from the holy Prophet, "If some person of high standing is imprisoned by you, treat him well." Islam regards kind treatment to others in proportion to the status of the captives as the minimum human conduct. The prohibition of discrimination in the first stages of formulating the international humanitarian law was limited to the issue of discrimination on the nationality of people. However, the principles of prohibition of discrimination have assumed a broader scope, the principles 44 and 45 in the Geneva Convention of the prisoners of war120 provided that the enemy officers should be treated fairly according to their rank.

Freedom of CaptivesIt is necessary to mention that if a captive escapes and goes back to his country, he is free unless he has bound himself to a commitment. If any commitment is involved, he is obligated to return for Islam condemns treachery. The Holy Qur'an states,

"Indeed God does not love the traitors." (***Surah al-Anfal, 8:58***)

Concluding Comments

After World War I which claimed so many casualties, in 1949 the representatives of States gathered in Geneva and formulated four compacts for preventing the unceasing massacre of men and from inhumane treatment towards the wounded and the sick and even towards the corpses known as the Four Conventions. Later, in 1977, two protocols were annexed in augmentation. The collection of these rules was called the International Humanitarian Law.

Jane Pictet, the Swiss lawyer who has immensely helped formulate the conventions and the protocols, says, "I wished to elucidate all the international humanitarian law in a beautiful comprehensive sentence. This is what I could present: 'Do as you would be done by.'"121

Interestingly, this is also stated by the holy Prophet, “He who does not treat others as he expects them to treat him is not a believer.”122 The implication is that the observance of international humanitarian law is part of one’s faith in religion and a fundamental pillar after the five fundamental pillars of Islam.

1. The late Dr ‘Abd al-Majid Badavi was the head of this institute and Salah al-din al-Munjad was the vice-president. See: 1389 A.H. , The introduction of al-Sayr al-Kabir, written by Dr. Badawi, p. 12. It is worth mentioning that University of Paris had a ceremony honoring the 1200th year of Shaybai’s death (804 A. D.)
2. Baron Michel De Tube, Lessons on the Historical Changes of International Law in Eastern Europe, Hague, 1926, Vol. 1 , pp. 341-554 especially puges 380-397.
3. Dr Kamil ‘Ayad, Safahat Min Tarikh al-Istishraq, Damascus: Majma’ al-‘Aribiyah, 1986, p.574.
4. He was born in Gharnateh (Granada) in 1548 and died in Shinboneh in 1617.
5. The author has divided jurisprudential rules into civil, judicial and political rules. In each part he has presented some discussions which constitute four volumes: the two volumes concerning civil laws have been published and the other two parts on penal and judicial laws are under publication.
6. Sura al-Baqarah 2:190-194: “And fight in the cause of Allah with those who fight with you, and do not exceed the limits, surely Allah does not love those who exceed the limits; And kill them wherever you find them, and drive them out from whence they drove you out, and persecution is severer than slaughter, and do not fight with them at the Sacred Mosque until they fight with you in it, but if they do fight with you, then slay them; such is the recompense of the unbelievers; But if they desist, then surely Allah is Forgiving, Merciful; And fight with them until there is no persecution and religion should be only for Allah, but if
They desist, then there should be no hostility except against the oppressors; The Sacred Month for the sacred month and all sacred things are under the law of retaliation; Whoso then acts aggressively against you, inflict injury on him according to the injury he has inflicted on you and be careful of your duty to Allah and know that Allah is with those who guard against Evil.” Surah Aale Imran 3:102, 105, 107, 110 respectively: “ O believers! Be careful of your duty to Allah with the care which is due to Him, and do not die unless you are Muslims; And be not like those who became divided and disagreed after clear arguments had come to them, and these it is that shall have a grievous chastisement; And as to those whose faces turn white, they shall be in Allah’s mercy, in it they shall abide; You are the best of the nations raised up for the benefit of men, you ennjoin what is right and forbid the evil and believe in Allah, and if the followers of the Book had believed it would have been better for them; of them some are believers and most of them are transgressors.”
7. Pictet, The Principles of Humanitarian International Law, 1966, Int. L. Rev. Red Cross, pp. 455, 462.
8. Al-Mavardi (died 405 h.q.) a distinquished Shafi’i jurisprudent who taught in Baghdad and Basra. See: Al-Ahkam al-Sultaniyyah, Markuz ul-A’lam al-Islami, Qum, p. 56 onward.
9. Ibn Kathir, al-Bidayat wa al-Nihayat, vol.7, p.282
10. The Geneva Convention on the improvement of the wounded and the ill people of the armed forces in the battlefield (approved on 12 August 1949, article 3). Three other Geneva conventions (1949) concerns the improvement of the wounded and the ill and the shipwrecked of the armed forces in the sea (approved on 12 August, 1949, no. 3219) which is called the Second Convention and the Geneva convention concerning the treatment towards the prisoners of war (approved on 22 August 1949 no. 3317) which is called the Third Convention. And the convention concerning the civilians during armed war under the same number and date 1949.
11. For historical reference see Mas’udi, Vol. 4 p. 17-316; The Laws of War at the Time of Islam, Yusuf Ibn Muhammad Ibn Ibrahim al-Andulusi (died 653 A.H.), Cairo Library, the Department of History, manuscript no. 399; also see Nahj al-Balaghah (The Ways of Eloquence), letter no. 14 with a little difference.
12. 1868 St. Petersburg Declaration in which 58 States participated.
13. The Great History (Siyar al-Kabir) with Sarakhsi’s explanatory notes, Vol.2, p.85
14. First protocol concerns the protection of the victims of international belligerency, approved on 8 June1977, article 35 UN Doc. A/32/144 Annex 1 (1911). From now on it will be called First Protocol.
15. Article 35, Par. 1.
16. Article 35, Par. 2.

17. See St. Petersburg 1868 Declaration
18. Geneva Protocol on Gas Warfare, approved on 17 June 1925
19. Mukhtasar Khalil , Chapter Four, cited in Nuslim Conduct of State, No. 214.
20. Muslim, Sahih, Istanbul, Vol. 6, p.72
21. Ibn Athir, Al-Kamil fi al-Tarikh, Vol. 2, p.358 (narrated by Malik ibn al-Nuvayrah)
22. Ahmad, Musnad, Vol.2, p.251
23. Murtaza Al-'Asgari, Abdullah Ibn Saba and Other Myths, Beirut, Fourth Edition, Dar al Kutub, Vol. 2, pp. 117-149. For narrations as to buming, see al-Ghadir, Vol. 7, p. 155 onwards, Nos., 8, 9, 10. Also see al-Mu'jam al-Mufahris li'l-Alfaz al-Sunnat al-Nabawiyyah, Vol. 1 , pp. 9-448, On the Case of Burning.
24. Athar al-Harb (Conduct of War), p.472, related by Qastalani, Vol. 5, p.152
25. Ahmad Ibn Hanbal, Musnad Vol. 3, p.435.
26. Bukhari, pp.54, 90
27. Tabari, Tabari Interpretation, p.64 (Interpretation of verse 125, Surah Aale Imran)
28. Ibid.
29. Ibn Sa'ad, Tabaqat, Vol. 3, pp.4-11; Sarakhsi Vol.3, p.212
30. Shafi'i, al-Umm, Vol. 4, p.287
31. The Convention on the Protection of Laws and War Conduct in the Land, approved on 18 October 1907.
32. Ahmad, Musnad, Vol. 3, p.404
33. Kanz al-Ummal, On Jihad, Hadith 1130 and 11396
34. Hague Convention, see footnote no. 3, p.277
35. First Protocol, see footnote no. 1, p.288
36. "The war is a trick" is a well known proverb which in Islamic text is attributed to Holy Prophet, Hamidullah, No. 460 related by Sarakhsi, Ibid., Vol. 1, p.83
37. Bukhari, 55; 157; p.143; Ibn Hisham, pp.683-684; Tabari, Tabari's History, Vol. 1, p.302; Ibn Hajar, Isabah, no. 3074
38. Al-Navadir al-Sutaniyyah wa al-Mahasin al-Yusufiyah, p.178; Ibn Athir, Kamil, Vol. 7, p. 34
39. Ibn Athir, al-Kamil, Vol. 2, p.223
40. Al-Nuvi, Sharh-i Sahih Muslim, Vol. 7, p. 306
41. Ibn Hisham, Sirah, Vol. 2, p.367, Published in Cairo, Egypt. Edited by Muhammad Muhy al-Din 'Abd al-Majid.
42. Al-Shafi'i, Al-Umm, Bulaq, Vol. 7, p.224, Beirut, p.241
43. Al-Shafi'i, Al-Umm, Bulaq, Vol. 7, p.322, Beirut, p.355
44. See footnote no. 1, p.16
45. Second protocol, 1977
46. The Hague Convention
47. Ibn Hisham, Sirah, pp.89-688; Abu Sayf, Ibid., p.124; Hamidullah, ibid., no. 289
48. Old Testament, Book of Deuteronomy, Chapter 20, Parts 10 to 15.
49. Al-Waqidi, Kitab al-Maghazi, research by Dr. Marson Johnson, p. 514; al-Sarakhsi, Sharh al-Sayr al-Kahbir, Cairo, vol 1, p. 367, vol. 2, p. 591, vol. 3, p. 1029.
50. Of course the truth of this story has been doubted by Sayyid Ja'far Shahidi. See: Analytical History of Islam, University Press
51. Ahmad, Musnad, Vol. 2, p. 403
52. Al-Mu'jam al-Mufahras l'il Alfaz al-Ahadith al-Nabavi, Vol.6, pp. 169-172; also al-Shafi'i , Ma'rifat al-Sunan wa al-Athar, Vol. 6, pp. 553-559
53. Ibn Hisham, Al-Sirat al-Nabawiyyah, Vol. 3, pp. 95-97
54. Zamakhshari, Mahmud Ibn 'Umar, Al-Kashshaf, Cairo: Halabi Publications, 1948, Vol. 3, p. 310; Sharh-i Sayr al-Kabir, Vol. 1, p. 78; Al-Mabsut , Vol. 10, p. 5. In Nahj al-Balaghah, Imam 'Ali states, "Do not expose women to torture even if they have offended you and your authorities. We were commanded to compose ourselves when we were encountred with the women pagans. Even in time of ignorance, if someone used weapons and stones against women, the future posterities would scold him due to this act. (Subhi Salig, Nahj al-Balaghah, p. 373)

55. Geneva Convention, 1949; Second Protocol, 1977
56. Al-Mughni, Vol. 8, p.541; Al-Muhalla, vol. 7, p.343; Wahbah al-Zahaili, al-Alaqat Al-Duwaliyat fi al-Islam, p.69
57. Ibid.
58. Ibn al-Athir, al-Nihayat, Vol. 1, p.247
59. Sarakhsi, al-Mabsut, vol. 1, p.69
60. Yamani, Ibid.
61. Ibid.
62. Ibn Abidin, Vol. 3, p.310; Mukhtasar Ibn al-Hajib, p.46; Hilyat al-'Ulama, p.449; Al-Ifsah 'an Ma'ani al-Sihhah, p.377; Mavardi, Al-Ahkam al-Sultaniyyah, p.39; Ibn Abi Ya'li, Al-Ahkam al-Sultaniyyah, p.27; Rawzat al-Bahiyyah, Vol. 1, p.220; Al-Mukhtasar Al-Nafi', Hilli, p.112
63. Al-Qastalani, Vol. 5, p. 142; Ibn Majah, Sunan, Vol. 2, p. 101.
64. Majma al-Zawa'id, Vol. 5, p. 316, Beirut: Dar al-Kitab, vol. 5, p. 316.
65. San'ayi, al-Musnaf, Majlis al-'Alami, vol. 5, p. 202.
66. Anthology of Kanz al-'Ummal, Masnad Ahmad, vol. 2, p. 319; Nail al-Awtar, vol. 7, p.246.
67. Abi Dawud, Sunan, Vol. 3, p. 52; al-Baghavi, Masahib al-Sunnat, Cairo: Vol. 2, p. 88; Shaykh Tusi, Tahdhib al-Ahkam, Vol. 6, p. 138, Beirut: Dar al-Ma'arif
68. Al-Razqani's Commentary on Al-Muwatta', vol. 22, p. 295; Al-Muntaqi, Notes on Al Muwatta, vol. 3, p. 167; Al-Bayhaqi, Sunan, vol. 9, pp. 85 & 89; Nayl al-Awtarm vik, 7, p.249.
69. 'Iqd al-Farid, vol. 1, pp. 151 onwards.
70. Tabarsi, Majma' al-Bayan, Tehran, vol. 1, p.285
71. Tabarsi, Fiqh al-Qur'an, p.119
72. Sharh-i Muslim, Vol. 12, p.48
73. Athar al-Harb, p. 473.
74. Yanabi' al-Fiqhiyah, p. 37.
75. Sharayi' al-Islam, Beirut, Vol. I, p. 312.
76. 'Shaykh Tusi, Al-Mabsut, Tehran, Vol. 2, p. 13.
77. Yanabi' al-Fiqhiyah, p. 167.
78. Jawahir al-Kalam, Vol. 21, p. 71.
79. Mahmasani, Al-Nazariyat al-'Ammah, Vol. 2, p.346
80. Abi Dawud, Sunan, vol. 3, p. 52; Wasa'il al-Shi'ah, Vol. 11, p. 43; Muntahi al-Matlab, Vol. 2, p. 911.
81. Jawahir al-Kalam, Vol. 21, p. 75.
82. Ibid.
83. Baihaqi, Sunan, Vol. 9, p. 85.
84. Wasa'il al-Shi'ah, Vol. 11, pp. 47-48.
85. Al-Muhalla, vol. 7, p. 297; Al-Umm, vol. 4, pp. 157 and 197 onwards; Al-Rawzat, vol. 2, p. 115.
86. Sharayi' al-Islam, Vol. 1, p. 311.
87. Tadhkirat al-Fuqaha', Kitab-i Jihad.
88. Mabsut, Vol. 2, p. 11.
89. See Sharayi' al-Islam, Kitab al-Jihad, Vol. 2, p. 312.
90. See Yanabi' al-Fiqhiyah, Al-Jihad, Qawa'id al-Ahkam, p. 247.
91. See Yanabi' al-Fiqhiyah, On Jihad, p. 87.
92. Ibid, Sara'ir, p. 168.
93. Ibid, Al-Jami' li 'al-Sharayi', p. 235.
94. Athar al-Harb fi al-Fiqh al-Islami, Wahbah Zahiyli, Damascus: al-Maktabat al-Hadithah, p.498.
95. See Mahmasani, Jawahir al-Kalam, Vol. 21, p. 70; Ibid. p. 242.
96. And fight in the cause of God with those who fight you, and do not exceed the limits. The Holy Qur'an, Surah al-Baqarah (2:190.)
97. Mahamasani, Ibid.,p.242

98. 3 Fath al-Qadir, Vol. 4, p. 287; Radd al-Mukhtar, Vol. 2, p. 308; Al-Muhadhdhab, Vol. 2, p. 250; Al-Mughni, Vol. 10, p. 504; Sharh al-Kharshi, Vol. 2, p. 412; al-Midnat al-Kubra, Vol. 3, pp. 24-25; Bidayat al- Mujtahid, Vol. 1, p. 307.
99. For the difference between these two rules, see Mahmasani, Falsafat al-Tashri Fi al-Islam, p.177
100. Al-Jami' al-Saghir, Vol. 1, No. 1705; Al-Muhalla, Vol. 7, No. 937; Saduq, Muhammad Ibn 'Ali Ibn Babiwiyh, Khisal, Bab-i Tas'ah.
101. Ibn Jarir Tabari, Jami' al-Bayan, Vol. 10, p. 42; Tusi, Al-Tabiyan, Vol. 5, p. 156; Zamakhshari, Al-Kashshaf. Vol. 1, p. 352; Khatib Sherbini, Al-Siraj al-Munir, Vol. 1, p. 32; Abu Hayyan Andulusi, Al-Bahr al-Muhir, Vol. 4, p. 519; Tantavi, Tafsir al-Jawahir, Vol. 5, p. 83; Jurjani, Tafsir Gazur, Vol. 18.
102. He was the commander of the army and the ruler of Basra in time of Uthman.
103. Yamani, Ibid.
104. Ibn Hisham, Sirah, Vol. 2, p.56
105. Yamani, Ibid.
106. A Hanafi jurist and the judge of judges in time of Al-Mahdi and Harun al-Rashid.
107. Surah al-Baqarah, (2:254.)
108. See Muhaqqiq Damad's article entitled Islamic Tolerance delivered at the Conference on Human Rights in Islam and Christianity, Tehran 1990
109. Ibn Jabir, Rihlah, Beirut, 1964, p. 280.
110. Tabaqat-i Ibn Sa'd, under Abudhar, Bihar al-Anwar, Vol. 15, p. 14.
111. Wasa'il al-Shi'ah, Kitab-i 'Itq, First Chapter.
112. Ibid., chapter 28
113. Kulaini, Kafi; Tusi, Tahdhib; Saduq, Thawab al-A'mal, Ibid.
114. See Muhammad Hasan Najafi, Jawahir al-Kalam, Kitab al-'Itq.
115. Jurji Zaydan, The History of Civilization, Vol. 4, p.54
116. Ibm Hisham, Sirah, Vol. 1, p.318
117. Sarakhsi, Ibid. ,p.211
118. Yamani, Ibid.
119. Ibn Kathir, Al-Bidayat Wa Al-Nihayat, Vol. 3, p.103 (the captives of Badr).
120. Third Convention, 1949, Geneva. See footnote no. 2, p. 286, articles 44 and 45.
121. Pictet, The principles of International Humanitarian Law, 1966, INT, L. Rev., Red Cross, pp. 455-462.
122. Sarakhsi, Sharh-i Siyar al Kabir, p.44

Dr. Abumuhammad 'Asgarkhani

It is of man that I have to speak: and the question that I am investigating shows me that it is to men that I must address myself: for questions of this sort are not asked by those who are afraid to honour the truth ... I conceive that there are two kinds of inequity among the human species: one, which I call natural or physical because it is established by nature and consists in a difference of age, health, bodily strength and the qualities of the mind or of the soul: and another which may be called moral or political inequality, because it depends on a kind of convention and is established or at least authorised by the consent of men. This latter consists of the different privileges, which some men enjoy to the prejudices of others. Such as that of being more rich, more honoured, more powerful, or even in a position to exact obedience.1

Jean-Jacque Rousseau

Introduction

Inequality among the human species arises from unequal distribution of power. Power is primarily in service of particular interests. Secondly, it is in service of the common good. Two categories of variables can account for the development of any regime. A first category involves general laws of cause and effect that can be categorised as principle factors. A second group of variables concerns subsidiary elements, which can be classified as peripheral or supplementary factors. The former consists of the actors' economic interests/incentives, sources of power, norms/principles and diffuse values, the latter comprising practice or usage, custom, and knowledge. The theoretical approach adopted here is a confluence of three clusters of theories: modified structuralism, neo-liberal institutionalism and the theory of cosmopolitanism.

At the outset, I shall give a brief study of the main streams of thought on regime theories. Then, I shall survey the theory of hegemonic stability. The reason for this is this that first there is almost a consensus among the scholars that international relations in the post Second World War period were dominated by American hegemony and that this hegemony established several international regimes that were either *benevolent* or *coercive*2 basically supporting the hegemony's interests. If coercive, the public utilitarian consideration was of secondary concern. Game theory and cosmopolitanism will be subsequently followed by my discussion on the principles, norms and rules of the human rights regime. In the end, I shall discuss the process of the international human rights regime formation. My conclusion will dwell upon both the contribution and limits of human rights in international politics.

Regime Theories

Elsewhere I have argued that the literature on international relations does not revolve round a single theory.3 The literature centred on regime analysisregimes are defined as sets of implicit or explicit principles, norms, rules and decision-making procedures around which actor's expectations converge in a given issue area4 - does not present a coherent whole either. Yet, it is quite safe to argue that the regime literature focuses on economic behaviour, departing from traditional concerns with military security.

Through the works of such scholars as Ernst Haas, regime analysis emerged out of an earlier concern with functionalism and integration.5 However, the chief point of departure has been recognised as Keohane and Nye's *Power and Interdependence*.6 Under conditions of interdependence, they argued that sovereignty had not yet withered away.

However, states could no longer exercise absolute control over international economic movements. Non-state actors, entities and institutions whether transnational, transgovernmental or intergovernmental were incorporated in regime literature. In 1983, Krasner and his co-authors tried to synthesise a theoretical framework on regime analysis. Krasner himself identified three perspectives: structuralism,

Grotian and modified structuralism.[7]

According to Waltz, of the three dimensions in structuralism that is, the distribution of capabilities, the ordering principles and the function of the units, only the distribution of capabilities actually matters. In analysing international-political structure, Waltz argues that:

We do not ask whether states are revolutionary or legitimate, authoritarian or democratic, ideological or pragmatic. We abstract from every attribute of states except their capabilities ... We ask what range of expectations arises merely from looking at the type of order that prevails among them and at the distribution of capabilities within that order... what emerges is a positional picture, a general description of the ordered overall arrangement of a society written in terms of the placement of units rather than in terms of their qualities.[8]

Therefore, according to structuralism, regimes depend on the distribution of power within the system. It is the states that *set the scene and stage their dramas or carry on their humdrum affairs*.[9] This approach leaves no room for regimes because only state power sets *the term of the intercourse, whether by passively permitting informal rules to develop or actively intervening to change rules that no longer suit them*.[10] International institutions are ineffective in a self-help system and co-operation is fragile. It is fragile both because of cheating ad because of states' preference for relative over absolute gain.

In a state of anarchy, Waltz posits *that relative gain is more important than absolute gain*.[11] In the word of Grieco, reflecting Waltz, states are positional, not autistic in character and in uncooperative interactions they are not only concerned about cheating but also worry that their partners might gain more from co-operation than they do.[12] Therefore, in a condition of anarchy, cheating and the search for absolute or relative gain impedes co-operation.

The Groatian approach, unlike structuralism, regards regimes as independent variables. Regimes are social institutions governing the actions of those interested in specifiable activities.[13] Under this approach, regimes are omnipresent. For instance, Puchala opines that for every political system, be it the United Nations, the United States, New York city or the American Political Science Association, there is a corresponding regime.[14] This generalisation ignores international anarchy and egoism. Unlike structuralism that sees regimes as outcomes, the Grotian perspective regards regimes as causal factors.

Modified structuralism views regimes as intervening variables between power and outcomes. This school encompasses two major intellectual streams: theory of hegemonic stability and bargaining theory. The prominent feature of modified structuralism is its adherence to the basic tenets of structuralism, which depicts an international system of functionally symmetrical, power-maximising states interacting in an anarchic environment. Yet, it postulates that under certain conditions when individual actors fail to secure Pareto-optimal outcomes, regimes play an important role even in an anarchic situation.

The Theory of Hegemonic Stability

The proponents of hegemonic stability theory argue that an open liberal world economy requires a hegemonic or dominant power.[15] Hegemony is essential because hegemonic structure of power, dominated by a single country is most conducive to the development of strong international regimes whose rules are relatively precise and well obeyed. Domination of the world by a single country as Keohane suggests is an integral part of the theory.[16] Kindleberger puts it more clearly: "For the world to be stabilized, there has to be a stabiliser, one stabiliser."[17]

By virtue of power, the hegemony should sustain the stability of the system such that a liberal world economy provides collective goods. Therefore, the World Bank, the International Monetary Fund, and the Most Favoured Nation clause of the GATT, form some examples of such collective goods.[18] The hegemony uses its influence to create international regimes, whose establishment in turn primarily purports to serve the hegemony's national interest.[19]

The hegemony's protection of its international interest is the main logic behind the notion of systematic stability. The implication is that regimes could be either benevolent or coercive. Duncan Snidal has argued that the question of when hegemony – whether by a single state or by a condominium of states– will be benevolent, coercive but still beneficial or simply exploitative outs across subfield boundaries.[20]

Keohane and Gilpin argue that regimes prescribe legitimate and proscribe illegitimate behaviour to limit conflict, ensure justice or facilitate agreement,[21] (emphasis mine). If a liberal world economy is to survive the hegemony, it must be able and willing to respond quickly to threats to the system.[22] Under this argument, systematic stability is a variable depending on power and most importantly on its maximisation. "A concentration of power would tend to lead to systematic stability whereas fragmentation of power and influence would lead to systematic instability.[23]

From this line of reasoning one can infer that co–operation is also a variable depending on power because it is the hegemony that creates international regimes that ease co–operation; however, co–operation can be extended by itself even after hegemony."[24]

My critique of hegemonic stability theory does not accord that of Susan Strange. Strange calls regimes *fads* and puts emphasis on traditional issue areas while I believe that regimes are still worth studying. It is, however, worth commenting on what Strange and Grunberg call the myth of hegemony.[25] It is also the theory of mythic content that downplays the coercive side of regimes while exaggerating the benevolent aspects.

Even the most positive writers on regimes such as Oran Young have acknowledged that some regimes are imposed.[26] Puchala and Hopkins admit: "All regimes are biased. They establish hierarchies of values, emphasising some and discounting others. They also distribute rewards to the advantage of some and the disadvantage of others and in so doing they buttress, legitimate and sometimes

institutionalise international patterns of dominance, subordination, accumulation, and exploitation."[27] Ironically, such *imposed* and *biased* regimes *ensure equity*.[28] Regime writers analyses resemble a medium of whether in which coercion withers away in a twinkle. The core of the orthodox hegemonic stability theory is to justify force by all means including illegal economic sanctions: "A pattern of behaviour initially established by economic coercion or force may come to be regarded as legitimate by those on whom it has been imposed."[29]

As Keohane posits, international relations should start from realism.[30] Accordingly, what I am concerned with here is the role of power at the early stage of co-operation and the conditions under which such co-operation has evolved in the past years.

A second critique is that the orthodox theory of hegemonic stability does not take into account the role of other state actors. The hegemonies - the United Kingdom before World War II and the United States after World War II - tended to be viewed as the sole supplier of regimes and public goods. All other members of the international society are considered free riders or at least irrelevant to the production of public goods. As Haggard and Simmons put it, "The benign view of hegemony turns realism on its head... rather than the strong exploiting the weak, it is the weak who exploit the strong."[31] This had led American writers on IPE (International Political Economy) to ignore smaller states' contribution to the process of regime formation and their function.

I would not attempt to move to the other extreme as Tooze, Murphy and co-authors do when they call for a non-counter-hegemonic international political economy and set an agenda for a research on hegemony from below simply because structural force lays the foundation of any given regime. However, they are right in suggesting that the *practice of international relations, driven by notions of consensus-induced co-operation rather than the bias of American universalism*[32] can better serve the interests of smaller states. The problem with the traditional hegemonic stability theory is that it does not provide clear theorems and implications because its variables are not readily practical in world politics. As Martin Rochester has asked, "What advice, for example, does the theory of hegemonic stability offer policy makers concerned about the requirements of world order should they allow a single state to become and remain a hegemony"?[33] Therefore,· it seems necessary to allow the roles of other actors.

Cosmopolitanism

The sons of Adam are limbs of each other
Having been creaied of one essence
When the calamity of time afflicts one limb
The other limbs cannot remain at rest

If thou hast no sympathy for the troubles of others
Thou are unworthy to be called by the name of a man.

Sa'di, the Persian Poet, 1193–1291

The problem of justice and inequality is not a new thing in human life. In Greek mythology, we hear Heraclitus saying, "The Sun will not overstep his measures. If he does, the Erinyes, the handmaids of justice will find out.[34] Talking about the harmony of a life shared in common by all its members, the Greek philosophers began to expound on the institutions of city–state. The growth of Athenian government brought changes in its institutions and the concept of justice became dependent on the changes in these institutions. Greek philosophers laid the foundation of a belief in common life that continued with some modification from the fifth century to the eighteenth century and came to be identified as idealism or cosmopolitanism.[35]

From the nineteenth century onward, its proponents have cast their eyes to a time when in the name of humanity nation states and national interests would be transformed.[36] The ideas of such writers range widely from environmental issues to the issues of ethics and hunger. However, one common theme among the proponents of this school of thought is their concern for inequality and injustice one aspect of which is human rights.

The Holy Qur'an states:

"We sent Our messengers 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***)

Justice holds a special place in the constitution of the Islamic Republic of Iran, Article 154 stipulates that *the Islamic Republic of Iran strives for the happiness of human beings within the community of mankind and recognises independence, freedom and the rule of the justice as universal rights to be enjoyed by all peoples of the world. Hence, while withholding from all interference in domestic affairs of nations, the Islamic Republic shall bolster any legitimate struggle of oppressed peoples against the oppressive classes anywhere on the face of the earth.*[37]

One can argue that the behaviour of the Islamic Republic of Iran does not at all accord with the theories of imperialism. Neither can it be explained by dependency perspectives. Different versions of the theories of imperialism ranging from classical theorists (Hobson 1902; Hilferding 1910; Luxemburg 1913 and 1915; Bulkharin 1915 and 1924; and Lenin 1916)[38] to more recent writers such as Baran[39] and Warren[40] and the dependency school whether the underdevelopment,[41] the world system,[42] articulation of the mode of production[43] or to some extent associated development[44] theories are all variants of economic determinism while the core of Iran's cosmopolitanism lies in its ideology and culture.

In the works of the sevnteenth century philosopher John Locke and in the Declaration of Independence written by his American disciples, all men are endowed by nature or God with certain basic rights. These appeared as the Rights of Man and of the Citizen in the French Revolution, proclaiming the liberty and equality of all persons regardless of economic classes or social status. Later such rights were realised on a universal scale under the Universal Declaration of Human Rights.

Thomas Jefferson's emphasis on endowed and unalienable rights was reflecting a long tradition in natural rights philosophy with roots dating back to the natural law and cosmopolitanism of the Greek Stoics, its reevaluation by St. Thomas Aquinas who developed the Church's doctrine that the rulers of states were subject to a higher law.

Game Theory

Two men suspected of committing a crime together are arrested and placed in separate cells by the police. Each suspect may either confess or remain silent and each one knows the possibie consequences of this action. These are: (1) If one suspect confesses and his partner does not, the one who confessed turns state's evidence and goes free and the other one goes to jail for twenty years. (2) If both suspects confess, they both go to jail for five years. (3) If both suspects remain silent, they go to jail for a year for carrying concealed weapons–a lesser charge. We will suppose that there is no honour among thieves and each suspect's sole concern is his own self interest. Under these conditions what should the criminals do?45

The foregoing, a clear description of the Prisoners' Dilemma explains what it is for an actor to make a rational decision and why co–operative action for mutual benefit is impossible.

The central point of the game theory of the Prisoners' dilemma is that rational actors cannot ultimately reach a Pareto–optimal solution even if a certain degree of mutual interest exists between them. The underlying cause of discord is that each actor might benefit from double crossing the other one, that is to say. From defection as it is illustrated by the stag–hunt context.

In the prisoners' dilemma, each prisoner is expected to confess and thereby defect solely on self–interest grounds. They both could avoid prison sentences if they chose not to confess. If one prisoner confesses (defects) and the other one chooses not to confess (co–operate) the defector gets the benefit. Since none of them is sure the other would co–operate both would ultimately defect.

As we can see, the notion of uncertainty plays a critical role. The outcome could be different should a line of communication be established between them. Applied to states, therefore, one pitfall of the theory is that it ignores the possibility of communication among states. Just like individuals, states cannot fail to communicate in a world woven into complex interrelated issues. Actors have many occasions to meet one another in international affairs. They have a stake in the future interaction and always worry about any damage to their reputation.

Axelrod has shown that co–operation can take place even under *unconditional defection*. It cannot happen if the interaction involves scattered individuals who have little chance to meet each other. The evolution of co–operation stems from a smaller number of partners who interact on a *reciprocity* basis. However, any strategy based on reciprocity is tried in a world where many other strategies are involved. Once co–operation based on reciprocity is established, it cannot *protect itself from invasion by less co–*

operative strategies.[46]

A second pitfall of the theory is that actors' decisions in international politics, just like those of prisoners are assumed to be voluntary. They have the choice either to choose or to pass the alternatives whereas in world politics alternatives are fixed in terms of (a) the distribution of capabilities ranging from military to economic power (b) forces involving *issue structure*.[47]

Hobbes holds that the agreements of men in the state of nature are covenant only. And covenants without the sword are but words.[48] *Duress* to which lawyers refer as a condition where one is induced by wrongful act or threat of another to make contract under circumstances which deprive him of exercise of his free will[49] is binding and lawful in the state of nature because:

Covenants entered into by fear in the condition of mere Nature are obligatory: For example if I covenant to pay a ransom, or service for my life to an enemy I am bound by it… and if a weaker prince makes a disadvantageous peace with a stronger, for fear he is bound to keep it ... and even in common wealth if I be forced to redeem myself from a thief by promising him money I am bound to pay it.[50]

In other words, promises made under duress are obligatory because *with a gun at my head ... I have rationally chosen to make such pledges rather than to be shot.*[51]

Some scholars have put emphasis on the bargaining position of the weaker states. Haas has maintained that the *expectation that the stronger will not use violence in economic relations has given the weaker the courage to assert themselves in many international forums*.[52] Wagner has summarised the writings on asymmetrical interdependence and has found that there were two ways in which the weak could demonstrate their bargaining power: one is the *willingness to suffer* and the other is that the *cost to the target state of agreeing to the demands made of it may be greater than the cost of the sanctions*.[53] Keohane warns that:

In applying rational choice theory to the formation and maintenance of international regimes, we have to be continually sensitive to the structural context within which agreements are made. Voluntary choice does not imply equality of situation; in explaining outcomes, prior to constraints may be more important than the process of choice itself.[54]

In the context of human rights, I must mention that as Axelrod puts it, states will have to meet each other repeatedly. Therefore, defection will not be allowed for a number of reasons. Firstly, states tend to observe human rights regime because of reputation considerations. Secondly, with the broad interpretation on chapter VII of the UN Charter after the Cold War, the Security Council takes action in two areas: humanitarian assistance and protected zones.

The Security Council's intervention under the rubric of collective security regime will operate as a deterring force against state behaviour. As a result, continued violation of the norms will work against the violator's self-interest. Thirdly, both on international and domestic scale, public opinion and mass media

will largely constrain the states.

General Aspects of Human Rights Regime

Dimensions

The dimensions of human rights regime are primarily its structural components. Just as arms control constitutes a more or less hierarchical area within which various individual regimes can exist human rights regime is not uni-dimensional. Human rights are clearly an established issue-area of world politics. What was once a matter of domestic jurisdiction has now been internationalised .

Principles

I define principles as the general objectives under each dimension of human rights regime, while norms are more specific provisions intended to establish codes of conduct. Under the United Nations Charter, the most important principle of human rights regime is Article 55, which stipulates:

With a view to the creation of condition of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a. higher standards of living, full employment, and conditions of economic and social progress and development; b. solutions of international economic, social, health, and related problems; and international cultural and educational cooperation; and c. universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.

Some newly constructed regimes are founded upon regimes that already exist. Some are constructed following a crisis. Functionalism and its regimerelated consequences will help revive, in the end, the spirit of former regimes. That is the line along which we may expect future developments to take place. In the case of the previously mentioned principles, I must note that the principle takes its roots from the League of Nations, which encompassed primarily minority rights, Labour rights and the rights of individuals in mandated territories.

As for minority rights, it was war that produced concern. After World War I, there was a belief that unhappy minorities in central Europe had contributed to the outbreak of war in 1914. Minority treaties were attached to the Versailles peace treaty of 1919 in which an important principle lay behind these treaties: peace, order, and justice - in addition to human dignity - mandate that a national majority shows tolerance towards minorities.

Attempts to protect labour rights fared much better and led to the creation of the International Labour Organisation (ILG) which subsequently developed a series of treaties to protect the rights of labour. The rights of individuals in mandated territories were theoretically protected under the League Mandates

Commission. The Commission consisted partially of the colonial powers and the individuals from Mandated Territories could not appear directly before the Commission. Yet, it was accepted that the League of Nations should guarantee the rights of peoples in these territories to achieve national independence and well-being.

Norms

Norms are the general legal provisions that help define codes of conduct for the actors in the system for each dimension of the human right regimes. The provisions are contained in international treaties or agreements and can originate from various sources. However, most of the norms for the current human rights regime stem from basic rules encoded in the Universal Declaration of Human Rights. Some norms may also be found in other international agreements or regional arrangements. However, such agreements are normally aimed essentially at strengthening the norms and principles set forth in the Universal Declaration. In consequence, the Declaration remains the primary source for norms of regime, forming a kind of tool chest of basic codes establishing not only the general norms and principles of the regime but also its operating provisions. Like most regimes, the norms of the current human rights regime tend to merge with the principles and objectives in the declaration.

Rules

Rules are the means incorporated into fundamental arrangements, which make the norms and principles of the regime operational. The rules must comply with established norms and principles and may either be legal and forrmal (such as resolutions of the Security Council or the United Nations General Assembly) or informal (established behaviours that have been elevated to the status of rules through repeated use). Rules may be established at either the global or the regional level.

Usage And Custom

According to Krasner, custom practice and usage are sets of causal variables that affect regime development. Usage refers to regular patterns of behaviour based on actual practice of actors: custom to longstanding practice. According to the position taken by Hopkins and Puchala, practices that begin as ad hoc private arrangements later become the basis for official regimes.

Knowledge

Ernst Haas defines knowledge as *the sum of technical information and of theories about that information which commands sufficient consensus at a given time among interested actors to serve as a guide to public policy designed to achieve some social goal*. In pinpointing the potentialities inherent in a stance of cognitive *evolutionism*, he argues that knowledge creates a basis for co-operation by illuminating complex interconnections that were not previously understood. Knowledge cannot only enhance the prospect for convergent state behaviour: it can also transcend *prevailing lines of ideological cleavage*. It

can provide a common ground for both mechanical approaches (most conventional social science theories) and organic approaches (egalitarianism and various environmentally oriented arguments).

Implementation Procedures

Procedures–or the actions that implement norms and rule–can be divided according to the bodies that carry out the prescriptive features of the regime–to three levels of national, regional and global.

At the national level, rules are implemented under national sovereignty. We do not propose to detail how rules and procedures are implemented at the national level. Suffice it to say that the implementation of rules will be increasingly constrained as states pass national legislation to support the efforts made under the regime. This can be seen, for instance, in the declarations of willingness by some countries to keep military contingents available for the United Nations on permanent basis.

Implementation procedures are created within multilateral organisations themselves. These arrangements include formal legal arrangements, tacit conventions and informal arrangements often established on a case–by–case basis. To understand this complex aspect of the human rights regime, it is useful to draw a distinction between global and regional levels.

Monitoring Regime Consequences

Most international organisations have established surveillance and control mechanisms to monitor implementation of prevailing rules and procedures. The Congruence of the regime can be determined by using these mechanisms to determine compliance with established norms or rules and procedures.

International human rights regime constitutes an ideology: it seeks to directly cotrol behaviour through commands and finally it seeks to indirectly control behaviour via political socialisation. The international monitoring agencies act for indirect protection over time, trying to urge states to directly protect human rights. Although both the public and the private sector are monitoring the human rights protection, such efforts do not exist in a political vacuum.

Historical Antecedents to Human Rights Regime

War and the conditions for peace and security is the core of both international relations and international law. Spencer believes that war is the cause of all such developments. The beginnings of international attention to human rights can be traced either to slavery or to war.

The Charter Of Cyrus

The ancestor of the documents recognising the rights of man was promulgated in Persia by Cyrus the Great about twenty five hundred years ago. Christian Daubie has recounted the magnanimity and clemency of Cyrus to subject peoples – in marked contrast to the practice of earlier conquerors–and

particularly his respect for their religion; from the Charter of Cyrus one induces the recognition and protection of what we now call the rights to liberty and security, freedom of movement, the right of property and even certain economic and social rights.[55]

The Four Tribunals

The Four Tribunals[56]

International wars and conflicts have produced four tribunals dating from the start of the twentieth century to the eve of the development of the human rights regime at the end of Word War II. The four tribunals have radically different characters.

In sequence, the opinions are those of the United States Supreme Court [sitting as a court of prize] of an international arbitrate tribunal formed under a U.S.–Mexican convention of the Permanent Court of International Justice formed under the League of Nations [the predecessor to the present International Court of Justice formed under the United Nations Charter] and of the International Military Tribunal formed by the allied powers after World war II for the Nuremberg trials of war criminals.

The selection of the four tribunals' opinions to present some background to the human rights regime might suggest to the reader that tribunals have played a major role in resolving disputes over international human rights and in simultaneously developing that body of law.

The *Paquete Habana* deals with an earlier period in the development of laws of war, here navel warfare, and with a theme that became central in the later treaty development of this field the protection of non–combatant civilians and their property [here, civilian fishing vessels] against the ravages of war.

Within the framework of the laws of war, this case–involves *jus in bello*, the ways in which war ought to be waged, rather than the related but distinct *jus ad bellum*, the determination of those conditions [if any] in which a just or justified war can be waged in which war is legal.

In its analysis of the question before it, the U. S. Supreme Court here illustrate a classical understanding of international customary law. The *Paquete Habana* has the aura of a humane world in which if war occurs the fighting should be as compassionate in spirit as possible. It rests the rule of exemption of coastal fishing vessels on considerations of humanity to a poor and industrious order of men and [on] the mutual convenience of fishing vessels.[57]

The intricate body of international law considered by the Supreme Court grew out of centuries of primarily customary law although custom was supplemented and informed centuries ago by selective bilateral treaties. Custom remains essential to argument about the laws of war to this day. However, this field is increasingly dominated by multilateral treaties that have both codified customary standards and rules and developed new ones in numerous international conferences.

Multilateral declarations and treaties started to achieve prominence in the second half on the nineteenth century. The treaties now include the Hague Conventions concluded around the turn of the century the four Geneva Conventions of 1949 (as well as two significant protocols of 1977 to those conventions) and several discrete treaties since World War II on matters like bans on particular weapons and cultural property.

The basic Geneva Conventions (185 states parties as of January 1995) and the two Protocols (Protocols No. 1 , 136 parties; Protocol No. 2, 126 parties) cover a vast range of problems stemming from land, air or naval warfare, including the protection of wounded combatants and prisoners of war, of civilian populations and civilian objects affected by military operations or present in occupied territories and of medical and religious personnel and buildings. As suggested by this list, the provision of the four Conventions and two Protocols constitute the principal regulation of *jus in bello*.

This entire corpus of custom and treaties came to be known as the *international humanitarian law of war*, the broad purpose being–in the words of the landmark St. Petersburg Declaration of 1960– alleviating as much as possible the scourges of war. Here lies the tension, even contradiction within the body of law.

Putting aside the question of a war's legality (an issue central to the judgement of the International Military Tribunal at Nuremberg and today governed by the UN Charter) a war fought in compliance with the standards and rules of the law of war permits massive international killing or wounding and other massive destructions that except at war, would violate fundamental human rights norms.

Hence all these standards and rules at some perilous and problematic division between brutality and destruction are (i) permitted or privileged or (ii) illegal or subject to sanction. Principles like proportionality in choosing military means or the avoidance of inflicting *unnecessary suffering* to the civilian population are employed to help mitigate war, thus countered by the goals of the state parties to a war– indeed in the eyes of the states, the paramount goal is gaining military objectives and victory as much as possible and directing the losses to one's own armed forces.

The generous mood of the *Paquete Habana* toward the civilian population and its food–gathering needs was reflected in the various Hague Conventions regulating land and naval warfare that were adopted during the ensuing decade. Note Article 3 of the Hague Convention of 1907 on certain restrictions concerning the Exercise of the Right to Capture in Naval War, 36 Stat. 2396. and TS. 544. which proclaimed in 1910: "Vessels used exclusively for fishing along the coast ... are exempt from capture."

The Chattin case was decided under a 1923 General Claims Convention between the United States and Mexico, 43 Stat. 1730, T.S. No. 679. That treaty provided that designated claims of Mexico against U.S.A. citizens (and vice versa) for losses or damages suffered by persons or by their properties that (in the case of the U.S. government for interposition to a Commission consisting of three members for decision in accordance with the principles of international law, justice and equity. Each state was to appoint one member and the presiding third commissioner was to be selected by mutual agreement (and

by stipulated procedures failing agreement.)

These arbitrations grew out of and further developed the law of state responsibility for injuries to aliens, a branch of international law that was among the important predecessors to contemporary human rights law. That body of law addressed only certain kinds of conflicts –not including, for example, conflicts originating in the first instance in a dispute between a claimant state (X) and a respondent state (Y). Thus it did not cover a dispute based on a claim by X that Y had violated international law by its invasion of x's territory or by its imprisonment of x's ambassador.

Rather, the claims between states that were addressed by the law of state responsibility for injuries to aliens grew out of disputes arising in the first instance between a citizen–national of X and the government of Y, for example, respondent state Y allegedly imprisoned a citizen of claimant state X–allegations which, if true, could show violations of international law.

The Minority Schools in Albania opinion illustrates treaties as a source and major expression of international law and –introduces another field of the human rights movement. This comment provides some background to the opinion.

Treaties and other special regimes to protect minorities have a long history in international law dating from the emergence in the seventeenth century of modern form of political state, sovereign within its own territorial boundaries. Within Europe, religious issues became a strong concern since states often included more than one religious denomination, and abuse by a state of a religious minority could lead to intervention by other states where that religion was dominant. Hence, peace treaties sometimes included provisions on religious minorities. In the later centuries, the precarious situation of Christian minorities within the Ottoman Empire and of religious minorities in newly independent East European or Balkan states led to the outbreaks of violence and to sporadic treaty regulation.

World War I ushered in an era of heightened attention to problems of racial, religious or linguistic minorities. The collapse of the great AustroHungarian and Ottoman multinational empires, and the chaos as the Russian Empire of the Romanoffs was succeeded by the Soviet Union, led to much redrawing of maps and the creation of new states.

President Wilson's Fourteen Points, however compromised they became in the Versailles Treaty and later arrangements, nonetheless exerted influence on the post–war settlements. In it and other messages, Wilson stressed the ideals of the freeing of minorities and the related self–determination of people's and nationalities. That concept of self–determination, so politically powerful and open to such diverse interpretations, continues to this day to be much disputed and to have profound consequences. It not only appears in the U.S. Charter but it is given a position of high prominence in the two principal human rights covenants.

The trial at Nuremberg in 1945–56 of major war criminals among the Axis powers, dominantly Nazi party leaders and military officials gave the nascent human rights regime a powerful impulse. The UN Charter

that became effective in 1945 included a few broad human rights provisions. However, they were more programmatic than operational, more a program to be realised by states over time than legal rules to be applied immediately to states.

Nuremberg, on the other hand, was concrete and applied, prosecutions, convictions, and punishment. The prosecution and the judgement of the International Military Tribunals were based on concepts and norms, some of which were deeply rooted in international law and some of which represented a significant development of that law that underlay the later formulation of major human rights norms.

The striking aspect of Nuremberg was that the trial and judgement applied international law doctrines and concepts to impose criminal punishment on individuals for their commission of any of the three types of crimes under international law that are described below. The notion of crimes against the law of nations for which the violators bore an individual criminal responsibility was itself an old one, but it had operated in a restricted field.

As customary international law developed from the time of Grotius, certain conducts came to be considered a violation of the law of nations–in effect, a universal crime. Piracy on the high seas was long the classic eample of this limited category of crimes. Given the common interest of all nations in protecting navigation against interference on the high seas outside the territory of any state, it was considered appropriate for the state apprehending a pirate to prosecute in its own courts. Since there was no international criminal tribunal, prosecution in a state court sought to apply the customary international law defining the crime of piracy, either directly or as it had become absorbed into national legislation, the choice of forum became less significant, for state courts everywhere, at least in theory, were applying the same law.

As World War II came to an end, the Allied Powers held several conferences to determine what policies they should follow towards the Germans responsible for the war and the massive, systematic barbarity and destruction of the period. These conferences culminated in the (U.S., USSR, Britain and France) London Agreement of August 8, 1945, 59 Stat. 1544, E.A.S. No. 472, in which the parties determined to constitute an International Military Tribunal for the trial of war criminals. The Charter annexed to the agreement provided for the composition and basic procedures of the Tribunal and stated in its three critical articles.

Article 6

The Tribunal established by the agreement referred to in Article 1 hereof for the trial and punishment of the major war criminals of the European Axis countries shall have the power to try and punish persons who, acting in the interests of the European Axis countries, whether as individuals or as members of organisations, committed any of the following crimes.

a) Crimes Against Peace: namely, planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements, assurances, or participation in a common plan or

conspiracy for the accomplishment of any of the foregoing;

b) War Crimes: namely, the violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, illtreatment or deportation to slave labour or for any other purpose of civilian population of or in war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;

c) Crimes Against Humanity: namely, murder, extermination, enslavement, deportation and other inhuman acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

The core of the universal system consists of the United Nations Charter and related instruments. Three such instruments, comprising the so-called International Bill of Rights, stand out in significance: the Universal Declaration of Human Rights of 1959 and the two principal covenants on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCCR). As of September 1995, the JCCPR had 131 state parties, the ICESCR 132 parties.

There are three regional human rights systems-regional in that they are based on treaties whose membership is restricted to states in a particular region: the European Convention for the Protection of Human rights and Fundamental freedoms (known as the European Convention on Human Rights) (30 states parties as of September 1950), the American Convention on Human Rights (25 parties) and the African Charter on Human Rights and People's Rights (49 parties).

The Charter builds on the precedents to which the Nuremberg Judgement refers and states the UN's basic purpose of securing and maintaining peace. It does so by providing in Article 2 (4) that the UN members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, a rule qualified by Article 51's provision that nothing in the Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a member.

The Charter has little to say directly about human rights. Its references to human rights are scattered, terse, and even cryptic. The term human rights appears infrequently, although in vital contexts. Note its occurrence in the following provisions: second paragraph of the Preamble Article 1 (3), Article 13(1)(b), Articles 55 and 56, Article 62(2) and Article 69.

The UN And The Universal Declaration

Despite the proposals to the contrary, the Charter stopped shy of incorporating a bill of rights. Instead, there were proposals for developing one through the work of a special commission that would give separate attention to the issue. That commission was contemplated by Charter Article 69, which provides that one of the UN organs, the Economic, and Social Council (ECOSOC), shall set up

commissions in economic and social fields and for promotion of human rights... in 1946. ECOSOC established the Commission on Human Rights, which has evolved over decades to become the world's single most important human rights organ.

Custom And The UN Resolutions

As components of argument about international human rights, custom and general principles retain great importance. Few issues of international law theory have aroused as much controversy as that engendered by resolutions and declarations of the General assembly, which appear to express principle and rules of law. Their adoption by large majorities through voting or consensus procedures has been seen by many as attempts to impose obligatory norms on dissenting minorities and to change radically the way in which the international law is made.

The arguments advanced in support of a finding that rights are a part of the customary law rely on different kinds of evidence–the incorporation of human rights provisions in many national constitutions and laws; frequent references in the United Nations resolutions and declarations to the duty of all States to observe faithfully the Universal Declaration of Human Rights.

Regional Regimes In Europe, The Americas And Africa

The remarkable feature of the European system is its productive and effective court; the materials illustrate the work of the Court through several revealing decisions. In the Inter–America system, the commission has been a very significant organ. The African system is the least developed institutionally; the materials concentrate on a distinctive aspect of its norms, a stress on duties as well as rights.

In addition to the three major systems, there is a largely dormant Arab system and a proposal for the creation of an Asian regional system. It is necessary to consider the broader European institutional context within which the Convention is situated. The Covenant is the creation of the Council of Europe, which is only one of the three major regional mechanisms dealing with human rights within Europe. The other two are the European Union and the organisation (formerly termed Conference) for Security and Co–operation in Europe. None of the three is concerned exclusively with human rights. The Council of Europe has the longest and most significant record of accomplishment in this field. Here I shall confine myself to the European regional arrangements.

The Council of Europe

The Council was established in 1949 by a group of ten states, primarily to promote democracy the rule of law, and greater unity among the nations of Western Europe. It represented both a principled commitments of its members to these values and an ideological stance against Communism. Over the years, its activities have included the promotion of co–operation in relation to social, cultural, sporting and a range of other matters. Until 1990, the Council's membership was essentially confined to Western European countries. Since then, post–cold War developments have made a major impact upon the

Council.

The European Union

Despite the absence of a bill of rights, the European Court of Justice (the judicial organ of the European Union) began in 1969 to evolve a specific doctrine of human rights, the original motivation for which probably owed more to a desire to protect the competencies of the European Community than to any concern to provide extended protection to individuals.

Over the years during which the human rights doctrine has evolved, the Court has identified several different normative underpinnings for it. They include certain provisions of the treaty of Rome. The constitutional traditions of the member states and the international treaties accepted by member states. For the most part, the European Court of Justice has applied this concept of human rights to the actions of the Community itself, but not to the actions of the member states.

The Organisation for Security and Co-operation in Europe (OSCE)

The Conference on Security and Co-operation in Europe (CSCE) opened in 1973 and concluded in August 1975 with the signing of the Final act of Helsinki. In 1995, the CSCE was officially transformed into the Organisation for Security and Co-operation in Europe (OSCE). It has many official organs like the Council of Ministers for Foreign Affairs. One issue, which the OSCE's evolution has made more pressing, is its relationship with the Council of Europe's human rights regime.

Women's Rights

The subject of women's rights as international human rights regime offers distinctive perspectives on the human rights movement as a whole. The basic treaty in this filled-the Convention on the Elimination of all Forms of Discrimination against women (CEDAN, effective 1991, 144 ramifications as of September 1995) has exceptional reach. At the same time, the problems that it addresses have exceptional depth and complexity.

The cases and materials in the literature, including but not restricted to those of Woman Refugee Regime, suggest the complexity interwoven socioeconomic, legal, political and cultural strands to the problem of women's subordination and women's rights. Indeed, it is difficult to know where to behind inquiry and analysis. Each starting point implicates others and by itself stems patently insufficient for yielding an adequate understanding of the problem, let alone solutions. When one focuses specifically on what appears to be women's issues, links between those issues and other aspects of social order (disorder) appear pervasive. All is interrelated. The problem is truly systematic.

Self-Determination And Autonomy Regimes

Theoretically rooted in disintegration and fragmentation, selfdetermination and autonomy stress the

charter and significance of autonomy regime–political systems or subsystems organised within a state for the purposes of fostering political participation and self–government by ethnic minorities and indigenous peoples. Together with several other human rights norms, the notion of self–determination continues to exert a strong influence on the debate over and possible forms of realisation of these autonomy regimes. Wilson addressed the question of self–determination directly:

National aspirations must be respected: people may now be dominated and governed only by their consent. Self–determination is not a mere phrase. It is an imperative principle of action which statesmen will henceforth ignore at their peril. 58

International Criminal Regimes

Among other considerations before the Security Council, the massive brutality in the former Yugoslavia and related public pressure contributed toward persuading it to establish an ad hoc international criminal tribunal, the first such tribunal since the post World War II tribunals constituted by the victorious powers in Nuremberg and Tokyo. The United States as a hegemon took the lead in drafting a plan for prosecuting these men. That plan, which led to the establishment of the International Military Tribunal at Nuremberg was presented to America's allies in San Francisco at the same time that the UN Charter was signed.

Within a year, a similar plan was adopted for the prosecution of top Japanese war criminals. The international community's knowledge about the atrocities in Bosnia, Croatia, and Rwanda – and its response to them–is reminiscent of the Allies response to the Nazi atrocities during World War II. Some countries have employed certain mechanisms to address widespread human rights abuses with strictly domestic remedies.

Argentina and Chile are examples of the societies where a mixture of truth–finding, public accountability and amnesty has paved the way for a return to a relatively civil and human life. In Honduras, a civilian court has charged military officers with committing human rights violations during the 1990s.

Such domestic remedies usually involve regional consequences. There is a growing trend to explore international remedies instead. American hegemony behind the United Nations is the primary source of such responses. A secondary source is the will of the international community that the United Nations embodies. Issues of sovereignty remain problematic. In fact, there is a contradiction in the Charter of the United Nations, Article 2 (7) of the Charter speaks more specifically about non–interference in matters, which are essentially within the domestic jurisdiction of any state. At the same time, it outlines more broadly the overriding exception to that rule for any enforcement measures under Charter VII.

According to Oran Young, certain international regimes harbour international contradictions that eventually lead to serious failures and mounting pressure for major alterations.59 International contradictions may culminate in a developmental character, deepening due to normal operations.

The clearest manifestations of an emerging trend toward international judicial intervention are the two *ad hoc* criminal tribunals established by the Security Council–one in early 1993 for the former Yugoslavia and the other in late 1994 for Rwanda. The United States, as hegemony seeking to stabilise the system after the collapse of bipolarity was the forefront in creating both tribunals. The Clinton administration has launched an investigation into the genocide by Iraqi government during the Persian Gulf War. However, both the United States and the international community ignored Saddam Husayn's gross violations of human rights during Iran–Iraq war.

The Iraqi atrocity against the Iranians and subsequently the U.S. silence (or its de facto support of the Iraqi regime during the war) on such crimes buttresses the public tenet of Hegemonic Stability Theory that hegemonies create international regimes primarily for their own benefit and not for the benefit of international community. In any case, the ultimate weapon of those ad hoc tribunals would lead to an international judicial intervention that will create a permanent International Criminal Court (ICC).

Development Regime

Ever since the first UN World Conference on Human Rights held in Tehran in 1960, the relationship between human rights and development has occupied a prominent place in the international discourse of rights. Since 1977, the debate has been pursued with the increasing vigour under the rubric of the right to development. That debate brings together several important themes. They include the legal foundations of the classical human rights and the basis for the recognition of new rights, the priority to be accorded to the different sets of rights, the links between human rights and democratic governance, the extent to which international community bears some responsibility for assisting states whose resources are inadequate to ensure the human rights of their own citizens, and the relationship between individual and collective rights (including peoples' rights). In addition, an examination of the concept of the right to development and its implications in the 1990s cannot avoid consideration of the effects of the globalisation of the economy and the consequences of the near–universal embrace of the market economy.

The list of internationally recognised human rights is by no mean immutable. Just as the British sociologist T.H. Marshall characterised the eighteenth century as the century of civil rights, the nineteenth century as that of political rights and the twentieth as that of social rights, so too have some commentators over the past two decades put forward claims for the recognition of the new rights, in particular a category known as the third generation of solidarity rights. By analogy with the slogan of the French Revolution these rights have been said to correspond to the theme of fraternite, while the first generation of civil and political rights correspond with liberte and the second generation of economic and social rights with egalite. Karel Vasak's list of solidarity rights includes the right to freedom, the right to peace, the right to environment, the right to the ownership of the common heritage of mankind, and the right to communication.

Far more significant has been the impact of the right to development. First recognised by the UN

Commission on Human Rights in 1977, it was enshrined by the General Assembly in the 1986 Declaration on the right to Development. It has never ceased to be controversial among the governments as well as among academic and other commentators. Efforts to secure its recognition raised the question of the process by which new human rights should be recognised. Some commentators emphasised the need for the catalogue of the rights to keep pace with new developments and to be responsive to new challenges. Others argued that the third generation approach of rights of peoples was a flawed way of seeking to meet such needs.

Conclusion

Some regime analysts offer four models for regime change. Power structure, diffusion of technology, issue structure and the function of international organisations serves as a basis for regime change.[60] Others suggest, *inter alia*, the notion of internal contradiction. All of them can affect the pattern of international human rights regime, leading ultimately to the proliferation of rights. Alston has listed a large number of rights ranging from the right to sleep and the right to social transparency to the right to coexistence and the right to tourism.[61]

Stephen Marks has warned against the abandoned proliferation of rights. He posits that not only is proliferation of rights regarded to be dangerous but also the employment of the term generation implies that the rights belonging to earlier generations are outdated and that the rights of the new generation are too vague to be justifiable and are no more than slogans.[62]

Issues covered by the recent writers on human rights–such as Gay and Lesbian Rights leads the literature to a scientifically unknown, culturally inadmissible, legally challengeable domain. The first openly homosexual person who spoke in a UN human rights forum on August 1992 noted that lesbian women and gay men should be represented in UN work.[63]

In recent US foreign policy from about 1973, Nixon, Carter, Reagan, Bush and Clinton all used the rhetoric of rights. Each of them meant something different. Mention can be made of several cases in which the United States was seeking its own egoistic interests. Suffice it to mention that in Greece, the United States supported the Greek Junta 1967–74. It sponsored and organised the Shah's SAVAK (secret police) in Iran. This brings to mind the idea of cultural relativism.

The most fundamental and pertinent reason for the anthropologists' restricted involvement with human rights issues can be traced directly back to the theory of cultural relativism. This is exemplified by the American Anthropological Association (AAA) statement's rejection of the idea of universal human rights, its emphasis on different peoples' different rights concepts and its criticism of a universal legal framework as ethnocentrically Western.

While this position is generally seen as a major burden contribution to the exclusion of anthropologists from human rights research, this is not the only impact of cultural relativism. For quite some time now,

the theory has, in fact, been nurturing a seemingly never-ending debate among human rights researchers on the question of universalism or relativism of human rights. The classical conflict is well-known: cultural relativists see the Universal Declaration on Human Rights as enumerating rights and freedoms which are culturally, ideologically and politically non-universal. They argue that the current human rights norms possess a distinctively Western or Judeo-Christian bias, and hence, are an ethno-centric construct with limited applicability.[64]

There are also unresolved systematic factors. For instance, human rights regime must also be seen from the perspective of economic interactions between the developing and the developed countries. The evolving nature of the international system also would indicate a need for new research into human rights and multi-national corporations (MNCs). As the globe become more interdependent, multi-nationals move to centre stage in the international arena.

In Donaldson's philosophical treatment of the corporations and morality, post-modern trends toward MNC dominance are highlighted in his claim that from a moral point of view, the central issue is that of economic justice. In the confrontation between the developed and underdeveloped nations, do multi-nationals aggravate or help solve social and economic problems?[65]

Two schools of thought are readily identifiable when it comes to theories of MNCs, development, and rights in the third world. One view is generally pro-MNC. The pro-MNC view holds that multi-nationals operating in the third world promote economic and social rights and indirectly support civil and political rights.[66] A second view holds that MNCs directly contribute to the violations of human rights in developing countries. The most carefully elaborated theoretical support for this position can be found in the work of economist Stephen Hymer.[67] Viewed from this perspective, the issue of human rights seems to be as controversial as the problem of expropriation under international law, which deals, among other things, with the role of such transnational corporations in the third world.

Against this myth, there is also a reality. There is an emerging tension between the principle of sovereignty, which is the constitutive principle of political system and other principles such as the principle of property rights, which is the constitutive principle of the economic system. Tensions are growing between the rights of the individuals, the rights of peoples and the rights of states. Such rights are derived from the conceptions of human nature: that is, covering the basic needs of the human body and mind (e.g. the right to life, liberty and security) and ought not to be denied by other humans.

However, owing to the unequal distribution of capabilities, international human rights regime has stemmed from the heart of modified structuralism. Within the framework of a modified structural analysis, there need not always be congruity between power distributions and related behaviour or outcomes. A change in power does not always suggest a change in outcomes because regimes may operate as intervening variables. Regimes will continue to exist after hegemony. International human rights regime will have its own life within a nation-state system, but this nation-state system will also have a society of states as illustrated by Charles Beitz. The society of states will be concerned with the moral relations of

members of a universal community... There are no reasons of basic principle for exempting the internal affairs of states from external moral scrutiny and it is possible that members of some states might have obligations of justice with respect to persons elsewhere.68 Elites will have to search for compromises, balances, and practical forward steps that will maximise the possibilities for international human rights regime.

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Introduction

At first glance, it might not seem very logical to set up a causal or even mutual relation between international system and the concept of human rights: for the international system is a political and international issue whereas human rights are regarded legal and sometimes internal. However, the issue of human rights has become a matter of great controversy in political centres ever since the advent of political relations: the treatment of the POWs, the situation of the people in occupied lands, the religious freedoms of new subjects and tens of other issues are directly or indirectly connected with human rights without assuming such a title. If Cyrus, the founder of the Achaemenid Dynasty, was the only non-Hebrew king mentioned in the Torah, it was because he was a stunning paragon of one who observed the rights of different people in his empire.

However, nowadays, human rights have transcended international relations, and turned into a determining factor; as other similar forces, it has been instrumental in changing the foundation of contemporary international system. This change is the product of a long process, which began, with the American Declaration of Independence and the Declaration of Rights of Man and of Citizens of France and the bitter experiences of 1930s and the conflicts ensuing World War II and challenged one of the foundations of international system, namely the rulership of state-nations to struggle the verge of destruction.

This process, which was accompanied with the misusing of human rights by superpowers, left a double impact, intensifying the complication of the issue. In point of fact, the pleasant breeze of freedom and respect for human beings were infested by the vicious domination of the world-devourers; hence human rights turned into a double-edged sword, and the dangling state of the oppressed nations is the result of this poisonous gift.

In order to lend intellectual flavour to our discussion, we need to propose a question: has human rights remained constant despite the changes in international relations? Or, has it been influenced like other social concepts in the course of time? Why has human rights faced opposition and denial especially on the part of countries, which were expected to adopt a different attitude? Our conjectural answer is that the concept of human rights has undergone changes for progress; furthermore, varying interpretations are made touching it. Therefore, human rights have lost its universality and turned into a controversial issue in international relations.

Besides, a brief survey of the past eras enables us to build up our discussion based on three historical eras conforming to three international systems.

First era: Indeed, man is not the subject of any rights whatsoever; people have no other task but obey the ruler or emperor as their subjects; if the ruler is an easterner, he observes a better attitude towards his subjects due to his moral sense; if the ruler is a westerner, he observes the rights of his subjects because of his own benefits; this is the era when the state–nations have not yet emerged.

Second Era: It begins with the end of the Medieval Ages and the advent of humanistic thoughts; man becomes the centre of the universe. However, the fundamental clash between new international system on the basis of the unquestionable rulership of the State on one hand and the rights of people on the other hand, results in a constructive struggle which leads to the Declaration of Rights of Man and of Citizen of France towards the close of the eighteenth century.

Third Era: In this era, human rights gradually turns into a main element of international community in the form of the rights of people, the rights of nations, the principle of the independence of nations, the equal rights of nations, the necessity of respecting human rights for the sake of world peace. The culmination of this process is the Declaration of Human Rights in 1948. Since then, human rights have been regarded as a goal to be achieved by international community; besides, it has left an increasing impact on the policies of great powers. However, in the first part of this brief report, we shall be dealing with a short study of the first and the second era; in part two we shall detail on the third era.

Part One –The Concept of Human Rights From Beginning up to the French Revolution.

The Age Of Ignorance

If Greece was the bedrock for political thoughts and the core of those thoughts was the inequality of human persons, Rome was the seat of thoughts and legal foundations where the rights of people were discussed. However, the Latin word *popolus* meaning people was not used concerning just anyone. In fact, the unilineal descent group who enjoyed civil and political rights and belonged to one of the Patrician or Ecoists classes was called *gens* and the term *popolus* was used with respect to upper

classes.[1] Hence, the impoverished plebeian people did not enjoy the rights of people nor did women. Before they waged a campaign to have their civil and political rights restored and get themselves established as popolus, the organisations and civil and legal institutes were obliterated from the core and the Roman democracy changed into an empire.

The legal system, which could have gradually moved towards progress and development deteriorated under the sway of the emperor and fell into oblivion in the wake of the penetration of the Berbers. However, since then, the bases for new divine laws were founded which eliminated the difference between master (patrician) and slave (plebeian). The interpretation of these rights and freedoms was distinctive from the modern criteria of human rights. Man's freedom consists in discovering the Divine Will and obeying Divine commands. By recourse to Him, one can find the straight path to life.

The Christian rights, which could be the right basis for human rights, soon found mighty outriders who violated human rights more than any one else. Despite the advancements and withdrawals, the Church of Rome increased its authorities every ten years. The wealth and public charities raised its dignity. For every important issue, the Christian world was the counselling party. The innovation of fighting apostasy was the defined law of the bible.[2] The exigency increased when the papal power exceeded that of the emperor.[3] The crusade wars broke out. They treated the pagans in a way that history had never witnessed.

Saint Thomas Aquinas, the outstanding medieval theologian tried to reconcile reason and faith and apply Aristotelian logic in service of religion. His move paved the way for natural rights, which were stressed by the Roman lawmakers, for nature, the tangible and documented creation of God is by referring to reason. This way was paved by the emergence of renaissance into the European community.

The Time Of Transition And New Hypotheses On Rights

Renaissance was a period marked by a surge of interest in every field of activity. In the field of science, the Copernican Revolution (1473–1543) was a striking change although there was great distance to the formation of natural sciences. In politics, Machiavelli's *Prince* (1513) paved the way for the formation of new states, namely the functionalist system substituting traditional ones although it first caused the creation of despotic States. The Westphalia Covenant was the subsequent result of this process, which necessitated the basis of international relations in new national states.

On the other hand, renaissance is not separate from humanism, which places man in the centre of material and spiritual issues. According to Renaulder, the French writer, humanism is so great a moral and mental improvement that we can call it the creation of the greatest kind of humanity.[4] Humanism[5] bore no enmity to the church. Even people like Lefebvre d'Etaple (1450–1536) were the first humanists who sought to create a relationship between Platonic and Aristotelian thoughts and Christian teachings. And Erasmus (1469– 1536), a powerful humanist, was the founder of the Christian philosophy.

However, the spread of such thoughts brought back to man his forgotten role. Thus, the church was no longer an intermediary between man and God. When man was discussed, reason, man's weightiest foundation of existence, was recognised more than anything else. Reason was a torch to discover laws. Thus, natural law, which was based on reason, took the place of canonical rights.

However, the relation between natural rights and the rights of people was not settled. Suarez, the Spanish scholastic philosopher and lawyer (died 1617) whose thoughts were deeply influenced by Saint Thomas Aquinas maintained that the rights of people must not be taken the same as natural rights, for the necessities of the rights of people did not stem from objective statements: for the same reason, they lacked the stability and equality of natural rights equally recognised for all nations. Grotius, the Dutch lawyer (1588–1645) known as the father of people's rights had a similar stand.

However, Hobbes, the English philosopher (1588–1679) questioned this difference and later on, lawyers like Pofenderf (*Natural and People's Rights* 1672) and Wolff (*Principles Natural Law and People's Rights* 1750) stressed the point that people's rights were the continuation of natural rights.6 Natural law gradually gave place to natural rights stemming from the nature of objects, which was nothing but positivism in rights. Likewise, Hobbes' theories can be regarded a change in law and politics and international relations.7 His theories of the natural situation remained an accepted principle in the theories of international relations until the emergence of the contemporary realists.

The fundamental point was that although Hobbes reached leviathan or the Ghoul State, which was the despotic State, his main concern was freedom. Freedom is the inseparable part of nature, for animals enjoy absolute freedom in nature.

The sixteenth and seventeenth centuries, in which traditions gradually gave place to modernity, witnessed a fundamental conflict between the principles dominating international relations and the situation of man's rights. At international stage, national States acted as a political unit and a legal entity in a scene, which knew no bounds for their freedoms. They were free and equal because they followed the laws of nature just like animals. The only thing, which could impede their acts, was power. Power was the only instrument which counteracted other powers; balance of power.

However, people closed eyes to their right of enjoying freedom, entrusting it to the state at the price of security. They exchanged freedom for security and deprived themselves of the right to object because the ruler had not assumed any responsibility. In other words, there was no other party involved. People had entered a covenant to entrust their freedoms and power to others whereas a legal contract required two parties. On the other hand, that the people could overlook their rights and freedoms indicated that there was a fundamental difference between natural rights and the rights of people. Man intervened in nature by virtue of his reason.

Whatever happened in the sixteenth century in the realm of ideas and action was going to turn into a fundamental and stable basis in the eighteenth century which not only fed Europe for two centuries but

also by the universalisation of the European system extended to the entire globe. The European State, the international European system, the European political thought, the European rights and values pervaded the culture of the whole world in the form of imposed values.

The Creation Of International System And The Study Of Lndvidual And Public Rights

State-nation, which was the innovation of Europe in the Westphalia Covenant of 1648, had a gradual birth and what was certain at the beginning was its first part, that is, the State. The first step was to concentrate the power in the hands of the ruler and the disempowering of the heirs in feudalism period.[8] In other words, state-nation consisted of two parts; central and circumstantial. Its centre was established in the sixteenth and seventeenth centuries in the form of state,[9] but in fact, its circumstantiality was the urban community which was to find a basic role by the process of people's participation and to fix its sublime status in its political life as the only source of rulership. This took shape in the eighteenth century during the revolutions, which happened in most European countries such as France and England, and the issue of people's participation gradually took effect.

During the French revolution as the only source of rulership, its definitions and dimensions were specified and since then, it has been accepted as an independent element in civil and international life. What created a new criterion in the political life was the reversion of the state-nation. If until then people had a secondary role just because they were the rule"s subjects, the states found a legal character because they were the representatives of people. Thus, the international system took a clear shape based on this new element.

Until the eighteenth century, five powers determined their powers in the pyramid of international power, namely France, England, Russia, Prussia, and Austria. During the seven wars between the years 1756-1763, these five powers realised that it was impossible to rout each other out of the arena and that it was advisable to divide the booty among themselves. Thus, the international system multidimensionally took shape based on exchange in which the states were the main representatives of nations in the scene.[10]

As the international system took shape based on European state-nation, the principles of political life were moulded based on reason, secularism of individual rights and democracy. All principles were summarised in philosophy and liberalism. The turning point in this process was Lock's theories (*On Civil State 1690*).[11] Unlike Hobbes, he did not believe in a despotic state, for in his contract, people did not overlook all their freedoms but rather they overlooked those freedoms of theirs, which were for the good of their community, preserving individual freedoms for themselves. These freedoms turned into the basis for socio-political order in the light of reason and law of nature.

The quest for the laws of nature led to research touching the rights based on the nature of man, the

actualisation of which was possible on the basis of social contract and the power which did not function to create the world but the redemption of the sovereignty of reason, the sovereignty which the feelings of man had then usurped.[12]

As an eighteenth century encyclopaedia says, “The general law is reason, governing all the people in the earth and the civil and political laws of nations should not be but certain and objective cases of the exercise of this public law.” Thus, reason was set against faith and individual freedom against church, and its secular arm, the ruler. Freedom was not only a matter of consciousness and conscience but also the basis of each person’s autonomy against any alien power. Hence, the Christian freedom was bound to give place to human freedoms.[13] Here, human rights found totally non-religious and mundane basis.

Two social and intellectual movements reached a common point in the French Revolution: on the one hand, the centralisation of reason as the wholesome power to distinguish right from wrong and truth from untruth together with freedom as a necessary condition for it and on the other hand, the social movement whose goal was the participation of people in political affairs and the redemption of the sovereignty of people. This process was manifested in the International Bill of Human Rights.

Before that, in the wake of the glorious revolution of England in 1688, the bill of rights of 1689 served as a suitable model for the latter and the American Declaration of Independence with Jefferson’s introduction in which equal rights, the unalienable rights granted by the Almighty such as the right to life, freedom, and that the ultimate goal of all states was the perseverance of these rights and that the power of state was dependent on the general will stressed therein.

Fifteen years later, these rights became the model for the Constitution of France and the preamble of the International Bill of Human Rights.[14] All the freedoms reasonable and naturally particular to man were universally and abstractly defined in the declaration of 1789. The boundary for these freedoms according to article four of the declaration included other freedoms, which should not be violated.

Since then, the relation between human rights and the international relations mingled, like the influence of human rights within the framework of liberalism and individual freedoms on political regimes and naturally on the international relations and sometimes in the form of a factor which has a direct economic or nationalistic form and sometimes it is discussed from a Marxist point of view. Finally, new interpretations of human rights are made in sociological context, the protection of workers’ rights, the rights of women, the rights of minorities, and the rights of refugees.

Part Two-Development of the Concept and the Function of Human Rights from the French Revolution up to the Present

From the French revolution onwards, three phases can be mentioned as to the relation between the developments of international relation and the concept of hu man rights: the first phase extends from the beginning of French revolution until the end of World War II. New issues such as the rights of women, of

children, and of the refugees are contained within the concept of human rights the concept of human rights includes two points from the perspective of international relation: one, the non-intervention of States in others' privacy (on the basis of liberalism) which leads to the development of non-state relations particularly trade relations.

The other issue is the function of nationalism stemming from the right of choosing the State by people which in fact carries the human rights into national level, giving rise to the emergence of new European States in the nineteenth century and the independence movements in the colonies in the years between and after the war.

The second phase marks the period of institutionalisation of the human rights at international level through bills and covenants on the one hand, and the exercise of human rights as an instrument for the intervention in internal affairs on the part of the Western countries, mainly America and the settling with the totalitarian countries during the Cold War on the other hand. The third phase in fact is a period, which begins with the Islamic revolution of Iran. Its characteristic is firstly the use of human rights against a third world country on the one hand and the new interpretations of the bill of human rights on the other, which may lead to varying interpretations of human rights and the questioning of human rights in Europe.

From The French Revolution To The End Of World War II

This phase, is in fact, a period, which nourished and influenced human rights rather than being influenced by it. The declaration of 1789 defined human rights as the expression of principles transcending the will of man without limitation due to birthplace, social status or nationality. The universality of the declaration turned it into an international document previously set forth in the framework of the Great Bill (1215), the Lament for Rights (1628). the Declaration of Rights (1689), Settlement Act (1701). The American Declaration of Independence (1776) and the likes. However, the declaration of 1789 became a model for all liberalistic movements and even nationalistic ones.

In the nineteenth century, human rights directly and indirectly left a great though little known impact on international relations. The indirect impact was made on the one hand by the liberalistic movements including the leftist and the rightist namely liberalism and socialism and the direct impact was made by nationalistic movements which led to the creation of new countries, totally changing the European map and on the other by exercising the international contracts.

The first article of the Universal Declaration of Human Rights enumerates man's freedoms and determines the zone of power and the degree of intervention of governments. In the wake of the fulfilment of these freedoms, the despotic regimes turned constitutional. Since, however, the States did not do this voluntarily, the nineteenth century Europe instigated revolutions for achieving these freedoms.

The 1830 revolution led to the relative victory of the democrats in France, Belgium, England and Spain

and the constitution which was the manifestation of this victory prevented the States or the rulers from assuming excessive power. As opposed to these countries. there were countries in which the revolutions came to waste.

Hence, an ideological and political segregation separated these two groups of countries, turning compatible systems to non-compatible ones.[15] Another impact of such revolutions, which found a more striking manifestation in 1848, was the shift of power. The mighty Austrian State grew weak and France grew stronger than ever before.

Despite the similarities between human rights and liberalism and individualism, the socialistic movements took recourse to human rights to justify their demands. Exploitation of man by man and the sex discrimination, which resulted in the violation of women's rights, was the debated subject of socialistic movements.

Thomas Spence (1750-1814) struggled against private ownership in the name of human rights and demanded for the collectivisation of farms and lands in a Federal government. Thomas Paine (1737-1809) advanced democracy in the name of human rights with a view to equally distributing the revenues.[16] Later, in 1870s and 1880s, the working hour was reduced to eight hours a day. The healthcare conditions and the prohibition of child labour were called for by all the socialist parties in Europe.

The development of individual freedom led to national freedom and the right to self-determination. Another point is that the message of the French Revolution was conveyed to all people by the leader of this revolution, Napoleon I who himself violated these rights. The Italian people were the first who sought to fulfil these rights with the arrival of Napoleon in their country.

Two nationalistic movements, namely the movement of the Italian people and the Germans in the nineteenth century led to the emergence of two kingdoms of Italy and the German Empire, which had determining effects on international relations. The emergence of the German Empire disturbed the balance of power, providing the conditions for World War I.

Also, the nationalistic sentiments in the Balkan Peninsula especially in the form of Pan-Slavism left perceptible effects. Many of new countries which took shape after World War I such as Yugoslavia, Hungary, Poland, Czechoslovakia, Lithuania, Litonia, and Estonia were all the results of growth of national sentiments and the use of human rights which allowed each nation to determine its own destiny.

The impact of human rights on international rights showed its signs in the second half of the nineteenth century. The observance of human principles in the field battles was considered in the Declaration of St Petersburg of 1868, the Brussels Conference of 1874 and the Hague Convention and achieved some success. With the act of June 2, 1890 on abolition of slavery initiated by England and approved by some countries, another sign of the impact of human rights on international rights became manifest. The effect was extended to the Declaration of Human Rights in the twentieth century.

Constitutions, declarations and charters point to human rights directly or indirectly: the 1918 Bolshevik Declaration relating to the rights of oppressed workers, the 1934 Declaration of the Falanges in Spain, the Russian Constitution in 1936 and the 1933 Constitution of Portugal and many others.

Position Of Human Rights In Bipolar System

The bipolar system after World War II was not limited to the existence of two powers. In fact, these two poles represented two different cultural, political and social worlds. Hence, their struggle was a perfect and many-sided one. It was under such conditions that human rights found a prominent position as an organisation and as the product of Western civilisation within the legal and political pillars of international system.

Although according to Raymond Aron, the 1948 Universal Declaration of Human Rights criticised the liberal society in the name of the social ideal and the socialistic society in the name of liberalistic ideal,[17] it undoubtedly accorded more with the Western liberal societies than with despotic eastern ones. The domination of Western civilisation in shelter of human rights has two general manifestations. First, the institutionalisation of human rights at international level through declarations and conventions and its instrumentation in foreign policies of Western powers.

International Institutionalisation of Human Rights

The recognition of human rights at international level started with the reflection of parts of the principles set forth in the International Bill of Human Rights. In the preamble of this bill, the basic rights of man and the necessity for respect for them and in article 1, it talks of international cooperation with a view to encouraging people to respect human rights and fundamental freedoms. Naturally, this is very general, abstract and impractical. However, the nature of the matter could have been effectual in developing human rights.

The most important and well-known international text on human rights is the Universal Declaration of Human Rights approved on 10 December 1948 with 48 positive votes and 8 neutral ones by the General Assembly of the United Nations (later, Declaration on Child Rights, the Elimination of Discrimination against Women and Elimination of Racial Discrimination). This bill enumerates the civil and political rights and freedoms, presented as a common ideal of all nations and peoples: however, it lacks international contract and the countries have no responsibility towards it.

In my opinion, what in this declaration is more important than commitment and guarantee is the way the rationalisations are done as in the beginning of the declaration, in justification of planning this case and the fact that there is a close relationship between the democratic states and freedoms and international peace. If a government adopts a tyrannical attitude within the country, it shall definitely adopt an aggressive attitude within foreign policies. This was the experience secured in the Fascist States in 1930s. Hence, for the preservation of international peace, it is essential to supervise the happenings in a

country. This provides for the intervention in the affairs of other countries.

Of course, if this supervision is done honestly and by international authority, it shall prove to the benefit of international peace, for regimes like Saddam Hossein's regime in Iraq have started domination and tyranny within the country, extending it to aggression against neighbours at international level. However, as we shall see, the supervision of human rights has become an instrument in the hands of the despots.

These kinds of ratifications continued years later in the context of universal and public declarations. Of these, is the Universal Declaration of People's rights as was published in the forrm of a non-stat declaration on 4 July 1976 in Algeria: its goal was to ratify the rights of people who had not taken the shape of state-nation (like Palestine). Article 1 recognised the right to life and article 2 recognised the right to national and cultural identity. However, more important than these declarations were the conventions, signed at regional or international levels.

At international level, one should mention conventions formulated in the framework of United Nations by the United Nations Organisation or other organisations, for instance, the Four Geneva Conventions and their properties in time of war, the Child Rights, the Elimination of all Kinds of Discrimination approved by more than 140 votes. However, the similar contracts signed in 1966 did not go into effect due to the refusal of some countries until 1976.

On 16 December 1966, the General Assembly approved two Covenants, which despite 1948 declaration were obligatory. The first was the Covenant on Economic, Social and Cultural Rights whose gradual realisation was required in developing countries on the basis of observing human rights and the attention to national economy and until 1980, about 63 countries attended it and by 1990, they amounted to 100 countries. The second was the Covenant on Civil and Political Rights and self-determination whose prompt realisation was required, until 1981, only 16 countries joined it, and by 1990, they amounted up to 95.

However, the regional conventions enjoy more functionality because the goals are clear and the members are self-motivated. In 1950, the European Convention on Human Rights (it went into fore in 1953) established a firm bond between morality and power, and between internal commitments of the States and intergovernmental relations for the first time in the province of human rights. It was because it responded to the moral commitments of human rights on the one hand and on the other hand, it used the power of the government as a support.

The articles set forth in this convention are kept but the European commission on Human Rights which was made up of one judge from each country supervises the observance of human rights in Member States. This convention and the annexed protocols as to executive organisations turned into a common point among the nations which had become members of the European Council (founded 1949), except France which joined the convention in 1981.[18]

Article three of European Council provided that the members should vow that everyone who is within

their judicial domain should enjoy human rights and fundamental freedoms. At first, the Council had 10 members, which has reached 35 member countries (many of the eastern European countries joined it between 1990 and 1996). In fact, the increase of the countries is the expansion of the European Convention on Human Rights, especially because the European social bill, observing the fundamental social rights which was accepted in the 1989 Convention by the European Council in Strasbourg was completed in 1950.

These fundamental rights included the right to profession with sufficient wages, the right to the amelioration of living conditions, the equal rights of man and women, the right to social security, the right to participate in public gatherings, the right to job instructions, healthy working condition, support for children, minimum wages for old people, social and professional adaptation for the disabled people.[19] These show the change of human rights and their development to a realm not conceived before. The right to healthy living conditions and social security for senior citizens and disabled ones are among the cases, which deserve contemplation as to the concept of human rights.

European innovative functions in human rights were emulated by other regions including the American Convention on Human Rights signed in 1969 between Latin American countries with 25 member countries today. The articles in this convention are quite similar to the ones in the European Convention. Even as to the mechanisms of exercise of these rights, Europe has been the model.

In 1981, the African Organisation of the time ratified the African Charter on Human and People's Rights with 49 positive votes. In the same year, the Cairo Declaration of Human Rights in Islam was reported to the world by UNESCO, which was the work of the Islamic Council in Europe and still does not have functional validity. In 1994, the Arab Union approved the Arab Bill of Human Rights whose text has not yet been ratified by any Member States.[20]

The common point of international institutionalisation of human rights and its employment in the foreign policies of great powers, is the Conference on Security and Co-operation in Europe known as the Helsinki Conference. In this conference in which the European countries and the two superpowers of Russia and America and Canada attended, regard and respect for human rights was accepted. Although the articles in Helsinki Conference were not as binding as in a convention, it was of importance due to other reasons. The function that this declaration found in the policies of Western countries especially the U.S.A. during the Cold War accelerated its obvious effects, which shall be dealt with in due course.

The Instrumentalization of Human Rights in the Foreign Policies in Western Countries

The American Declaration of Independence (1776) and the Declaration of Rights of Man and of Citizen of France (1789) reveal the formal position of human rights in the laws and policies of these countries. Besides, there are two points which call for notice. One, most of the violations of human rights in the world are done by the mighty Western countries the evidence for which can be found in the independence wars of different countries such as Algeria and Vietnam. Two, the only protection for

human rights is the weapon of morality. Maurice Cranston, the British writer, states that human rights are moral rights, deriving its executive power from social moralities.[21]

These moralities are closely associated with public opinions, which in the twentieth century turned into an organised process. This process can be interpreted as the public opinion of the world.

Naturally, the use of human rights as a weapon in foreign policies should be equally abolished. In this regard, the United States has been a pioneer for two reasons: one is what Stanley Huffman says about the Americans. He states that the Americans often imagine themselves on an island surrounded by drowning people and their duty is to save them. That is why they always assume a teacher-like attitude and based on moral grounds they give themselves the license to interfere in the affairs of others and guide them on the straight path.

Secondly, America turned into a power, which could do anything, thus what remained was the justification of power. The Wilson Declaration including 14 articles was a combination of a despotic nature in the guise of saviour which did not succeed in adopting an isolated policy but succeeded by the same strategy to force the old empires and the despotic regimes to leave the scene so that the republic and democratic states could be instated.

After World War II, the US directly struggled against Russia but with the policy of New Look, it sought to control the rivals by using diplomatic and legal weapons and to avoid direct conflict. In this process, every instrument could be used, even human rights. However, this required that the rivals should first accept the rules of the game and then put a golden bridle around its neck. This important issue was provided in Helsinki Conference.

Although the Helsinki Declaration did not have binding guarantee, it strengthened the controversies within the eastern bloc. Russia gave in to this deal for the determination of the boundaries in Eastern Europe was not aware of its consequences. The Russians realised that the refugees had increased and asked for migration to the West due to the right to freedom of movement set forth in the Helsinki Declaration. Or when the 77 Bill in Czechoslovakia succeeded in sending its documents to the West, the Russian leaders realised that it had been short-dealt.

The matter turned serious when the American president, Jimmy Carter protected the notorious adversaries such as Bukovsky and Sakharov.[22] Jimmy Carter who became president in the late 1976 officially established the foreign policy on the basis of human rights: on 6 December, 1978, on the 30th celebration of the Declaration of Human Rights, he stated, “Even these rights constitute our national identity. This policy should be a poultice for the wounds of Vietnam and the declaration a way to return to ideal and humane principles of the liberal America and on the other hand, an instmment for imposing force on its rival, Russia.”[23]

Some believe that Carter really believed in human rights, applying them in the third world and the American cronies. If that was the case, the Christian aspects of this policy soon grew pale in the light of

opposing national interests. Some people consider the fall of Shah, this faithful ally of the West as the result of the same policy and some others describe the sorrow of the military regimes of Latin America as the manifestation of this policy.

The American economic and political failures, which made American leadership, look ridiculous to the Japanese and the Europeans, the general policy of Carter, should be questioned.[24] With the election of Reagan as the president, the direct policy with Russia took the place of human rights and when Gorbachev came to leadership in 1985, it seemed that he had adopted the Western policy and that there was no longer the need for human rights in Russia and the third world countries became the targets of this weapon.

However, as Marcel Merle states, the way of using this weapon determined from the beginning that the U.S.A. used human rights as a pressure instrument and that sadly, the historical instances of such uses were not few. For instance, the Russian Czars exerted pressure on the Ottoman empires under the pretext of protecting the Christian minorities.[25]

However, it is not only the U.S. that uses human rights as an external instrument, but the European countries take such steps in the European union as well. Entering this union not only necessitated the observance of human rights the way Europe has in mind, but also the commercial transactions are dependent on this condition. For the same reason, Turkey has fallen behind and as long as it fails to provide political freedoms for its subjects and settle accounts with the Kurds, it is inconceivable for it to enter the European union.[26]

The voluntary eastern European countries should accept the supervision of the European commission on human rights. The conference on security and co-operation in Europe, preparing itself to dominate all eastern and Western countries, stressed the religious freedoms and the rights of cultural, linguistic and religious identities in the Geneva session in 1989. In addition, this conference stressed human rights as the foundation of this organisation in the session of 35 member countries in Paris (November 1990) during which it changed its name to the Organisation of Security and Co-operation.

On the other hand, the increase of the Member States from 35 to 53 during the years 1990 and 1996 which took place with the acceptance of the countries broken away from Russia, helped develop the concept of human rights to countries where there was no mention of European human rights. It is understood that Europe seeks to use human rights as an instrument in foreign policy just like the U.S. as the European community demanded human rights in development plans, asking for a text in re-signing the Lome pact known as Lome 4 between this union and 63 African countries, Caribbean and the pacific Oceania in December 1989, despite the importance it accorded to African countries and the former colonies.

Critique Of The Principles Of Western Human Rights And Protest Against Its Misuse In Foreign Policies

At first, we need to point to an opposition in the attitude of third world countries. The use of human rights by non-European people first took place in the struggle against exploitation. Here, the non-European people sought to fight Europe by means of European concepts. According to a French writer, the European domination from the sixteenth century up to the twentieth century induced the non-European people to think in a European fashion. The people of Asia, Africa and America had to arm themselves with European concepts in order to survive, for these concepts had taken hold of other concepts, and guns had taken the place of slings. The exploited ones used the same concepts that Europe had used against their freedom, independence, and self-determination.[27] Thus, the function of human rights found international expansion by dominated countries in the late 1960s.

In this time, the Russian-American relations were getting better and the West-cast axis was losing its importance and on the contrary, the north and south axis was finding importance. The discussion on universal order, which was invigorated in the early 1970s, was soon concentrated on the injustice in accessing to information. The importance of information and its control by Western institutes was the main subject of north and south relations and the UNESCO Conferences in Nairobi (1976) and Paris (1978) allotted their main subject to his case. In the end, McBride's report in the general conference in Belgrade held on October 25 1980 was accepted. In this context, the necessity of observing justice is stressed.

1. Elimination of imbalance and inequality

2. Elimination of the negative effects of some of the public monopolistic centres and the elimination of excessive concentration

3. The observance of the rights of all peoples in participating in international exchange of information on the basis of equality, justice and mutual interests

This debate gave rise to an overwhelming crisis within UNESCO. In December 1948, the United States left this organisation. In December 1985, England joined the United States and condemned the so-called world terrorism in UNESCO. As for the third world countries, they could not do anything.[28] At all events, there was no debate on the concept of human rights and it seemed as if the concept of human rights as accepted by the Europeans was accepted by all nations of the world.

However, in the early 1980s, this question emerged whether humanity was a single, universal and inalienable affair and that human rights were the clear sign of man's position, a reasonable man, a master for whom the society was a place of his flowering intellect or on the contrary it was an affair influenced by time, place and diverse cultures. This question was accompanied with the question, which emerged, from the basic opposition of human rights with the authorities of states. The Islamic revolution

of Iran was instrumental in motivating these two questions, for on the one hand, it demanded national authority and the refusal of foreign domination and rejected any kind of interference under any circumstances including human rights and on the other hand, as a pioneer of a movement arising from Islamic values it sought to find a new definition for social concepts especially the legal concepts and principles including human rights.

Before this, diverse steps had been taken in Islamic countries. In 1968, the union of Arab countries created the permanent Arab commission on Human Rights and in 1981, the Universal Declaration of Human Rights in Islam was declared to the world through the immediacy of UNESCO. However, none of these steps has been able to question the domination of the European concept of human rights.

On the other hand, the policies for a Universal Declaration of Human Rights in Islam in which the similarities and dissimilarities between the West society and Islamic world are determined have not yet taken place. The important point in this process is the initiation of debates over the principles and the possibility of diverse ideas as to human rights,

The Asian countries have well understood that the West employs human rights as a pressure weapon in foreign policies. Chandra Mozafar, professor of political science in Malaysia states that the foundation of the debate between Asia and the West is economical. “On the basis of one of the studies of European commission, until the year 2020 there will be five strong economics in eastern Asia as to the equality of purchase power. The economy of China will be the greatest economy of the world, which will be 40 percent greater than the second economic power, that is, the U.S.A. They feel that they are losing the domination that they have had for over 200 years. Is the protection of human rights one of the few policies in ensuring the preservation of such domination?”[29]

Therefore, we realise that human rights have never been so entangled with international relations. In fact, human rights are a part of the international system, which is important both in dominating relations and in debates. The uniformity and opposition in international system finds reflection in the same way as in human rights. On the one hand, the eastern domination and the attempt to protect it and on the other, the opposition of the countries under domination. The future of human rights is dependent on such debate. The countries under domination want to keep human rights as a shield to preserve their identities (see the Algerian declaration of 1976) and the dominating countries seek to use human rights as the means to interfere in the affairs of others and use the resolutions of the United Nations on humanitarian assistance as a means to this end.

Conclusion

From the beginning, human rights have been one of the data, subjects and determining factors in international relations and the more we advance, the more the relation between human rights and international relations grows. It is true that governments are independent and have national authority but there are two points which should not go unnoticed: the increase of transnational forces associated with

all communities, such as environment and on the other hand, the increasing elimination of the distance between national community and international community. This means that the age of authority of States is diminishing and the transnational forces including human rights have gained greater importance and shall penetrate the national frontiers.

Encountering such forces, if necessary, should be done with forces of the same nature. Stress on diminishing national authority will not be sufficient for preventing the impact of human rights. There should be another form of human rights of another kind to be placed against the existing one.

On the other hand, the concept of human rights is not so stable in order that we can recognise it as being limited to the 1789 declaration but that which belongs to a contradictory issue, developing and involving in international debates. Hence, it influences these debates and is influenced by them. The sequence of debates over human rights and its diverse interpretations, which are changing, is a witness to the same case. The last point is that the third world countries are condemned to either accept the European interpretation of human rights or offer a reliable interpretation of them.

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Dr. Sa’idah Lutfiyan

Five fundamental questions arise in the discussion of human rights:

1. What are human rights?

2. Should human rights be universal or associated with the cultural characteristics of nations?

3. Is human rights a civil issue and within the domain of independent countries or should it be treated as an international issue?

4. What factors cause the violation of human rights by the States?

5. How should international community and state and non-state organizations protect human rights at international level?

Each one of these complicated questions concerns a certain field of human rights. This article deals with the violation of human rights of the Muslims throughout the world in certain cases and the positions of international organizations in the context of the aforementioned issues. In part one, we shall discuss “the historical change of human rights, important international documents constituting the international regime of human rights and the similarities between international human rights and Islamic human rights. In part two, we shall discuss the freedom of religion as one of the most fundamental human rights and the violations of the human rights of Muslims in non-Muslim societies particularly in Chechnya-Herzegovina and the Occupied Palestinian. Finally, in part three, we shall draw a conclusion from our discussion.

Part One-International Regime of Human Rights. The Historical Change of Human Rights

Contemporary human rights are shaped in three main generations. The first generation human rights was declared in the democratic revolutions towards the end of eighteenth century in America and France, which centered on civil and political rights with the view to ensuring individual rights and patriarchal system. These rights George Jellinek called *negative situation* and *active situation*. The rights of negative situation are of defensive nature, aiming to prevent the violation of the right to life, freedom, and private property by the State. The rights of active situation elate to participation in political process,

the freedom of expression, gatherings and suffrage.

The second generation of human rights finds its origins in the nineteenth century known as *positive situation*. The idea of positive rights was strengthened by the problems arising from the industrial revolution and socio-political rights were set forth to eliminate poverty.1

Maurice Cranston defines positive rights as those, which are approved and exercised by the system of civil laws. Positive rights are true, particular to man. What man should have is a different issue.2

The third generation of human rights was developed during the twentieth century, adding two aspects to human rights. The first aspect was the universality of human rights after World War II. The Universal Declaration of Human Rights was approved by the General Assembly on 12 December 1948.3

Indeed, the idea of protection of human rights by the international community goes back to the catastrophic events of World War II and the exceeding despotism of great powers preceding the war. The Universal Declaration of Human Rights is regarded as the main document of the international human rights regime. In 1966, the viewpoint set forth in this Declaration was enhanced in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

In early January of 1987, 87 and 85 parties were respectively bound to approve the covenants and almost all other countries signed the agreement or at least expressed their support for them. These documents are recognized as the International Bill of Human Rights, including extensive civil and political rights (the right to life, the right to security of person, non-discrimination, protection against arrest or arbitrary detention, the freedom of expression, press and political gathering) and economic, social and cultural rights (the right to food, medical welfare, education, social security and job security.)4

Another important aspect of the third generation human rights are the attention focused on socio-economic rights the most important of which are the right to development, the right to a healthy and balanced environment, the right to participation in and benefiting from the common heritage of mankind (shared Earth-space, resources: scientific, technical, and other information and progress: cultural traditions, sites, and monuments).

In discussing against economic, social and cultural rights, they regard a distinction between negative rights (only demanding clemency and forgiveness) and positive rights (requiring the concerted efforts of all social forces to substantial degree on a planetary scale). The violation of negative rights involves active injuries and the violation of positive rights only involves earning support. For instance, the protection of torture frequently said to be negative (because, the State should abstain from torturing people) has indeed a positive character. In many countries, the abstention from torturing people requires fundamental changes in laws, the administrative policy and the personnel.

Many civil and political rights are not manifestly negative. Suffrage is a positive right: unemployment or

the lack of medical welfare is regarded as a threat to security of person and the dignity of man.[5] The obvious point is the flagrant difference lying in the observance of negative and positive rights between the nations. Although the International Bill of Human Rights (approved by most countries) places stress on the observance of social, economic and cultural rights, the poverty and deprivation of millions of people throughout the globe is an undeniable fact.

Are human rights a national or international issue? How should we strive to abide by it? Donnelly expreses the *own-state duty* which suggests that since the international system is made of nation-state, the duty of observing human rights is binding on the countries which should ensure and respect the rights of their citizens.[6] On the contrary, Vincent suggests the idea of *other state duty*, contending that the duty of observing socio-economic rights is binding not on the nation-countries and the international community has responsibilities in this regard.[7] The point introduced is the universality of human rights. Do the cultural differences among people mean that the concept of the universality of human rights lacks validity? Are they really used to advocate a dominant imperialistic ideology? Are human rights a Western construct with limited applicability as they claim?[8] Are human rights universal because of its concern for all men! Do they keep concealed the universal domination of a certain culture (the imperialistic culture of Western countries)? Two different answers are given to these questions:

A) The advocates of universality believe that human rights are not associated with a certain ideology or idea. Although the concept of human rights finds its origins in the West and emerged in Europe and northern America, the concept of human rights is not associated with Western thought or culture and is exercisable not only in Western communities but in non-Western communities as well.[9]

B) The adversaries of the universality of human rights proposed the philosophical view of cultural absolutism, implying that the culture of every society has underlying moral values. Hence, they believe that cultural features have more moral and spiritual value than the world of justice. As cultures are different, human rights should not be universal and the Westerners should not expect that the non-Western cultures should change their moral system according to the international human rights regime.[10]

In international assemblies and non-state international organizations supervising human rights in different countries, we have witnessed the Western criticisms of Islamic laws and rights. Some theoreticians of human rights claim that there are still discriminations between Muslims and non-Muslims although in the constitutions of Muslim countries, equal rights and freedom of religion are granted and in some of them (such as Iran and Pakistan) the right to representation in the executive power is allocated to religious minorities.[11]

In defense of Islamic human rights, the Muslim lawmakers express that Islamic human rights are based on the Qur'an and the practice of Prophet Mohammed (P.B.U.H.). In Islamic societies, the punishment for theft can be the chopping of the hand, and blood money must be paid to the victim's family. Despite the protest of Western proponents of human rights against Muslim laws of punishment, most of the

Muslims today obey this law at large. Of course, the Muslim laws require the State to put into effect its commitments for executing the socio-economic justice and the preservation of a standard of living before it applies these punishments. In other words, these punishments may be allowed when these conditions are fulfilled.

According to the Islamicists and Muslim lawmakers, the Muslims are the victims of discrimination in international communities. Ahmet Davutoglu states in his *Civilizational Transformation and the Muslim World*:

Over the recent years, there has been a tendency in Western spiritual and political centers to ill repute the Muslim communities as maladroit clements in international System. The issue of Salman Rushdie and the Islamic Hijab (Muslim dress code for women) of girls and women in France and England aroused historical bias against Islam. Mass media has been extensively used with a view to strengthening this thought. In the Persian Gulf crisis, although Saddam Husayn's wing was protected by many Muslim countries, he is regarded as an ever-increasing symbol for Islamic fundamentalism.[12]

In this regard, Muhammed Makki Nasiri, one of the members of the Religious Intellectual Council in Morocco, states:

Human rights might be a new phenomenon for the West, but we have had human rights in Islam from the outset. We do not see any difference between the whites, the blacks, the Jews and the Muslims; they are all free. However, we never torture the Jews as they do in France and England. Israel is given the license to commit massacre. The US did not even condemn the bombardment of the Saf in Tunisia by Israel.[13]

Although most of the Westerners claim that human rights are the manifestation of Western culture, the Muslims contend that human rights lie in the heart of Islam. The emphasis of the West on human rights does not conceal the fact that the rights of citizens are violated every day in the Western communities. Of course, Nassiri stresses that Islamic freedoms do not permit everything. Saudi Arabia opposed the Universal Declaration of Human Rights because it permits paganism.[14] Ali Mazru'i regards Islamic human rights and Islamic culture more humane than the Western culture. He admits to the difference between men and women in some Islamic countries: however, he believes that the historical gap between the West and Islam is not a hundred years but that the Muslim countries are a few decades behind the Western communities in this regard.

Almost in all the Western countries except New Zealand, women did not have the right to vote until the beginning of the twentieth century. Britain granted this right to women in two stages, in 1918 and 1928 respectively. In the amendments to the American Constitution in 1920, the US granted suffrage to women. Until 1971, Switzerland deprived women of suffrage at national level whereas the Muslim women in Tunisia, Morocco, Algeria, Indonesia and other Muslim countries enjoyed this right.[15] In 1870, British married women did not have the right to property.

By comparison, the Muslim women have always enjoyed this right. The US (the largest and the most influential Western country) has never had a woman president whereas Pakistan and Bangladesh, which are among the countries with the highest population in the Muslim world, have been often run by woman prime ministers. Benazir Bhutto in Pakistan, Khalida Ziya and Hasina Wajed in Bangladesh were chosen as Prime Ministers. In Muslim Turkey, Tansu Ciler has served in various positions in the government.

Now the Muslims and the Jews are equal in number in the US: however, it is most improbable that a Muslim leader be chosen as president in the near future in this country. By comparison, the Republic of Senegal in which 95 percent of its population are Muslims was ruled by a catholic president (Leopold Sedar Senghor) for twenty years (1960–1980). The present leader of Senegal is a Muslim, but his wife is a catholic. In Western Europe, millions of Muslims live:[16] however, no Muslim has ever been selected as a member of the Western Cabinet. From the facts noted above, one can conclude that the Westerners are far less secular than they often assume and that historically the Muslim communities are far more humanitarian than what the Westerners believe.[17]

Davutoglu criticizes the double standard function of international laws and system, which has caused insecurity on the part of the Muslims. The international system has tolerated the Israeli policy of expansion in the occupied lands of Palestine. *Intifazah* is called the terroristic act, but the popular riots in Eastern Europe arc supported. A serious response was not given towards the Russian military intervention in Azerbaijan in January 1990 and hundreds of Azerbaijanis lost their lives due to this aggression.

However, the Western powers showed reaction against the Russian intervention in Baltic republic. International organizations are sensitive to the rights of the small Muslim minorities in Muslim countries and publish diverse reports on the violations of the rights of these groups; yet, they kept silence towards the oppression against the Muslim minorities in Kashmir, India, Bulgaria, former Yugoslavia, Burma and other places.

Atomic powers in the Muslim world (Pakistan and Kazakhstan) are introduced as serious dangers to the world security whereas the existence of such weapons in nonMuslim countries (Israel and India) is accepted.[18] The Muslims who constitute 25% of the world population[19] do not have a permanent member in the Security Council of the United Nations and the requests of the Muslim world have been repeatedly vetoed by the non–Muslim communities.[20] The Secretary General of United Nations has never been a Muslim and only a small number of important organizations have been supervised by the Muslims.

Richard Falk alleges that there are the bipolarization and discrimination of mass media and the American political leaders. It seems that these organizations support those who tend to follow goals contrary to Islamic interests. In regard to the differences between the Arabs and Israel, this idea has come up that the violence of the Israelis against the Palestinian refugees and other Arabs is generally considered based on security policies but the Palestinian violence is viewed as a terroristic act, injuring

the moral and political claims of Palestinian combatants.

Other clashes in which the Muslims have been the victims of the violation of human rights (such as Chechnya, Bosnia and Kashmir) also demonstrate the truth of the discriminatory policies. If the victim and the victimizer changed places, the response of international assemblies would definitely change.

In addition, Falk points to the discrimination regime of the prohibition of nuclear weapons. Mass media overshadows the picture that the military-nuclear capability of the Muslim countries is a threat to international security. Although the motive of Pakistan in nuclear weapons is a response to the nuclear threat of India and a superior military capacity compared to its nonMuslim neighboring country. Pakistan's newly acquired nuclear capability is referred to as Islamic bomb. No report is provided on Christian bomb, Hindu bomb or Confucian bomb.

In the continuation of the anti-Islamic attitude of international system towards Muslim countries, Richard Falk investigates the international response to terroristic acts. In the first responses towards terroristic acts, the Muslim world was considered a suspect. The labels *rebels* or *rascals* are given to several Muslim countries (including Iran, Iraq and Libya) to strengthen the suspicion that the Islamic combative tendencies should be treated forcefully while the non-Muslim countries (such as Burma over the recent years and south Africa during apartheid era) which violated international laws and universal conscience were treated with the policy of *constructive engagement*.

Besides, in the wake of the Cold War, the West expressed its commitment towards the expansion of democratic rule (namely, encouraging public elections and the observance of the constitution.) The Western fear of the political influence of Islam led to the overlooking of the coup d'etat which took place in Algeria to counteract the election victory of Islamicists. The coverage of mass media towards the oppressed Muslims was dry and scant attention to the spiritual and political stress resulted in radical acts (such as voluntary bombing). The support of the Palestinian Arabs and the adversaries of Western State (such as Iran and Libya) of the actions of Arab democratic combatants are exaggerated but the cry of the Israelis (with the slogans of death to Arabs and Palestine) for revenge is ignored.

From the viewpoint of world economy, the Muslim countries are kept in isolation. The G-7 composed of the great economic powers does not include any Muslim country. Do Malaysia, Indonesia or Saudi Arabia not have the right as Canada or Italy to participate in the decision-makings of the world economy? In the age of enlightenment, is it not reasonable that the Muslim countries participate in the international economic system?[21]

With view to enhancing the socio-economic cooperation among the Muslim countries and also strengthening relations between these countries with non-Muslim countries, eight Muslim counties (Iran, Turkey, Indonesia, Egypt, Pakistan, Malaysia, Bangladesh, and Nigeria) have established a new cooperativeeconomic organization called D-8 (Developing Eight). On 16 June 1997, this organization started work with the signature of the common declaration of the Istanbul Bill by the heads of the States

of eight countries.

The decision of 10 July 1997 of the American Congress, which recognized Jerusalem as the capital of Israel and allotted one million dollars for transferring the American embassy from Tel Aviv to Jerusalem, is another undeniabie evidence of the anti-Islamic tendencies of American foreign policies. This anti-Islamic act is insensitive to the feelings of millions of Muslims about the future of this holy city and opposes the resolutions of United Nations. Both the Muslim countries and the underdeveloped non-Muslirn countries objected to the unfair judgement of international assemblies in choosing regimes which should be studied and criticized due to the violation of human rights.

In the following chapter, we shall treat this question whether international assemblies including the Commission on Human Rights of the United Nations and the international non-governmental organizations advocating human rights and the western countries shall be partial in their judgement of the human rights of the Muslims.

Part Two-Human Rights in Practice Muslims in non-Muslim Societies

In the international laws on human rights, the observance of civil and political rights seems more prominent than that of socio-economic rights. As article 27 of the International Covenant on Civil and Political Rights states all the rights of minorities should be observed,

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

Also, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities approved on 18 December 1992 stresses that such people have the right to the enjoyment of their culture, the expression of their religion and the use of their language.[22]

Article 1 of the International Bill of Human Rights declares that the Member States should propagate through this organization the respect for human rights and fundamental freedoms for everyone without limitation of any kind due to race, sex, language or religion.[23]

The case studies of the situation of human rights of Muslims in BosniaHerzegovina, Chechnya and the Occupied Palestine which will be dealt with in the following part indicate that human rights are neither (in practice) partial nor postulated.[24]

The Israeli Attitude Towards The Palestinians In The Occupied Lands

With the military occupation of the Gaza Strip and the West Bank of Jordan River, Israel played the

reciprocal role of the State and the occupier. In both roles, the policy of Tel Aviv should be limited to the laws of war and international standards of human rights. The deplorable situation of the Palestinians indicates that there is a need for a new set of laws and legal standards for the protection of civilians under the long ascendancy of the occupiers, for the laws of human rights are not observed for Palestinian military men. Peleg states that the settlement activities of the Israeli Jews in the occupied lands are the main cause of the extensive violation of human rights in the years before the uprising that became known as *intifazah* (shaking off).

No other Israeli policy as the act of settlement of the Jews in Palestine has ever left such a negative impact on the situation of human rights in Palestine. These plans did not increase the hostility between Arabs but they set many Israeli radical Jews in the neighbourhood of these angry oppressed Arabs. Consequently, the violent and bloody tension between the Arabs and the Israeli immigrants has been inevitable.

In response to this ever-increasing violence, the government in Tel Aviv has helped intensify the tensions with the more severe security measures it has taken within its domain. Under such circumstances, the violation of human rights has become more obvious than ever before. The Israeli policy on the expulsion of the Palestinians from the lands, the destruction of their houses, and the prolonged incarceration are used as a means to achieve three goals. These goals are:

1) Preventing the growth of native leadership

2) Satisfying the demands of the emigrant Jews with a view to intensifying the anti-Palestinian acts

3) Punishing non-military Palestinians for their previous acts.

Hence, the Israeli political motivations result in aggressive policies instead of security motivations. Moreover, since Israel does not take such measures due to military or security necessities; and does not follow political goals, these policies violate international laws.[25]

The violations of Palestinian rights by the Israelis are innumerable. We shall be discussing the most important of these cases.

The Status of Palestinian Refugees

The 1948 war between the Arabs and the Israelis left 650,000 Arab refugees who fled to the West Bank of the Jordan River or the neighbouring Arab countries. In 1948, the General Assembly of the United Nations approved resolution 194 and proposed a way for eliminating the refugee's problem. Paragraph 11 enumerates a few solutions such as repatriation, or the payment of indemnity.

At first, the Palestinian refugees did not accept the resolution but after some time, they viewed paragraph 11 of the same resolution as guaranteeing unconditional return of the Palestinian refugees to their land.

In 1967 war, approximately 300,000 Palestinians (among whom 100,000 people were the 1948 refugees) escaped from the West Bank and the Gaza Strip and became known as the Palestinian refugees. The Security Council of the United Nations approved resolution 237, demanding Israel to provide facilities for the repatriation of these refugees. Israel allowed only a small number of them to repatriate from Jordan. About one-third of the Palestinian refugees were placed under Israeli supervision in the West Bank and the Gaza Strip.

Resolution 242 of the Security Council (accepted by Israel and the major Arab countries) is somewhat vague about the solution to the refugee's problem, pointing that the just solution to the Arab-Israeli differences depended on the solution to the problem of Palestinian refugees; however, it does not specify who these refugees are. In the wake of 1973 war, resolution 338 of the Security Council stressed implementation of the resolution 242 and added that peace should be established through direct negotiations. The Camp David Accords in 1978 between Egypt and Israel did not consider any solution to the refugee's problem.[26]

It is common to compare enemy to little animals with the view to humiliating them in ethnic differences. Also, in the differences among the Arabs and the Israelis, comparisons of this sort are frequently made. The extremist Jews supporting major Kahane compare Palestinians to cockroaches, which should be collected and expelled from the country. The Arab Bedouins are a small caste in the Sinai Peninsula, living in the desert. With the advent of the Israeli State, approximately 100,000 Arab Bedouins found themselves within the borders of this country. Most of them were expatriated to Jordan or Egypt and their expulsion continued in 1950s. Tel Aviv State usurped 93 percent of the Negheb desert without considering the rights of the Palestinian Arabs and without paying indemnity.

The most blatant instance of the violation of international conventions on human rights concerns 2000 Bedouins dwelling in the east of Jerusalem. The members of Jahilin tribe living in Negheb were driven away to the border of Jordan in 1950s and were in the occupied lands towards the end of the 1967 war. From the time of their expulsion from Negheb, these Bedouins continued farming by borrowing lands from the Arab villagers.

For the expansion of Jewish settlements, Tel Aviv usurped these lands, suggesting that they choose the stone hill, which is some 500 meters away from the main garbage dump and the industrial waste in Jerusalem. The important point is that the Israeli authorities have recognized the place suitable for human residence. The issue of Jahalin was proposed in the fifty first assembly on the International Commission on Human Rights and some of the groups on human rights and non-state organizations supported them.

The draft of the resolution inquiring Israel not to usurp 53 hectares of land in Jerusalem was not ratified in the Security Council on May 17 1995 due to American veto.[27] The Western countries, which claim to protect human rights, have not taken any operative step to help the Arab nomads and other wandering Palestinians.

Inhumane Conduct towards the Palestinian Prisoners And Arbitrary Execution

A disabled diminutive Palestinian man called 'Abd al-Samad Hasan Harizat, was detained in early April 1995 for the crime of co-operating with Hamas (considered the most important Islamic party who reject making peace with Israel) and was killed due to brain concussion during the interrogation session of the Shin Beth.[28]

In another occasion, Ehud Yatom, a former agent of Shabak (Israeli Security Agency) admitted having a part in the wanton execution of the two Palestinians called Subhi and Majid Abu Jamiya. He confessed that these two Palestinians were badly beaten for the crime of participating in the act of hijacking the Israeli bus number 300 carrying the security forces and the non-civilians (including the Israeli foreign minister Yitzhak Mordechai). About an hour after arrest, they were entrusted to Yatom and other Shabak Agents while they were suffering from severe cuts and bruises. During transferring them from the place of arrest, Abraham Shalom, the chief of Shabak ordered Yatom to have them executed immediately. According to Yatom's confession, he obeyed this order at once. Following the publication of Yatom's interview, the Palestinian Center for Human Rights sent a letter on 6 December 1996 to Israeli authorities to disclose some facts about the bus 300: they received no reply, however.[29]

Armed Attack against the Civilians

On 27 September 1996, Israeli helicopters opened fire to the nonresidential zones of Rafah. In the Gaza Strip, the Israeli soldiers have kept using weapons against the civilians. In the West Bank, it is also reported that the Israeli soldiers have attacked the Palestinian civilians. On the same day, during the Friday Prayer Congregation at Masjid al-Aqsa, three Muslim worshipers were killed and seventy wounded. The Israeli Prime Minister Benjamin Netanyaho did not opt for negotiations on the tunnel under way near Masjid al-Aqsa and other issues resulting in last summer's clashes.[30]

Surrounding the Occupied Territories

On the evening of October 23 1996, the Israeli authorities started to surround the occupied Palestinian lands. The entire boundary passages between the Gaza Strip and the Israeli domain were blocked and the movement of persons and goods was limited in the Israeli-controlled areas. These limitations affected all the aspects of the lives of people dwelling in the Gaza Strip, creating innumerable difficulties as follows:

1. Limitations of the trade transaction between the Gaza Strip and the external world.

2. Preventing the Gaza workers from going to their place of work in Israel

3. Not allowing access to medical services to the patients who were in need of medical treatment outside the Gaza Strip

4. Preventing the freedom of movement between the Gaza Strip and the West Bank, even for more than

1200 Palestinian students dwelling in the Gaza Strip who were doing their studies in the universities of the West Bank

5. Preventing visits to the relatives and the family members of the Palestinian prisoners incarcerated in the Israeli prisons. About 750 Palestinian prisoners are being kept in the Israeli prisons.

6. Prohibiting freedom to leave Israel[31]

The intensive military siege of the Gaza Strip started on 25 February and continued for eight months, magnifying the miseries and sorrows of a million people dwelling in the Gaza Strip. During the period of twenty seven years of direct and military occupation, the Israeli authorities started to destroy the economic substructures of the Gaza Strip with a view to changing the territory to a free market for their products and a source of cheap man power for their factories and industries.

During these years and as a result of the Israeli policies, the income of the Arab Palestinian workers has become very vital for economy and for the people in the Gaza Strip. However, due to repeated closures, the Arab Palestinian workers have decreased in number in Israel. Before February closure, the workers consisted of 22,000 persons. The decrease of the workers has resulted in economic problems for this occupied territory in which the rate of unemployment was 60 percent.

Tel Aviv is responsible for the economic destruction of Gaza after years of military occupation and this responsibility should be considered in time of imposing closure policies. These policies show the blatant violation of the scientific freedom, the right to education, the right to freedom of movement, the right of the prisoners to visit their relatives and their right to have lawyers in the Gaza Strip.

What are the international reactions towards the blatant violations of the human rights of Palestinian Muslims? Reports on the continuation of Israeli policies contrary to humane dignity in the occupied territories are erratically published. On February 9, 1995, Betselem, the Israeli group of human rights declared that 1396 Palestinians had been killed by the Israelis or their Arab allies since the advent of the Palestinian *intifazah* in 1987. And this number includes 256 children under the age 16. The number of the Israeli casualties is 230 including 57 military men.[32]

Amnesty International Organization has criticized Israel and the Palestinian authority for not observing the Arab human rights. This organization reports that the ones accused of voluntary bombs planting in Jerusalem and Tel Aviv have been exposed to torture. The bombing of the refugee camps in the south of Lebanon, which claimed l03 lives, is another instance of the violation of human rights.[33] However, Israel has not been the target of international sanction or punishment for the violation of the Palestinian human rights (such as arbitrary execution, torture and nonhumane treatment towards the prisoners, unjust execution, detetion and arrest without any obvious crime, the prevention of thousands of refugees to repatriate to their lands, the destruction of the houses of innocent people, the usurpation of Arab lands for building Jewish settlements.)

Twenty-six members of the Subcommittee on Prevention of Discrimination and Protection of Minorities approved a resolution concerning Palestine and other lands occupied by Israel with eleven affirmative votes, six negative votes and six absent votes. This resolution cites the appalling cases noted in the previous resolutions. Israel is severely scolded for the odious violation of the Geneva convention on the protection of civilians in time of war, the persistence in occupying the Arab Palestinian lands, the settlement in the occupied territories, the refusal of the resolutions of the United Nations, the non-humane treatment and terroristic acts against the Arab Syrian civilians. Besides, this resolution insists on the protection of the international conference of Middle East peace.34

For the first time over the fifty years of the General Assembly of the United Nations, an emergency special session was held on 24 and 25 April 1997 with a view to considering the Israeli illegal actions in the eastern part of occupied Jerusalem and in other occupied territories of Palestine. This assembly approved a resolution in which the settlement in Jabal Abu Ghunaym was condemned. This special session of the General Assembly was held in the Security Council following the second American veto on 21 April 1997 which contrary to the resolution 51/223 of the General assembly on 13 March and the severe position of the members of the United Nations was held to condemn the policies of expansion of Tel Aviv.35

Despite the international oppositions, the rightist State of Netanyahu has put an end to the limitations applied by the former State in 1992 for expanding the Jewish towns in the occupied territories and decided to build new houses in the West Bank of the Jordan River. The recent decision of the American Congress for the formal recognition of Jerusalem as the capital of Israel and the failure of the United Nations in exercising the approved resolutions shows that the reactions of Western countries (specially the US) and the international forums towards the violation of human rights are dependent on the identity of the victims and the accused regimes. If the Muslim Palestinians played the part of the occupier regime and the occupier regime the part of the refugees, prisoners and victims of the aggressive policy of expansions, would the West keep silent in the face of this oppression? Or would they reward the oppressor?

The Muslims In Bosnia And Herzegovina

The emergence of new countries in the former Yugoslavia (Slovenia, Croatia, Bosnia-Herzegovina and Meseroni) increased the Balkan countries from six to ten. Muslims constitute 44 percent of the population of Bosnia Herzegovina and it is reported that there are 3.5 millions of them. Of course, due to ethnic expurgation, there is not an exact statistical number and these numbers are to be roughly taken.

The Serbs constitute thirty one percent of the population of this country, and the Croatians seventeen percent. Sixty percent of the inhabitants of Serbia recognize themselves as belonging to Serb group and the Croatians constitute 75 percent of the population of Croatia.36 In Bosnia-Herzegovina as in the previous case, the violations of Muslim human rights are blatant and undeniable and consist of the following: the ethnic cleansing of the Muslims by the Serbs, inhumane treatment of Muslim prisoners, the

forcing of Muslims to work for the Serbs, massacre, the torturing of the civilians, the deplorable condition of the war refugees expatriated from their houses, the destruction of the mosques and historical monuments (including the destruction of the sixteenth century mosque Farhad Pasha in Benjaloc and at least the destruction of thirteen mosques in Foca), the prevention of movement of the caravans carrying food and medicine and other services which could save people's lives, intercepting the UN vehicles, attacking and killing the ambassadors of the International Organisations.[37] The number of the Bosnian disappeared ones (most of whom arc Muslims) exceeds 15,000 persons as recorded by the International Committee of the Red Cross.[38]

The reactions of international assemblies towards the crisis of Bosnia Herzegovina were first slow and insufficient. In December 1991, Alija Izzet Begovic, the Bosnia President, in his trip to Washington, asked for the dispatch of peacekeeping forces. And if the American peacekeeping intervention and other great powers had taken place in time, it would have stopped the atrocities resulting in the violations of Muslim human rights by the Serbs.

In a letter to the Security Council dated 29 June 1992, the permanent ambassador of Bosnia-Herzegovina asked the UN to intervene in this crisis, enclosing a list of 94 prisoner camps in Bosnia and Herzegovina and 11 other camps in the forrmer Yugoslavia. In a letter dated 5 August 1992, the American permanent ambassador in the United Nations Organizations in Geneva called for an emergency session of the Commission on Human Rights with a view to discussing the dangerous situation of the former Yugoslavia. With the approval of the Commission members, a special session was held.

The Sub-Commission on Prevention of Discrimination and Protection of Minorities approved a resolution, condemning the Serbian policy of ethnic cleansing resulting in the dislocation of a great number of people (especially the Muslims). The members of the sub-commission inquired that the extensive violation of human rights should be stopped, that indemnity should be paid to the refugees and the ones who have committed crimes should be summoned to international tribunals. The United Nations High Commissioner for Refugees reported to Commission on Human rights that the violation of human rights has been rarely so planned, shameful and blatant as to drive people from their houses or destroying the society.

More than half of the lands in Bosnia-Herzegovina have become a detention center for creating ethnic territories. The International Committee of the Red Cross visited twenty thousand prisoners among whom 8300 people were from Bosnia-Herzegovina. According to the report of this commission, the Serbs regarded no respect to non-military prisoners, the personnel giving medical services or the formal emblem of the Red Cross or the United Nations Organization.

In a letter dated 5 August 1992 to the permanent ambassador of the United Nations in Geneva, Izzet Begovic gave a report on the events, and torture in the prisoner camps under the supervision of the Serbs reminiscent of the appalling events of World War II. The reliable reports of mass media and the

non-governmental organizations verified the violations of Muslim human rights.[39]

Although the Dayton Peace Negotiations (1995) turned into Dayton Accord with the support of great powers according to which, Bosnia Herzegovina was divided into two almost independent political parts of Muslim Croat federation (assuming the administration of 51 percent of the country) and Serb Republic (ruling over the remaining 49 percent) with a weak central government: however, the clashes of February 1997 in the city of Mostar (divided between the Western part under the Croat supervision and the eastern part under Muslim supervision)[40] indicates the weakness and instability of Muslim-Croat federation.

Deep chasms exist between the Muslims and the Croats and despite the political endeavors of Euro American community, cooperation within the federation is at a low level. If these two groups fail to create strong common political organizations in this federation, the probability of clashes between the ethnic, religious groups in Bosnia-Herzegovina will increase.

Prompt and serious actions of international community for putting an end to criminal acts of the Serbs could have prevented the crnel attacks against the lives and properties of the civilians and the destruction of historical and religious places, as well as anti-humane atrocities. Some of the Western powers are against military intervention, emphasizing that this war is based on national interests and seek to put an end to the war among ethnic groups. Only after the divulging of the policy of the Serb ethnic cleansing, their invasion was recognized as the main factor for this war, exerting pressure on the Serbs by applying sanction, creating no-fly zone, bombing of military installations of Serbs and the dispatching of the peace keeping forces.[41]

In order to justify the policy of ethnic cleansing, the Serbs claimed that the goal of the Bosnian Muslim fundamentalists was to establish an Islamic State in Bosnia, Serbia and Macedonia with a view to exporting Islam from Sarajevo to Turkey in Europe. With emphasis on the threatening growth of Islamic fundamentalism in Europe, the Serbs vowed that they would do anything (even massacre) to change the demographic composition of the Muslim territories.

The important historical point in the reactions of international community against the issue of violation of human rights in Bosnia Herzegovina is the execution of war criminals. By general consensus, the Security Council approved resolution 808 dated 22 February 1993. It stated, '"The Security Council decides on the establishment of international tribunals for prosecuting those who are responsible for the grave violations of international human rights in the former Yugoslavia since 1991."[42]

The United Nations Commission on Human Rights approved a resolution in March 1995 in which the Serbs of Bosnia Herzegovina and Croatia were recognized responsible for the war crimes and the violations of human rights in the former Yugoslavia since the beginning of armed clashes in 1992. This commission concluded that the Serbs were following the policy of ethnic cleansing and mass murder (including unjust murder, torture, disappearance, and executions without trial).[43]

The continuation of the activities of the United Nations in preserving peace and protection of human rights of threatened ethnic and religious groups in circumstances where the Bosnian Serbs do sabotage and prevent the progress of the Hague tribunal in investigating the war crisis is vital.

Chechnya In The Domain Of Russia: Independence Or Repression

The small republic of north Caucasus of Chechnya borders with Georgia and the republic of Daghestan of Russia and is strategically important due to being on the main highway and the only railway for the oil pipelines running from the realm of Russia between the Caspian Sea and the Black Sea. This republic is 13,000 kilometers wide and its population before war was 1.2 million people. The people of Chechnya who have been Muslims since the eighteenth century are among the oldest people in Caucasus.

In the eighteenth and nineteenth centuries, Chechnya struggled against Russian expansionism in Caucasus, in 1926, Russia formed the ChechnyaIngushetia territory which in 1934 used to be a republic with civil independence. In 1944, Stalin exiled to Middle Asia about 600,000 persons from Chechnya and Ingushetia for the accusation of cooperating with the Nazi Germany. One third of these exiles died before they reached their destination. In 1957, Nikita Khrushchev permitted the rest of them to return to their country.

On 4 November 1991, contemporary with the collapse of Russia, Dzhokhar Dudayev, the leader of separatist party of Chechnya declared independence. On December 11 1994, in the wake of the failure of the negotiations between Moscow and the government of Dudayev, the Russian armies attacked this republic. In this clash which continued until August 31 1996, between 40,000 to 100,000 military and non-military persons were killed. One of the victims of this war was Dudayev who lost his life in the bombardment of Russia on April 21 1996. Consequently, Zelinkan Yandarbayev assumed the responsibility of leadership of the separatist party.

On 31 August, General Alexander Lebed, the advisor to the National Security of Yeltsin and Asian Maskadov, the commander-in-chief of the separatist party of Chechnya agreed to put an end to the war which lasted 21 months and postponed the decision-making concerning the future political situation of this republic to the year 2001.[44] In January 1997, all the military forces of Russia were withdrawn from Chechnya.[45]

There are scattered reports on the violation of Muslim human rights in Chechnya. In January 1995, the Russian forces took control of many territories in Grozni, the capital of the separatists of Chechnya and in the operations for taking back the city, the city suffered many damages. On 19 January, Boris Yeltsin expressed that the Chechnya strife had come to an end and a few days later, he added that the military stage of Chechnya had finished and the Ministry of Interior was responsible for preserving order in this republic.

According to the statistics of the Chechnya government, more than 18,000 civilians were killed in the

clashes up to 12 January 1995. Even a delegate of Russian representatives condemned the Russian military forces for a massacre on a massive scale, claiming that thousands of innocent men and women were killed in the bombardment of the capital by the Russians. Only 150,000 people out of the 400,000 inhabitants remained in the city before war that included many of the Russians.[46]

On the murder of civilians in Chechnya, the International Committee of the Red Cross claimed on 12 April that the Russian soldiers had killed at least 250 civilians during a severe attack on the village of Samashki in Western Chechnya on 18 April. In this report, the Russian soldiers were seriously condemned for attacking against the civilians and participating in the actions without considering the difference between the military men and the civilians, and the blatant violation of human rights.[47]

Hundreds of people (mostly civilians) were killed in the Russian air raids. In July 1996, the Russian fighter planes participated in heavy air raids over the south territories in Chechnya and dropped bombs and missiles over the Chechnya people.[48]

In the Russian air raids, many Chechnya families suffered heavy financial damages. One of the victims of these bombardments was Aminat Tsoyeva whose house was devastated once in April 1995 and had been rebuilt and that which had caught fire again in the summer attacks of 1996.[49] The Amnesty International provided a report on the violation of Muslim human rights in Chechnya by the Russian military forces. The Russian violences included the mass murder of the military people, execution without trial, torture and inhumane treatment towards the civilians and arbitrary arrest. According to the report of this organization, hundreds of civilians were killed.[50]

The Russia–Chechnya conflict resulted in the dislocation of a group of Muslims. In the middle of 1995, about 144,000 Chechnya civilians lived with the local people of Dagistan, which is one of the biggest autonomous republics of northern Caucasus of the Russian federation on the western shores on the Caspian Sea. Now, 22 thousand refugees are living in this republic.[51]

Even in time of peace, the Chechnya Muslims did not have the right to choose their place of residence. Areas near Moscow continued the Propiska System to stop the settlement of ethnic minorities. This system served as the condition to stay in Moscow. By assisting the local Cossacks, the Local governmental authorities in the areas of Don sought to expel some of the Chechnya families living in the villages without Propiska.[52]

Different views are suggested on the future of Chechnya. Sergei Gandlovsky prefers living in very small but free land. Vladimir Lukin, the head of International Committee Affairs of Russian Duma believes that the recognition of Chechnya independence is dangerous for many countries, for other minorities groups are encouraged to fight for their independence. Sergei Filatev, head of Public Movement of the Whole Federation of Russia vows that concluded agreements between the government and the representatives of Russia and Chechnya do not provide legal conditions for full independence of Chechnya in the year 2001.

For Russia, agreement to separation from Chechnya is the first step towards creating a confederation synonymous with retrogression. For Chechnya, this is not the way to the freedom they dream of. Chechnya (without Russia) turns into realm dependent on Islam or else chaos shall run to other parts of north Caucasus. Bulat Okudzhava expresses that Chechnya has never volunteered to join Russia. On the basis of imperialistic grounds, this small nation was attacked for fifty years by Russia in the nineteenth century. In 1994, the Chechnya people were deported to exile places to die. In 1994, Russia brought about the death of 80,000 Chechnya civilians. How can these people remain united with Russia? Vadim Bakatim, the vice-president of the Reform Foundation believes that separation from Chechnya is certain. However, this separation did not take place in 1991 or 1997 or 200l, but it was when the Russian politicians sent their tanks and soldiers to Chechnya to re-establish order.53

International assemblies remained mum on the Russian human rights violations in Chechnya, for this would be regarded an internal issue. Most of the Muslim countries remained neutral to this conflict.

Conclusion

The case study of the Muslim human rights violations (Palestine, Bosnia and Chechnya) indicates that the governments do not observe the rights of the minorities and the reactions of international forums to such sabotages is dependent on the identity of the victims. Can the West adopt a neutral position towards the Muslim minorities in the non-Muslim societies or even the Muslim majorities in the Muslim societies? International forums under the domination of Western countries have shown reactions under certain circumstances towards the violations of human rights. These circumstances include:

This widespread sabotage must have taken place with certain plan with the purpose of genocide. Barbara Harff and Ted Gurr describe four types of massacre and political murder:

1. Massacring ethnic people (progressive massacre)

2. Massacre following de-exploitation in a bi-structural state (despotic massacre)

3. Massacring during racial, religious, and ethnical attempts for earning autonomy and independence (retaliating massacre)

4. Massacring hostages or the scapegoated groups (politicide)54

The massacre of Muslims by the Serbs, the massacre of Palestinian and Chechnya civilians respectively by the Israelis and the Russians are instances of retaliating massacre. The intervention of international community towards these genocides is dependent upon their scale. Therefore, the international reactions towards the cruelties and the war crimes of the Serbs have been more severe than the steps taken against the Israeli aggressive and inhumane treatment of the Palestinians.

International rights have been blatantly violated. The UN was able to stop the Serbian crimes, for the

Member States have explained away the massacre by international treaties. The concept of genocide in the Convention on the Prevention and Protection of War Crimes approved in 1948 states that with a view to total destruction or limited to a certain national, ethnic, racial or religious group, the signing parties of the convention verified that massacre whether it takes place in time of war or in time of peace was a crime in international law and they vowed to prevent or punish it.55

The national security of great powers (especially the five permanent members of the United Nations Security Council) or their allies are threatened. If intervention or protection of the victims of the human rights violation proves detrimental to the political interests of great powers, these states, using specific means of foreign policies seek to prevent the condemnation of the states or groups accused of violating human rights, even if these policies are to the detriment of civil and political freedoms.

On the contrary, in some instances they support the despotic states which claim in the name of national security that guerrilla fighters and terrorists should be tortured and that the political prisoners should be kept in prisons to prevent them from staging a coup. A striking instance of this outlook is Washington policy towards the Israeli aggression against the Palestinian Muslims. The observance of human rights and democracy is encouraged where the Islamists are not given opportunity to assume power. The violations of human rights are criticized where the Muslims are weakened.

Another instance is the encounter with the crisis of Chechnya and the complete silence of international community to the inhumane treatment of the Russian military forces of the Muslim civilians. If Russia was a smaller power without the right of veto in the Security Council, this could be regarded international and the opportunities for the legal intervention of the UN could be provided. As for the protection of security for the Iraqi Kurds, the Security Council took unusual steps (including creating a protective zone in the north of Iraq).

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Introduction

In the course of history, man has had an ongoing struggle for an expanding body of fundamental human rights for as many people as possible. Humanists and international lawyers have long endeavored to protect these rights. They have discussed the position of the individual in international law in particular. Although it is universally acknowledged as a fact that the individual is the basic unit to whom any legal system is directed, discussions of this nature have often resulted in denying man of any position whatsoever.

According to the classical international law, the individual as an object had no rights and duties. However, the relationship between the individual and the society has undergone changes over the recent years. Since the Western view on human rights has prevailed in contemporary international society for a long time and can be traced back to medieval Europe, it seems appropriate to consider it as a historic point of departure for investigating that relationship.[1]

The Reformation and Renaissance movements provided scientific, religious and philosophical outlets for freedom and self-expression. In medieval Europe, the ordinary individual was left beyond the jurisdiction of international law and was treated as a mere object.

With the emergence of despotic regimes towards the close of the middle ages, the struggle for human rights commenced. This struggle led to the great political revolutions of the late seventeenth and eighteenth centuries.[2] Those facets of human rights that had, then, been encroached upon were formulated into declarations and bills of rights[3] and written subsequently in national constitutions.[4]

During the eighteenth and nineteenth centuries, the commercial activities of certain European States were expanded, and the need for protecting groups of nationals was deeply felt by these states. They satisfied the exigeny by including specific clauses in their treaties with some nonEuropean states. For example, the United Kingdom entered into several treaties with Morocco whereby the latter agreed, inter alia to treat its entire people alike no matter what religion they had.[5]

On the other hand, the participants in the Congress of Vienna (1815) showed deep concern for human rights at the international stage. They dealt with religious freedom as well as civil and political rights and heard petitions by individuals and groups for international protection of those rights. Likewise, major powers agreed in principle to abolish slavery and the slave trade. At Brussels Conference of 1890, a comprehensive treaty for abolishing the slave trade was finally concluded.

Despite the occasional actions, such as the above-mentioned examples, by the individuals, and not by the nationals of protesting states, the issue of human rights appeared on international political agenda during the past three centuries, at least not before World War II broke out. It was because human rights, which as a rule implied the way a state treated its citizens in its own territory, were viewed as an entirely domestic political affair. And the states were obligated by the principle of non-intervention, as a

subsidiary duty of the right of sovereignty, not to interfere in the affairs that were basically within the domestic jurisdiction of sovereign states.

However, a state generally tended to the granting of civilized treatment to its citizens. This practice eventually led to the development of what is generally described as treatment in accordance with the minimum standard of international law. Since the beginning of the nineteenth century, a few general treaties have been concluded with the effect to stamp out the gross violations of human rights such as the slave trade. Although it may appear that anti–slavery and humanitarian movements have sought only sets of freedoms and rights of limited groups, they actually have operated upon philosophical foundations closely connected with the entire human kind.

Sympathy for religious minorities and humanitarian ideals helped further expand the international protection of the rights of citizens, by way of treaty and on occasions, by direct intervention. Furthermore, the nationality principle received recognition in the international protection of minorities.

During the Second World War, the Allied Powers found in the principle of national self–determination a powerful weapon in their way against the axis powers. In response to the German Peace Proposals of 1916 the Allied Powers affirmed *inter alia* that “no peace is possible as long as the reparation of violated rights and liabilities, the acknowledgement of the principle of nationalities and of free existence of small states shall not be assured.”

Though the League of Nations concerned itself with minority rights, labor rights and rights of the individuals in mandated territories, human rights did not receive specific mention in the language of the convention. This was not surprising in view of the then prevailing notion that these questions were not, primarily, of international concern.6

Indeed, a problem often becomes an object of international concern and action, only after a dramatic event crystallizes awareness. This explains why more immediate reasons for the genesis of international concern for human rights were born out of the events concerned with the origin and conduct of the Second World War. The systematic carnage of millions of innocent civilians by Germany during the war resulted in the general conviction that the effective international protection of fundamental human rights was a fundamental condition for gaining international peace and progress. This faith was given repeated expression in several official statements and declarations of the Allied.

Franklin D. Roosevelt, the president of the United States, in an address to Congress, in January of 1941, set forth the doctrine of the Four Freedoms. In August of the same year, Roosevelt and the Prime Minister of the United Kingdom, Winston Churchill, formulated the Atlantic Charter in the form of a joint declaration which laid down a number of principles and policies to be put into effect when peace was achieved so that the people of the world could live *free from fear and want*.7

These principles included those that were to be incorporated four years later in the Charter of the United Nations. The Preamble of the Charter, which was set forth at San Francisco Conference 1945, reads as

follows:

We the people of the United Nations determined

“To save succeeding generations from the scourge of war which twice in our lifetime has brought untold sorrow to mankind and to reaffirm faith in fundamental human rights in the dignity and worth of the human person in the equal rights of men and women and of nations large and small and…”

“To establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained and…”

“To promote social progress and better standards of life in larger freedom”

To put human beings in their capacity as individuals, citizens and members of a race governed by principles of equality, justice and solidarity at the center of interest and action of the world order is the novel element which gives the United Nations Charter its historical value and present validity. This new emphasis is clearly discernible in the light of the conviction that there is a close connection between the respect for human rights and the preservation of international peace and security.[8]

However, the challenge to achieve universal respect for human rights are still a matter of great importance. For example, slave-like practices have remained a grave and persistent problem even in the closing years of the twentieth century despite the fact that it is condemned. Another example of this nature is the refugee problem. Although the immediate cause of most refugees movements is armed stmggle or serious domestic disorder the violation of human rights usually finds root in the struggle itself.[9]

In the present article we shall deal with the development of the concept of human rights to determine the process of this developments, the differentiation of each stage and the impact of the development on the formation of human rights documents. At the end, we shall discuss human rights under the influence of a new trend.

The Formation of Human Rights

So far, human rights have undergone three phases. Each phase has given birth to a new generation of human rights. The first or traditional generation is based on individual rights. Social rights are the main tenets of the second generation. Rights towards other countries and international society form the cornerstone of the third generation of human rights.[10]

First Generation Of Human Rights

The first generation was affected by the views of Western countries. According to such views, civil and political rights are apparently of primary importance although it is not really possible to rank human rights

in proportion to the priority of one over another. They help give shape to the foundation on which the economic and social welfare of individuals and communities should be built.

Those who advocate the preeminence of civil and political rights hold that the lack of these rights may permit authoritarian governments to remain in power, which ultimately will create an obstacle to economic, social and cultural development. They state that the ability to combat repression, corruption, environmental pollution and destruction over land or working conditions depends on the liberty to exercise civil and political freedoms.

Therefore, civil and political rights gained primary importance and selfdetermination was considered only as a general principle and not a full right of people. Western view had its reflection manifested on the work of the United Nations.[11] This will be dealt with later in this article.

In fact, the stance of Western countries centered on an arena in which socialist countries was at a disadvantage. Human rights, therefore, were used as an ideological weapon against eastern European States.

Second Generation Of Human Rights

Two important political events helped shape the second generation. First, the strengthening of the socialist group of countries; second, and as a consequence of the first one, the rise of the cold war, the ideological and geopolitical struggle between the United States and the Soviet Union. At this time human rights became just one more arena for the superpower struggle. For example, in the late 1950s the Commission on Human Rights, which was under the supervision of the United States extensively discussed the right to freedom of information (a right that the Soviet Union systematically violated) but completely ignored all economic and social rights. Conversely, the Soviet Union tried to focus attention on racial discrimination in the United States and unemployment throughout the capitalist West.

It may be generally stated that the second generation was the result of the encounter and the occasional convergence of Western and socialist schools of thought. The latter was supported by the Third World. The socialist countries tended to emphasize the importance of basic rights and freedoms for gaining international peace and security. The context of the international human rights obligations was defined solely by the state in the light of the socio-economic advancement of that state. It was the particular expression of an international human provision.

The socialist group tended to lay stress upon the rights relevant to economic and social matters, self-determination and equality. Hence, it minimized the importance of the traditional civil and political rights.

The input of the socialist and Third World states helped broaden the general abstract concept of human rights, emerging from the liberal values of the Universal Declaration. We shall consider its impact later in this article.[12]

Third Generation Of Human Rights

The third generation was marked by the prevalence of developing countries. Their strategies for socio-political and economic development were based on the concepts of economic self-sufficiency and political independence. Thereupon, the developing countries elaborated their own philosophy and strategy of human rights on the basis of self-determination and development. Their numerical superiority and vociferousness made it possible for them to manage on the preponderance of their own aspirations without necessarily requiring the support of the socialist countries.

The general approach of the Third World States has been a combination of the aforesaid concepts. The Third World's view is characterized by the importance attached to the equality and sovereignty of states as well as the recognition of the importance of social and economic rights.

Accordingly, the traditional civil and political rights of these countries, in fact, include a wide range of nations with different interests and needs and at different stages of development. Decolonization has left a deep influence on them. In addition, economic problems have played a major role in drawing their attention to the general development.

Developing countries felt that the world community had ignored their urgent economic, social and cultural needs and the right to development. They believed that the emphasis on civil and political rights served to impose others' values on their societies. They wished that the international community should demonstrate as much commitment to economic, social and cultural rights - and in particular to the right to development of vulnerable groups - as it had to civil and political rights.[13]

The attitude of developing countries, in general, towards civil and political rights was shaped by three factors:

Firstly, recognizing the importance of this category of right could undermine or weaken the authority of the government in such countries.

Secondly, developing countries need a strong central government if their economies are ever to grow. The restriction of certain rights and liberties seems to these countries to be justified by the need to give precedence to economic and social rights.

Thirdly, the social structure of many African and Asian countries is that of a community with a leader exercising undisputed power.

Their doctrine is based on the following points:

1. The priority of economic, social and cultural rights;

2. the alteration of the present international economic system as it is to a large extent responsible for the undeveloped conditions of the poorer nations and hence for the lack of fundamental rights in these

countries;

3. only by changing the domestic–international context for the violations of civil and political rights these violations can be brought to an end.

The opinions of the developing countries have come to prevail in the United Nations within a short period of time. The turning point was the year 1974 when a series of important documents concerning the New International Economic Order was approved. These documents rendered the amelioration of the international economic and social order a precondition for greater respect for human rights in developing countries. Briefly, they sought to make clear, once and for all, that in considering important and subtle matters such as human rights, one cannot take an abstract and meta historical view but must look into the general factual and economic context of human rights.

Nevertheless, there is the risk that too little attention would be paid to certain classes of grave violations of human rights on the part of some developing countries. In fact, many of these violations are fruits of unjustified and arbitrary forms of authoritarian rule. They are not dictated by conditions of economic underdevelopment but are the aftermaths of abuses perpetrated by individuals or groups.

On the other hand, too much emphasis on economic context of human rights does not cast enough light on a phenomenon which is common in developing countries and which is often the cause of grave infringements of human rights. Specifically, it sometimes happens that the ruling minority has the backing of large–scale foreign interests and pursues ends, which are not for the good of the whole population. This minority often uses the support of foreign nations or powerful foreign economic interests to oppress the population. The authoritarian method of these governments is to some extent the outcome of underdevelopment but cannot be eliminated by economic means alone.[14]

Briefly, the main result of the new strategy of human rights has been to stimulate the formulation of new rights. These are called collective or group rights and include the right to development and the right of peoples to cultural, economic, political and social self–determination.[15]

New Trend

Although the emphasis on individual rights is not the sole prerogative of liberalism, the liberal tradition has laid claim to these rights in a special way. It has frequently done so at the cost of socio–economic rights as well as cultural, religious and group rights. However, personal well–being cannot be reduced to freedom of choice. In fact, first generation rights may not be fully realized in isolation from second generation and third generation rights.

A kind of truce has settled in which all states recognize different sets of values. It is now accepted that there is no inherent conflict, no hierarchy, and no priority among categories of rights or between any particular rights in the other. There is no excuse for neglecting each category of rights or for sacrificing rights in one category to rights in the other. Moreover, governments have come to recognize the need to

continue to chip away at resistance rooted in government values in order to realize more fully and more effectively human values both economic and political.

Thereupon, the end of Cold War brought about a new phase in the evolution of the universal protection of human rights. In fact, an essential body of opinions has emerged on the basis of interdependence of all three groups of states, which is now shared by them. For the purpose of our discussion all groups of states agree on the following essential points:

1. The dignity of human beings is a basic value, which every state should try to protect;

2. it is compulsory to bring about the realization of fundamental rights of groups and peoples; and

3. even though some states may for economic, social organizational or political reasons find it hard to grant full respect of human rights, no state must commit grave, repeated and large-scale violations of whole categories of human rights.

Accordingly, promising paths for action by the United Nations have opened from the late 1980s,[16] which has led to the emergence of a new fourth generation of human rights.

Each one of these generations has contributed in its own way to the international documents, especially those of the United Nations, on human rights.

Impact on International Documents of Human Rights

Since its inception, the United Nations has been striving to make real the pledges made by the international community to the individual human being. That the Organization has helped formulate a series of declarations and conventions is of great significance. The International Bill of Human Rights marks one of the august actions taken by the United Nations with the intention of promoting human rights and fundamental freedoms.

A first act of the Organization was to fulfill the recommendation of the Preparatory Commission of the United Nations at San Francisco that the Economic and Social Council (ECOSOC) should immediately establish a commission on Human Rights and direct it to formulate the International Bill of Rights. The General Assembly approved this recommendation on 12 February 1945 and later ECOSOC established the Commission on Human Rights. Members of the Commission immediately decided whether the Bill should take the form of a proclamation or a treaty.

At its second session on December 1947, the Commission on Human Rights decided to designate a Covenant on Human Rights, and in its third session on June 1948 agreed as a compromise that the International Bill of Human Rights should consist of a declaration, a convention and measures of implementation. The report of the session presented by the Commission to the Economic and Social Council contained not only a Draft of International Declaration on Human Rights but also a Draft of the

Covenant on Human Rights.

However, while the Draft of the Declaration contained all rights civil, political, economic, social and cultural – under the influence of Western view, specially the United states, which questioned the wisdom of including both types of rights in the same instrument, the Draft of the Covenant only contained articles on civil rights.[17]

Universal Declaration Of Human Rights

Although the promotion of human rights was referred to in the Charter of the United Nations (1945), the real commitment to this ideal was only expressed with the adoption and proclamation of the Universal Declaration of Human Rights. The General Assembly adopted the Universal Declaration, which recognizes the inherent dignity and, equal and inalienable rights of all members of the human family, on 10 December, 1948.

A number of general ethical notions were enshrined in the Declaration. It embodies the idea of human dignity, of being free and equal in rights and opportunities and also ensured the material requirements for a dignified existence; the principle of tolerance, involving respect for the beliefs and views of others and allowing opportunities for all to play a part in determining the conditions under which their society lives; and the concept of solidarity which covers rights in civil, political, economic, social fields.

On the whole, the view expressed on human rights is Western. Much importance is allotted to civil and political rights than to economic, social and cultural rights and of the rights of peoples no mention is made at all. Nor does the Declaration say anything about economic inequalities between states.[18]

The Universal Declaration of Human Rights is proclaimed as a common standard of achievement for all peoples and nations. It recognizes that the realization of this objective depends on both national and international action. While expressing a universal morality of respect for human dignity, it also indicates that the realization of human rights must likewise start from a consideration of irrelevant principles and standards.

The Universal Declaration is to be accorded a great step in stating goals and principles. Although a declaration lacks the binding force of a treaty, the Universal Declaration has secured the approval of a great majority of states. It provided the basis for several international treaties on human rights inspired constitutions of many states and influenced the formulation of subsequent resolutions.

The Universal Declaration of Human Rights affirms that the exercise of a person's rights and freedoms may be subject to some limitations which must be determined by law, only for the purpose of securing due recognition of the rights of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.[19] By proclaiming the Universal Declaration, the first part of the Internal Bill of Human Rights, as provided by the Commission on Human Right in June 1948, took shape. Consequently, the second phase i.e. to design a covenant on Human Rights began.

Human Rights After The Universal Declaration

Inside the United Nations

The drafters of the Universal Declaration of Human Rights intended to follow it with a treaty or covenant that would give human rights binding force in international law. Although the drafting was largely completed by 1953, the covenant was tabled for more than a decade mainly because of the cold war and ideological rivalry over the status of economic and social rights. However, increase in the membership of the United Nations by the Third World countries led the organizations to give priority to the issues of human rights.

Notwithstanding, the influence of Western view is clearly discernible. They questioned the status of economic, social and cultural rights and claimed that these rights were not really human rights since they belonged to a different logical category. Economic, social and cultural rights such as right to food, healthcare, social insurance and education are less important than civil and political rights such as due process, and equal protection of the law.

Finally, Western view caused civil, political, economic and cultural rights to be separated by the United Nations subsequent action into two distinct treaties: the International Covenant on Civil, and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

On the other hand, the socialist camp and Third World Countries exerted their influence on the 1966 Covenants. Upon the basic agreement of the above-mentioned countries and Western countries, on the need to translate the general principles of the Universal Declaration into legally binding instruments, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were adopted in 1966 and took effect in 1976. They enable us to affirm that civil, political, economic, social and cultural rights are equally important and worthy of attention.[20]

The preamble to each Covenant states that everyone is entitled to enjoy civil and political rights as well as economic, social and cultural rights. Article 1 of each Covenant says that the right to self-determination is universal. Both Covenants add that by virtue of that right states determine their political status and freely pursue their economic, social and cultural development.

These similarities reflect endeavors of socialist and third world countries, which favored the inclusion of both categories of rights in a single instrument. They propounded several arguments.

1. Without economic, social and cultural rights, civil and political rights are meaningless or ineffective;

2. the unity of all human rights and the integral personality of human beings should be preserved:

3. a covenant which does not embrace economic, social and cultural rights would merely reaffirm civil and political rights which exist in all constitutions and it is hard to consider as a progress; and

4. the separation of the rights into two distinct covenants can cause an indefinite postponement of the attainment of economic, social and cultural rights.[21]

While the influence of socialist and third world countries caused the above similarities between the two covenants, the impact of Western view brought differences for those documents. Advocators of separation put forward the following arguments:

1. States have the duty to ensure the fulfillment of civil and political rights as inherent rights of the human person; while the economic, social and cultural rights are objectives to be achieved instead of rights to be protected:

2. the implementation of civil and political rights needs inmmediate legislative and administrative measures to ensure that states do not intervene in the lives of individuals, but the implementation of economic, social and cultural rights is a progressive process dependent on socio-economic conditions and requires the positive action of the state; and

3. a covenant including only civil and political rights would be acceptable universally whereas the same was not true of economic, social and cultural rights.

Thereupon, under the Covenant on Civil and Political Rights, Contracting Parties undertook to respect and to ensure to all individuals within their territory and subject to their jurisdiction the rights recognized in the Covenant. The Covenant required them to take the necessary steps in accordance with their constitutional process and with the provisions of the Covenant, to adopt such legislative and other measures as may be necessary to give effect to the rights recognized in that instrument. Moreover, it designated a special organ of implementation (the Human Rights Committee) and required the States Parties to submit reports to the Committee on the measures they have adopted which give effect to the rights recognized and on the progress made in the enjoyment of these rights.

Whereas the Covenant on Economic, Social and Cultural Rights stipulated that the realization of the rights must be progressively achieved and required a Contracting Party to act to the best of its potentials with a view to gradually effect the full realization of the rights recognized in the Covenant, it also refused to mention any measures of implementation. All it did was to prescribe an obligation to submit periodic reports to the Economic and Social Council on the measures adopted and the progress made in the cause of realizing these rights.[22] However, the adoption of the Covenants completed the process of giving shape to the second part of the International Bill of Rights. Now it was the duty of Member States of the United Nations to take steps towards providing measures of implementation.

In the wake of the adoption of the two Covenants on Human Rights, the United Nations undertook standard sets of activities in human rights. The Tehran Conference provided the opportunity to set goals for the following years. This Conference was held from 22 April to 13 May 1968. It adopted *inter alia* a proclamation. The Proclamation of Tehran made the United Nations grant independence to Colonial Countries and Peoples on the grounds that it had created new standards and obligations to which states

should conform (par. 3). This was an evidence for the advancement of the Third World stand towards human rights.

As the first step towards the exercise of human rights, Tehran Proclamation stipulated that the laws of every country should grant each individual, without limitation due to race, language, religion or political belief, freedom of expression, of information, of conscience and religion as well as the right to participate in the political, economic, cultural and social life of his country (Par. 5.)

The Proclamation emphasized that since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the exercise of human rights is dependent upon sound and effective national and international policies of economic and social development (Par. 13).[23] It was an important advancement for the Third World countries to propound the idea of establishing a New International Economic Order and to promote the concept of the right to development.

Outside the United Nations

Besides the United States documents, regional agreements were supplemented, and expanded upon the above-mentioned instruments. Among them are:

1. The European Convention on Human Rights and Fundamental Freedoms was signed in 1950 and took effect in 1953 together with its eight protocols;

2. the American Convention on Human Rights was signed in San Jose, Costa Rica in 1969 and took effect in 1978;

3. the Helsinki Accords was adopted in 1975; and

4. the African Charter on Human Rights and Peoples' Rights was adopted in 1981.

The same situation as to the instrument adopted in the United Nations has existed regarding international human rights instruments adopted outside the UN system.

The European Convention on Human Rights covers a wide variety of primarily civil and political rights. Therefore, it is formulated under the influence of Western view. The rights in American Convention on Human Rights are fundamentally those protected by the European Convention and those economic rights contained in the Charter of the Organization of American states (1948) as revised by the Protocol of Buenos Aires (1967).

It can be easily understood why Helsinki Accords of 1975 laid emphasis on political and civil rights. These accords were based on an overall compromise in which Western States recognized post-war border and the status quo in Eastern and Central Europe in exchange for human rights commitment by the Communist countries.

The African Charter on Human and People's Rights contains, in addition to civil and political rights, the economic rights such as the rights to selfdetermination and development. This charter reflects more than the other documents third world views. The best expressions of these views are rights to development and self-determination.[24]

Formation Of The Third World Human Rights

Right to Development

Development was once defined as almost entirely in terms of economic growth. But the development strategies oriented merely towards economic considerations have often failed to achieve social justice. In the meantime, human rights may have been violated or denied. In the broadest sense, development may be viewed as the process by which all human rights are to be realized. In other words, the realization of human rights is the goal of development.

The right to development is the right of individuals, groups and peoples to participate in, contribute to and enjoy sustainable economic, social, cultural and political development in which all human rights and fundamental freedoms can be fully realized. This includes the right to effective participation in all aspects of development and at all stages of the decision making process: the right to equal opportunity and access to resources: the right to fair distribution of the benefits of development; the right to respect for civil, political, economic, social and cultural rights and the right to an international environment in which all these rights can be fully realized.

In fact, the right to development can be considered as the consequence of the new outlook in the field of human rights. It was forcefully asserted that individuals, peoples and the developing states have the right to development. This right was a means of reformulating the whole problem of the international law of development in terms of a fundamental right.

Many developing countries felt that the world community had ignored their urgent economic, social and cultural needs and the right to development. They felt that the main obstacle to the realization of the right to development lay at the international macro-economic level as reflected in the widening gap between the North and the South, between the rich and the poor.

Some developing countries believed that an emphasis on civil and political rights served to impose others' values on their societies. For the future, many developing countries wanted the international community to demonstrate as much commitment to economic, social and cultural rights and in particular to the right to development of vulnerable groups - as it had to civil and political rights.

In fact, such countries, constituting a wide range of nations with different interests and needs and at different stages of development have been deeply influenced by decolonization. In addition, economic problems have played an important role in focusing their attention on the general developmental issues. Accordingly, the traditional civil and political rights tend to lose their superiority over the third world

states.[25]

Efforts to fashion a right to development can be traced back to the procss of founding the United Nations. In 1941, the Allied Powers of the Second World War proclaimed *freedom from want* to be one of their post war objectives.

Th preamble to the Charter of the United Nations speaks both of fundamental human rights and social progress and better standards of life in greater freedom. Article 5 of the charter stipulates that the United Nations shall promote the condition of economic and social progress and development. The right to development gradually emerged upon these principles.

The Declaration on Granting Independence to Colonial Countries and Peoples, resolution 1414 (XV) of 1960 stipulates that all peoples can by virtue of the right to self-determination, freely determine their political status and freely pursue their economic, social and cultural development.

According to the Declaration on Social Progress and Development adopted by the General Assembly in 1969, social progress and development shall aim at the continuous raising of the material and spiritual standards of living of all members of society with respect for and in compliance with human rights and fundamental freedoms.

The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among states in accordance with the Charter of the United Nations resolution 2625 (XXV) on 24 October 1970 stipulated that all peoples have the right to freely pursue their economic, social and cultural development.

In 1974, the special session of the General Assembly issued three resolutions which respectively embodied the Declaration on the Establishment of a New Economic Order (A/Res. 3201), the Program of Action on the Establishment of a New Economic Order (A/Res), and the Charter of Economic Rights and Duties of States (A/Res. 328l). It was stated in these declarations that the existing international economic system is unjust. Thereupon, developing countries called for a change in the system. They aimed to create economic conditions, which would improve their standard of principles of social justice and allow them to compete in terms of trade with other states on an equal basis.

The developing countries argued that until a new international economic order was achieved the economic and social conditions of underdevelopment would constitute an emergency situation making the implementation of at least some human rights difficult if not impossible. It is the impact of the application of principles of social justice and equity on international level which is pertinent to human rights.

Since the developed nations took a negative stand towards the New International Economic Order, the move to raise the moral imperatives for the cause of development understandably entered the human rights framework. Thus the right to development was initially raised in the General Assembly through the

resolution 32/132 (1977) which stated that *the right to development is a human right and equality of opportunity is as much a prerogative of nations and individuals.*

On the other hand, in its resolution 32/130 (1977) the General Assembly stated, *inter alia*, that *the achievement of lasting progress in the implementation of human rights is dependent upon sound effective national and international policies and social development*. The Declaration on the Right to Development reinforced this position.

In 1986, the General Assembly adopted the Declaration on the Right to Development (A/Res. 41/128) which established *an inalienable human right by virtue of which each person and all peoples are entitled to participate in, contribute to and enjoy economic, social cultural and political development in which all human rights and fundamental freedoms can he fully realized*.
The Declaration stated among other things that the human person is the central subject of development and should be the participant and beneficiary of the right to development. It also emphasized the efforts at the international level to promote and protect human rights should be accompanied by efforts to establish a new international economic order.

In his 1992 report on the Work of the United Nations, Secretary General Boutros-Ghali wrote that sustainable development is not possible without respect for human rights and that human rights are meaningless in an environment of poverty and deprivation.

According to the statement of the then UN Secretary General, at the opening the World Conference on Human rights on 14 June 1993, one of the goals of the Conference was to reflect on the following the question: what are the links between the goals pursued by the United Nations and human rights including the link between development and enjoyment of economic, social, cultural, civil and political rights? He emphasized that the conference should reaffirm the link between development and the enjoyment of all human rights.

The San Jose Declaration (Costa Rica, meeting in January 1993) stated that the Latin America and Caribbean community regards peace, democracy, development and social welfare as essential for the full realization of human rights.[26]

These documents show the process of the acceptance of development as a right for people. However, certain requirements have to be fulfilled before development is realised. Besides internal conditions, there should be international favorable environment for development. Self-determination is a means to this end.

Right to Self-determination

The principle of self-determination has developed from a philosophical to a political concept in international relations and now has given shape to a fiundamental principle of positive international law. It has developed as an aspect of human rights. The right of self-determination can be traced back to the

First World War. After the war, a politico-legal postulate had been advanced challenging certain facets of the main fabric of the family of nations, namely the principle of self-determination of peoples.[27]

It became part of international law with its inclusion in the Charter of the United Nations. According to the Charter of the United Nations one aim of the Organization is to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. Furthermore, article 55 of the Charter stipulates that with a view to the creation of conditions of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote higher standards of living, full employment and condition of economic and social progress and development. Accordingly, the Charter sees a link between self-determination and economic concepts like economic progress and development.

The General Assembly directed by the resolution 545, the Commission on Human Rights to draw up draft covenants to ensure international respect for self-determination of people. Resolution 637 (VII) of 1952 provided that the member states of the United Nations should uphold the principle of self-determination of all peoples and nations.

However, the recognition of the principle came in the context of Decolonization in which the United Nations played a key role. The post war period witnessed former colonies joining the ranks of sovereign states through pressure both the General Assembly of the United Nations and the dependent nations themselves claiming their right to self-government. The pressure led to the agreement that the principle of self-determination had generated a rule of international law by which the political future of a colonial or similar non-dependent territory should be determined in accordance with the wishes of its inhabitants. Accordingly, the Declaration on the Granting Independence to Colonial Countries and Peoples, resolution 1514 (XV) of 1960 provided that all peoples had the rights to selfdetermination.

The Covenant on the Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights both state that the right to selfdetermination is a universal right which all peoples should enjoy. According to the Common Article I all people have the right of self-determination and accordingly the right to freely determine their political status and to freely pursue the economic, social and cultural development.

The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, adopted as resolution 2625 (XXV) on 24 October 1970 also emphasizes the right to self-determination.

The African Charter on Human Rights and People's Rights 1986 emphasizes the right to self-determination.

The World Conference on Human Rights (1993) declared that all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their

economic, social and cultural development.[28]

According to some writers, self-determination constitutes only a general principle, not a full right of peoples. But the others believe in full legality of it. Some are of the opinion that self-determination refers to collectives rather than individuals, not yet subjects of international law but potential recipients of direct rights under the law. Such collectives wish to secede from or have autonomy within their state, create their own state or join another state. The idea is frightening to existing states.

Some others believe that the idea of self-determination entails not only a right of a country to attain independence, rid itself of foreign domination and remain free from foreign interference but also certain human rights of the citizens of its territory. They argue that the Declaration on the Granting Independence to Colonial Countries and Peoples accelerated the acceptance of self-determination as a legal right.

Besides the Covenant on the Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights gave more validity to the right of self-determination as a rule of law and a wider front, not limited to colonial situation as a matter of treaty law. Its basic objective is to guarantee that all the people have a government of their own choice that respond to their political, economic and cultural needs. It aims at the elimination of external or internal domination and the creation of the proper atmosphere in which individuals have the possibility of enjoying fundamental human rights. It also seeks to impose certain standards of administration in all states regardless of race, creed color and sex.

Yet, support for self-determination can also be a political tool in the hands of groups agitating for self-determination in other states to embarrass or even dismember their states.[29]

As we have already mentioned a new trend from the late 1980s, based on an essential body of opinions has opened promising avenues for action by the United Nations. Vienna Declaration and Program of Action adopted at the World Conference on Human Rights on 25 June 1993, is an example reflects this body of opinion.

For example, it recognizes and affirms that *all human rights derive from dignity and worth inherent in human person and reaffirms the solemn commitment of all states to fulfill their obligations to promote universal respect for, and observance and protection of all human rights and fundamental freedoms for all*.[30] It shows that *the dignity of human beings is a basic value which every stote should try to protect*.

Moreover, according to the Vienna declaration *effective international measures to guarantee and monitor the implementation of human rights standards should he taken with respect to people under foreign occupation and effective legal protection against the violation of their human rights should he provided in accordance with human rights norms and international law, and great importance must he given to the promotion and protection of the human rights of persons belonging to groups which have been rendered vulnerable*.[31] It accepts the necessity of *aiming at the achievement of fundamental rights of groups and peoples*.

The Declaration also provides that while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of the states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms and while development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the violation of internationally recognized rights.[32] It reflects the opinion that even though some states may for economic, social, organizational or political reasons find it hard to grant full respect to human rights, no state must commit grave, repeated and large scale violations of the whole categories of human rights.

However, the points cited above, altogether, reflect the present situation of human rights under the influence of the new trend and refer to the responsibility for human rights, indivisibility and universality of human rights and the necessity of respect for democracy.

Present Situation of Human Rights

Responsibility Of Human Rights

It has been remarked for example in article 2 of the International Covenant on Economic, Social and Cultural Rights that the state should be the best guarantor of human rights. According to that article, a Contracting Party undertake to take steps to the maximum of its available resources with a view to achieving progressively the full realization of the rights recognized in that covenant.

Most writers have assumed that a state has to care for its own nationals to enjoy the fundamental human rights. This obligation relates to all aspects of human rights. However, as Boutros–Ghali, the United Nations Secretary General, has recalled when states prove unworthy of this task, when they violate the fundamental principles laid down in the Charter of the United Nations, the issue of interational action must be raised. In these circumstances, the international community as a whole must take over from the states that fails to fulfill their obligations.[33]

Indivisibility Of Human Rights

Which rights are preeminent? Is there a conflict between civil and political rights on the one hand and economic, social and cultural rights on the other? Do human rights begin with economic and social concerns such as shelter, nutrition , health, education, and employment or are political freedoms the key to fulfilling these and other human needs? Do the countries have to reach certain levels of development before the civil and political rights of their citizens can be recognized? Are governments obliged to respect political rights if countries are mired in poverty or chronic underdevelopment?

Debate over these questions has been heard within the United Nations system since the Organization's earliest efforts to define and protect human rights.[34] These questions are focused on the problem of divisibility and indivisibility of human rights. In fact, since man is an integrated whole, human rights are

indivisible and must be regarded altogether. Indivisibility or in the other words, interdependence of the human rights is evident. Efforts to promote one category of rights must take full account of the human right areas, which are interchangeably interrelated.

It is visible, for example, in the reciprocal relationship between respect for human rights and peace and stability, relation between the enjoyment of trade union rights and respect for civil liberties, participation of indigenous populations in decisions concerning their status and conditions and civil liberties which make possible the free shaping and expression of opinions and genuine involvement in processes leading to decisions.

More generally, the denial of civil and political rights tends to have adverse effects on the enjoyment of economic and social rights; neglect of social protection and well–being often goes hand in hand with the inability of poorer and more vulnerable population groups or people as a whole, to have a voice in influencing decisions.

Interdependence is evident not only in measures and policies within nations but also in their effects beyond international boundaries. It has become ever more evident that no country can pursue economic and social policies in isolation from developments in the world stage. This fact finds reflection, for example, in current anxieties concerning the global effects of the economic policies pursued by major industrialized nations and the implications for world stability of third world indebtedness. The policies pursued on such questions will have a direct effect on the ability of individual countries to maintain and further the enjoyment of human rights. International collaboration and solidarity are thus a vital factor in efforts aimed at the realization of human rights.[35]

The indivisibility and interdependence of the two sets of human rights is a fundamental tenet of the United Nations approach to human rights. In 1948, the Universal Declaration of Human Rights put the challenge for United Nations Member States to enhance and sustain their commitment to the realization of all human rights. While a general, abstract concept of human rights, born of liberal values, prevailed initially as we can see from the text of the 1948 Universal Declaration, the input of the socialist states and the states of the third world helped broaden this initial vision.

The General Assembly has confirmed, on several occasions, its view that the full enjoyment of one category of rights depends on the realization of the others. According to the Declaration of the Right to Development (1986) all human rights and fundamental freedoms are indivisible and interrelated. The Assembly stated in 1991 that all human rights and fundamental freedom are indivisible and interrelated and promotion and protection of one category of rights should never exempt or excuse states from the promotion and protection of another.[36]

The foregoing makes it clear that all human rights are universal, indivisible, interdependent and interrelated. Efforts to promote one category of rights must take full account of the progress in implementing others. As mentioned before, human rights are not only indivisible but also universal.

Universality Of Human Rights

Human rights should be viewed as a synthesis resulting from a long historical process. As such they should be in accordance with history. Yet, the fact that human rights keep pace with the course of history should not change what constitutes their very essence, namely the universality. The World Conference on Human Rights has reaffirmed the importance of ensuring the universality, objectivity and non-selectivity of the consideration of human rights issues. While some form of ideological split and economic disparities may continue to be the hallmark of our international society, they cannot interfere with the universality of human rights.

However, it should be noticed that the universality of human rights fits uncomfortably in a political order structured around sovereign states. The future of international human rights activity can be seen as a struggle over balancing the competing claims of sovereignty and international human rights. While the universal nature of these rights is beyond question, this concept of universality is not something that is decreed nor is it the expression of the ideological dimension of one group of states over the rest of the world. While human rights are common to all members of the international community, and each member of that community recognizes himself in them, each cultural epoch has its own special way of implementing them.[37]

This conditioning reveals that some form of limitation can be regarded for human rights.

Limitations On Human Rights

While human rights are common to all members of the international community and each member of that community recognizes himself in them, each cultural epoch has its own special way for carrying them out. The significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind in the adoption of the way.

Thereupon, in giving shape to the rights and measures for implementing them, values of different cultures should be regarded. It is not an innovation. Having proper regard for different legal systems in the process of progressive development of international law has been under consideration by the member states of the United Nations from the earliest date. It can be seen, for example, in the status of the International Law Commission, which has been approved by the General Assembly through the adoption of the resolution 174 (II) on 21 November 1947. Article 8 of the Status provides *inter alia*, that in the Commission as a whole representation of the main forms of civilization and of the principle legal systems of the world should be assured.[38]

In addition, the Universal Declaration of Human Rights affirms that the exercise of person's rights and freedoms may be subject to certain limitations, which must be determined by law, only for the purpose of securing due recognition of the rights of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

In the Bangkok meeting of March–April 1993 Governments, while welcoming the increased attention being paid to human rights by the international community, stressed the need to consider human rights in national and regional contexts and emphasized the principles of respect for national sovereignty and non–interference in internal affairs.[39]

The foregoing reveals that human rights cannot be promoted without respect for democracy.

Democracy And Human Rights

In 1991, the General assembly stated that all human rights and fundamental freedoms are indivisible and interrelated and promotion and protection of one category of rights should never exempt or excuse states from the promotion and protection of another.

Boutros–Ghali recalled in his message for Human Rights Day (10 December 1992) that democracy is more than elections. The mere introduction of political pluralism is not enough to turn a poor society into a prosperous one. The final document of the World Conference on Human Rights inked in Vienna reaffirmed the recognition of the interdependence between democracy, development and human rights.[40]

Generally, democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. Since the human person is the central subject of the right to development, the enjoyment of all civil, political, economic, social and cultural rights is both the necessary condition and the aim of the right to development. Thus, States must not only take concrete steps to improve economic, social and cultural conditions and to facilitate the efforts of individuals and groups for that objective, but must do so in a manner that is democratic in its formulation and results.

Democracy is based on the freely expressed will of the people to determine their own religious, political, economic, social and cultural systems and their full participation in all aspects of their lives. Democracy is a political framework in which human rights can best be safeguarded and is a political system which best allows for the free exercise of individual rights. It is not possible to separate the promotion of human rights from the establishment of democratic systems within the national and international communities. Democracy at all levels and in all spheres is essential to true development. Structural inequalities in international relations as within individual countries, are obstacles to the achievement of genuine democracy and a barrier to development and to promote internationally acceptable norms of human rights.

Human rights should therefore be covered by effective mechanisms and procedures to guarantee and protect them and to provide sanctions. Only democracy, within and among states, can truly guarantee human rights. It is through democracy that individual and collective rights, the rights of peoples and the rights of persons are reconciled. It is through democracy that the rights of states and the rights of community of states are reconciled. This is why we must act constructively to build an effective link

between democracy, development, in all its aspects, and human rights.41

Vital importance of democracy for the promotion of human rights does not mean that some states should limit others voluntarily or to expect them to borrow political systems that are alien to them. Democracy is no one's private property. It can and ought to be assimilated by all cultures. Democracy is not a model to copy from certain states but a goal to be achieved by all peoples. It is the political expression of the common heritage. It is something to be shared by all.Vital importance of democracy for the promotion of human rights does not mean that some states should limit others voluntarily or to expect them to borrow political systems that are alien to them. Democracy is no one's private property. It can and ought to be assimilated by all cultures. Democracy is not a model to copy from certain states but a goal to be achieved by all peoples. It is the political expression of the common heritage. It is something to be shared by all.

1. In connection with the evolution of international society and medieval international law, see G. Schwanenberger, The Frontiers of International Law (London: Stevens, 1962), pp. 44–45.
2. History is replete with great historic movements for man's freedom – the English, American and French revolutions bear testimony to vindication of certain human values.
3. The English Bill of Rights, 1688; Declaration of Man and of the Citizen, 1789; and the
United States Bill of Rights, 1791. For the text of these documents see Ian Brownlie, ed. Basic documents on Human Rights, 1981.
4. The constitutions framed in the twentieth century contain invariably provisions on fundamental rights of man and citizens. Cf. S. I. Bhalla, Human Rights, An International Framework For Implementation, (Delhi: Docta Shelf Publications, 1991), p. 2.
5. Cf. C. Parry, Ed. The Consolidated Treaty Series, (Dobbs Ferry, New York: Ociana Publications, 1969, Vol. 56 (1801–1803), pp. 93–103, Vol. 116 (1856–1857), pp. 121 – 141.
6. Erica–Irene A. Daes, Freedom of the Individual Under Law (Geneva: United Nations, Center for Human Rights, 1990, pp. 1–2: Bhalla, Op. Cit., p.21; Jack Donnelley, International Human Rights (Boulder: Westview Press, 1993), pp. 5 – 7, passim.
7. For example, US president Roosevelt postulated in his Annual Message to the Congress on the state of the Union, Four Freedoms which were freedom of speech and expression, freedom of every person to worship God in his own way, freedom from want and freedom from fear. On 14 August 1941, president Roosevelt and Prime Minister Churchill issued the Atlantic Charter and declared that "after the final destruction of the Nazi tyranny they hope to see a peace established… which will afford assurance that all men in all lands may live out their lives in freedom from fear and want the Declaration of united nations Allied Powers expressed their conviction that complete victory over their enemies is essential to defend life, liberty, independence and religious freedom and to preserve human rights and justice: in their own lands us well as in other lands": Cf Bhalla, Op. Cit pp.3–4; Santa Cruz, Herman, "The Creation of the United Nations and ECLAC", CEPAL Review, No. 57 (December, 1995), pp. 17 – 18.
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10. N. A. Maryan Green, International Law, Third Ed., (London: Pitman Publishing, 1987), p. 123: United Nations, Notes for Speakers, p. 29: Antonio Cassese, International Law in a Divided World; (Oxford: Clarendon Press, 1986), pp. 297, 370:

Malcolm N. Shaw, International Law, (Cambridge: Grotins Publication Ltd, 1986), p.206.

11. Cassese, Op. Cit. 297-99, Notes for Speakers, p. 31: Shaw, Op. Cit., p. 173; Rebecca M. M. Wallace, International Law; A Student Introduction (London: Sweet & Maxwell , 1986), p. 187: United Nations, Center for Human Rights, The International Bill of Rights, Fact Sheet No. 2, (New York: United Nations, 1992), pp. 6-7.

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14. Bahram Mustaqimi, '"Economic Rights and Democracy'", in Fundamental Economic Rights, Ed. By Fusahat H. Syed (Rawalpindi: Friends, 1995), pp. 244-46.

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