

**HUMAN RIGHTS IN ISLAMIC PERSPECTIVE:
A COMPARATIVE APPROACH**

by

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Introduction:

Human rights as a whole can be approached from different standpoints—socio-political, ideological and religious. Concept of human rights in the communist and capitalist perspectives are almost fundamentally different from each other. In communist perspective abolition of ownership of private property is viewed as an essential precondition for a successful implementation of human rights, while rights of ownership and possession on private property is almost sacred in a capitalist system. Moreover, on various issues, such as national, cultural, spiritual and religious, capitalism and socialism have their own connotations and stances. Thus these two dominating socio-political systems of the 20th century in many ways stand in diametrically opposite directions. Still from the consideration of materialistic achievements both the systems and their success and failure in realising human rights can easily be compared and judged.

The Islamic approaches towards human rights are fundamentally different from those of capitalist or socialist viewpoints. Islam emphasizes on ethical, moral and spiritual dimensions of freedom and equality. Its material approaches are the means to reach to a higher goal; spiritual salvation. In fact material cost-benefit analysis is not the only criterion to judge human efforts. Some activities of human beings might not be so essential in material terms, but those might be very important to maintain a society in a civilized manner. Thus both the society and individuals have to make their activities relevant to their hearts and minds. Drive for only material gains may put to an end of ever enriching standard of human civilization. But within the Islamic

approaches there also exists diverse opinions on various aspects of human rights. Apart from madhhabi or sectarian difference, Islamic jurists also sharply differ with Sufis on various points of human freedom, secularist humanism, liberalist spiritualism and determinism. The Islamic Shariah, of course, imposes limitation upon human freedom to remove certain negative or relatively bad possibilities from human life. Despite some strict and unchangeable injunctions of Shariah, limitations imposed upon human activities are not always of absolute character.

Thus from the fundamental philosophical view-point the Islamic concepts of human rights are totally different from other materialistic view-points. That is why, as a whole, it is almost impossible to study the Islamic concepts of human rights and freedom in capitalist or secularist perspectives. On the other hand, at the present stage of development of human civilization, human rights are increasingly achieving a sort of universal character at least in their conceptual formulation and make up. Moreover, socialism has given up its inborn fierce struggle against capitalism and is trying to build a solid bridge with it. In such a situation, a study of the human rights and freedom in Islamic perspective and its probable contribution to present day human rights, affairs might be of both theoretical and practical importance. In this regard relevant questions are: Is Islamic humanism mainly a topic of merely religious or metaphysical character and implication? Does Islamic spiritualism have anything to do with modern human freedom? Does Islam tend to establish a totalitarian voluntarism? What are the implications and ramifications of the relationship between Divine will and human efforts in realisation of human rights? What are the main spiritual and material factors in Islam determining the human rights? Can Islam contribute something substantial to the healthy use of human freedom? This paper is an attempt to address some of these basic questions.

Concept of Humanism and Freedom in Islam

Like other world-religions Islam takes God as the only entity of absolute and infinite freedom. To seek infinity or absolute

freedom in the finite human being, who is by nature circumscribed by physical and environmental in-built limitations, is a dangerous illusion and even self-destructive. But human beings as the "image of God" and vice-gerent of the creator, Almighty, on earth possess divine qualities. Attempts of moulding human life pattern to the Divine will apparently limit their freedom, but a Muslim's lifesynchronization to Allah's command liberates him from all external conditions including psychological self-bondage, and helps him to attain greater freedom. Such a greater freedom must be in conformity with the will of God and that should maintain the equilibrium in the human life and society. Thus according to Shari'ah, each and every human being has certain obligations towards God, nature and other human beings. Hence individual freedom in Islam is envisaged as an outcome of personal submission to the Divine will rather than as innate personal right.¹

Interrelationship between the submission to Divine will and the enjoyment of freedom is very similar to that of relationship between rights and duties of an individual citizen of a state.² Thus Islam rationally propagates human being's obligations towards God, environment, society and fellow-citizens. In this regard Islam rarely differentiate Muslims from the followers of other religions. But because of some organic relationship between legal and moral duties of a Muslim, sometimes it is difficult to differentiate Hawkkullah (duties towards God) from Hawkkul Ebad (duties towards creatures). This complex differentiation between the duties towards God and His creatures could lead to a mistaken conception of Human Freedom. Islam as a divine religion can claim its perfection, but human being can not claim his perfection in fulfilling his duties. "Material factors" of a system should be

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1. Quran demands submission of human beings to Allah and on the other hand, describes man as His vicegerent upon earth. "He has subjected to you whatsoever is in the heavens and whatsoever is in the earth; it is all from Him. In that surely are Signs for a people who reflect." (Quran, 45: 13)
 2. "Liberty thus involves in its nature restraints, because the separate freedoms I use are not freedoms to destroy the freedoms of those with whom I live... religion is a good instance of this aspect." In: Harold J. Laski, *A Grammar of Politics*, Unwin university Books, London, 1970 pp. 144-146

enriched according to the demand of age and the sustained capability of a particular human civilization. Humanism practised by prophet Muhammad(sm) was of paramount standard to be followed thoroughly at the same degree later on. The very presence of the prophet Muhammad (sm) made the first Muslim state an apostolic one. Though God as a supreme authority and His status as an indirect ruler always remain the same, still prophet Muhammad (SM) enjoyed highest degrees of freedom in enforcing Divine Law and the prophet did justify his greater freedom by his incomparable degree of submission to Allah. Early Khalifs or Imams of Muslim states also had to prove the same according to their level of submission.

Later on formidable problems arose during the Muslim Kings and tyrannical rulers with their illegitimate suppression of human rights. Naming it as "Oriental Despotism" western literatures are quick in finding lack of freedom in every Muslim states.³ But very little were mentioned in the western literature about the sacrifices of the Muslims fighting for equality and freedom prescribed by Islam. Jurists Abu Hanifa and Ibne Hanbal, Sufis al-Hallaj Suhrawardi and many other innumerable Muslim humanists, fought fathomlessly throughout their entire life for the preservation of sacred freedom given by Allah. In fact, one can easily find a rich legacy of a continuous struggle between the political authority and spiritual or religious authority of Muslim societies throughout the history. Islamic Jurisprudents, theologicians and Sufis regardless of their differences of opinions on various aspects of freedom, humanism and human rights fought against the Muslim rulers to maintain the rights of freedom of speech and expression of opinion. On many occasions they might not be successful, but they left a tradition for posterity to emulate. That glorious past is still a source of inspiration for millions of Muslims.

Spiritual dimension of human rights in Islam

The remote past of human civilization knows the term "natural rights" or an overall conception of the "rights of man". In modern

3. See for details: Ye, M. primakov, *The East after the collapse of the colonial system*, Nauka, Moscow, 1983 pp. 61-75.

context, "human rights" are almost of similar connotations of ancient term "natural rights"⁴ The pivotal argument is that each and every human being by his very virtue of spiritual and physical entities is free and equal, and creation of any artificial hurdles in the way of development of human qualities have been treated as the violation of human rights. The first article of the Universal Declaration on Human Rights clearly stipulates that: "All human beings are born free and equal in dignity and rights".⁵ But the history of the conceptions of "human rights" is much more younger than the fundamentals of Islam.⁶

Only in the sixteenth century the formulation of the conception of the "human rights" started.⁷ And in the twentieth century this conception reached its fruition in the form of a systematic "universal human rights".⁸ But Islamic conceptions of human rights have a history of fourteen centuries old. Prior to the tenth century these conceptions did not receive any thorough systematization. But after that all major Muslim schools of thought agreed upon some fundamental principles of human rights.

This statement demands a scrutiny of Islamic principles of human rights. Does they differ from modern conception of human

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4. "According to the ideas of the Greeks, men's lives should be lived in accordance with nature and with right reasons... Man and the state were thus bound together in a living social whole; neither could have interests contrary to the other... Nature was the source of law, and human reason the means through which nature's wishes could be discovered. "In: *Gottell's History of Political Thought* by Lawrence C. Wanass, George Allen & Unwin Ltd., London, 1964 pp. 41-42.
 5. Cited in : Muhammad Zafrullah Khan, *Islam and human rights*, The London Mosque, 1967, p. 4.
 6. Quran describes all human beings of similar physical and spiritual origin. See for details Quran: 2: 22-23, 4:2, 16: 73, 49: 14, 35:40, 95:5, 32:7-10.
 7. "But a real beginning was made only during the early 19th century". In: A. B. Kalaiah, *Human Rights in International Law*, Deep Deep Publications, New Delhi, 1986, p. 17.
 8. See for details *Ibid.* p. 18; "In the 20th century this developed in many constitutions of countries around the world and included expecting governments support of rights such as education, employment etc." In: *Echo of Islam*, No. 90. December, 1991, p. 61.

rights? How far Islam emphasizes on present-day universal equality? Equality and freedom are the twin pillars of human rights, and slavery is the anti-thesis of these. Issues surrounding the question of slavery may well explain some important aspects of the human rights in Islam.

Many critics of Islamic human rights argue that as the holy book of Islam, Quran, did not abolish slavery unequivocally, so question of genuine equality in Islam does not arise. However, it should be kept in mind that only very recently human civilization could bear the responsibility of the declaration of complete abolition of slavery.⁹ It would be too much to ask an ideology to go for complete abolition of slavery fourteen centuries ago without creating material and psychological preconditions. As a Divine religion, Islam, could bring unprecedented revolutionary changes in Arabian peninsula just after its emergence. But why not in abolishing slavery? If the Universal Declaration of Human Rights can stipulate that all sorts of slavery and slave-trade is completely prohibited, why the fundamental sources of Islam did not go for such stipulation?

Apparently Islam could abolish slavery by a simple pronouncement of the holy Quran.¹⁰ But even the Aristotelian argument postulates that no ideology or state can impose a dramatic change, which the concerned civilization or society can not sustain. Abolition of slavery could unleash a vast reservoir of human force, which the socio-economic infrastructure of the society would find extremely difficult to cope with. Not only the society could be hunted by the spectre of a threat by hordes of freed slaves; the slaves could be deprived of shelter, food and other basic means of existence. That is why Aristotle favoured a system of

9. In 1956 under the auspices of the U. N. O. 49 nations signed the antislavery convention. See for details: A. B. Kalaiah, *Ibid*, pp. 17-19.

10. "But the conditions of contemporary life (it was the beginning of the seventh century after christ) did not permit a total elimination of the exercise of control by one human being over another, though the degree and incidence of such control were so regulated by Islam as to render it very light and easily endurable, if not entirely beneficent in all cases" In: M. Z. Khan, *Ibid* p. 67.

slavery for the speedy development of human civilization.¹¹ Contribution of slaves to the Modern American civilization was so great that the Americans were enthusiastic to import thousands of African slaves to build their society and did not see any alternative to the slavery.¹² But Islam does not believe in a civilization built and sustained by the slaves. Islam adopted a comprehensive plan to release more and more slaves and rehabilitate them within the main-stream of the-society. The prophet of Islam not only exhorted his followers to free slaves but also encouraged them to take freed slaves as their brothers.¹³

The issue of slavery in pre-Islamic Arabian society is a complicated one. Despite their contribution to the Arabian society, like all other societies, slaves had no human rights as well there.¹⁴ Provision of equal freedom to the masters and slaves in Islam is a spiritual demand. To fulfil such a spiritual demand, approach should be made to appeal to the souls, so that masters and slaves understand that their relationship is entirely based on human foundation. Such a realization would hammer the very foundation of the slavery. To understand the basic arguments related to the

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11. "Aristotle's crucial thesis, which is itself in agreement with Plato, is that the distinction between ruler and ruled of which master and slave is an example, is distinction that we find throughout nature... perhaps the simplest explanation of what Aristotle means by natural slavery is that it is an example of the relation of body and soul... There is a common interest which unites natural slave with natural master, but this is not true when unjust law and force alone are the ground of the relationship" In: Leo Strauss, Joseph Cropsey, (eds) *History of Political Philosophy*, The University of Chicago Press 1981 pp. 75-76, See for details the "1st book" of Aristotle's *Politics*.
 12. An American author describing the absolute character of the "Declaration of Independence" of America adopted in 4 July 1776 says: "Blacks remained slaves until about 80 years later, women did not receive the right to vote until 112 years later and the working class did not get the legal right to organise and collectively bargain until 150 years later" In: Claude M. Lightfoot, *Human Rights U. S. style from colonial Times through the New Deal*, International publishers, New Yourk, 1977, p. 16.
 13. Quran encourages the Muslims to marry slaves, see Quran: 4:25.
 14. "In pre-Islamic Arabia slavery flourished unchecked and the lot of the slave was miserable in the extreme. The master possessed and exercised the power of life and death over the slave." In: M. Z. Khan, op. cit p. 66.

problem of slavery one has to study the philosophical and spiritual stand-points of Islam.

For the realization of human rights in practical life, in every instance, Islam starts with a spiritual reality and argument. In the first place, Islam takes every individual human being as a spiritual entity. In this consideration masters and slaves are placed on equal footing. That is why, at the very advent of Islam, without preaching any class hatred it invited the masters and slaves alike to the spiritual salvation. The very fact that many of the powerful and influential associates of the prophet (sm) were of the slave-origin proves that how strong was spiritual appeal of Islamic salvation. Slaves had been embracing Islam not out of material interests but to discover their spiritual faculties. On the other hand, masters had been releasing their slaves not out of compulsion, but as a symbol of their love to Allah, prophet and fellow human beings. Initially material and legal considerations were either irrelevant or insignificant. But only spiritual, philosophical and psychological approaches were not enough to stop the curse of slavery as a system. Spiritual salvation obviously demands physical freedom and social equality.

In the entire Arabian peninsula, long before the advent of Islam, the slavery was an institutionalized system and it had a mechanism to cater to the needs of masters and slave-trade. To face this reality Islam discovered a large number of ways to rescue the slaves from the bondage of their masters. Remedy of many sinful acts was the unconditional release of slaves. Moreover, provisions had been made to release the slaves at their market-price paid by others.¹⁵

For a slave it is an urgent need to put to an end of his slavery-bondage. But for a freed slave the most important is his rehabilitation in terms of social, economic and political consideration. In this regard Islamic spiritual and material approaches go parallelly. Jaid Bine Usamah, a slave lived with Prophet (Sm), even did not

15. After the prophet's marriage with Khadejah, he distributed the greater part of her property to the poor and freed all her slaves. See for details. Ibid.

know when he was freed. When Jaid's father came to take him back, then both the father and son learned that his slavery-bondage ended long ago.¹⁶ Still Jaid continued to live with the Prophet (Sm) and he was married with a cousin, Jainab, of the Prophet. Later on he was a military commander of Muslim army. Thus Jaid's rehabilitation was complete and comprehensive one. There are innumerable instances of similar kind. Belal, a black slave was bought by Abu Bakr, the first Caliph, to be freed. But he was not an empty handed freed slave. He got the job of the first Muazzin (he who calls for prayers). One of the most honorable jobs of the first Muslim state in Medinah. Thus the concept of freedom for freed slaves in Islam was real, not a formal one.¹⁷

History witnessed that the feudalism released a large number of slaves to buy their labour for cultivation of lands. Similarly capitalism wanted to free all slaves to get them engaged in factories and firms. But in both the cases majority of the freed slaves remained unemployed.¹⁸ Capitalism impoverished a great majority of the world population at the interests of the capitalist class. Socialism wanted to solve the problem of unemployment and poverty. But like Feudalism, and capitalism, socialism despite its eagerness to put an end of slavery-bondage, utterly failed to handle this problem comprehensively. Formally slavery was abolished, but in disguise there remain different kinds of slavery.¹⁹ In a capitalist system a poor and helpless man is no better than a slave, as even his physical survival is threatened, while in a socialist system human being turns into a slave of state and party machinery. The reason of this failure is the lack of spiritual and moral

16. "The prophet explained that Zaid was free and could go with them if he so wished and no question of any payment." Ibid.

17. "Throughout his life the prophet never owned any slave as the institution of slavery and anything savouring of it were repugnant to him." Ibid, p. 67.

18. "Hundreds of thousands of people all over Europe were on the point of starvation. They roamed from place to place seeking shelter and food." In: Claude M. Lightfoot, op. cit. p. 13.

19. "These circumstance in England and Europe made it easy for the colonizers to enlist people as temporary slaves for the American economy... Many free workers willingly signed away their freedom for a period of time to get transportation to the new land of "opportunity". Ibid, p. 13-14.

dimensions of those systems. Merely economic considerations save birth class-war between the conflicting parties, while Islam envisaged a slaveless society not at the cost of new curse of class-war.

From the time immemorial the gap between is and what ought to be worries human rational. Islam was quite aware that one kind of slavery can easily be replaced by other. Initially it might not be realized that new emerging disguised slavery would appear worse than the previous one. Replacement of feudalism by capitalism and capitalism by socialism proved that every socio-political system at its zenith is the most dangerous to the human freedom and equality. Any typical politico-economic system can not be sustained without wide ranged frequent violation of human rights, as totalitarian voluntarism is not compatible with the human nature. Man is not only a rational animal, he is also a combative one. Thus, as a whole human being can not be satisfied with any typical socio-political and economic system for a long period.²⁰

The fact that the frontiers of antonyms like good/bad, virtue/vice, freedom/ slavery, order/disorder, war/peace, conflict/agreement, legality/illegality in Islamic teachings are not the same as they are conceived in modern European or American traditions. This differentiation is very wide having specific legal, religious and moral implications. The view-points of Islam on social and family life, sex, morality, life-style, pattern of behaviour are very distinct. That is why social and legal regulations on the activities of state organs and individuals are bound to be different. In some cases apparently differentiation between Islamic and secular norms are almost unbridgeable. Many analysts taking the Quranic verses and Hadiths out of the context thus not only try to destroy their significance, but also create confusions. Many

20. According to Aristotle not the inequality of property power and honour serves as the major factor of change of socio-political system, it is the level of education and awareness of the people changes the social and economic system. See for details Book II of the politics.

situational and tactical issues were been treated as the bases of Islamic ideology.²¹

Of course, Islamic ideology has its own socio-economic and political world-view. Islam as a socio-political system is neither similar to Western liberalism nor to any secular totalitarian system. It has a set of principles, norms and values to guide a Muslim state and government. That is why, as an ideology, Islam, is very reluctant to recognize any prevailing state system entirely of its own or reject other entirely. But situational and tactical issues are not the basis of Islamic ideology. On the other hand, adoption of Islamic methods become meaningless without their proper utilization.²²

With regard to human rights Islam is predominantly interested in spiritual ends and means, but do not ignore material factors. For Islam, material ways and means are not the end in themselves. But emphasis on spiritual and material factors of human rights in Islam differ depending upon the level of overall religious, economic and cultural development of the concerned communities. In fact, question of priorities in spiritual and ritual matters divided the Muslim religious circles into two broad based groups: Sufis and Fuqah (jurisprudent). The jurisprudent hold that the shariah can be realized by emphasizing on outward ritual actions. But the sufis believe that such an outer form may be lacking in substance. According to Sufis, the preferred mode is to develop the dormant resources of the moral and inner self. Due to this preferential treatment, apparently one can easily trace a sharp conflict between the sufis and Fuqah. But in every ideology or conceptual notion there always exists a gap between the envisaged state and the

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21. Where it could have allowed many creative policies to develop, it instead became relatively rigid and became bound by certain historic precedents. In: Abdul Hameed Abu Sulayman, "Al-dhimmah and Related concepts in Historical perspective". In : Journal, Institute of Muslim Minority affairs Vol. 9, No. 1, London, 1988, p. 6.
 22. "it is wrong to abuse Islam by seeking to justify certain political systems in the face of obvious contradictions between those systems and Islamic Law" In: *Human Rights in Islam*. International Commission of Jurists, Kuwait University, 1982, p. 7.

reality. There is always a shortfall between the inner and its actualization in the outer. That is why, Sufis seek first to grasp the core and proceed outward to form, while Fuqah proceed from the shell, the outside and hope to penetrate to the kernel, the core. According to Fuqah, for an ordinary man it is very difficult to start with the core and in fact, they also do not consider the rituals as the end in themselves but a means to the end.²³

Conceptual differences between Sufis and Fuqah are not very difficult hurdles to overcome, if they want to work as mutakellimum (theologians) and social workers for the actualization of their convictions. Conceptual differences in the issues of human rights in Islam would be insignificant, if Muslim states and governments would come foreword for their actualization. Our present concern of human rights regarding freedom of choice, conscience, responsibility and belief can be well focused in terms of relations between Muslims and non-Muslims, maintained by the Muslim polity.

Muslim Political Authority and Non-muslims

Questions surrounding the protection of human rights based on the tenets of Islam is yet to be answered by the modern Muslim states. As a whole, Muslims have a long rich history of their co-existence with the non-Muslims both internally and externally. It is very important to scrutinise the behaviour of the political authority of the city-state of Medinah under the leadership of the prophet Muhammad (Sm). In fact the Medinah Charter ensured the rights of the non-Muslims living there. This is very important for the Muslims and non-Muslims alike because they take those experiences as the Islamic ideals for all the generations to come. Quran itself declares that Allah "sent thee (Muhammad) to save as a mercy for the peoples."²⁴ The prophet Muhammad (Sm) as a ruler of Muslim state had to prove the truthfulness of this Quranic verse. As the prophet of Islam and the ruler of Medinah, Muham-

23. See for details, Kerimv Gasym Mamed Oglu, "Basic principles distinguishing Orthodox Islam and Sufism: In: Journal Institute of Muslim Minority affairs vol. 9, No. 2 pp. 245-250.

24. Quran 21:107.

mad (Sm) had to balance between his methods of preaching Islam and his ruling system for Muslim and non-Muslim irrespective of their creed or tribal origin. Quran itself laid down the principles: "let there be no compulsion in religion".²⁵ Having been placed at the vantage point of domineering authority it was not an easy task to carve a very comfortable place for the non-Muslims. In this regard Medinah Charter was the fundamental law and guideline to the citizens of Medinah. The spirit of the Medinah Charter was maintained both in the time of peace and war.

There was an agreement among the tribes of Medinah to maintain peace and harmony internally and to protect the state at the time of aggression from outside.²⁶ The Jewish tribes were a party to the Charter, but soon they became jealous of the Muslims. They could not tolerate the emerging Muslim political authority, and with the collaboration of outsider non-Muslims waged a war against Muslims and thus Medinah Charter was put on a serious test. Prolonged conspiracies hatched by the some sections of Jewish tribes against the prophet ultimately caused the destruction of Jewish political and military power; but many Jews were allowed to live there in peace. They were tolerated and had never been forced to accept Islam. They were respected to the extent that they were considered still to have enough social ethics and order to allow human responsibility and orderly human interaction.²⁷ Violation of human rights by the Muslims against the Jewish and Christian population could not arise, as they got the treatment of *ahl-al Kitab* (the people of the book). The Zoroastrians (*Magians*) and *al-sabi un* were also received similar treatment like the people of the Book.

Many critics discussing the terminologies such as *Al-Dhimmah*, *Al-jizyah*, *Mushrikun*, *shrik*, *Jihad*, *Apostasy*, *Dar-al-Islam*, *Dar-al-harab* project that the place of human rights in Muslim states is so limited that violation of human rights is bound to be a common phenomenon throughout the traditional Muslim territories. But

25. Quran 2:256.

26. Articles of the Medinah Charter, No. 4, 7, 9, 23, 47.

27. See for details Abdul Hameed Abu Sulayman, op. cit. p. 6.

they forget that Islam is not merely a Divine religion, it is also a religion of fitrah (goodness and badness of human nature). It calls for the total submission to the Divine will out of conviction. Forceful submission to Divine will neither permissible nor desirable. Willful submission is only possible through the projection of higher social justice, human equality and a egalitarian system, where human arrogance and egotism have no place. It is the duty of the Muslims to prove their deepest and sharpest sense of responsibility in sustaining their cherished civilization and values.

Loyalty and commitment by the Muslims to the Divine guidance and the higher general standard of well-being of the entire population living under a Muslim polity is the precondition of exercising rights and duties of the Muslims. Without peaceful and orderly coexistence with other religions, Muslims can not hope to project their own healthy, stable and ever expanding progressive nature of thought and actions. Apart from the political aspects of Islam there are many other aspects of to be preached. Spiritual, moral and cultural aspects of Islam might appeal strongly in the absence of overt political domination on the non-Muslim subjects of the Muslim countries "All Muslims, particularly intellectuals, need to focus on this basic emphasis. The fundamental islamic attitude concerning relations among human being as expressed in the Quran and Sunnah in terms of love (tawadduhum), help (tuhsinvs), gentleness (allati hiya ahsan) and protection (atimmah)"²⁸ That is why, one can easily observe that the prophet Muhammed (sm) never attempted to convert the Jewish tribes of Medinah and the Arab Christians of Najrah in Islam by force. He offered the Christians of Najrah an effective territorial autonomy for their self-government according to their own creed.

Though generally it is regarded that Islamic law is a personal law-not a territorial one, yet one can observe that in practice Islam could allow even the territorial autonomy to the non- Muslims living under the Muslim polity. The Muslims even did not mind to allow non-Muslims raising pigs and eating pork in Muslim territo-

28. Ibid., p. 10

ries, but did not allow "riba-business" which could easily violate the socio-economic justice maintained by the Islamic state. In a word, both in terms of territorial and personal laws non-Muslim subjects of the Muslim states had equal rights to enjoy autonomy in running their religious and personal affairs. But difficulties arose with the people having no scripture and creed of their own. For example, the al-arab (the Bedouin) had no religious scripture, social norms, ethical and moral values. It was impossible to have any interaction with them on sensible terms. Those savage and barbaric pagans under their Bedouin leadership, in fact, declared an all-out war against Islam. Here Islam appears not merely a religion, but a civilization, bound to react appropriately. It was, of course, an Islamic duty to bring those pagans within the purview of human civilization so that an orderly human interaction could be established.

Every civilization has its own ways and means to use force against the extremely irrational subjects. Drug addicted or other kinds of perverted peoples can be taken for forceful treatment for their own well-being. It is not a violation of human rights, rather it is a necessary step to maintain a healthy social environment to sustain the human rights. The use of force for a healthy expansion of civilization is allowed in Islam, specially where exists no alternative. But it has to be borne in mind that use of force is the last resort in Islam. "A fundamental human change was indeed achieved when Islam introduced basic human rights as the Arabian Peninsula was subdued and launched its historic journey to civilization under the impetus of Islam".²⁹ But when the classical period of the expansion of Islamic civilization was over, the Muslim political forces could not maintain a balanced attitude between their state sponsored religious activities and use of force in bringing less civilized tribes or nations within the purview of Muslim civilization.

Muslim jurists, thinkers and theologians were quite aware about this unbalanced attitude towards non-muslims by the Muslim

29. Ibid., p. 6.

rulers. In fact, emergence of sufism and other forms of non-political Islamic trends sustaining the purity of Islamic values brought more and more non-muslims within the wider purview of Islam. Many non-Muslims either accepted Islam or gave up their staunch anti-Islamic stands. Continuous hostility between the Muslims and non-Muslims could easily pose a threat to the peaceful methods of preaching Islam. The peaceful methods of Sufis attracted diverse sections of population towards Islam. That is why, history witnessed the success of Sufis in spreading Islamic ideas and teachings in many regions of the present Muslim world, specially in Africa, south-East Asia, India, Pakistan and Bangladesh. The Muslim merchants also played a remarkable role in this respect. Sufi-teachers and Muslim merchants successfully projected the unprecedented tolerance towards other religious beliefs and non-Muslims throughout the entire medieval era.³⁰

Modern Muslim States and human rights

From western perspective hardly any modern muslim state can be found where maintenance of human rights would be marked upto the standard of the day. Who is to be blamed? Ordinary Muslims, Muslim rulers or Western colonizers and their system? As the upholders of Islamic civilization, Muslims lost their grounds initially not in the international fronts, but in their domestic fronts. Muslim rulers were inhumane to their own Muslim citizens and destroyed the dynamism prevailed in the early Islamic societies. As a result the Muslim political and economic system collapsed completely and the Muslim countries lagged far behind in terms of scientific and technological progress in relations to non-Muslim counterparts. This paved the way for the West with its superior economic and political system to subjugate Muslim states. Colonialization process was so strong and pervading that in the nineteenth century the entire Muslim Ummah came under serious cultural, political, economic and military domination of the west.

30. See for details Nasim Hasan Shah, "The concept of Al-Dhimmah and the Rights and duties of Dhimmis in an Islamic State" In: Journal, institute of Muslim Minority affairs (JIMMA), vol. 9, No. 2, pp. 217-222.

A dichotomy in Muslim response was visible towards Western political and cultural onslaught. The Muslim masses shunned any relationship with the west, took solace in their past glories and clung more desperately to the ritual aspect of religion. But the Muslim rulers, on the other hand, cultivated friendship with the West to safeguard their political interest. More they culturated themselves with the west, the more they became alienated from the Muslim masses. Though kings, shaiks and Amirs maintained their power in collaboration with the Western rulling elites, they attempted to hoodwink the Muslim masses playing on religious symbols and rhetories.

The Muslim failed to understand that European colonial powers were merely interested in dividing the Muslim countries among themselves. Sykes-Picot Agreement of 1916 was the glaring example of this process. Thus since the early years of the nineteenth century Muslim countries had very little scope to project their own brand of civilization and human rights. Prior to the world war II the Muslim counties had no real choice but to adopt this or that European thought or system which was neither suitable to them nor acceptable to the common masses. To get rid of European system or culture, Muslim Ulamas with some segments of Muslim masses wanted to create unity among the Muslims. But each and every group searching unity made situational or tactical stands as the fundamental Islamic issues. A group of political activists regardless of their political and religious loyalties, can easily form a political institution based on any particular doctrine. There might be a good number of political doctrines based on one particular ideology, and Islam is no exception to this Universal phenomenon. In fact, rise of any political institution is basically a result of the interaction between a doctrine and prevailing state order and environment. But in the modern Muslim world the muslim political activists estabilishing this or that political institution or pursuing a particular political doctrine try to prove that all other institutions and doctrines lost their viabilities and practica-bilities; and in search of conclusive evidence in their favour and against others they often use peripheral issues as the central issues. As a result Islam as an ideology has been presented in a very

distorted way, and in the political arena a comprehensive Islamic ideology with its original fervour lost its ground. The Muslims found themselves in internal fierce struggles throughout the Muslim world, and Muslims left with no effective co-operation and workable institutions both in managing domestic and foreign affairs.

Since 1950s the newly sovereign Muslim states mainly adopted either typical capitalistic or socialistic course of development. But ruthless character of capitalist economy in the Muslim countries is more ugly than the oriental economic systems.³¹ The Muslim nationalist bourgeoisie class associated with the external forces mercilessly have been exploiting the peoples of the forces mercilessly have been exploiting the people of the Muslim countries. As a result, some of the Muslim governments and a big section of Muslim intellectuals adopted socialism as their ideology and orientation. Socialism in Muslim countries in the guise of one party system reinforced already prevailing tyranny and usurpation of human rights. Not only they failed to make a headway in proper distribution of wealth, but they put the national economy in shamble.

All sorts of westernization, modernization and socialisation of the Muslim societies, in fact, undermined the basic religious principles and the traditions of Islam. Newly introduced system in the Muslim countries could only bring benefits to a tiny sections of the masses and alinedated the majority of the Muslims from state affairs. As a result the Muslim countries are trapped in tumultuous and instability phase, as is being buffeted by ideas and forces that are more alien to its nature than anything encountered earlier. The different sections of the Muslims stepped in fierce conflict with one another.³² Thus both the capitalist and socialist system failed to prove that they have a better way of life to replace the Islamic one. Argument that Islam is merely a religion failed to convince the Muslim masses to believe so and to practise accordingly. Islam

31. See for details ye. M. Primakov, op. cit. pp. 62-66.

32. See Lawrence Ziring, "Constitutionalism and the Quran in the Final Decades of the 20th Century" In: JIMMA, p. 228.

increasingly is becoming attractive as a socio-political and economic system. In the face of Islamic revivalism, the Muslim governments and political parties are increasingly, though half-heartedly attempting to reflect the hopes and aspiration of the Muslims in reshaping the state machinery. Thus the Muslims are interested in having their own concepts of human rights to be implemented in their society, rather than borrowed them from outside.

Islamic Constitutionalism and human rights

Does Islam has its own constitutionalism? Can Islamic constitutionalism effectively safeguard the human rights? What are the main problems of the Muslim countries in establishing constitutional ruling for guaranting the human rights of their people? The modern Muslim states in general failed to develop a deep-rooted constituional system of their own. If we divide the Muslim states considering their degrees of political stability, economic viability, social coherence and progressive policies, a paradoxical situation would be discerned. The Muslim states with considerable political stability and economic viability rarely possess any substantial political legitimacy. On the other hand, Muslim governments possessing some degrees of political legitimacy, in fact, seriously lack political stability and strong economic viability.

Irrespective of degrees of political legitimacy and stability the majority of the Muslim governments are eager to justify their adopted policies and actions in the name of Islamic principles, customs, norms and muslim traditions.

The Muslim governments adopting no constitutions at all also trying to justify their actions through Islamic tenets and arguments. The Quranic verses: "We detail our revelations for a people who have knowledge"³³ "Thus we display the revelations for people who have sense"³⁴ "Thus we do expound the revelations for people

33. Quran 9: 11.

34. Quran 30: 28.

who reflect"³⁵ are often used in favour of the arguments that the Muslim governments do not need any "man-made constitutions".

It is argued that not only general constitutional principles are found in the Quran, but other branches of law can easily be built on the basis of Quranic principles. The argument that the Quran can easily serve the role and functions of a modern constitution of a nation-state leads to the reinforcement of absolute power in the hands of Muslim rulers. Countries like Saudi Arabia and Qatar do not have any constitution, unabashed absolutism prevails there in the name of religion. Presumably they tried to extol the role of the Quran, but in reality equating Quran with a constitution of modern nation-state they severely disgraced the revealed text of the Quran.³⁶

The Quran has been revealed for the entire mankind. It "speaks to all men with the same message, emphasizes equality, and warns against perversion and wickedness."³⁷ In fact, there is no doubt that in the first place the Quranic message is meant for the entire humanity and, of course, Quran demands from the Muslims the fulfilment of their duties towards the causes of humanity. For a better service to the causes of humanity the Muslim people were supposed to be united under a single political leadership. But single political leadership does not mean any dictatorial or autocratic ruling system. Rather Quran prescribes a constitutional ruling system of the Muslim Ummah similar to a confederation of commonwealth. In this perspective Quran can be regarded as the constitution of the world-wide Muslim confederation, which even can be termed as Caliphate. Even in terms of modern constitution the Holy Quran can easily be served as the strongest source of orientation and aspiration for the entire mankind and the Muslims

35. Quran 10:24

36. Quran strongly warns against seeking rules and regulations of everything by express Divine revelations, as that would make Islamic framework rigid, inelastic and burdensome. "O ye who believe, do not keep asking about things which, if they were expounded to you, would become troublesome" Quran: 5:102.

37. Lawrence Ziring, *op. cit.* p. 225

in particular, but it can not be named as a state constitution in a typical modern sense.

A modern state-constitution is predominantly concerned with the national causes and interests. Constitution is the reflection of power struggle among different national political parties and a legitimate relationship between the governors and governed of the concerned state. Cardinal test for a state-constitution is its effectiveness in protecting the weaker sections of the society. The rockbed for a constitutional society is the open and free expression of diverse views and practices and the toleration of different forms of expression. From these perspectives Muslim nation-states, constitutional performance is very poor.

In fact, the modern Muslim states who can boast of having a constitutional system of their own, failed to develop a constitution based on their ideology or philosophy. In most cases they emulated Western pattern. The 1956 and 1962 constitutions of Pakistan asserted the sovereignty of almighty over the entire universe and emphasised the Islamic principles of socio-economic justice. But in reality almost all Islamic teachings regarding socio-political justice and human rights were ignored and Islamic principles were misused to safeguard the rights of vested interested groups.

The Muslims in general failed to realise that in the West the constitutional development knows a several centuries-long process of historical evolution based on their culture and tradition.

Constitutions of the majority of the Muslim states were adopted under the pressure of some vested interested foreign and national quarters. Rarely a constitution of a Muslim country has any grass-root connections with their own people and societies. Real and effective constitutions are to be evolved, developed and nurtured by the customs, values, sentiments, emotions, hopes and aspirations of the concerned peoples. Muslim governments and political parties have been ignoring this simple factor of constitutionalism and thus the Muslim countries are over-all left without any effective constitutional ruling and witnessed endemic instability resulting from inter-cine struggle among various groups for power.

Maintenance of human right is the hall-mark of a constitution, whether it is secular or religious. But maintenance of human right is possible if awareness of the ruler and the ruled converge on the fundamental rights. The tragedy of the Muslim people is that the ruled Muslim lack consciousness and awareness, and on the other hand, the rulers are indifferent to the basic human rights. How agonising the ordeal is for the Muslims would be apparent from the attitude of the Muslim scholars towards the right to education. All Muslim scholars admit that Islam advocates compulsory education for all Muslims and similar right should be guaranteed for non-Muslims as well.

On the other hand, according to the Universal Declaration on Human Rights: "Everyone has the right to education"³⁸ and "parents have a prior right to choose the kind of education that shall be given to their children".³⁹ Analysing the texts of international conventions concerning the right to education some Muslim scholars describe them as "a simple recommendation and is not binding or enforced while Islam makes it imperative obligation for muslim states and individuals"⁴⁰ But still today Muslims predominantly remained illiterate and in this respect situation in the oil-riched Arab countries is worse than even the non-Arab poor Muslim countries.

Despite all this the Kingdom of Saudi Arabia " feels proud because of education is free at all its-level... for both males or females... and often encouraged by adequate grants... it is to help you appreciate the primary importance of human rights in the kingdom... you will also more easily realize how much would be lost, if cultural rights in that kingdom were to be reduced to the limitations of the International charters, and becomes simple

38. Article 26(1) of the *Universal Declaration on Human Rights*,

39. *Ibid.* Article 26(3).

40. "the Prophet made education obligatory on all Muslims, men and women, by urging them to contemplate all occurrences, in the sky or on the earth. This contemplation corresponds to the Islamic idea of complete education, necessary for the full development of human personality." *Conferences on Muslim Doctrine and Human Rights in Islam*, Ministry of Justice, Riyadh, p. 109.

recommendations, never enforced".⁴¹ But reality shows that eighty percent of Saudi population are still illiterate. No one can ignore the fact that Islam makes education compulsory for all Muslims, but right to education still remains ignored or unfulfilled by the Muslim governments irrespective of their character of ruling: monarchy, democracy, dictatorship or constitutional.

Similar bleak picture would evident in respect of right to labour. Rights to form labour unions and their freedom of opinion and expressions are more or less recognised by all states. Right to go on strike in organized manner in demand of fulfilling some basic human rights is accepted universally.⁴² The Muslims in general vehemently criticise all Marxist and socialist doctrines advocating various right of labour movements.⁴³ Many Muslims also criticise Western capitalist policies regarding various rights of the working people.⁴⁴ But in the Muslim world rarely there exists any legal system dealing with these issues with proper attention.

Foreign workers and poorer sections of the Arab workers are being seriously discriminated on many accounts, while officially it is recognized that Islam does not make any distinction or allows for any kind of distinction between one human being and another concerning the things provided for in the Universal Declaration of Human Rights, namely race, colour, language, religion or opinion, national or social origin wealth or country.⁴⁵ Islam has its own way in dealing with various rights of women, especially in the matters of marriage, divorce, inheritance and witness system. But these systems along with other Islamic principles are either misinterpreted or misused throughout the Muslim world. For example, there is no Islamic provisions prohibiting non-Arab workers legally working in the Arab countries to enjoy equal human rights. But in reality both foreign Muslims and non-Muslims

41. Ibid., 60, 119, 122.

42. "Everyone has the right to form and to join trade unions for the protection of his interests" Article 23(4), the Universal Declaration of Human Rights.

43. Conferences on Moslem doctrine and Human Rights in Islam op. cit. p. 56.

44. Ibid.

45. Ibid pp. 49, 79.

working in the oil-rich Arab countries have no human rights as such. Arab laws almost always stand against the foreign workers in case of any dispute or disagreement.⁴⁶ Thus mere proclamation of various rights by a constitution may remain empty slogans having no strong legal and practical effects. All constitutional rights must be enforced by other branches of municipal law and strongly supported by public and private institutions and public opinion, otherwise those rights are not achievable practically.

The Muslim countries' main problem is the absence of any effective constitutional ruling. In theoretical perspective some Muslim states might boast of having a balanced ideology and constitutionalism to take care of human rights up to the demand of the day. But above all they need governmental machinery accountable to their own people and only then one can hope their reasonable behavior in fulfilling the basic demands of human rights.

Conclusion :

It is an undeniable fact that the very conception of the human rights in Islam is different from all other Western and secular concepts of human rights. The main indicator of the success and failure of the Western and secular concepts of human rights is the material achievement while the spiritual salvation is the prime concern of the Islamic concepts of human rights. With material achievements as the offshoots which is also not less remarkable than the mundane achievement as gained under capitalist society or any other mode of development. In material terms a state or society may be rich, but its humane character may be very poor because of its weak moral, ethical and spiritual foundation. Rich humane character and strong moral foundation of a society can be

46. Arguing that foreign workers may engage themselves in subversive activities. It is claimed that "the kingdom of Saudi Arabia, with deep understanding, has given its reservations on this point which combines odd and absolute rights including the right to strike, in order to prevent the interests of the workers themselves, and the interests of the national economy from becoming a tool in the hands of irresponsible subversive foreigners" Ibid. p. 57.

regarded as the end of Islamic human rights, while material advancement is the means to achieve that goal. But within the wider purview of the Islamic conception of human rights there exists distinct differences among the different schools of thought on the priorities of the basic human rights and their contextual interpretations. Sufistic interpretation of human rights differs from the views of the Islamic jurisprudence. Madhhabi and sectarian differences also can not be ignored. But despite all the differences on the questions of human rights in Islamic perspective there could be found a mainstream in actualization of basic human rights, and the rockbed of the Islamic human rights is very wide and equally relevant to all schools of thought. Because Islam regards the entire humanity as the off-shoots of the "first couple" called Adam and Eve.

All Muslim schools of thought are in consensus that for the real spiritual salvation a human being must enjoy freedom in physical and psychological terms. But in regard to the ways and means there exist differences of opinion. A Sufistic approach may over emphasize on moral, ethical and spiritual foundation of human rights, while a jurisperdent may even ignore some of the moral and human dimensions. Equal status of human beings in terms of similar material opportunities may be a matter of great importance. Providing equal opportunities in achieving material comforts a state or ideology wants to project its humane face. But the higher material achievement of a state or society does not necessarily lead to equal distribution of wealth. That is why moral foundation and richer spiritual salvation of each and every citizen of a state is regarded as the precondition of actualization of the Islamic human rights because this would ultimately lead to the egalitarian distribution of material wealth also.

Since the adoption of the Medinah Charter and the establishment of the city-state of Medinah, Islamic civilization as a whole projected its own brand of human rights through the actualization of those rights in the Muslim societies. Under the direct supervision of the prophet Muhammad (Sm) the theoretical concepts of the

Islamic human rights got the highest level of practical implementations. After his physical demise the level of actualization of Islamic human rights differed depending upon the personage at the helm of state affairs, socio-political, economic and cultural development of different Muslim states and societies. Subjective factors i.e. the Muslim rulers in particular and the Muslim masses in general, not always could fulfil their religious and moral duties to safeguard human rights. Violation of Islamic human rights on the part of the Muslim rulers and state sponsored administrators was not of a rare occurrence. But uncompromising struggle of the Muslim opposition to protect the rights to freedom of opinion and expression, and to achieve equal rights in the eyes of law knows no parallel in the history of human civilization. In fact, it is not the Muslim state authorities, but the Muslim opposition under the leadership of Mujtahids or Saints, who ensured the minimum realisation of Islamic human rights through their armed or peaceful struggles.

The real state of affairs concerning the basic human rights in the modern Muslim nation-states does not fulfil the demands of the day. The poor performance of the Muslim governments in realizing various human rights in their societies is in organic relationship with the colonial legacies and westernization process of the Muslim societies. All sorts of westernization and secularization of the Muslim societies not only failed to bring any remarkable change to the better in realization of the basic human rights, but in fact adversely affected the general welfare and level of human rights achieved in Muslim states and societies. At present a sense of realization appears to be prominent throughout the Muslim world to achieve their own religious and moral foundations. Islamic principles, norms, values and Muslim traditions appear to be more effective in safeguarding the basic human rights for the broader sections of masses. As human rights can not be realised without the strong support of public opinions, and public opinions can not be built with the help of alien ideas, unknown to the Muslim masses.

Uncertainty and instability of the Muslim governments and their alienation from the grass-root levels of their societies made them ineffective in actualizing the basic human rights. Moreover, they themselves have been violating the human rights to safeguard their regimes from the political and religious oppositions or popular uprisings. The governments without any substantial political legitimacy and in constant fear of insurgencies can not be the guarantors of the human rights. On the other hand, in the absence of strong legitimate governments international law and institutions can not uphold the causes of human rights in those states.

Democratic institutions of a state having wide ranging popular basis and support can only be the real guarantors to safeguard the human rights. But the Muslim countries failed to develop their own democratic traditions. They tried to imitate typical western democracy without giving proper emphasis on their own religious norms, customs, values and traditions. In theoretical perspective Muslims inherited very strong constitutional legacy of their own, but for the modern Muslim nations that is mainly a remnant of former glory.⁴⁷

The Muslim-nation states neither successfully could establish institutions of western democratic pattern nor fruitfully could evolve their Islamic institutions. In theoretical consideration they have to rely on many Islamic directives and in practical terms they have to use the experiences of Western and "secular" democratic values and traditions. With such a comprehensive approach and attempt, a Muslim nation-state can hopefully establish a governmental machinery accountable to the people and seriously

47. "It has been said that Islam is an egalitarian creed; that, indeed, it is more republican than royalist in sympathy;... At one time or another, Mamluks (non-Arab slaves who were recent converts to Islam) ruled Muslim states from India in the east to Spain in the West; Whereas, by contrast a slave dynasty ruling a christian kingdom would have been inconceivable." In: F. et-Manssoury, "From Granada to the Gulf: Did History Repeat Itself?" In : *The Muslim World Book Review*, Vol. 12, No. 2, 1992. The Islamic Foundation, U. K. p. 5.

committed to the realization of human rights. However, a single modern Muslim state in isolation probably can not make any headway in the process of materialization of human rights in Islamic perspective as elaborated in the paper. Therefore, in this extremely interdependent world, unless the Muslim nation states approach the issue comprehensively as well as unitedly, the realization of Islamic human rights will remain only a pious wish and a distant dream.